

**Letter of Findings: 01-20160025N
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Married couple demonstrated that they were not Indiana residents for the 2011 tax year. Married couple were not required to file 2011 Indiana individual income tax return and their 2011 income was not 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 § 6-8.1-5-1; 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 assessment of individual income tax for the 2011 tax year.

STATEMENT OF FACTS

Taxpayers (Husband and Wife) are individuals with a current Indiana address. Taxpayers did not file an Indiana income tax return for the tax year 2011. 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 year 2011, Taxpayers were Indiana residents, that Taxpayers failed to file their Indiana individual income tax return, and that Indiana income tax was due for 2011.

Taxpayers timely protested the assessment. An administrative phone hearing was held. This 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 2011, that they failed to file their 2011 Indiana full-year resident individual income tax return, and that Indiana income tax was due for 2011. The Department in a letter, dated October 8, 2015, explained in relevant part, as follows:

After reviewing your account[,], our records indicate [that] for the tax year 2011 you've taken the Indiana Homestead Tax Credit at the address [in Indiana]. By taken the Homestead credit you're considered as [] full-year Indiana resident[s], which makes your W2[s] and 1099[s] [income] taxable to the [S]tate of Indiana . . .

Taxpayers disagreed. Taxpayers contended that they did not own a home in Indiana during 2011, nor did they claim the Indiana homestead credit for the 2011 year. Taxpayers asserted that in September 2010, they sold their Indiana home and purchased a new home in Michigan, where they lived and worked until fall 2012. Taxpayers

further stated that, in fall 2012, Husband had a better employment opportunity in Indiana and returned to Indiana. Taxpayers purchased a different house in Indiana in November 2012 after they sold their Michigan home. Taxpayers maintained that they purchased the current Indiana residence and applied for the Indiana homestead deduction November 21, 2012. Taxpayers claimed that they were not Indiana residents for the 2011 year because they lived and worked in Michigan. The issue is whether Taxpayers were Indiana residents for 2011.

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 accordingly 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](#) explains further how "residency" affects a taxpayer's income tax liability, in relevant part, as follows:

(1) Taxpayer Moving to Indiana. When a taxpayer moves to Indiana and becomes a resident and/or domiciliary of Indiana during the taxable year, Indiana will not tax income from sources outside Indiana which the taxpayer received prior to becoming an Indiana domiciliary. Indiana will, however, assess adjusted gross income tax on all taxable income after the taxpayer becomes an Indiana resident.

(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. . . .

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.

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.

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.**"

'[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.**

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."

"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."

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. (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.**"

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.**

Id. at 1317-18 (Ind. 1988)(**Emphasis added**).

Taxpayers, in this instance, contended that, for the 2011 tax year, their income was not subject to Indiana income tax because they were not Indiana residents, namely they did not own an Indiana home and did not claim the Indiana homestead deduction for 2011. Specifically, Taxpayers reiterated that (1) they sold their Indiana home and purchased another home in Michigan in September 2010, (2) they moved to Michigan and subsequently lived and worked in Michigan for a couple years, including 2011, and (3) they sold their Michigan home in fall 2012 and purchased a different house in Indiana in November 2012, where they currently live, and claimed the Indiana homestead afterwards. 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 to Michigan. Thus, to determine whether Taxpayers were Indiana residents for 2011, the Department must first determine whether Taxpayers effectively changed their domicile to Michigan before 2011.

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 an Indiana home since 1996 and the Indiana homestead deduction was claimed on that house until 2010. Publicly verifiable records also established that Taxpayers purchased a separate Indiana house and the Indiana homestead was claimed for 2011. 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 tax years.

Throughout the protest process, Taxpayers contended that the Department erroneously relied on the public records, which showed the 2011 Indiana homestead was claimed by Taxpayer on their current Indiana home. Taxpayers, referencing a July 2010 offer letter of employment in Michigan, explained that they sold their Indiana home and moved to Michigan in September 2010. They did not own any residence in Indiana during 2011; rather, they purchased a home in Michigan, where they lived, worked, and participated in local church activities until October 2012. To support their protest, in addition to the offer letter of employment, Wife's voter registration, both Husband and Wife's Michigan driver's records, their various Michigan vehicle and watercraft registrations, as well as their 2011 federal and Michigan state income tax returns and W2s, Taxpayers further provided documentation, including but not limited to, documents concerning their 2010 sale of their Indiana home, their 2010 purchase of Michigan home, their subsequent sale of their Michigan home in October 2012 and their subsequent purchase of their Indiana home in November 2012. Taxpayers maintained that they purchased their current Indiana home in November 2012 and claimed the Indiana homestead afterwards. Thus, the 2011 Indiana homestead deduction was mistakenly recorded under their name because they could not have claimed the homestead prior to acquiring their ownership of that Indiana house.

Upon review, Taxpayers' supporting documentation demonstrated that Taxpayers had the requisite intent and conduct to abandon their domicile in Indiana prior to 2011 by obtaining a full time employment in Michigan, selling their Indiana home and moving all of their possessions to Michigan, and surrendering their Indiana driver's licenses when they applied for Michigan driver's licenses. Taxpayers' supporting documentation also substantiated that Taxpayers had the intent and conduct to establish the new domicile in Michigan prior to 2011 by purchasing a new home in Michigan, registering to vote in Michigan, obtaining Michigan driver's licenses, titling and registering their vehicles and watercraft in Michigan, as well as joining local church and participating in the local social activities in Michigan. The totality of the supporting documents and circumstances demonstrated that Taxpayers effectively changed their domicile prior to 2011.

Taxpayers' supporting documentation further demonstrated (1) that they returned to Indiana in late 2012 after they sold their Michigan home and purchased their current Indiana home in November 2012, (2) that they recorded the transfer on November 21, 2012, and (3) that they claimed the Indiana homestead deduction on their current Indiana home beginning November 21, 2012 and going forward. Thus, Taxpayers' documents demonstrated that they did not claim the 2011 Indiana homestead and it was a clerical error.

Taxpayers' supporting documentation also demonstrated that they lived and worked in Michigan and they did not own any residence in Indiana during 2011. Thus, Taxpayers did not maintain "a permanent place of residence in [Indiana] and spend[] more than one hundred eighty-three (183) days" of the 2011 year in Indiana.

Given the totality of the circumstances, Taxpayers met their burden to demonstrate that they were not Indiana residents for 2011 because they changed their domicile to Michigan prior to 2011 and that they did not maintain a permanent place of residence in Indiana and spend more than 183 days in Indiana. IC § 6-3-1-12; see also [45 IAC 3.1-1-21](#). Taxpayers demonstrated that they were not Indiana residents and thus they were not required to file the 2011 Indiana Full-Year Resident Individual Income Tax Return.

Finally, when a taxpayer is not an Indiana resident but has income derived from Indiana sources, the income is subject to Indiana income tax. IC § 6-3-2-2(a). It should be noted that, the Department's records showed that, during 2011, Taxpayers received a 2010 state income tax refund from Indiana, which technically is an Indiana source income and Taxpayers' only Indiana source income for 2011. Nonetheless, the Indiana General Assembly has provided a deduction for the same amount and, thus, the issue is moot.

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. Given a "case by case" review of Taxpayers' facts, documentation, circumstances, the Department agrees that Taxpayers were not Indiana residents for 2011 and their 2011 income was not subject to Indiana income tax.

FINDING

Taxpayers' protest of residency issue is sustained.

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