

**Letter of Findings: 01-20160380
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Individual was not required to file a 2012 Indiana individual income tax return because he did not avail himself of the Indiana homestead credit, and thus was not an Indiana resident. Filing of composite corporate tax return relieved Taxpayer of obligation to file individual income tax return for 2012 on Indiana source income.

ISSUES

I. Indiana Individual Income Tax - Residency.

Authority: IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-3-2-1; 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); In the Matter of Evard, 333 N.E.2d 765, 768 (Ind. 1975); [45 IAC 3.1-1-21](#); [45 IAC 3.1-1-22](#).

Taxpayer protests the Department's proposed assessment for the 2012 tax year based on Indiana residency.

II. Indiana Individual Income Tax - Composite Tax Returns.

Authority: IC § 6-3-2-1(a); Income Tax Information Bulletin 72 (June 2012).

Taxpayer protests the Department's proposed assessment for the 2012 tax year on business income.

STATEMENT OF FACTS

Taxpayer is an individual residing in Kentucky. Taxpayer owned residential property in Indiana, which he sold under the terms of a contract-for-deed in 2009. Taxpayer also received rental income and royalties from several Indiana properties as a member of three Indiana limited liability companies. The Indiana Department of Revenue ("Department") determined that Taxpayer was an Indiana resident for the tax year 2012 and had Indiana income, and that Taxpayer failed to file his 2012 Indiana individual income tax return. The Department therefore issued a proposed assessment for 2012 for income tax, penalty, and interest.

After receiving the proposed assessment, Taxpayer filed the present protest. An administrative phone hearing was held. This Letter of Findings ensues and addresses Taxpayer's protest of the proposed assessment for the tax year 2012. Additional facts will be provided as necessary.

I. Individual Income Tax - Residency.

DISCUSSION

The Department assessed Taxpayer income tax for the 2012 tax year, concluding that Taxpayer was an Indiana resident and that he failed to file a 2012 Indiana individual income tax return. The Department determined that Taxpayer was a resident based upon the homestead exemption being claimed in 2012 on the Indiana residential property Taxpayer owned until 2009. Taxpayer contends that he was not required to file a 2012 Indiana income tax return because he was not an Indiana resident, and that the purchasers of the Indiana property at issue claimed the homestead exemption. The issue is whether, for the tax year 2012, Taxpayer was an Indiana resident

and was therefore subject to Indiana income tax.

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 his 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 "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). For income tax purposes, "The term '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](#). A nonresident is "any person who is not a resident of Indiana." IC § 6-3-1-13.

To establish a domicile, a taxpayer "must be physically present at a place, and must have the simultaneous intent of establishing a home at that place." [45 IAC 3.1-1-22](#). For income tax purposes, "a person has only one domicile at a given time even though that person maintains more than one residence at that time." *Id.* Additionally, "[o]nce a domicile has been established, it remains until the conditions necessary for a change of domicile occur." *Id.* "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 v. Walton*, 157 N.E. 275, 278 (Ind. 1927).

In *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court considered the standard by which "domicile" –and thus residency–is established. The court determined that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. Specifically, the court explained, in relevant 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 place of residence temporarily, but with the intention of returning, has not lost his original residence.

Id. at 1317 (internal quotations and citations omitted). The Indiana Supreme Court went on to conclude that:

Residency requires a definite intention and evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable. A self-serving statement of intent is not sufficient to find that a new residence has been established. Intent and conduct must converge to establish a new domicile.

Id. at 1318 (Internal quotations and citations omitted); see also *In the Matter of Evrard*, 333 N.E.2d 765, 768 (Ind. 1975) ("The person must show . . . evidence of acts undertaken in furtherance of the requisite intent, which make that intent manifest and believable.")

Additionally, [45 IAC 3.1-1-22](#) considers the following relevant facts in determining whether a new domicile has been established:

- (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).**

These factors are not exclusive in determining an individual's intent to relocate. "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." *Id.*

The Department found that Taxpayer was an Indiana resident based upon the conclusion that he had taken the Indiana homestead exemption on a residential property in Indiana. However, Taxpayer submitted documentation showing that he sold this property in 2009 under the terms of a contract-for-deed agreement. Under the terms of the agreement, the purchasers were to be responsible for all tax obligations on the property. Taxpayer also submitted the 2012 Real Property Maintenance Report for the property at issue, listing the purchasers as the "owner party." While Taxpayer is still listed as an owner on the property, this is consistent with the terms of the contract-for-deed sale agreement, and Taxpayer is not responsible for the property taxes on the property. Thus, Taxpayer did not receive the benefits of the homestead exemption, and it is therefore not indicative of Taxpayer's intent to make Indiana his domicile. Taxpayer provided sufficient documentation to establish that he was domiciled in Kentucky for the 2012 tax year and was a nonresident of Indiana, thus meeting his burden under IC § 6-8.1-5-1(c) to show that the Department's proposed assessment is incorrect. 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.

II. Individual Income Tax - Composite Tax Returns.

DISCUSSION

Taxpayer protests the Department's proposed assessment on the basis that Taxpayer had rental income and royalties from Indiana real property. The Department found that Taxpayer was required to file an individual income tax return for 2012 because he had unreported Indiana source income. Indiana imposes a tax "on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a).

Taxpayer is a member of three Indiana limited liability companies that file composite adjusted gross income tax returns on behalf of their nonresident members, including Taxpayer. Income Tax Information Bulletin 72, 20120627 Ind. Reg. 045120371NRA (June 2012), states,

[A]n S corporation or a partnership shall file a composite adjusted gross income tax return on behalf of all nonresident shareholders or partners. . . . The individual nonresident shareholders will be relieved of the obligation to file an individual adjusted gross income tax return unless they have income from other Indiana sources.

Taxpayer has provided copies of the composite tax returns filed with the Department showing that the limited liability companies of which he is a member paid income tax on his behalf for tax year 2012. Taxpayer is therefore relieved of the obligation of filing an individual gross income tax return on this income for 2012.

FINDING

Taxpayer's protest is sustained.

SUMMARY

For the reasons discussed above, Taxpayer's protest of the Department's proposed assessment for the 2012 tax year is sustained. Taxpayer is not required to file an individual income tax return for tax year 2012.

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