

Supplemental Letter of Findings: 01-20160124
Individual Income Tax
For the Year 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 Supplemental Letter of Findings.

HOLDING

Former Indiana resident's move to North Carolina in 2011, a subsequent four and one-half year term of employment in the People's Republic of China, and his later move from China to Nevada were indicative of an intention to abandon his former Indiana domicile in 2011; Former Indiana resident was not subject to Indiana's individual income tax in 2012.

ISSUE

I. Individual Income Tax - Indiana Residency.

Authority: IC § 6-3-2-1(a); IC § 6-3-1-12; IC § 6-8.1-5-1(c); Dept. 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); In the Matter of Evrard, 333 N.E.2d 765 (Ind. 1975); Board of Medical Registration and Examination v. Turner, 168 N.E.2d 193 (Ind. 1960); Croop v. Walton, 157 N.E. 275 (Ind. 1927); Culbertson v. Bd. Of Comm'rs of Floyd County, 52 Ind. 361 (1876); 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](#); [45 IAC 3.1-1-23](#)(3).

Taxpayer argues that he was not an Indiana resident during 2012 and that the Department's previous decision to the contrary was erroneous.

STATEMENT OF FACTS

Taxpayer is an individual currently living in Nevada. The Indiana Department of Revenue ("Department") issued Taxpayer a "proposed assessment" of additional income tax for the year 2012 while Taxpayer was living and working in China. Taxpayer responded to the proposed assessment voicing his objections. The Department responded in a January 2016 letter, which stated in part:

If you are a [United States] citizen domiciled in Indiana, and you go to a foreign country for a limited amount of time because of assignment by employer, study or for any purpose, you do not lose or change your domicile unless you clearly show that you intend to remain in that foreign country permanently and you do not plan to return to Indiana.

Taxpayer filed a protest challenging the proposed assessment. An administrative hearing was conducted during which Taxpayer explained the basis for his protest. A Letter of Findings (LOF) was issued September 2016 denying the protest. Taxpayer disagreed with the decision set out in the LOF and requested a rehearing. The rehearing request was granted. An administrative rehearing was conducted during which Taxpayer's representative reiterated the original objections and presented additional documentation. This Supplemental Letter of Findings results.

I. Individual Income Tax - Indiana Residency.

DISCUSSION

The issue - as in his original protest - is whether Taxpayer established that he was not a full-year resident of Indiana during 2012.

Taxpayer is a current resident of Nevada having moved to that state from China in 2016. Taxpayer supplied a copy of his current Nevada apartment lease along with Nevada utility bills.

Taxpayer admits living and working in Indiana from 2006 through 2011. During that time, Taxpayer states that he lived at his mother's home during those six years but asserts that he "never owned or leased real property in Indiana during" those years.

In December 2011, Taxpayer moved from Indiana to North Carolina beginning working for an international development company.

In March 2012 Taxpayer moved from North Carolina to the Republic of China at the behest of his employer. While in China, Taxpayer purchased a car, obtained a Chinese driver's license, married a Chinese national, and had a child while in that country.

While in China, Taxpayer obtained an "Alien Employment License," temporary residency permit, Chinese work permit, and purchased a home near Shanghai. Taxpayer also provided evidence that Shanghai local income taxes were withheld on his behalf by his employer.

Under the terms of his employment agreement, his employer deposited a portion of his salary in a local Chinese bank with the remainder of his salary deposited in a United States bank.

While living in China, Taxpayer arranged for his domestic mail to be delivered to his mother's home in Indiana.

Taxpayer remained living and working in China for approximately four and one-half years.

After leaving employment in China, Taxpayer moved to and is currently living in Nevada.

All tax assessments are prima facie evidence that the Department's claim for the 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." *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Indiana 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.

Additionally, an individual who files federal income tax returns as a nonresident citizen "is considered as being domiciled in Indiana and his income taxable as a resident citizen, if he maintains a place of abode in Indiana immediately prior to residing in a foreign country as a nonresident citizen of the United States, and has not permanently established his domicile in a foreign country or in another state . . ." [45 IAC 3.1-1-23\(3\)](#).

To establish a domicile, a taxpayer "must be physically present at a place, and must have the simultaneous intent of establishing a home at that place." [45 IAC 3.1-1-22](#). For income tax purposes, "a person has only one domicile at a given time even though that person maintains more than one residence at that time." *Id.* Additionally, "Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur." *Id.* "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 v. Walton*, 157 N.E. 275, 278 (Ind. 1927).

In *State Election Board v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court considered the standard by which a "domicile" is established. The court determined that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though he moved to different

states for various reasons for many years. Specifically, the court stated, 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. Id. 1317 (Internal citations omitted).

The supreme court concluded that:

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 1318 (Internal citations omitted).

In an earlier case, the Indiana Supreme Court stated that in order to establish a new residence, a taxpayer "must show . . . evidence of acts undertaken in furtherance of the requisite intent, which make that intent manifest and believable." In the Matter of Evrard, 333 N.E.2d 765, 768 (Ind. 1975).

The Department's regulation provides that "[t]here is no one set of standards that will accurately indicate the person's intent in every relocation." [45 IAC 3.1-1-22](#). Instead, the determination is made on a case by case basis. Id. Facts to be considered include:

- (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. Id.

In addition, courts have considered a taxpayer's contemporaneous declarations identifying that taxpayer's "home;" insurance policies, mortgages, contracts or other instruments indicating the taxpayer's home; and membership in clubs, churches, or other social groups in a place. Croop, 157 N.E. at 278-79. Finally, courts have considered the location of taxpayer's household goods and mailing address. Board of Medical Registration and Examination v. Turner, 168 N.E.2d 193, 197 (Ind. 1960); See also, Culbertson v. Bd. Of Comm'rs of Floyd County, 52 Ind. 361 (1876). However, a taxpayer "seeking to establish his claim of exemption from taxation on the ground of nonresidence is not required to show that his property was assessed elsewhere." Croop, 157 N.E. at 276.

The Department is mindful that there is no one set of standards that will accurately indicate the person's intent in every relocation. The Department stands by its original position that taking up employment in a foreign country is not necessarily indicative of a change in domicile. However, given that Taxpayer moved from Indiana to North Carolina in 2011, began employment with a company that assigned him to work in China, that Taxpayer remained in China for four and one-half years, and that he subsequently left China for employment in Nevada, the Department is prepared to agree that Taxpayer manifested an intention to "abandon" his Indiana domicile in 2011 and to establish a domicile outside this state.

FINDING

Taxpayer's protest is sustained.

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