

**Letter of Findings: 01-20160480N**  
**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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 residing in New Zealand is not required to pay Indiana individual income tax for 2011 because he was not an Indiana resident at that time.

**ISSUE**

**I. Indiana Individual Income Tax - Residency - Domicile.**

**Authority:** IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-3-2-1; IC § 6-8.1-5-1; IC § 9-24-1-1.5; Lafayette Square Amoco, Inc. v. Ind. Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Ind. Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Scopelite v. Ind. Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Ind. 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); In the Matter of Evrard, 333 N.E.2d 765 (Ind. 1975); [45 IAC 3.1-1-21](#); [45 IAC 3.1-1-22](#); [45 IAC 3.1-1-23](#).

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

**STATEMENT OF FACTS**

Taxpayer is an individual who has resided in New Zealand since 2010. The Indiana Department of Revenue ("Department") determined that Taxpayer was an Indiana resident for the tax year 2011 based upon information received indicating that she held an Indiana driver's license and that she had listed an Indiana address on her Federal income tax return. The Department, therefore, issued a proposed assessment for 2011 for income tax, penalty, and interest.

Taxpayer protested the proposed assessment. An administrative hearing was held. 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 - Residency - Domicile.**

**DISCUSSION**

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. Ind. Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Ind. Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting her challenge to the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Ind. Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Ind. Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Indiana imposes a tax "upon 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). 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; see also [45 IAC 3.1-1-](#)

[21](#). A nonresident is "any person who is not a resident of Indiana." IC § 6-3-1-13.

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, "[o]nce 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 Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court considered the standard by which "domicile" –and thus residency–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 explained, in relevant 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 place of residence temporarily, but with the intention of returning, has not lost his original residence.

*Id.* at 1317 (internal quotations and citations omitted). The Indiana Supreme Court went on to conclude 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 quotations and citations omitted); see also *In the Matter of Evrard*, 333 N.E.2d 765, 768 (Ind. 1975) ("The person must show . . . evidence of acts undertaken in furtherance of the requisite intent, which make that intent manifest and believable.")

Additionally, [45 IAC 3.1-1-22](#) considers the following relevant facts in determining whether a new domicile has been established:

- (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.

These factors are not exclusive in determining an individual's intent to relocate. "The determination of a person's intent in relocating is necessarily a subjective one. 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." *Id.*

During the protest, Taxpayer submitted numerous documents to the Department in support of her argument that she was not an Indiana resident and was domiciled in New Zealand during the relevant tax year. Taxpayer provided her mailing address on federal returns from 2010-2011, which was the corporate office of Taxpayer's employer, her federal return for 2012 with Taxpayer's New Zealand address, Taxpayer's New Zealand tax return, Taxpayer's New Zealand pay slips for 2010-current, bank and investment statements showing Taxpayer's New Zealand address, Taxpayer's New Zealand's permanent resident visa issued December 2011, Taxpayer's New Zealand driver's license issued 2010, Taxpayer's New Zealand work permit issued 2010-2014, a copy of Taxpayer's 2011 Federal Form 114 and 2015 Federal Form 8938 which show that bank/investment accounts are held in New Zealand, purchase details for her New Zealand home in March 2014, copies of her New Zealand employment agreement for 2010 and 2011, and a travel summary for 2010 and 2011 which shows she was in Indiana for only three days during that time. These documents, viewed in their totality, clearly indicate Taxpayer's

intent to abandon her Indiana domicile.

In addition, the possession of an Indiana driver's license is not conclusive of a finding of Indiana residency, as the Indiana Bureau of Motor Vehicles is authorized to issue driver's licenses to non-residents. IC § 9-24-1-1.5.

The Department also based its assessment on the conclusion that, because Taxpayer is a United States citizen, her domicile is presumed to be Indiana because she must maintain a domicile in the United States. However, [45 IAC 3.1-1-23](#) provides, in relevant part:

(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.**

(3) Nonresident Citizens

An individual from Indiana who is permitted to file 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.** (Emphasis added).

As Taxpayer has established, she became a domiciliary of another country well before 2012 and does not have Indiana source income; therefore, she may not be taxed by Indiana. Taxpayer also does not meet the minimum requirements to be taxed in Indiana as a nonresident citizen because, although she did file Federal income tax returns, she has permanently established her domicile in a foreign country. Taxpayer established that her Indiana mailing address belongs to her daughter, and she only uses this address to receive mail in the United States.

In conclusion, Taxpayer has addressed the Department's basis for issuing the proposed assessment. Taxpayer has clearly established that she effectively abandoned her Indiana domicile for the tax year at issue. Taxpayer has met her burden of proving the proposed assessment to be incorrect as required by IC § 6-8.1-5-1(c), and she is not subject to Indiana income tax for the tax year 2011 because she was a nonresident.

Residency cases are particularly fact sensitive, thus the position relayed within this document pertains only to this case and its specific set of facts.

## FINDING

Taxpayer's protest is sustained.

*Posted: 03/29/2017 by Legislative Services Agency*  
An [html](#) version of this document.