

**Letter of Findings: 01-20160114  
Individual Income Tax  
For the Tax Years 2011 and 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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 established that he was not domiciled in Indiana in tax years 2011 and 2012 but had effectively abandoned his Indiana domicile and established a new one in Michigan. Therefore, Taxpayer was not required to file a 2011 and 2012 Indiana income tax returns.

### ISSUE

#### **I. Individual Income Tax - Residency.**

**Authority:** IC § 6-8.1-5-1; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-3-1-3.5; IC § 6-3-1-12; 4 U.S.C. § 114; Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2011); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988); Croop v. Walton, 157 N.E. 275 (Ind. 1927); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2011); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 3.1-1-22](#).

Taxpayer protests the imposition of Indiana individual income tax for the 2011 and 2012 tax years.

### STATEMENT OF FACTS

Taxpayer did not file 2011 or 2012 Indiana income tax returns. Based on the best information available to it, the Indiana Department of Revenue ("Department") determined that, for both 2011 and 2012, Taxpayer had Indiana income and claimed the homestead exemption on his Indiana property.

As such, the Department concluded that Taxpayer was an Indiana resident who should have filed Indiana income tax returns and paid any tax due for the tax years at issue. The Department thus issued tax assessments for Taxpayer for both years.

Taxpayer timely protested the assessment but waived his right to participate in an administrative hearing. This Letter of Findings results. Additional facts will be provided as necessary.

#### **I. Individual Income Tax - Residency.**

### DISCUSSION

The Department determined that Taxpayer was an Indiana resident during tax years 2011 and 2012 because he had Indiana income and took the homestead exemption on his Indiana property. The Department therefore concluded that Taxpayer was domiciled in Indiana in 2011 and 2012, and his income was subject to Indiana income tax.

Taxpayer contends that he owns property in both Indiana and Michigan, but that Michigan has been his domicile since moving there in 2000. Taxpayer spends less than four months in his Indiana home each year and receives income tax forms at his Indiana home, but notes that he does not work or earn income in Indiana. Taxpayer also argues that he removed the homestead exemption from his Indiana property in 2016 and paid back the benefit of the exemption for 2013, 2014 and 2015, further evidencing that Michigan is his domicile. As such, Taxpayer believes that he does not owe Indiana income tax for tax years 2011 and 2012.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2011); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's position 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. 2011). Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, shall be entitled to deference.

Indiana imposes a tax "upon 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 § 6-3-1-3.5(a) provides the starting point to determine the taxpayer's taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point. IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax, which includes:

- (1) Income from real or tangible personal property located in this state;
- (2) Income from doing business in this state;
- (3) Income from a trade or profession conducted in this state;
- (4) Compensation for labor or services rendered within this state; and
- (5) Income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible person property to the extent that the income is apportioned to Indiana under this section or if the income is allocated to Indiana or considered to be derived from sources within Indiana under this section.

Although IC § 6-3-2-2 does not specifically address state income tax regarding retirement income, Congress imposes a condition outlined in 4 U.S.C. § 114(a) which provides "No State may impose an income tax on any retirement income of an individual who is not a resident or domiciliary of such State. . . ." Thus, only when individuals are Indiana residents or domiciled in Indiana may Indiana tax retirement income of the individuals.

Pursuant to IC § 6-3-1-12, a 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. . . ." In other words, a resident includes individuals who are domiciled in Indiana or maintain a permanent place of residence in Indiana and then spend more than 183 days in Indiana. In this case, Taxpayer returns to his Indiana home for no more than three to four months per year. Therefore, Taxpayer was able to establish that he did not spend more than 183 days in Indiana during 2011 or 2012. Thus, in order to be considered a resident of Indiana during 2011, Taxpayer must have been domiciled in Indiana.

Domicile is defined by [45 IAC 3.1-1-22](#), which 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.

(Emphasis added).

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

For example, in *Croop v. Walton*, 157 N.E. 275 (Ind. 1927), a taxpayer 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. The taxpayer 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, taxpayer 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) (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.* at 277-78. (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.**"

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.

**(Emphasis added).**

Taxpayer purchased his Indiana home in 1997. Upon semi-retirement, he purchased and moved to his Michigan home in October of 2000. Taxpayer states that since moving to Michigan he spends eight to nine months each year in Michigan and the rest of the time in Indiana. He has registered several cars in Michigan since at least 2004 through 2015 and registered to vote in Michigan in 2000. His 2011 and 2012 federal income tax returns reflect his Michigan address and he filed Michigan income tax returns for both years at issue. Taxpayer has a Michigan driver's license issued in 2013 and claims that he no longer has his Michigan driver's license from 2011 and 2012. Further, Taxpayer began taking the principal residence exemption on his Michigan home after receiving permission in a 2009 letter from the Land Resource Centre in his Michigan County.

Taxpayer maintains his Indiana home and his income tax forms continue to reflect his Indiana address. A review of Taxpayer's income tax forms showed that Taxpayer's income is primarily investment income, retirement income and social security income; not from income earned in Indiana. In 2016 Taxpayer removed the homestead exemption from his Indiana home. He also attempted to pay back the benefit of the homestead exemption for tax years 2011 and 2012. However, his Indiana County's auditor's office would only let him pay back the benefit up to three years back or 2013, 2014 and 2015. This three-year "look back" limitation was the county auditor's policy and not law at the time Taxpayer applied to remove and pay back the homestead exemption. Taxpayer acted under the guidance of the county auditor and made every attempt to pay back the benefit of the exemption for tax years at issue.

Given the totality of the circumstances, the Department agrees that Taxpayer has abandoned his Indiana domicile. He removed his Indiana homestead exemption and established a home in Michigan. He registered to vote in Michigan, registered his vehicles in Michigan and files Michigan income tax returns, all evidencing that Taxpayer has changed his domicile.

Residency cases are particularly fact sensitive thus the position relayed within this document pertains only to this case and its specific set of facts.

### **FINDING**

Taxpayer's protest is sustained.

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