DEPARTMENT OF STATE REVENUE

01-20160295.SLOF

Supplemental Letter of Findings: 01-20160295
Indiana Individual Income Tax
For The Tax Year 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 Supplemental Letter of Findings.

HOLDING

Retirees were not Indiana residents for the 2011 and 2012 tax years because they did not spend more than 183 days in Indiana and they changed their domicile to a different state. Retirees established that, among other things, (1) they maintained Texas Driver's Licenses and vehicle registration during tax years 2011 and 2012 and (2) they registered to vote in Texas. Retirees further took steps to remove their Indiana homestead deduction which they erroneously claimed from their Indiana home for the tax years at issue and paid back the tax benefits they received due to the homestead deduction, including penalty. Retirees thus were not required to file 2011 and 2012 Indiana full-year resident individual income tax returns and their retirement income was not Indiana income subject to Indiana income tax.

ISSUE

I. Indiana Individual Income Tax - Non-filer - Residency.

Authority: 4 U.S.C. § 114; 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.

Taxpayers protest the Department's proposed assessments for the 2011 and 2012 tax years.

STATEMENT OF FACTS

Taxpayers are individuals with a current Texas address. Taxpayers did not file Indiana income tax returns for tax years 2011 and 2012 ("Tax Years at Issue"). In 2015, 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, Taxpayers were Indiana residents, that Taxpayers failed to file their Indiana individual income tax returns, and that Indiana income tax was due for the Tax Years at Issue.

Taxpayers timely protested the assessment. An administrative phone hearing was scheduled and Taxpayers failed to attend the hearing. The Department administratively closed Taxpayers' protest without issuing a Letter of Findings. Taxpayers subsequently submitted additional information and requested a rehearing. The rehearing request was granted and a rehearing was held. This Supplemental Letter of Findings ensues. 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 Taxpayers were full-year Indiana residents for the Tax Years at Issue, that they failed to file their Indiana full-year resident individual income tax return, Form IT-40, and that Indiana income tax was due for the Tax Years at Issue.

Taxpayers disagreed. Taxpayers claimed that they moved from Florida to Texas in late 2005. Taxpayers asserted

that although they own a house in Indiana, they were Texas residents since 2005 and they were not Indiana residents for the Tax Years at Issue. The issue is whether Taxpayers were Indiana residents 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). When an individual only has retirement income, under 4 U.S.C. § 114(a), Indiana may only impose state income tax "on any retirement income of an individual who is [] a resident or domiciliary of [Indiana] (as determined under the laws of [Indiana])." As for nonresident person who has Indiana income and is required to file his or her Indiana income tax return, 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.
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> 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:
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> (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). The taxpayer taking the credit does so with a certified statement. IC § 6-1.1-12-37(e). If the taxpayer changes his or her use of the property such that it would no longer qualify for the credit, the taxpayer must inform the county of that change and ask that the credit be removed within sixty days after the date of that change. IC § 6-1.1-12-37(f)(1). If a taxpayer does not make that declaration when the use of the property has changed and ask that the credit be removed, the taxpayer is required to pay back the tax benefits it received due to the homestead deduction as well as a ten-percent penalty and other likely fees. 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**."
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> '[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**.
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> 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."
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> **"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."**
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> 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**.
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> 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**."
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> A person who leaves his places of residence temporarily, but with the intention of returning, has not lost his original residence . . . .
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> 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**.
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> Id. at 1317-18 (Ind. 1988)(**Emphasis added**).

Taxpayers, in this instance, contended that after they retired, they lived in Florida prior to 2005, that they have been Texas residents since late 2005, and that they were not required to file an Indiana income tax returns for the Tax Years at Issue because they were not Indiana residents and did not have Indiana income for the Tax Years at Issue. Taxpayers stated that they own a residence in Indiana. Taxpayers asserted that the Indiana homestead deduction was erroneously claimed after they refinanced their Indiana residence. Taxpayers further maintained that they "have since gone to the county and removed the homestead exemption and paid the difference in property tax . . . ." Similar to Mr. Walton who was domiciled in Michigan before moving to Indiana, Taxpayers were longtime Indiana residents and domiciled in Indiana before they decided to move. Thus, to determine whether Taxpayers were Indiana residents for the Tax Years at issue, the Department must first determine whether Taxpayers effectively changed their domicile to a different state other than Indiana before 2011.

Upon review, 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 Taxpayers were domiciled in Indiana since the 1990s. Publicly verifiable records established that Taxpayers were owners of the Indiana home since 1996 and the Indiana homestead deduction was claimed on that house for 2011 and 2012. When the homestead deduction was claimed, Taxpayers necessarily affirmed that the Indiana home is their "true, fixed, permanent home to which [they have] the intention of returning after an absence." Otherwise, Taxpayers were required to notify the county that they 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 Taxpayers were Indiana residents for 2011 and 2012 tax years.

Taxpayers at the phone hearing stated that they initially moved to Florida and that, in 2005, they decided to relocate to Texas and become Texas residents. To support their protest, in addition to their 1099R and SSA-1099 forms, auto insurance policy, and current Texas Driver's License, Taxpayers submitted Husband's initial application of his Texas Driver's License and his vehicle registration in Texas. Husband also registered to vote in Texas in late 2005 and offered a copy of his 2016-2017 "Voter Registration Certificate." Taxpayers maintained that the Indiana homestead deduction was mistakenly claimed on their Indiana house, that they removed the homestead exemptions and paid back the additional tax, and that they did not spend more than 183 days for each of the Tax Years at Issue.

Upon review, Taxpayers' documentation showed that Husband had a Florida Driver's License before he applied for and obtained his Texas Driver's License in November 2005. Meanwhile, Husband registered and insured his vehicle pursuant to Texas law. Husband also registered to vote in Texas in 2005. Taxpayers' additional documents further supported that they took steps to remove the Indiana homestead deduction and that they paid back the tax benefits for the Tax Years at Issue. Given the totality of the circumstances, the Department is prepared to agree that for the Tax Years at Issue, Taxpayers met their burden to demonstrate that they were not Indiana residents because they changed their domicile to Texas prior to 2011 and that they did not spend more than 183 days in Indiana even though they still owned a house in Indiana. IC § 6-3-1-12; see also 45 IAC 3.1-

1-21. Pursuant to 4 U.S.C. § 114(a), their retirement income was not subject to Indiana income tax for the Tax Years at Issue.

Finally, it should be noted that Taxpayers, who continue to maintain a permanent place of residence in Indiana, are on notice that for the purposes of determining Indiana residency, each year stands alone. Going forward, if similar circumstances arise again for different tax years, Taxpayers will be required to accordingly document their potential residency issues.

FINDING

Taxpayers' protest of Indiana residency for 2011 and 2012 is sustained.

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