

**Letter of Findings: 01-20160442
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 his purchase of Indiana real property did not, on its own, indicate that he was an Indiana resident.

ISSUE

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 Evrard, 333 N.E.2d 765 (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.

STATEMENT OF FACTS

Taxpayer is an individual who resided in Florida and was employed in Washington D.C. during the relevant tax year. Taxpayer moved to Florida in 2009 and purchased a home there. In December 2012, Taxpayer purchased real property in Indiana. The Indiana Department of Revenue ("Department") determined that Taxpayer was an Indiana resident for the tax year 2012, 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 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. Indiana 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 his Indiana residential property. 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 sellers of the Indiana property at issue claimed the homestead exemption for 2012. 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 in 2012. However, Taxpayer submitted

documentation from the county auditor showing that the homestead exemption for 2012 had been claimed by the previous owner, and Taxpayer had not purchased the property until the end of 2012. Furthermore, Taxpayer submitted additional documentation showing that the Indiana homestead exemption was subsequently placed on his Indiana residence in error and was later removed. Thus, Taxpayer himself did not take the Indiana homestead exemption for 2012, and it is therefore not indicative of Taxpayer's intent to make Indiana his domicile.

The Department's records also show that, during the relevant tax year, Taxpayer owned a Florida residence, had a Florida driver's license, Florida vehicle registrations, and Florida voter registration. Property tax bills submitted by Taxpayer for 2012 also show that he claimed a homestead exemption on his Florida property, establishing that the property in Florida was his primary residence. Considering the factors outlined in [45 IAC 3.1-1-22](#), Taxpayer has shown that he did not manifest an intention to abandon his Florida domicile and make Indiana his domicile in 2012 with the purchase of Indiana real property.

Viewing these facts in their totality, Taxpayer provided sufficient documentation to establish that he was domiciled in Florida 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.

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