

**Letter of Findings: 01-20160040
Indiana Individual Income Tax
For The Tax Year 2012**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Individuals were Indiana residents because they maintained a permanent place of residence in Indiana and spent more than 183 days in Indiana.

ISSUE

I. Indiana Individual Income Tax - Residency.

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](#); [50 IAC 24-2-5](#).

Taxpayers protest the Department's proposed assessment for the 2012 tax year.

STATEMENT OF FACTS

Taxpayers are a married couple with a current Florida address. Taxpayers did not file a 2012 Indiana income tax return. The Indiana Department of Revenue ("Department") determined that for the tax year 2012, Taxpayers were Indiana residents, that Taxpayers failed to file their Indiana income tax return, and that Indiana income taxes were due for 2012.

Taxpayers timely protested the assessments. An administrative hearing was conducted during which Taxpayers' representative explained the basis for the protest. This Letter of Findings ensues and addresses Taxpayers' protest of the proposed assessments for 2012. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Residency.

DISCUSSION

The Department, based on publicly verifiable information including Indiana real property records, determined that Taxpayers were Indiana residents, that they failed to file a 2012 Indiana income tax return, and that Indiana income tax was due for 2012. Taxpayers, to the contrary, claimed that they were not required to file the 2012 Indiana income tax return and did not owe any Indiana income taxes because they were not Indiana residents. The issue is whether, for the year 2012, Taxpayers were Indiana residents.

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.

Additionally, [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. at 277 (internal citations omitted).

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. at 277-78 (internal citations omitted).

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.

Taxpayers, in this instance, were longtime Indiana residents who contended that they were not Indiana residents because they have been domiciled in Florida since 2003. Specifically, Taxpayers asserted that, following their attorney's advice, they changed their domicile from Indiana to Florida in 2003, that they registered their motor vehicles in Florida and periodically renewed the Florida licenses, that they registered to vote in Florida, and that they attended a church and a social club in Florida. To support their protest, Taxpayers provided additional documentation, including a "Florida Residency Checklist," a living will, a Florida "Declaration of Domicile," their Florida driver's licenses, and certificates of membership of a Florida church. Taxpayers also took steps to remove the Indiana homestead deduction which was erroneously claimed.

Upon review, Taxpayers' supporting documents demonstrate that since 2003 they had intended to change their Indiana domicile to Florida and did so following the legal advice they obtained. Thus, the Department is prepared to agree that Taxpayers changed their domicile from Indiana to Florida.

However, because Taxpayers maintained a permanent place of residence in Indiana (the home they own), they may also qualify as Indiana residents when they spent more than 183 days during the year at issue in Indiana. IC § 6-3-1-12; [45 IAC 3.1-1-21](#). During the protest process, Taxpayers initially wrote to the Department stating that they spent "188" days in Indiana. After a subsequent phone discussion with the Department, however, Taxpayers

claimed that they spent "181" days in Indiana without providing any reason or documentation to explain the change.

As mentioned above, Taxpayers bear the burden to demonstrate that the assessment is not correct. After careful considering both statements, the Department is mindful that the residency test here is a technical one. However, Taxpayers' own statements created the unusual circumstance. Taxpayers' initial statement clearly conceded that they were Indiana residents because they own the Indiana home and spent 188 days in Indiana. Taxpayers' subsequent statement however suggests otherwise. To state it differently, Taxpayers' initial statement would have made Taxpayers Indiana residents for the tax year at issue and their income would have been subject to Indiana income tax. Without supporting documentation to explain the change, the Department is not able to agree that Taxpayers met their burden and that they were not Indiana residents.

In short, the Department agrees that Taxpayers met their burden to demonstrate that they were domiciled in Florida. However, there is another test for residing in Indiana, "(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." Given the totality of the circumstances, in the absence of other supporting documentation, because Taxpayers maintained a permanent place of residence in Indiana and spent more than 183 days in Indiana, Taxpayers were Indiana residents. Thus, Taxpayers were required to file the 2012 Indiana full-year income tax return and their income was subject to Indiana income tax.

FINDING

Taxpayers' protest is denied.

Posted: 10/26/2016 by Legislative Services Agency
An [html](#) version of this document.