

**Letter of Findings: 01-20160465N
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 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Husband and Wife provided documentation to establish that wife was not domiciled in Indiana for 2012. Therefore, Individuals properly filed a 2012 part year resident Indiana return to properly reflect Husband's Indiana income.

ISSUES

I. Indiana Individual Income Tax - Residency.

Authority: 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; IC § 6-1.1-12-37; 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); [45 IAC 3.1-1-21](#); [45 IAC 3.1-1-22](#).

Taxpayers protest the Department's proposed assessment for the 2012 tax year.

II. Tax Administration - Non-Filer Penalty and Interest.

Authority: IC § 6-8.1-10-3; IC § 6-8.1-10-1.

Taxpayers protest the imposition of the penalty and interest.

STATEMENT OF FACTS

Taxpayers are a married couple ("Husband and Wife"). Taxpayers purchased a home in Indiana in May 2012. The Indiana Department of Revenue ("Department") determined that Taxpayers were Indiana residents for the tax year 2012 and that Taxpayers failed to file their 2012 Full Year Indiana Income Tax return. The Department therefore, issued a proposed assessment for 2012 income tax, penalty, and interest.

Taxpayers protested the assessment. An administrative phone hearing was held. This Letter of Findings ensues and addresses Taxpayers' 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 Taxpayers income tax for the 2012 tax year on the ground that Taxpayers were Indiana residents in 2012 and that they failed to file their 2012 Indiana income tax return. The Department based its assessment on the determination that Husband owned property in Indiana and took the homestead exemption on that property, and Taxpayers renewed vehicle registration with the Indiana Bureau of Motor Vehicles for 2015 and 2016.

In response to the Department's determination that Taxpayers were residents, Taxpayers filed an Indiana Part Year return only claiming Husband's income as taxable to Indiana. Taxpayers argue that Wife was not an Indiana resident and therefore her income was not subject to Indiana taxes and provided documentation to support this

assertion. The issue is whether, for the tax year 2012, Taxpayers were Indiana residents and were therefore subject to Indiana income tax.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; 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, Taxpayer is required to provide documentation explaining and supporting her challenge that the Department's assessment is wrong.

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. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayer's taxable income and to calculate what would be her 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.

Additionally, [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).

Under Indiana law "[h]omestead" is defined 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). A taxpayer is entitled to claim a deduction, known as homestead deduction, 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, 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). Otherwise various penalties and fines ensue, including the requirement to pay back the credit.

For guidance in determining a taxpayer's domicile, the Department refers to *Croop v. Walton*, 157 N.E. 275 (Ind. 1927). In *Croop* a taxpayer, Mr. Walton, moved from Sturgis, Michigan to Elkhart, Indiana by selling his Michigan residence and purchasing a residence in Indiana, where he and his wife lived for several years for the benefits of his wife's health. Indiana assessed Mr. Walton state income tax on his intangible property. *Id.* at 276-78. Mr. Walton disagreed, arguing that his intangible property was not subject to Indiana taxes because he was domiciled in Michigan. *Id.* The court found that Mr. Walton: owned and managed a company and stores in Michigan; maintained his membership with lodges, clubs, and a church; on various occasions exercised his civil and political rights; and that Sturgis was used in his legal documents, including insurance policies, mortgages, leases,

contracts, and other instruments. Ruling in favor of Mr. Walton, the court concluded that Mr. Walton did not change his domicile from Michigan to Indiana and his intangible property was not subject to certain Indiana taxes. The court explained, in relevant part, that:

The word "inhabitant," as used in our statute regulating the imposition of taxes, means "one who has his domicile or fixed residence in a place." **"If the 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."**

No precise or exact definition of the term "**domicile**," which responds to all purposes, seems to be possible. It 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.**

Many cases collected in the works just cited have held that at times the cognate terms "residence" and "domicile" are synonymous, but many other cases there cited and quoted from have held that the two terms, when accurately used, are not convertible, but that there is a very clear and definite distinction between them. "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.

Domicile is of three kinds-domicile of origin or birth, domicile by choice, and domicile by operation of law. . . . **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. at 277-78. (Internal citations omitted). (**Emphasis added**).

In *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court reiterated similar analysis and determined that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though Mr. Bayh moved to different states for various reasons for many years. Specifically, the court illustrated, 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.

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 1317-18. (Internal citations omitted). (**Emphasis added**).

In short, any individual who was domiciled in this state during the taxable year is a resident. IC § 6-3-1-12(a). "A change of domicile requires an actual moving with 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." *Bayh*, 521 N.E.2d at 1317.

Taxpayers protest the Department's determination that they both were required to file full year Indiana IT-40s. Taxpayers explained that Husband lived and worked in Missouri until he bought a house in Indiana in May 2012. Wife lived and worked in South Carolina for the entire year at issue. Husband bought house in his name and took the homestead deduction on that home when he purchased it. Husband also argues that pursuant to the instructions on State Form 5473(R13/12-09) under "When to File" the homestead deduction claim must be completed the year prior to the first year for which the person wishes to obtain the deduction. In addition IC § 6-1.1-12-37(h) states that the homestead deduction does not apply the first year in which the deduction was claimed. Therefore, Husband did not receive the benefit of the homestead deduction until one year after he took the deduction, which in this case was 2013, the year after the one for which the Department issued proposed assessments.

Taxpayers provided documentation showing that Wife's income is not subject to Indiana tax and that they properly filed an Indiana PNR. The documents included Taxpayers' closing on their Indiana home in May 2012, their Missouri 2012 Individual Tax Return showing that the Husband only earned income in Missouri, their South Carolina 2012 Individual Tax Return showing Wife's income earned in that state, and their Indiana PNR return taxing only the Husband's income. Taxpayers also provided documentation showing that Wife's domicile was not in Indiana for the year at issue. That documentation included the closing materials on her South Carolina home showing only Wife's name, 1099s for the years at issue showing Wife's South Carolina address, a copy of a check payment to a South Carolina club, a real estate tax receipt for the South Carolina home, receipts for contributions to a South Carolina church, and a copy of Wife's South Carolina voter registration. All of the factors weigh in favor of Taxpayer's argument that Wife was not a resident of Indiana during 2012, as explained by Croop and Bayh.

Pursuant to [45 IAC 3.1-1-22](#) Taxpayers have documented relevant facts that establish that Husband properly filed a 2012 Indiana PNR return. Husband's 2012 Indiana income is subject to Indiana income tax because he purchased a home in Indiana in 2012, and claimed that home was his permanent residence by taking the homestead deduction. This means that Husband spent more than 183 days in Indiana during 2012 and was a resident in Indiana for 2012 as defined by IC § 6-3-1-12. Wife's documentation establishes that she was neither a resident nor domiciled in Indiana for the year at issue, and therefore her income was not subject to Indiana income tax as provided by IC § 6-3-2-1(a) and IC § 6-3-2-2(a). Taxpayers' PNR will be processed, and Taxpayer will be billed accordingly.

FINDING

Taxpayer's protest is respectfully sustained in part and denied in part as explained above.

II. Tax Administration - Non-Filer Penalty and Interest.

DISCUSSION

Taxpayer requests that the Department abate the penalty and interest. Pursuant to IC § 6-8.1-10-3(a), the Department may assess a penalty if the taxpayer "fails to file a return on or before the due date"

Indiana imposes interest on overdue tax pursuant to IC § 6-8.1-10-1(a), which states:

If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

Taxpayers established that Wife was not domiciled in Indiana and therefore properly filed an Indiana PNR. However, because the return was filed in response to the Department's investigation, it was not timely pursuant to IC § 6-8.1-10-3, the Department will recalculate penalty and interest pursuant to the liability confirmed in the PNR.

FINDING

Taxpayers' protest of the penalty and interest will be adjusted in accordance with the filing of their PNR Indiana return.

SUMMARY

For the reasons discussed above, Taxpayers' protest of the Department's proposed assessment for the 2012 tax

year is sustained in part. Taxpayers' protest of the penalty and interest will be adjusted in accordance with the filing of their PNR Indiana return.

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