

**Letter of Findings: 01-20160589N
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

For purposes of the Indiana individual income tax, Individual was not required to file a 2011 Indiana individual income tax return because Individual was a New York resident in 2011.

ISSUE

I. Indiana Individual Income Tax - Residency: Domicile.

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; 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); [45 IAC 3.1-1-21](#); [45 IAC 3.1-1-22](#).

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

STATEMENT OF FACTS

The Indiana Department of Revenue ("Department") determined that Taxpayer was an Indiana resident for the tax year 2011, that Taxpayer failed to correctly file the 2011 Indiana income tax return and that additional Indiana income tax was due.

Taxpayer disagreed with the assessments and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayers explained the basis for the protest. This Letter of Findings results. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Residency: Domicile.

DISCUSSION

The Department assessed Taxpayer additional income tax for the 2011 tax year on the ground that Taxpayer was an Indiana resident, failed to correctly file the 2011 Indiana income tax return, and that additional Indiana income tax was due.

Husband and Wife both worked for an Indiana Company. Wife's employment ended April 2009 and she received a job offer in New York in August 2009. Husband stayed in Indiana. Husband then moved to New York for a different job opportunity in August 2009. Husband and Wife bought a New York home in 2010. Wife received a job offer from an Indiana Company and she eventually moved back to Indiana in October 2010. Husband and Wife filed tax returns as married-separate from 2011-2013. Wife filed Indiana Individual Income tax returns and Husband filed New York Individual Income tax returns. Wife took the Indiana Homestead Exemption as an Indiana resident and Husband took the New York Homestead Exemption. The New York home was sold in 2013. Husband provided a copy of his 2011 New York tax return.

The issue is whether, for the tax year 2011, Husband was an Indiana resident and 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, taxpayers are required to provide documentation explaining and supporting their 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 properly and correctly 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.

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.**

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, a new domicile is not necessarily created when individuals move to a new place. Rather, the individuals must move to the new place and have intent to remain there indefinitely.

In Croop v. Walton, 157 N.E. 275 (Ind. 1927), a taxpayer, Mr. Walton, moved from Sturgis, Michigan to Elkhart, Indiana by selling his Michigan residence and purchasing a residence in Indiana, where he and his wife lived for several years for the benefits of his wife's health. Indiana assessed Mr. Walton state income tax on his intangible property. Id. at 276-78. Mr. Walton disagreed, arguing that his intangible property was not subject to Indiana taxes because he was domiciled in Michigan. Id. The court found that Mr. Walton owned and managed a company and stores in Michigan; that Mr. Walton maintained his membership with lodges, clubs, and a church in Sturgis, Michigan; that Mr. Walton on various occasions exercised his civil and political rights in Sturgis, Michigan; and that Sturgis, Michigan was used in Mr. Walton's legal documents, including policies of insurance, mortgages, leases, contracts, and other instruments. Id. Ruling in favor of Mr. Walton, the court concluded that Mr. Walton did

not change his domicile from Michigan to Indiana and his intangible property was not subject to certain Indiana taxes. *Id.* The court explained, in relevant part, that:

The word "inhabitant," as used in our statute regulating the imposition of taxes, means "one who has his domicile or fixed residence in a place." **"If the 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."**

No precise or exact definition of the term "**domicile**," which responds to all purposes, seems to be possible. It 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.**

Many cases collected in the works just cited have held that at times the cognate terms "residence" and "domicile" are synonymous, but many other cases there cited and quoted from have held that the two terms, when accurately used, are not convertible, but that there is a very clear and definite distinction between them. "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

Domicile is of three kinds--domicile of origin or birth, domicile by choice, and domicile by operation of law. . . . **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**).

In *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court reiterated a similar analysis and determined that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though Mr. Bayh moved to different states for various reasons for many years. Specifically, the court illustrated, in relevant part, that:

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.

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 1317-18.

(Internal citations omitted) (**Emphasis added**).

During the protest process, Taxpayer submitted additional documentation to support the assertion that Husband was not an Indiana resident until July 2014 and did not owe any additional Indiana income tax for tax year 2011. Specifically, Taxpayer's supporting documentation included:

- New York vehicle registration 2010-2012

- New York voter registration
- Settlement Statement HUD-1 form dated 5.25.2010 showing purchase of the New York residence
- Settlement Statement HUD-1 form dated 9.3.2013 showing the sale of the New York residence
- 2011 cable bill for the New York residence
- 2011 propane bill for the New York residence
- 2011 phone bill addressed to the New York residence
- Utility activity in the New York residence October 2013.

Upon review, Taxpayer's supporting documentation demonstrated that Taxpayer Husband was not domiciled in Indiana in 2011. While Taxpayer's Wife is listed as a co-owner of the Indiana residence, Taxpayer Husband did not take the Indiana Homestead exemption. Additionally, Taxpayer did not move back to Indiana, nor did Taxpayer spend 183 days or more in Indiana in 2011.

In short, any individual who was domiciled in this state during the taxable year is a resident in this State. IC § 6-3-1-12(a). "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.'" Bayh, 521 N.E.2d at 1317-18. In short, the Department agrees that Taxpayers met their burden of proof to demonstrate that Wife was an Indiana resident in 2012 and Husband was not an Indiana resident until June 30, 2013.

FINDING

Taxpayers' protest is sustained.

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