

**Letter of Findings: 01-20160537N
Indiana Individual Income Tax
For The Tax 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 Indiana Department of Revenue's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.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 was not required to file a 2012 Indiana individual income tax return because he established that he did not avail himself of the Indiana homestead credit and had no other indicia of Indiana domicile, and thus was not an Indiana resident.

ISSUE

I. Indiana Individual Income Tax - Residency.

Authority: IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-3-2-1; 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); 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, 768 (Ind. 1975); [45 IAC 3.1-1-21](#); [45 IAC 3.1-1-22](#).

Taxpayer protests the Department's proposed assessment for the 2012 tax year based on Indiana residency.

STATEMENT OF FACTS

Taxpayer is an individual who has worked and resided in China for at least the past twenty-five years. Taxpayer is employed by a company that maintains its principal place of business in Missouri. The Indiana Department of Revenue ("Department") determined that Taxpayer was an Indiana resident for the tax year 2012 based on records indicating that a homestead exemption had been claimed on property he owned in Indiana, and that Taxpayer failed to file his 2012 Indiana individual income tax return. The Department therefore issued a proposed assessment for 2012 for income tax, penalty, and interest.

After receiving the proposed assessment, Taxpayer filed the present protest. An administrative phone hearing was held. This Letter of Findings ensues and addresses Taxpayer's protest of the proposed assessment for the tax year 2012. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Residency.

DISCUSSION

The Department assessed Taxpayer income tax for the 2012 tax year, concluding that Taxpayer was an Indiana resident and that he failed to file a 2012 Indiana individual income tax return. The Department determined that Taxpayer was a resident based upon the homestead exemption being claimed on six Indiana residential properties. Taxpayer contends that he was not required to file a 2012 Indiana income tax return because he was not an Indiana resident, and he never elected to claim to homestead exemption.

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, the taxpayer is required to provide documentation explaining and supporting his challenge that the Department's assessment is wrong.

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 new 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.
- (Emphasis added).**

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 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." *Id.*

The Department found that Taxpayer was an Indiana resident based upon its conclusion that Taxpayer had taken the Indiana homestead exemption on six residential properties in Indiana. Taxpayer asserts that the properties in question were investment properties, and that he properly reported his Indiana source income from these properties but was not an Indiana resident. At the hearing, Taxpayer presented copies of the Indiana Sales Disclosure Form for five of the properties at issue, each designating in Section F that the property would not be used as Taxpayer's primary residence and that the property would be used as residential rental property or that

the homestead exemption was not elected. These sales disclosure forms also show that four of these properties were not purchased until 2013. For the Indiana property that Taxpayer did own in 2012, the sales disclosure form shows that the property was purchased at a surplus property auction, and Taxpayer indicated that it would not be his primary residence.

The sales disclosure form for the sixth property shows that it was sold to another buyer on a land sale contract in 2010, and that the purchaser would be using the property as her primary residence, not Taxpayer. This is also consistent with Department records showing that the property had been sold in 2010. Based on the documentation provided, Taxpayer has shown that he either did not own the properties at issue in 2012, did not elect the homestead exemption, or had sold the property on a land sale contract prior to 2012. Taxpayer established his domicile in China well before the tax year at issue, and there are no other facts establishing that he was a resident of Indiana.

Taxpayer provided sufficient documentation to establish that he was a nonresident of Indiana for the 2012 tax year, thus meeting his burden under IC § 6-8.1-5-1(c) to show that the Department's proposed assessment is incorrect. 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.

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