

**Supplemental Letter of Findings: 01-20160544**  
**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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 Supplemental Letter of Findings.

### HOLDING

Individual residing in Qatar provided sufficient documentation to show that he was not a resident and therefore cannot be domiciled in Indiana for 2011, because Individual left Indiana after college and holding an Indiana's driver's license is not enough to establish residency.

### ISSUE

#### **I. Indiana Individual Income Tax - Residency - Domicile.**

**Authority:** IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-3-2-1; IC § 6-8.1-5-1; IC § 9-24-1-1.5; Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Lafayette Square Amoco, Inc. v. Ind. Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Ind. Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988); [45 IAC 3.1-1-21](#); [45 IAC 3.1-1-22](#).

Taxpayer protests the Department's assessment for the 2011 tax year.

### STATEMENT OF FACTS

Taxpayer is an individual who has resided in Qatar since 2010. The Indiana Department of Revenue ("Department") determined that Taxpayer was an Indiana resident for the tax year 2011 based upon information received indicating that he held an Indiana driver's license and that he had listed an Indiana address on his Federal income tax return. The Department, therefore, issued a proposed assessment for 2011 for income tax, penalty, and interest.

Taxpayer protested the proposed assessment. An administrative phone hearing was held. The Department issued Letter of Findings 01-20160544 denying Taxpayer's protest. Taxpayer timely requested a rehearing, which the Department granted. A rehearing was held and this Supplemental Letter of Findings ensues. Additional facts will be provided as necessary.

#### **I. Indiana Individual Income Tax - Residency - Domicile.**

### DISCUSSION

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

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.

Pursuant to IC § 6-3-1-12, a resident is defined as follows:

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, or (c) any estate of a deceased person defined in (a) or (b), or (d) any trust which has a situs within this state.

Domicile is defined by [45 IAC 3.1-1-22](#), which states:

"Domicile" Defined. 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).

Thus, a new domicile is not necessarily created when an individual moves to an address outside Indiana. Instead, the individual must move to the new non-Indiana address and have intent to remain at that non-Indiana address.

The Indiana Supreme Court considered the issue of the meaning of "domicile" in *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), in which the court provided:

Domicile means "the place where a person has his true, fixed, permanent home and principal establishment, and to which place he has, whenever he is absent, the intention of returning." *Turner*, 241 Ind. at 80, 168 N.E.2d at 196. Domicile can be established in one of three ways: "domicile of origin or birth, domicile by choice, and domicile by operation of law." *Croop*, 199 Ind. at 271, 157 N.E. at 278. **The domicile of an unemancipated minor is determined by the domicile of his parents.** *Hiestand v. Kuns* (1847), 8 Blackf. 345.

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." *Scott*, 171 Ind. at 361, 86 N.E. at 413. **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.**" *Rogers*, 226 Ind. at 35-36, 77 N.E.2d at 595-96. Id. at 1317. (Emphasis added).

Therefore, an examination of Taxpayer's acts is required to determine if Taxpayer had the intention to acquire a new domicile outside Indiana and to abandon his domicile in Indiana.

A review of the domiciliary criteria listed under [45 IAC 3.1-1-22](#) is illuminating in this matter. As is common for college students, Taxpayer's indicia of domicile were minimal while attending school. As explained by the court in Bayh, the domicile of an unemancipated minor is determined by the domicile of his parents and it was this childhood domicile which continued for Taxpayer through college. As a student, he did not have the resources to acquire the material and social indicia of what the Bayh court described as "domicile by choice." After graduating from college in 2001, Taxpayer left Indiana to attend graduate school in Illinois. Taxpayer graduated from graduate school and moved to Georgia where he began his career. Taxpayer lived and worked in Georgia from 2006-2010. Taxpayer moved to Qatar in 2010 and has remained there ever since.

During the protest, Taxpayer submitted numerous documents to the Department in support of his argument that he was not an Indiana resident and was not domiciled in Indiana during the relevant tax year. Taxpayer provided his Permanent Residency card for Qatar showing an expiration of July 2012, a Qatar identification card, and his letter of employment for the years 2010-2012. Taxpayer also included visas and passport information for his entire family. Taxpayer explained that he grew up in Indiana and graduated from an Indiana University in 2001 and moved to Illinois, after that he then moved to Georgia in 2006. Taxpayer also provided his 2006 W-2 from his Illinois employer listing an Illinois address, and his 2009 federal tax return with his Georgia address. Taxpayer also provided his 2009 Georgia state income tax return. Taxpayer also provided information on his home purchased in Georgia in 2007, Taxpayer's Georgia driving record, Georgia birth certificates of his children, his children's social security cards, which were sent to Taxpayer's Georgia address, and the medical bill for his children's birth. Taxpayer explained that the Indiana address used is his wife's parents' address.

The Department based its assessment on Taxpayer's possession of an Indiana's driver's license for 2011-2017 and use of an Indiana mailing address. In the course of the protest process, Taxpayer has provided documentation and analysis to support his protest that he was not a resident of Indiana during 2011. The possession of an Indiana driver's license, by itself, is not conclusive of a finding of Indiana residency, as the Indiana Bureau of Motor Vehicles is authorized to issue driver's licenses to non-residents. IC § 9-24-1-1.5. Taxpayer was able to show that he effectively abandoned his Indiana domicile and establish a new domicile elsewhere. Taxpayer met his burden to show that the assessment of tax for 2011 is incorrect as required by IC § 6-8.1-5-1(c).

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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