DEPARTMENT OF STATE REVENUE

01-20160497N.LOF

Letter of Findings: 01-20160497N
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Individual was an Indiana resident for the 2012 tax year because he did not effectively change his Indiana domicile. Publicly verifiable information established that (1) Individual took the Indiana homestead deduction on his Indiana home for the 2012 tax year and took itemized deductions in his federal return specifically as negotiated in Divorce Settlement, (2) Individual maintained Indiana Driver's License and vehicle registration during 2012, and (3) Individual was the partner of an Indiana business managing Indiana rental property. Therefore, Individual was required to file a 2012 Indiana full-year resident individual income tax return and his income was subject to Indiana income tax.

ISSUE

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

Authority: 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 § 6-3-3-3; IC § 6-3-5-3; 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; 45 IAC 3.1-1-74; 45 IAC 3.1-1-76; 50 IAC 24-2-5.

Taxpayer protests the Department's proposed assessment for the 2012 tax year.

STATEMENT OF FACTS

Taxpayer is an individual with a current California address. Taxpayer did not file an Indiana income tax return for the tax year 2012. In 2015, pursuant to the best information available to the Indiana Department of Revenue ("Department"), the Department determined that, for the tax year 2012, Taxpayer was an Indiana resident, that Taxpayer failed to file his Indiana individual income tax return, and that Indiana income tax was due for 2012.

Taxpayer timely protested the assessment. An administrative phone hearing was held. This Letter of Findings ensues and addresses Taxpayer's protest of the proposed assessment. 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 Taxpayer was a full-year Indiana resident for 2012, that he failed to file his 2012 Indiana full-year resident individual income tax return (Form IT-40) and that Indiana income tax was due for 2012. The Department initially informed Taxpayer that he had "unreported income for tax year 2012" and "must file an Indiana return . . . ."

Taxpayer disagreed. Taxpayer claimed that he relocated first to Illinois and then California after he filed for a divorce in Indiana in October 2011. Taxpayer argued that he was not an Indiana resident for the 2012 year. The issue is whether Taxpayer was an Indiana resident for 2012.

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). 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). When the taxpayer is no longer qualified for the homestead deduction (or exemption), 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).

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. . . .

> 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**).

Taxpayer, in this instance, contended that he was not required to file an Indiana income tax return for 2012 because he was not an Indiana resident and did not have Indiana income for 2012. Taxpayer stated that "I lived in Illinois from 1/1/2012 [until] 9/30/2012. I did not have Indiana income during 2012." Taxpayer also claimed that he moved to California after September 30, 2012 and remained there. Similar to Mr. Walton who was domiciled in Michigan before moving to Indiana, Taxpayer was a longtime Indiana resident and domiciled in Indiana before he decided to move. Thus, to determine whether Taxpayer was an Indiana resident for 2012, the Department must first determine whether Taxpayer effectively changed his domicile to Illinois before 2012.

In addition to his 2012 W2s, federal, Illinois, and California income tax returns, Taxpayer submitted additional documents to support his protest, which included his divorce petition, the "Decree of Dissolution of Marriage, Waiver of Final Hearing, and Mediated Settlement Agreement" ("Settlement Agreement"), his California Driver's License, the unsigned copy of the first page of his employer's "Covenant Not to Compete & Confidentiality Agreement" ("Confidentiality Agreement"), his employer's offer letter, and various copies of e-mail correspondence. Taxpayer further offered a timeline in supporting his assertions, in relevant part, as follows:

- 2011 - [Taxpayer] moved to Illinois immediate[ly] after moving out of [his Indiana] residence . . .
- 10/28/2011 - [Taxpayer] moved into an apartment in [] Illinois;
- 1/26/2012 - [] Email from Manager of HR with address in Illinois;
- 8/7/2012 - [] Email fro[m] Manager of HR with address in California;
- 8/21/2012 - [] offer letter stating the commitment to move to California;
- 9/27/2012 - [] Non-Compete & Confidentiality agreement based upon residing in California . . .
- 9/4/2012 - California Driver's License

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 Taxpayer was domiciled in Indiana since 1990s. The publicly verifiable records established that Taxpayer was one owner of the Indiana home since 2006 and a homestead deduction was claimed on that house. When the homestead deduction was claimed, Taxpayer necessarily affirmed that the Indiana home is his "true, fixed, permanent home to which [he has] the intention of returning after an absence." Otherwise, Taxpayer was required to notify the county that he 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 Taxpayer was an Indiana resident for 2012 tax year.

Taxpayer at the phone hearing explained that, after he petitioned for divorce, he moved to Illinois in late 2011. Taxpayer maintained that because his Indiana home was the "Marital Home," he was "unable to transfer his interest in the Marital Home until his divorce was finalized" in December 2012. Taxpayer argued that the Department erred in relying on the Indiana homestead deduction information.

Upon review, however, the Department is not able to agree. Specifically, Taxpayer's supporting documentation demonstrated that the divorce was finalized in December 2012, resulting in a "Settlement Agreement," which in relevant part, stated as follows:

> Wife is awarded all right and interest in the [Marital Home] . . . [Taxpayer] shall be entitled to claim one hundred percent []of the itemized deductions for mortgage interest and property tax paid on his 2012 federal and state income tax returns. Wife shall be entitled to claim one hundred percent [] of the itemized deductions for mortgage interest and property tax paid on her income tax return for 2013 and thereafter . . . .

It should be noted that, in the above matter, Taxpayer was not an involuntary participant. Rather, Taxpayer's documents demonstrated that he petitioned for divorce in Indiana local court in October 2011. Taxpayer initiated the legal proceeding in Indiana pursuant to Indiana laws, which required Indiana residency. Taxpayer subsequently negotiated and eventually agreed to dissolve the marital assets, including the Marital Home. Taxpayer could have chosen, but did not do so, to relinquish his 2012 interest or benefits on the Marital Home.

Instead, pursuant to the Settlement Agreement, Taxpayer specifically claimed the 2012 Indiana homestead deduction on his Marital Home and benefited from the Indiana homestead laws as a result. By doing so, Taxpayer first expressly informed the State of Indiana that he was entitled to the benefit of paying a lower property tax and that his "true, fixed, permanent home to which [he has] the intention of returning after an absence." Taxpayer also claimed the benefits to pay lower income tax after he took the itemized deductions in his income tax returns. Publicly verifiable information further showed that Taxpayer maintained the ownership of the Marital Home until November 2013, twelve months after the divorce decree was granted and the legal proceeding concluded. Publicly verifiable information also showed that since 2006, Taxpayer was a partner of an Indiana limited liability company, managing rental property in Indiana. Taxpayer continued listing his Indiana address in the annual filings with the State of Indiana for the year at issue. Thus, the Department is not able to agree that Taxpayer's documentation supported that he manifested the intent to abandon his Indiana domicile in 2012.

Taxpayer referenced, in addition to his employer's offer letter, his Illinois 2012 return, Schedule NR and W2, arguing that he resided in Illinois during the first nine months of 2012. However, Taxpayer's Illinois 2012 return and the offer letter of Taxpayer's employer showed that Taxpayer's address was a PO Box in Illinois. On the other hand, publicly verifiable information showed that he maintained an Indiana Driver's License and his vehicle registration issued by the Indiana Bureau of Motor Vehicles during those months. The facts that Taxpayer chose to use a PO Box address while he stayed in Illinois, coupled with his Indiana activities led the Department to conclude that Taxpayer failed to take the necessary steps to establish his intent to change his Indiana domicile.

Finally, Taxpayer claimed that he changed his domicile to California in September 2012. To support his claim, in addition to his 2012 California income tax return (Nonresident or Part-Year Resident Income Tax Return) and his California Driver's License, Taxpayer referred to the Confidentiality Agreement, his employer's offer letter, and an e-mail he sent to his employer, requesting his employer to change his address for "payroll and 401k" purposes. His California Driver's License was issued September 2012 and his return stated that he moved to California October 1, 2012. Both documents demonstrated that Taxpayer chose to use a PO Box address in California. Thus, in the absence of other verifiable supporting documentation, the Department is not able to agree that Taxpayer manifested the necessary intent to abandon his Indiana domicile in September 2012 or subsequently when he filed his 2012 California Nonresident or Part-Year Resident Income Tax Return.

In short, given the totality of the circumstances and especially the intent expressed in the Divorce Settlement, the Department is not able to agree that Taxpayer abandoned his Indiana domicile before or in 2012. Without abandoning his Indiana domicile, Taxpayer cannot acquire a new domicile in a state other than Indiana.

As mentioned earlier, Taxpayer may also qualify as an Indiana resident when he spent more than 183 days during the year at issue in Indiana when he maintained a permanent place of residence in Indiana. IC § 6-3-1-12; 45 IAC 3.1-1-21. Considering the W2 information and the employer's offer letter, the Department is prepared to agree that Taxpayer spent more than 183 days working in Illinois and California and thus did not spend 183 days or more in Indiana. Since the Department concludes that Taxpayer was domiciled in Indiana, the question regarding whether Taxpayer spent more than 183 days of the 2012 year in Indiana is moot.

Finally, Taxpayer's W2 information established that he worked for his employer in Illinois and later in California. Both states, however, do not have reciprocal agreements with Indiana. IC § 6-3-5-3; 45 IAC 3.1-1-76. Assuming that Taxpayer rendered his services to earn all his W2 income and also properly filed his 2012 Illinois and California state income tax returns, reporting and remitting income tax to both states, Taxpayer will be entitled to claim credits for the same tax paid to both states (excluding local/county income tax) when Taxpayer properly files his Indiana Full-Year Resident Individual Income Tax Return, IT-40, pursuant to IC § 6-3-3-3(a), which provides, as follow:

> Whenever a resident person has become liable for tax to another state upon all or any part of his income for a taxable year derived from sources without this state and subject to taxation under IC 6-3-2, the amount of tax paid by him to the other state shall be credited against the amount of the tax payable by him. Such credit shall be allowed upon the production to the department of satisfactory evidence of the fact of such payment, except that such application for credit shall not operate to reduce the tax payable under IC 6-3-2 to an amount less than would have been payable were the income from the other state ignored. The credit provided for by this subsection shall not be granted to a taxpayer when the laws of the other state, under which the adjusted gross income in question is subject to taxation, provides for a credit to the taxpayer substantially similar to that granted by subsection (b).

Taxpayer thus must enclose federal as well as Illinois and California state return transcripts in his IT-40 to claim the credits. See also 45 IAC 3.1-1-74.

In conclusion "[e]ach assessment and each tax year stands alone." Miller Brewing, 903 N.E.2d at 69. The Department is mindful that there is no one set of standards that will accurately indicate the person's intent in every relocation. Under Indiana laws, mere ownership of Indiana property does not necessarily make that owner an Indiana resident for state income tax purposes. However, given the totality of the circumstances, in the absence of other supporting documents, the Department is not able to agree that Taxpayer met his burden of proof. Thus, given a "case by case" review of Taxpayer's facts, documentation, circumstances, all of his income earned during 2012 was subject to Indiana income tax because Taxpayer's domicile remained in Indiana for the 2012 year. However, Taxpayer will be entitled to credits for the state (not local/county) income tax he paid to Illinois and California pursuant to the above mentioned applicable Indiana laws.

FINDING

Taxpayer's protest of Indiana residency is respectfully denied. Taxpayer is required to file his Indiana Full-Year Resident Individual Income Tax Return (IT-40), but he was entitled to a credit for state (not local/county) income tax paid to Illinois and California with respect to his W2 income for the 2012 tax year. Taxpayer must file a 2012 Indiana Full-Year Individual Income Tax Return and enclose both federal and state return transcripts in his IT-40 to claim the credits within 60 days from the date this Letter of Findings is issued.

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