DEPARTMENT OF STATE REVENUE

01-20160306.LOF

Letter of Findings: 01-20160306
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 not responsible for Indiana individual income tax because she demonstrated that she did not have taxable distributions from her Individual Retirement Accounts ("IRAs") for 2011 and that she was not an Indiana resident and did not have Indiana source income for 2011.

ISSUES

I. Indiana Individual Income Tax - Additional Income -Taxable Distributions.

Authority: I.R.C. § 61; I.R.C. § 408; IC § 6-3-1-3.5; 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); 45 IAC 3.1-1-1.

Taxpayer asserts that she did not have taxable distributions from her Individual Retirement Account ("IRA") and thus had no additional adjusted gross income for the 2011 tax year.

II. Indiana Individual Income Tax - Residency.

Authority: 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; 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.

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

STATEMENT OF FACTS

Taxpayer and her spouse ("Husband") are a married couple who own several residences in various states, including Indiana. Taxpayer and Husband timely filed their federal income tax return (married filing jointly), but did not file an Indiana income tax return for the tax year 2011. The Indiana Department of Revenue ("Department") determined that for the tax year 2011, Taxpayer was an Indiana resident, that she had income attributable to Indiana, that she failed to file her Indiana income tax return, and that Indiana income tax was due for 2011.

Taxpayer timely protested the assessments. An administrative hearing was conducted during which Taxpayer explained the basis for the protest. This Letter of Findings ensues and addresses Taxpayer's protest of the proposed assessments for the tax year 2011. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Additional Income -Taxable Distributions.

DISCUSSION

The Department determined that for the tax year 2011, Taxpayer had additional income subject to Indiana individual income tax. Taxpayer claimed that she did not have additional income for 2011.

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).

In general, the Internal Revenue Code requires a taxpayer to report and pay his or her federal income tax when his or her gross income exceeds a certain amount. Gross income includes all income whatever source derived. I.R.C. § 61(a). For state income tax purposes, IC § 6-3-1-3.5(a) provides the starting point for determining a taxpayer's taxable income, stating that the term "adjusted gross income" shall mean, "In the case of all individuals, 'adjusted gross income' (as defined in Section 62 of the Internal Revenue Code), modified as follows . . . ." The Department's Administrative Rules repeat the basic principle at 45 IAC 3.1-1-1, which states:

> For individuals, "Adjusted Gross Income" is "Adjusted Gross Income" as defined in Internal Revenue Code § 62 modified as follows:
>
> (1) Begin with gross income as defined in section 61 of the Internal Revenue Code.
> (2) Subtract any deductions allowed by section 62 of the Internal Revenue Code.
> (3) Make all modifications required by IC 6-3-1-3.5(a).

Since Indiana refers to federal adjusted gross income as starting point to compute the taxpayer's individual income tax liability, the amount of the federal adjusted gross income stated in "Line 37" of the Form 1040 is directly used to determine the taxpayer's Indiana adjusted gross income for Indiana individual income tax purposes.

For federal income tax purposes, an individual taxpayer may establish an IRA with a bank or similar institutions pursuant to I.R.C. § 408 to claim various tax benefits and maximize his or her retirement assets. In general, when the taxpayer deposits the statutorily allowable amount of cash into his or her IRA each year, the taxpayer is not allowed to withdraw the money until certain statutory requirements are met. When the taxpayer withdraws the money from the IRA before meeting certain statutory requirements, the withdrawal is a taxable distribution. Nonetheless, the taxpayer may move his or her IRA to a different investment management company without triggering the taxable event if the transaction qualifies as a "Trustee-to-Trustee" transfer or a "direct rollover." Id.

In this instance, Taxpayer has an IRA, which consists of various investments. Taxpayer stated that in mid-2011, she decided to change her investment management company. Upon closing her IRA at the former investment management company, the company sent the IRA money (in the form of cash) to the new investment management company designated by Taxpayer and issued 1099-R forms to Taxpayer. The new investment management company, however, issued 5498 forms, erroneously stating that a portion of the payments received were "taxable distributions" for the 2011 year. Taxpayer's 2011 federal income tax return was subsequently examined by the Internal Revenue Service ("IRS") and the new investment management company issued a corrected form to correct the errors. As a result, the IRS concluded that Taxpayer did not have taxable distributions from her IRA and her federal adjusted gross income remains unchanged for 2011. To support her protest, Taxpayer submitted additional documentation including the IRS transcript of their 2011 filing and monthly statements from both investment management companies regarding the transfer at issue.

Upon review, the Department agrees that Taxpayer demonstrated that she did not have taxable distributions from her IRA for 2011.

FINDING

Taxpayer's protest on this issue is sustained.

II. Indiana Individual Income Tax - Residency.

DISCUSSION

Pursuant to publicly verifiable information, the Department determined that Taxpayer and Husband claimed a homestead credit on their Indiana residence and, thus, Taxpayer was an Indiana resident, that she failed to file her 2011 Indiana income tax return, and that Indiana income tax was due for 2011. Taxpayer, to the contrary, claimed that she was not required to file a 2011 Indiana income tax return and did not owe any Indiana income

taxes because she was not an Indiana resident during 2011. The issue is whether Taxpayer was an Indiana resident for 2011.

As mentioned earlier, the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c). Also as discussed in Issue I, 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. Indiana, in general, 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, 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.
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> 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.
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> 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:
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> (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.

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.

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**."
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> '[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."
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> **"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."**
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> 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**.
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> 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**."
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> A person who leaves his places of residence temporarily, but with the intention of returning, has not lost his original residence. . . .
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> 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**.
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> Id. at 1317-18 (**Emphasis added**).

Taxpayer, in this instance, was a longtime Indiana resident who contended that, for 2011, she was not an Indiana resident because she and Husband had moved to Florida in 2004 and were Florida residents since then. Specifically, Taxpayer asserted that she changed her domicile from Indiana to Florida in 2004 and has since remained a Florida resident, including in 2011. Taxpayer further asserted that although she and Husband maintained their ownership of their Indiana residence, they did not claim homestead credit on their Indiana residence and they did not spend 183 days or more in Indiana during 2011. Taxpayer and Husband sold their Indiana residence in 2013.

To support her protest, Taxpayer provided additional documentation, including a homestead exemption on their Florida residence, voter registration and voting records in Florida, as well as her Florida driver's license. Taxpayer also provided copies of a letter sent to the Department in 2004 informing the Department that they had purchased a residence in Florida on May 18, 2004, and that Taxpayer intended to establish residency in Florida. Taxpayer further provided the Settlement Statement (HUD-1) to support that the sale of their Indiana residence occurred in 2013 and they did not claim the Indiana homestead credit on their Indiana residence for several years, including tax year 2011. Furthermore, Taxpayer submitted a calendar and correspondence showing the dates that she was both in and outside of Indiana, demonstrating that while she spent more of 2011 in Indiana than any other state, she did not spend more than 183 days in Indiana in 2011.

Upon review, Taxpayer's supporting documentation demonstrate that even though Taxpayer had a permanent place of residence in Indiana and spent more days in Indiana than in any other state, the weight of the evidence

presented supports residency in Florida. Specifically, after she and Husband purchased their Florida residence in 2004, they did not claim the homestead credit on their Indiana residence, but rather claimed the homestead exemption on their Florida residence, including for tax year 2011; that she and Husband maintained Florida drivers' licenses; and that she and Husband have been registered to vote and voted in Florida since 2004. Publicly verifiable records also show that Taxpayer's spouse served as a director of a Florida not-for-profit organization when she and Husband moved to Florida in 2004. Taxpayer's spouse also subsequently served as an officer of their Florida homeowners' association, including in 2011.

These actions, coupled with Taxpayer's explicitly expressed intent to establish residency in Florida in 2004, demonstrate that Taxpayer and Husband did in fact abandon their Indiana domicile and establish a new domicile in Florida pursuant to 45 IAC 3.1-1-22 and the above referenced case law. Although Taxpayer spent the majority of 2011 in Indiana for various reasons and the remainder in a number of other states, she also demonstrated that she did not spend more than 183 days in Indiana. Thus, given the totality of the circumstances, the Department agrees that Taxpayer met her burden to demonstrate that she was not an Indiana resident for 2011.

FINDING

Taxpayer's protest on the issue of residency is sustained.

SUMMARY

Taxpayer's protest is sustained on both the additional Indiana source income and Indiana residency issues.

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