

Letter of Findings: 01-20160539N
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Married couple demonstrated that they were Indiana residents for the 2011 tax year. Married couple were required to file 2011 Indiana individual income tax return and their 2011 income was subject to Indiana income tax because they maintained their Indiana domicile by taking the Indiana homestead credit for 2011 payable 2012 although they moved to a different state seeking a better job outlook.

ISSUE

I. Indiana Individual Income Tax - Non-filer - Residency.

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](#).

Taxpayers protest the Department's proposed assessments for the 2011 tax year.

STATEMENT OF FACTS

Taxpayers (Husband and Wife) are individuals with a current North Dakota address. Taxpayers did not file an Indiana income tax return for the tax year 2011. In 2015, pursuant to the best information available to the Indiana Department of Revenue ("Department"), the Department's Enforcement Division determined that, for the tax year 2011, Taxpayers were Indiana residents, that Taxpayers failed to file their Indiana individual income tax return, and that Indiana income tax was due for 2011.

In response, Taxpayers filed a 2011 Indiana Part-Year or Full-Year Nonresident Individual Income Tax Return, IT-40PNR ("INPNR"), dated April 13, 2016. The Schedule A to their INPNR stated that Taxpayers had income for the 2011 tax year (Indiana Unemployment Compensation, in the amount of \$750). Upon reviewing their INPNR, the Department disagreed and made adjustments, which resulted in subsequent proposed assessments of income tax, interest, and negligence penalty for the tax year 2011.

Taxpayers timely protested the assessments. An administrative phone hearing was held. This Letter of Findings ensues and addresses Taxpayers' protest of the proposed assessments concerning adjustments made on their INPNR for the tax year 2011. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Non-filer - Residency.

DISCUSSION

The Department, based on information including Indiana real property records, found that Taxpayers were full-year Indiana residents for 2011, that they failed to file their 2011 Indiana full-year resident individual income tax return, and that Indiana income tax was due for 2011. The Department in a letter, dated August 3, 2016, explained in relevant part, as follows:

After reviewing your account[,] our records indicate [that] for the tax year 2011 you've taken the Indiana Homestead Tax Credit at [address in Indiana]. In order to receive Homestead Tax Credit you must claim your domicile to be Indiana, which makes your W2[s] and 1099[s] [income] taxable to the State of Indiana. . . .

Taxpayers disagreed. In filing the INPNR, Taxpayers stated that only the \$750 unemployment compensation they received from the State of Indiana was subject to Indiana income tax and not their additional income. Taxpayers claimed that they were not Indiana residents for the 2011 year because they "moved to North Dakota the end of 2010." The issue is whether Taxpayers were Indiana residents 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). "[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](#)(2) explains further how "residency" affects a taxpayer's income tax liability, in relevant part, as follows:

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 location and have an 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**).

Taxpayers, in this instance, contend that their W2 income was not subject to Indiana income tax because they lived and worked in North Dakota during 2011. Rather, Taxpayers explained that they received Indiana unemployment compensation, in the amount \$750, which they reported on their INPNR and paid the tax. Taxpayer stated, in relevant part, as follows:

We have enclosed [three] W2s to support our claim that the income earned on these W2s was not earned in Indiana. The Income was earned in the state of North Dakota and therefore is not taxable income in Indiana . . . Each of these W2s shows that the income was earned in the state of North Dakota in box 15

Thus, to determine whether Taxpayers were Indiana residents for 2011, the Department must first determine whether Taxpayers effectively changed their domicile to North Dakota before 2011. Similar to Mr. Walton who was domiciled in Michigan before moving to Indiana, Taxpayers were longtime Indiana residents and domiciled in Indiana before they decided to move to North Dakota [*sic, Dakota*].

To support their protest, in addition to a 2011 federal income tax return (1040 form) and a 2010 North Dakota income tax return, Taxpayers provided additional supporting documentation including, but not limited to, a handwritten agreement to rent a room at an address in North Dakota, three W2s for the 2011 year, a Letter of Clearance from the North Dakota Department of Transportation, and a letter from an office of an Indiana local county auditor.

Upon review, 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 Taxpayers were domiciled in Indiana since 1990s. The publicly verifiable records established that Taxpayers were owners of a house in Indiana since 1998 and a homestead deduction was claimed on that house. When the homestead deduction was claimed, Taxpayers necessarily affirmed that the Indiana home is their "true, fixed, permanent home to which [they have] the intention of returning after an absence." Otherwise, Taxpayers were required to notify the county that they no longer qualified for the homestead deduction within sixty days after the date of that change. IC § 6-1.1-12-37(f). Thus, there is a rebuttable presumption that Taxpayers were Indiana residents for 2011 tax year.

Taxpayers at the phone hearing explained that they moved to North Dakota in late 2010 because their job outlook was much better in North Dakota. Taxpayers stated that they initially lived in a camper and were able to rent a house in 2011. Taxpayers subsequently purchased a new home in North Dakota in 2013. Taxpayers also asserted that when they realized that the Indiana homestead was claimed on their Indiana residence, they took steps to notify their Indiana local county auditor and remove the homestead credit on their Indiana home. Taxpayers further stated that they paid back the Indiana homestead benefits claimed previously. Thus, Taxpayers argued that they were not Indiana residents because they were not domiciled in Indiana nor did they spend more than 183 days in Indiana for the 2011 year.

Upon review, however, the Department is not able to agree. First, Taxpayers' supporting documents showed that in 2011 Taxpayers received unemployment benefits from the State of Indiana, not North Dakota. The publicly verifiable records showed that Taxpayers claimed the Indiana homestead credit on their Indiana home throughout all years, including 2011 payable 2012. By doing so, Taxpayers expressly informed the State of Indiana that they

were entitled to the benefit of paying a lower property tax and that their "true, fixed, permanent home to which [they have] the intention of returning after an absence." The letter from Taxpayers' Indiana local county auditor stated they paid back the benefit for 2014 only, not the tax year at issue. In addition, Taxpayers' W2s demonstrated that they continued using their Indiana home address when their employers were in North Dakota for 2011 and early 2012. Moreover, Taxpayers offered the handwritten lease agreement (without notarization) to support that they lived in North Dakota. The agreement stated that Taxpayers agreed to "rent a room . . . starting Jan[uary] 1, 2011" The agreement alone however could not be verified and was not, on its own, sufficient to support that they were residents of North Dakota. Not until May 2011, did Taxpayers take steps to apply for North Dakota driver's licenses. Thus, the Department is not able to agree that Taxpayers abandoned their Indiana domicile before 2011. Without abandoning their Indiana domicile, Taxpayers cannot acquire a new domicile in North Dakota.

As mentioned earlier, Taxpayers may also qualify as Indiana residents when they spent more than 183 days during the year at issue in Indiana when they maintained a permanent place of residence in Indiana. IC § 6-3-1-12; [45 IAC 3.1-1-21](#). Considering the written agreement together with their three W2s, the Department is prepared to agree that Taxpayers spent more than 183 days worked in North Dakota and thus did not spend 183 days or more in Indiana. 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 also moot.

Finally, all three of Taxpayers' W2s established that they worked for their employers located in North Dakota. North Dakota however is not one of states which have reciprocal agreements with Indiana. IC § 6-3-5-3; [45 IAC 3.1-1-76](#). Assuming that Taxpayers rendered their services to earn all their W2 income and also properly filed their 2011 North Dakota state income tax return, reporting and remitting income tax to North Dakota, Taxpayers will be entitled to claim a credit for the same tax paid to North Dakota (excluding local/county income tax) when they properly file their 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).

Taxpayers thus must enclose both federal and North Dakota return transcripts in their 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, 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 Taxpayers met their burden of proof. Therefore, given a "case by case" review of Taxpayers' facts, documentation, circumstances, all of Taxpayers' income earned during 2011 was subject to Indiana income tax because Taxpayers' domicile remained in Indiana for the 2011 year. However, Taxpayers will be entitled to a credit for the state (not local/county) income tax they paid to North Dakota pursuant to the above mentioned applicable Indiana law.

FINDING

Taxpayers' protest of residency issue is respectfully denied. Taxpayers were required to file their Indiana Full-Year Resident Individual Income Tax Return (IT-40), but they were entitled to a credit for state (not local/county) income tax paid to North Dakota with respect to their W2 income for the 2011 tax year. Taxpayers must file a 2011 Indiana Full-Year Individual Income Tax Return and enclose both federal and North Dakota 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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