

Letter of Findings: 01-20160124
Individual Income Tax
For the Year 2012

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document to 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 unable to establish that he abandoned his Indiana domicile when he moved to China for a temporary work contract and intended to return to the United States. Individual maintained contacts with Indiana and is required to file a 2012 Indiana income tax return.

ISSUE

I. Individual Income Tax - Indiana Residency.

Authority: IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-3-1-3.5; IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-8.1-5-1; Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); State Election Board 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. 2012); 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 3.1-1-21](#); [45 IAC 3.1-1-22](#); [45 IAC 3.1-1-23](#).

Taxpayer argues that he was not an Indiana resident during 2012 and was not required to file an Indiana income tax return for that year.

STATEMENT OF FACTS

Taxpayer is a United States citizen currently living in China. The Indiana Department of Revenue ("Department") issued a proposed assessment of Indiana income tax the Department determined Taxpayer owed for tax year 2012 based on the best information available to the Department. Taxpayer responded with a "Letter of Protest" stating that he was not a resident of Indiana during 2012 or any subsequent years.

An administrative phone hearing was held during which Taxpayer explained the basis for his protest. This Letter of Findings results. Additional facts will be provided as necessary.

I. Individual Income Tax - Indiana Residency.

DISCUSSION

The issue is whether Taxpayer was domiciled in Indiana in 2012 and was therefore required to file an Indiana income tax return. The Department determined that Taxpayer was a resident of Indiana because Taxpayer had an Indiana driver's license and had a W-2 and 1099 which listed Taxpayer as an Indiana payee.

Taxpayer argued that he lived in North Carolina for the first few months of 2012 and then moved to China for work. Thus, Taxpayer states that he did not owe any Indiana income tax for 2012.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the tax is valid, and each 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. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her 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. 2012). 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 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. For Indiana income tax purposes, the presumption is that taxpayers properly and correctly file their federal income tax returns as required pursuant to the Internal Revenue Code. Thus, to compute what is considered the taxpayer's 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 taxpayer's taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

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. An individual who files a federal income tax return as a nonresident citizen "is considered as being domiciled in Indiana and his income taxable as a resident citizen, if he maintains a place of abode in Indiana immediately prior to residing in a foreign country as a nonresident citizen of the United States, and has not permanently established his domicile in a foreign country or in another state . . ." [45 IAC 3.1-1-23](#)(3).

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 an 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 he 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."**

A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence. *Yonkey v. State* (1866), 27 Ind. 236.

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 - 1318 (Ind. 1988).

(**Emphasis added**).

In the instant case, Taxpayer indicates that he lived in Indiana while working in Kentucky in 2001 and 2002 and again in 2006 through 2011. In December of 2011 Taxpayer moved to North Carolina to spend time with family before moving to China for work in March of 2012. Taxpayer explained that he originally went to China on a one-year employment contract, which subsequently turned into four years of employment. During this time Taxpayer met and married his wife and started a family.

While living in China Taxpayer continued to use his Mother's Indiana mailing address for mail due to the "unreliable nature of mail in China." He maintained two bank accounts in Indiana. He and his wife purchased a

home and a vehicle in China, both of which are in his wife's name. Taxpayer had both a Chinese and Indiana driver's license, though, as of 2011, he had no vehicle in the United States. Taxpayer did not own or rent property in Indiana, he was not registered to vote in the United States nor did he vote.

Taxpayer provided copies of his employment agreement, employment license and work permit, all of which indicate that Taxpayer's status in China was temporary. Taxpayer stated that he never intended to reside in China permanently and would never renounce his American citizenship. At the time of the hearing, Taxpayer indicated that his employment contract would end in 2016 at which time he and his family intended to return to the United States. In fact, Taxpayer's wife had already obtained a ten-year United States visa to this effect.

The Department is mindful that there is no one set of standards that will accurately indicate a person's intent in every relocation. However, given a "case by case" review of Taxpayer's facts, documents and circumstances, the Department is unable to agree that Taxpayer abandoned his Indiana domicile for tax year 2012. Prior to leaving Indiana, Taxpayer lived with his Mother in Indiana for several years. He had a vehicle registered in Indiana and an Indiana driver's license which he maintains. Taxpayer moved to China for a one-year employment contract with a temporary stop in North Carolina, and had no intention of remaining in China at that time. Circumstances led him to stay in China longer than initially expected. However, Taxpayer further expressed that he and his family intend to return to the United States in 2016. All of Taxpayer's employment and immigration documentation support the fact that his time in China was temporary as was intended.

Any individual who was domiciled in Indiana during the taxable year is considered a resident of this State. IC § 6-3-1-12(a). "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." Bayh, 521 N.E.2d at 1317. Additionally, "[a] person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence." Id. Thus, given the totality of the circumstances, the Department is not able to agree that Taxpayer effectively and legally changed his domicile. Taxpayer was Indiana resident for the tax year 2012 because his domicile remained in Indiana.

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 respectfully denied.

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