

**Letter of Findings: 01-20150396
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 demonstrated that he was an Indiana resident for the 2011 tax year and was required to file Indiana individual income tax return. His domicile remained in Indiana because he claimed the Indiana homestead credit benefits on his Indiana home and returned to Indiana when his work assignment was concluded.

ISSUE

I. Indiana Individual Income Tax - Non-filer.

Authority: IC § 6-1.1-12-37; 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 § 6-3-3-3; IC § 6-3-5-3; 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); Miller Brewing Co. v. Indiana Dep't of State Revenue, 903 N.E.2d 64 (Ind. 2009); 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); [45 IAC 3.1-1-21](#); [45 IAC 3.1-1-22](#); [45 IAC 3.1-1-23](#); [45 IAC 3.1-1-74](#); [45 IAC 3.1-1-76](#); [50 IAC 24-2-5](#).

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

STATEMENT OF FACTS

Taxpayer is an individual, who has owned a home in Indiana since 2003. Publicly verifiable information showed that, for years, Taxpayer claimed the "homestead" deduction (or exemption) on his Indiana home pursuant to Indiana law.

Until 2013, Taxpayer worked for a multi-national company ("Company") that has headquarters in Indiana for more than a decade and retired from Company. In 2009, Taxpayer was tasked to facilitate an acquisition of a company in New Jersey, and Taxpayer moved to New Jersey. Taxpayer returned to the Company's Indiana office in 2012 after the completion of the task. Subsequently, Taxpayer only worked and stayed in New Jersey as needed. Taxpayer lived in his Indiana home after his return to Company's Indiana office.

For the tax year 2011, Taxpayer filed the 2011 New Jersey state income tax return, reporting his state income tax to New Jersey. Taxpayer however did not file his Indiana income tax return for the tax year 2011. The Indiana Department of Revenue ("Department") - based on the best information available to the Department - determined that for the tax year 2011, Taxpayer was an Indiana resident, that Taxpayer failed to file his Indiana income tax return, and that Indiana income tax was due for the 2011 tax year.

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

I. Indiana Individual Income Tax - Non-filer.

DISCUSSION

The Department, based on information including Indiana real property records, found that Taxpayer was an Indiana resident, that he failed to file his 2011 Indiana individual income tax return, and that Indiana income tax

was due for 2011.

Taxpayer disagreed, claiming that he did not owe any Indiana income tax because he was not an Indiana resident. Taxpayer asserted that he moved to the State of New Jersey in 2009. He filed a 2011 New Jersey state income tax return and paid state income tax to New Jersey. The issue is whether Taxpayer was an Indiana resident for 2011 for Indiana individual income tax purposes.

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). "[E]ach assessment and each tax year stands alone." *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64, 69 (Ind. 2009). 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).

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 file their federal income tax returns as required pursuant to the Internal Revenue Code. Thus, to efficiently and effectively compute what is considered the taxpayers' 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 to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

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.

[45 IAC 3.1-1-23](#) explains further how "residency" affects a taxpayer's income tax liability, in relevant part, as follows:

- (1) Taxpayer Moving to Indiana. When a taxpayer moves to Indiana and becomes a resident and/or domiciliary of Indiana during the taxable year, Indiana will not tax income from sources outside Indiana which the taxpayer received prior to becoming an Indiana domiciliary. Indiana will, however, assess adjusted gross income tax on all taxable income after the taxpayer becomes an Indiana resident.
- (2) Taxpayer Moving from Indiana. Any person who, on or before the last day of the taxable year, changes his residence or domicile from Indiana to a place without Indiana, with the intent of abiding permanently without Indiana, is subject to adjusted gross income tax on all taxable income earned while an Indiana resident. Indiana will not tax income of a taxpayer who moves from Indiana and becomes an actual domiciliary of another state or country except that income received from Indiana sources will continue to be taxable. . . .

To determine a person's domicile, [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.

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**).

Indiana law further defines "[h]omestead" as "an individual's principal place of residence . . . that is located in Indiana" and that "the individual owns" IC § 6-1.1-12-37(a)(2). "'Principal place of residence' means an individual's true, fixed, permanent home to which the individual has the intention of returning after an absence." [50 IAC 24-2-5](#). A taxpayer is entitled to claim a deduction, known as homestead deduction (or exemption), against taxes imposed on his or her homestead property pursuant to IC § 6-1.1-12-37(e). When the taxpayer is no longer qualified for the homestead deduction (or exemption), the taxpayer must notify the auditor of the county where the homestead is located within sixty days after the date of that change. IC § 6-1.1-12-37(f).

Thus, a new domicile is not necessarily created when an individual moves to a place outside of 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.**"

'[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. (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. (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 places of residence temporarily, but with the intention of returning, has not lost his original residence. . . .

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**).

Taxpayer, in this instance, contended that he was not an Indiana resident for 2011 and his income was not subject to Indiana income tax. Taxpayer explained, in relevant part, as follows:

2009

- April: [Company] transfer[ed] me to [New Jersey] related [to Company's] purchase of [a company in New Jersey]
- May: I lease[d] [an apartment in New Jersey]
- August: I turned over my Indiana driver's license to NJ DMV and obtained a NJ driver's license and voter[s] registration
- Summer: signed onto gym membership . . .

2010

- . . . a traffic ticket noted on my NJ driver record report . . .

2011

- initial [] lease ended April 2011 and I renewed agreeing to two semi-annual payments with the landlord
- I further signed a second lease on a [different] apartment in April 2011 in [New Jersey]
- . . . two more traffic tickets on my NJ DL . . .

Thus, to determine whether Taxpayer was an Indiana resident for 2011, the Department must first determine whether Taxpayer effectively changed his domicile to New Jersey before 2011. Similar to Mr. Walton who was domiciled in Michigan before moving to Indiana, Taxpayer was a longtime Indiana resident and domiciled in Indiana before moving to New Jersey. Also, Taxpayer does not dispute that after 2013, he was domiciled in Indiana and filed Indiana full-year resident individual income tax returns since then.

To support his protest, Taxpayer provided additional supporting documentation including but not limited to, Company's expense reports concerning his relocation in 2009, a lease and several rent payments, a Complete Non-certified New Jersey Driver History Record Report, his New Jersey Driver's License, his voter registration, two monthly credit card statements, a Membership Agreement for a Fitness Center in New Jersey, and his medical report from a New Jersey physician.

As mentioned earlier "[o]nce a domicile has been established, it remains until the conditions necessary for a change of domicile occur." [45 IAC 3.1-1-22](#). "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, 157 N.E. at 276; see also Bayh, 521 N.E.2d at 1317-18. In this instance, it is well-established that Taxpayer was domiciled in Indiana since 1990s. The publicly verifiable records established that Taxpayer was the owner of his house in Indiana since 2003 and claimed a homestead deduction. When the homestead deduction was claimed, Taxpayer affirmed that the Indiana home is his "true, fixed, permanent home to which [he] has the intention of returning after an absence." Otherwise, Taxpayer was required to notify the county that he no longer qualified for the homestead deduction within sixty days after the date of that change. IC § 6-1.1-12-37(f). Thus, it is a rebuttable presumption that Taxpayer was an Indiana resident for 2011 tax year.

Upon further review, Taxpayer's supporting documentation demonstrated that he relocated to New Jersey based on Company's request. A relocation services company engaged by Company worked with Taxpayer in 2009. Taxpayer however did not manifest the intent to stay or live in New Jersey indefinitely because he did not sell his Indiana home; rather, he chose to lease an apartment in New Jersey. Taxpayer signed up for a gym membership in New Jersey in 2009 and ended in 2012. Taxpayer's May 2011 and December 2011 monthly credit card statements together with his medical report supported that he spent most of his time during 2011 in New Jersey. However, Taxpayer did not register to vote in the State of New Jersey until September 2012. Taxpayer's New Jersey driver's license was issued July 2, 2013 although he had several traffic violations in the State of New Jersey throughout 2010 and 2011.

On the other hand, publicly verifiable records established that Taxpayer had registered to vote in Indiana previously and voted in November 2010, that he renewed his vehicle registration with the Indiana Bureau of Motor Vehicle in August 2011, and that he continues claiming the homestead credit on his Indiana home, including the 2011 payable 2012 year. Taxpayer eventually did return to his home in Indiana upon conclusion of his work assignment in New Jersey. Thus, the Department is not able to agree that Taxpayer abandoned his Indiana domicile. Since Taxpayer did not abandon his Indiana domicile, he could not obtain a new one.

Also, it should be noted that as mentioned earlier, when a taxpayer maintains a permanent place of residence in Indiana, he or she may also qualify as an Indiana resident when the taxpayer spent more than 183 days during the year at issue in Indiana. IC § 6-3-1-12; [45 IAC 3.1-1-21](#). Considering Taxpayer's supporting documentation together with his 2011 New Jersey state return, the Department is prepared to agree that Taxpayer spent more than 183 days working in New Jersey and thus did not spend 183 days or more in Indiana. Nonetheless, since the Department concludes that Taxpayer was domiciled in Indiana, the question regarding whether Taxpayer spent more than 183 days of the 2011 year in Indiana is moot.

Finally, Taxpayer's W2 established that he worked for Company's office located in New Jersey and he filed his 2011 New Jersey state income tax return, reporting and remitting income tax on his W2 wages to New Jersey. New Jersey however is not one of states which have reciprocal agreements with Indiana. IC § 6-3-5-3; [45 IAC 3.1-1-76](#). Taxpayer thus will be entitled to claim a credit for the same tax paid to New Jersey (excluding local/county income tax) when he files his Indiana Full-Year Resident Individual Income Tax Return, IT-40, pursuant to IC § 6-3-3-3(a), which provides, as follow:

Whenever a resident person has become liable for tax to another state upon all or any part of his income for a taxable year derived from sources without this state and subject to taxation under [IC 6-3-2](#), the amount of tax paid by him to the other state shall be credited against the amount of the tax payable by him. Such credit shall be allowed upon the production to the department of satisfactory evidence of the fact of such payment, except that such application for credit shall not operate to reduce the tax payable under [IC 6-3-2](#) to an amount less than would have been payable were the income from the other state ignored. The credit provided for by this subsection shall not be granted to a taxpayer when the laws of the other state, under which the adjusted gross income in question is subject to taxation, provides for a credit to the taxpayer substantially similar to that granted by subsection (b).

Taxpayer thus must enclose both federal and New Jersey return transcripts in his IT-40 to claim that credit. See also [45 IAC 3.1-1-74](#).

In conclusion "[e]ach assessment and each tax year stands alone." Miller Brewing Co., 903 N.E.2d at 69. The Department is mindful that there is no one set of standards that will accurately indicate the person's intent in every relocation. Under Indiana law, mere ownership of Indiana property does not necessarily make that owner an Indiana resident for state income tax purposes. However, given the totality of the circumstances, in the absence of other supporting documentation, the Department is not able to agree that Taxpayer met his burden of proof. Therefore, given a "case by case" review of Taxpayer's facts, documentation, circumstances, all of Taxpayer's income during 2011 was subject to Indiana income tax because Taxpayer's domicile remained in Indiana for the 2011 year. However, Taxpayer will be entitled to a credit for the state (not local/county) income tax he paid to New Jersey pursuant to the above mentioned applicable Indiana law.

FINDING

Taxpayer's protest of residency issue is respectfully denied. Taxpayer is required to file his Indiana Full-Year Resident Individual Income Tax Return (IT-40), but he was entitled to a credit for state (not local/county) income tax paid to New Jersey with respect to his W2 income for the 2011 tax year. Taxpayer must file a 2011 Indiana

Full-Year Individual Income Tax Return and enclose both federal and New Jersey return transcripts in their IT-40 to claim that credit within 60 days from the date this Letter of Findings is issued.

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