

**Letter of Findings: 01-20150540  
Indiana Individual Income Tax  
For The Tax Year 2011**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### **HOLDING**

Individual was required to file 2011 Indiana individual income tax return, IT-40PNR form, because during the first three months of 2011, he resided in Indiana, worked in Indiana, received unemployment benefits from Indiana and had Indiana source income.

### **ISSUE**

#### **I. Indiana Individual Income Tax - Non-filer.**

**Authority:** IC § 6-1.1-12-37; IC § 6-3-1-3.5; IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Croop v. Walton, 157 N.E. 275 (Ind. 1927); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988); [45 IAC 3.1-1-21](#); [45 IAC 3.1-1-22](#); [45 IAC 3.1-1-23](#); [45 IAC 3.1-1-115](#); [50 IAC 24-2-5](#).

Taxpayer protests the Department's proposed assessment for the 2011 tax year.

### **STATEMENT OF FACTS**

Taxpayer is an individual with a current Michigan address. Taxpayer did not file an Indiana income tax return for the tax year 2011. The Indiana Department of Revenue ("Department"), based on publicly verifiable information including real property records, determined that for 2011, Taxpayer was an Indiana resident and had Indiana source income, that Taxpayer failed to file his Indiana income tax return, and that Indiana income tax was due. As a result, the Department assessed Taxpayer Indiana income tax based on the best information available at that time ("BIA assessment").

Taxpayer timely protested the BIA assessment. An administrative phone hearing was held. This Letter of Findings ensues and addresses Taxpayer's protest of the BIA assessment for the Tax Year at Issue. Additional facts will be provided as necessary.

#### **I. Indiana Individual Income Tax - Non-filer.**

### **DISCUSSION**

The Department, based on publicly verifiable information including real property records, determined that Taxpayer was an Indiana resident for 2011, that he had Indiana source income, that he failed to file his Indiana income tax return, and that Indiana income tax was due.

Taxpayer, to the contrary, claimed that he moved to Michigan in late March 2011 because of new employment. Taxpayer claimed that he was not required to file an Indiana income tax return.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong.

Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Indiana imposes a tax "on the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. To efficiently and effectively compute what is considered the taxpayers' Indiana income tax, the Indiana statute refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayers' taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

For Indiana income tax purposes, resident "includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state. . . ." IC § 6-3-1-12; see also [45 IAC 3.1-1-21](#). Nonresident is "any person who is not a resident of Indiana." IC § 6-3-1-13.

[45 IAC 3.1-1-23](#)(2) explains further how "residency" affects a taxpayer's income tax liability, in relevant part, as follows:

Taxpayer Moving from Indiana. Any person who, on or before the last day of the taxable year, changes his residence or domicile from Indiana to a place without Indiana, with the intent of abiding permanently without Indiana, is subject to adjusted gross income tax on all taxable income earned while an Indiana resident. Indiana will not tax income of a taxpayer who moves from Indiana and becomes an actual domiciliary of another state or country except that income received from Indiana sources will continue to be taxable.

To determine a person's domicile, [45 IAC 3.1-1-22](#) states:

For the purposes of this Act, a person has only one domicile at a given time even though that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.

The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case. Relevant facts in determining whether a new domicile has been established include, but are not limited to:

- (1) Purchasing or renting residential property
- (2) Registering to vote
- (3) Seeking elective office
- (4) Filing a resident state income tax return or complying with the homestead laws of a state
- (5) Receiving public assistance
- (6) Titling and registering a motor vehicle
- (7) Preparing a new last will and testament which includes the state of domicile.

Indiana law further defines "[h]omestead" as "an individual's principal place of residence . . . that is located in Indiana" and that "the individual owns . . . ." IC § 6-1.1-12-37(a)(2). "'Principal place of residence' means an individual's true, fixed, permanent home to which the individual has the intention of returning after an absence." [50 IAC 24-2-5](#). A taxpayer is entitled to claim a deduction, known as homestead deduction (or exemption), against taxes imposed on his or her homestead property pursuant to IC § 6-1.1-12-37(e). When the taxpayer is no longer qualified for the homestead deduction (or exemption), the taxpayer must notify the auditor of the county where the homestead is located within sixty days after the date of that change. IC § 6-1.1-12-37(f).

Thus, a new domicile is not necessarily created when an individual moves to a place outside Indiana. Instead, the individual must move to the new non-Indiana place and have intent to remain there indefinitely.

For example, in *Croop v. Walton*, 157 N.E. 275 (Ind. 1927), a taxpayer, Mr. Walton, who was domiciled in Michigan sold his home in Michigan and moved to a new residence in Indiana where he and his wife lived for several years for the benefit of his wife's health. Mr. Walton lived in the Indiana home "on account of the mental and physical condition of his wife, and continued to occupy it until such time as she could safely return to [Michigan] to live." *Id.* at 276. The court concluded that, based on the level of activity he maintained in Michigan and lack of intention to abandon his domicile, Mr. Walton did not change his domicile from Michigan to Indiana. The court explained, in relevant part, that:

"If [a] taxpayer has **two residences in different states**, he is **taxable at the place which was originally his domicile, provided the opening of the other home has not involved an abandonment of the original domicile and the acquisition of a new one.**"

'[D]omicile' . . . is the place with which a person has a settled connection for legal purposes, either because his home is there or because it is assigned to him by the law, and is **usually defined as that place where a man has his true, fixed, permanent home, habitation, and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the intention of returning.**

*Id.* (Internal citations omitted) (**Emphasis added**).

In explaining the difference between "residence" and "domicile," the court in *Croop* stated:

'Domicile' "is a residence acquired as a final abode. To constitute it there must be (1) residence, actual or inchoate; (2) the nonexistence of any intention to make a domicile elsewhere." "The domicile of any person is, in general, the place which is in fact his permanent home, but is in some cases the place which, whether it be in fact his home or not, is determined to be his home by a rule of law."

**"Residence is preserved by the act, domicile by the intention." "Domicile is not determined by residence alone, but upon a consideration of all the circumstances of the case." "While a person can have but one domicile at a time, he may have concurrently a residence in one place . . . and a domicile in another."**

To effect a change of domicile, **there must be an abandonment of the first domicile** with an **intention not to return to it**, and there must be **a new domicile acquired by residence elsewhere** with an **intention of residing there permanently, or at least indefinitely.**

*Id.* (Internal citations omitted) (**Emphasis added**).

In *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court considered the issue of the meaning of "domicile" in determining that Mr. Bayh met the residency requirement for the office of Governor. Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. The court stated, in pertinent part:

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and . . . he does not lose the one until he has gained one in another place." Establishing a new residence or domicile terminates the former domicile. A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact.... **[T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile.**"

A person who leaves his places of residence temporarily, but with the intention of returning, has not lost his original residence. . . .

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." **Intent and conduct must converge to establish a new domicile.**

*Id.* at 1317-18 (Ind. 1988) (**Emphasis added**).

Taxpayer in this instance stated that he worked for an Indiana employer until March 2011 when he was laid off. Subsequently, Taxpayer moved to Michigan where he rented an apartment in June 2011 to begin a new job.

Although he owned a house in Indiana and a homestead deduction was claimed for 2011, Taxpayer stated that his Indiana house was foreclosed in 2012. Taxpayer further asserted that he filed a Michigan income tax return for 2011 and paid state income tax to Michigan. Thus, Taxpayer maintained that he was not an Indiana resident and was not required to file the 2011 Indiana income tax return. To support his protest, Taxpayer provided copies of his 2011 lease and his 2011 Michigan income tax return.

Upon review, as mentioned earlier, "[o]nce a domicile has been established, it remains until the conditions necessary for a change of domicile occur." [45 IAC 3.1-1-22](#). "To effect a change of domicile, there must be an abandonment of the first domicile with an intention not to return to it, and there must be a new domicile acquired by residence elsewhere with an intention of residing there permanently, or at least indefinitely." Croop, 157 N.E. at 276; see also Bayh, 521 N.E.2d at 1317-18. Taxpayer, in this instance, leased an apartment in Michigan in June 2011, obtained his Michigan driver's license, registered his vehicles in Michigan in October 2011, and also registered to vote in Michigan. The Department is mindful that there is no one set of standards that will accurately indicate the person's intent in every relocation. Given a "case by case" review of Taxpayer's facts, documentation, circumstances, the Department is prepared to agree that Taxpayer "abandoned" his Indiana domicile beginning October 2011 and established his new domicile in Michigan afterwards.

Taxpayer's 2011 Michigan income tax return further showed that he claimed "Renters" deduction as "Part-Year Resident" from April 4, 2011 through December 31, 2011 in his Michigan return. Thus, Taxpayer demonstrated that for 2011 he did not spend 183 days or more in Indiana. As a result, the Department is prepared to agree that Taxpayer was not an Indiana full-year resident for 2011 because he changed his domicile from Indiana to Michigan and did not spend more than 183 days in Indiana.

Nonetheless, it should be noted that Taxpayer in this instance filed and claimed "Part-Year Resident" in his 2011 Michigan return. Indiana and Michigan have entered into a reciprocal income tax agreement. [45 IAC 3.1-1-115](#). "Indiana will not impose its adjusted gross income tax on salaries, wages and commissions earned by legal residents of [Michigan] in Indiana and [Michigan] in turn will not impose their individual income tax on wages, salaries and commissions earned by legal residents of Indiana in [Michigan]." Id. Taxpayer's 2011 Michigan "Part-Year Resident" return demonstrated that he only paid income tax to Michigan on his wages earned in Michigan. Before Taxpayer relocated to Michigan in April 2011, Taxpayer resided in Indiana, worked in Indiana, and also received unemployment benefits from Indiana. That is, Taxpayer was an Indiana resident for several months and had Indiana source income during 2011; that income was Indiana source income and subject to Indiana income tax. IC § 6-3-2-2(a); [45 IAC 3.1-1-23](#)(2). In light of the new information submitted, the Department's BIA assessment might have been overstated. However, without the required actual Indiana return, IT-40PNR form, the Department is not able to properly review and determine the correct amount of tax due for 2011. Thus, Taxpayer was required to file an Indiana part-year resident return (IT-40PNR form), reporting his Indiana income.

In short, given the totality of the circumstances, Taxpayer established that for 2011 he was in the process of changing his domicile and did not spend more than 183 days in Indiana. Taxpayer's documentation further demonstrated that for several months in 2011, he had Indiana source income while he resided in Indiana, worked in Indiana, and received unemployment benefits from Indiana. Thus, Taxpayer was required to file a 2011 IT-40PNR return and remit Indiana tax.

### FINDING

Taxpayer's protest is sustained provided that he files the required 2011 Indiana IT-40PNR return and pays the amount due within 30 days from the date this decision is issued. Otherwise, Taxpayer's protest is respectfully denied.

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