

**Letter of Findings: 01-20150539
Indiana Individual Income Tax
For The Tax Years 2011 and 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 demonstrated that he was an Indiana resident for the 2011 and 2012 tax years. Individual was required to file 2011 and 2012 Indiana individual income tax returns and his 2011 and 2012 income was subject to Indiana income tax because he maintained his Indiana domicile by taking the Indiana homestead credit for all payable tax years before 2015, obtaining an Indiana identification card, periodically using his Indiana home address to renew his vehicle registrations and file annual reports of a company which he owned although he moved to and spent more than 183 days in a different state.

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 § 6-8.1-5-1; 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](#); [50 IAC 24-2-5](#).

Taxpayer protests the Department's proposed assessments for the 2011 and 2012 tax years.

STATEMENT OF FACTS

Taxpayer is an individual with a current Florida address. Taxpayer is the sole shareholder and also serves as the president and secretary of an S corporation ("Indiana Corporation") that was incorporated and is doing business in Indiana. Taxpayer did not file an Indiana individual income tax return for the tax years 2011 and 2012 ("Tax Years at Issue"). Pursuant to the best information available to the Indiana Department of Revenue ("Department"), the Department's Enforcement Division determined that, for the Tax Years at Issue, Taxpayer was an Indiana resident, that Taxpayer failed to file his Indiana individual income tax return, and that Indiana income tax was due for the Tax Years at Issue.

Taxpayer timely protested the assessments. An administrative phone hearing was held during which Taxpayer and his representative explained the basis of his protest. This Letter of Findings ensues and addresses Taxpayer's protest of the proposed assessments. 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 Taxpayer was an Indiana resident for the Tax Years at Issue, that he failed to file his 2011 and 2012 Indiana full-year resident individual income tax return, and that Indiana income tax was due. The Department in a letter explained in relevant part, as follows:

The department received your correspondence showing proof of Florida residency. Unfortunately, the Department is unable to move forward since the homestead credit was applied to your Indiana address

Taxpayer disagreed, claiming that he moved to Florida and became resident of Florida. The issue is whether Taxpayer was an Indiana resident for the Tax Years at Issue.

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**).

Taxpayer, in this instance, contended that approximately in 2006, he purchased a vacation home in Florida and subsequently decided to move to Florida and became a Florida resident. Taxpayer further stated that although he receives K-1 income from the Indiana Corporation, he is not required to file Indiana individual income tax returns. Taxpayer asserted that the Corporation withholds the tax on the distributions to him and remits to Indiana, so as a nonresident shareholder, he may choose not to file the Indiana full-year nonresident individual income tax return, IT-40PNR according to instruction in the IT-40PNR booklet. To support his protest, in addition to a 2011 IT-20S, Schedule IN K-1, Taxpayer provided additional supporting documentation including, but not limited to, an excerpt of the IT-40PNR booklet, several Income Tax Information Bulletins, the spring 2015 property tax assessment, a Notice of Change of Use on Property Receiving the Homestead Standard Deduction, his Florida voter registration, and his expense statements from a Florida club which he has frequented since May 2011.

Thus, to determine whether Taxpayer was an Indiana resident for the Tax Years at Issue, the Department must first determine whether Taxpayer effectively changed his domicile to Florida before 2011. Similar to Mr. Walton who was domiciled in Michigan before moving to Indiana, Taxpayer was longtime Indiana resident and domiciled in Indiana before he decided to move to Florida.

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 starting in the 1990s. The publicly verifiable records established that Taxpayer was the owner of his Indiana home since 2008 and claimed the Indiana homestead deduction on that house. When the homestead deduction was claimed, Taxpayer necessarily 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, there is a rebuttable presumption that Taxpayer was Indiana resident for the Tax Years at Issue.

At the phone hearing, Taxpayer explained that he initially purchased a vacation home in Florida in 2006 and subsequently decided to move to Florida. He registered to vote in Florida in 2008, and obtained a Florida driver's license and vehicle registrations. Taxpayer explained that he did not claim the Florida homestead deductions on his Florida residence because that type of residence did not qualify for homestead credit under Florida law. Nonetheless, Taxpayer asserted that when he realized that the Indiana homestead was claimed on his Indiana residence, he took steps to notify his Indiana local county auditor and remove the homestead credit on his Indiana home. Thus, Taxpayer argued that he was not an Indiana resident because he was not domiciled in Indiana nor did he spend more than 183 days in Indiana for the Tax Years at Issue.

Upon review, however, the Department is not able to agree. First, publicly verifiable information showed that Taxpayer applied for and maintained - using his Indiana home address - an Indiana identification card as well as registered and renewed his vehicle at the Indiana Bureau of Motor Vehicle for years, including Tax Years at Issue. Additionally, Taxpayer is the Indiana Corporation's sole shareholder, and also serves as the president and secretary of the Corporation. Taxpayer continues using his Indiana home address for Corporation's annual reports which were required to be filed with the Indiana Secretary of State periodically. Taxpayer's supporting documents further showed that Taxpayer did not notify his local county auditor regarding the change of the homestead status until May 2015. Taxpayer, in that notice, stated since "2006 property became ineligible" but Taxpayer did not take any actions to rectify the erroneous homestead benefits he received before 2015. Rather, Taxpayer retained the homestead benefits for the Tax Years at Issue; the homestead credit was removed for only the spring 2015 assessment - going forward. Thus, the Department is not able to agree that Taxpayer abandoned his Indiana domicile before 2011. Without abandoning his Indiana domicile, Taxpayer cannot acquire a new domicile in Florida.

Finally, as mentioned earlier, Taxpayer may also qualify as an Indiana resident when he spent more than 183 days during the Tax Years at Issue in Indiana when he maintained a permanent place of residence in Indiana. IC § 6-3-1-12; [45 IAC 3.1-1-21](#). Since the Department concludes that Taxpayer was domiciled in Indiana, the question regarding whether Taxpayer spent more than 183 days of the Tax Years at Issue in Indiana is also moot.

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 Taxpayer met his burden of proof. Therefore, given a "case by case" review of Taxpayer's facts, documentation, circumstances, all of Taxpayer's income earned during the Tax Years at Issue was subject to Indiana income tax because Taxpayer's domicile remained in Indiana.

FINDING

Taxpayer's protest of residency issue is respectfully denied. Taxpayer was required to file his Indiana Full-Year Resident Individual Income Tax Return (IT-40) for the Tax Years at Issue.

Posted: 03/29/2017 by Legislative Services Agency

An [html](#) version of this document.