

Letter of Findings: 01-20160058
Individual Income Tax
For the Years 2011 and 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 maintained a Homestead Exemption Credit on property owned in Indiana. As such, Individual was domiciled in Indiana in 2011 and 2012 and was required to file an Indiana individual income tax return for those years.

ISSUE

I. Individual Income Tax - Indiana Residency.

Authority: IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-3-1-12; IC § 6-8.1-5-1; IC § 6-3-1-3.5; IC § 6-1.1-12-37; 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 3.1-1-22](#).

Taxpayer argues that he was not an Indiana resident during 2011 and 2012 (the "Tax Years") and was not required to file an Indiana income tax return for that year.

STATEMENT OF FACTS

Taxpayer is a current Tennessee resident who lived in a condominium in Indiana from 1992 to 2003. Taxpayer moved to Tennessee in latter half of 2003, but has not terminated ownership of the Indiana condominium. Therefore, the Indiana Department of Revenue ("Department") notified Taxpayer that, based upon the information reported to the Department, the Department determined that Taxpayer had unreported income for tax years 2011 and 2012. The Department requested that Taxpayer either provide Indiana individual income tax returns for the Tax Years or send a letter explaining why he is not required to file 2011 and 2012 Indiana individual income tax returns.

Taxpayer responded in a letter dated July 14, 2015 stating that he "[was] not a resident of Indiana nor does he have any Indiana source income." Taxpayer included copies of his Tennessee driver's license history, Tennessee vehicle registrations, and Tennessee voter registration. On July 27, 2015, the Department issued a proposed assessment of individual income tax for 2011, and, on September 8, 2015, issued a proposed assessment of individual income tax for 2012. Taxpayer re-sent his July 14 letter on September 15, without including any Indiana tax returns or other documents. In a September 30, 2015 letter to Taxpayer, the Department acknowledged receipt of his correspondence, while also notifying him that he had taken the Indiana Homestead Credit for the Tax Years. The Department's letter again requested that Taxpayer provide Indiana tax returns for the Tax Years. Taxpayer filed a protest regarding this matter in October 2015. An administrative 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 Department assessed Taxpayer Indiana income tax for the Tax Years because Taxpayer did not timely file his Indiana individual income tax return by the due date for each of those years. Taxpayer argued that he was not

required to file an Indiana income tax return in each of the Tax Years because he lived in Tennessee for a majority of each of those years. He states that he kept his condominium in Indiana because he returned to Indiana frequently for medical treatment.

The issue is whether Taxpayer was required to file an Indiana income tax return for the 2011 and 2012 tax years. Information available to the Department created a rebuttable presumption that Taxpayer was a resident of Indiana in 2011 and 2012. Further, Taxpayer claimed a Homestead Exemption Credit on his Indiana property in both 2011 and 2012.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid 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). In reviewing a taxpayer's argument, the Indiana Supreme Court has held, that when it examines a statute that an agency is "charged with enforcing . . . we 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).

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. 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 taxpayers' taxable income and calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

Indiana imposes an income tax on "that part of the adjusted gross income derived from sources within Indiana of every nonresident person . . ." IC § 6-3-2-1(a).

With regard to . . . nonresident persons, "adjusted gross income derived from sources within Indiana" . . . shall mean and include:

- (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 . . . intangible personal property to the extent that the income is apportioned to Indiana . . .

IC § 6-3-2-2(a).

Indiana also imposes an income tax on "the adjusted gross income of every resident 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.

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, an individual does not necessarily create a new domicile when that 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**).

Subsequently, in *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court further considered the meaning of "domicile" in determining that Mr. Bayh met the residency requirement for the office of Governor. The court concluded that Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. The court explained, 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 (Ind. 1988)(**Emphasis added**).

Accordingly, even when a taxpayer moves from Indiana for years, the taxpayer is presumed to be an Indiana resident if the taxpayer is domiciled in Indiana and has no intention to abandon his or her Indiana domicile. The taxpayer may rebut that presumption.

In this instance, Taxpayer claims that for all of 2011 and 2012 he was a resident of Tennessee. Taxpayer moved to Tennessee in 2003 and indicates that he intended to remain there indefinitely. While in Tennessee, Taxpayer returned to Indiana frequently to receive medical treatment, staying in his Indiana condominium during those visits.

Taxpayer provided documentation to support his position that he lived in Tennessee during the Tax Years. Taxpayer provided a copy of his Tennessee driving record, showing renewal of his driver's license in November 2014. That record shows an original license issue date of October 14, 2003. Taxpayer also provided copies of vehicle registrations: one dated in April 2007, and another dated in July 2013. Information available to the Department indicates that Taxpayer registered cars in Tennessee in 2007 and 2013. Taxpayer also provided a copy of his voter registration history in Tennessee, which began in 2003.

However, while living in Tennessee, Taxpayer maintained his home in Indiana so he could return periodically to receive medical care. Information available to the Department shows that Taxpayer continued to claim a Homestead Exemption Credit on the Indiana condominium in the Tax Years. In both the Taxpayer's protest letter and the administrative hearing, Taxpayer asserted that he notified his Indiana county assessor of his change in primary address and requested having the Homestead Exemption Credit removed from his Indiana property. Verifiable information, on the other hand, showed that Taxpayer's Homestead Exemption Credit was not removed from the property until 2015, in response to correspondence received from Taxpayer earlier that year. Under Indiana law, a "homestead" is a taxpayer's "principal place of residence" located in Indiana and owned by Taxpayer. IC § 6-1.1-12-37(a)(2). Homesteads are eligible annually for a "standard deduction from the assessed value of the homestead for an assessment date," i.e., the Homestead Exemption Credit. IC § 6-1.1-12-37(b). To claim a Homestead Exemption Credit, taxpayers must fill out a Form HC10 and submit it to the state. This form includes a "Certification Statement" which taxpayers sign and date, certifying that Indiana is their principal place of residence. Without removal or repayment of the Homestead Exemption Credit for the Tax Years, the Department cannot agree that Taxpayer's principal place of residence changed before, or during, the Tax Years. Together, these factors suggest Taxpayer retained his domicile in Indiana.

Upon review of the documentation, the Department cannot agree that Taxpayer was domiciled outside of Indiana in 2011 and 2012. Despite Taxpayer's actions in Tennessee, he maintained his Homestead Exemption Credit in Indiana. Taxpayer must file an Indiana individual income tax return for 2011 and 2012.

FINDING

Taxpayer's protest is respectfully denied.

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