

**Letter of Findings: 01-20170096N
Indiana Individual Income Tax
For The Tax Year 2013**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 2013 tax year because she did not change her domicile to a different state. Individual established that she attended an out-of-state law school, but she returned to Indiana upon conclusion of her clerkship in Louisiana. Individual took the Indiana Bar Examination and has been licensed to practice law in Indiana. Individual renewed her Indiana Driver's License and Indiana vehicle registration. Individual thus was required to file a 2013 Indiana full-year resident individual income tax return and was entitled to a credit for the income tax she paid to Louisiana.

ISSUE

I. Indiana Individual Income Tax - Non-filer - 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; 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](#).

Taxpayer protests the Department's proposed assessment for the 2013 tax year.

STATEMENT OF FACTS

Taxpayer is an individual with a current Tennessee address. Taxpayer did not file an Indiana income tax return for tax year 2013. In 2017, pursuant to the best information available to the Indiana Department of Revenue ("Department"), the Department's Enforcement Division determined that, for 2013, Taxpayer was an Indiana resident, that Taxpayer failed to file her Indiana individual income tax return, and that Indiana income tax was due for 2013.

Taxpayer 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 publicly available information, including her Indiana Driver's License and professional license, found that Taxpayer was a full-year Indiana resident for 2013, that she failed to file her Indiana full-year resident individual income tax return, Form IT-40, and that Indiana income tax was due for 2013.

Taxpayer disagreed. Taxpayer stated that she grew up in Indiana and moved after she graduated from college seventeen years ago. The issue is whether Taxpayer was an Indiana resident for 2013.

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 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 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.

(Emphasis added).

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 (**Emphasis added**).

Taxpayer, in this instance, grew up in Indiana and attended a state university in Indiana. Taxpayer argued that she abandoned her Indiana domicile after she graduated from college seventeen years ago. Taxpayer stated that she first moved to Seattle, Washington to stay with her sister, then moved to California where she worked as a paralegal, and subsequently she moved again to attend a law school in New Orleans, Louisiana, and worked there after graduation. Taxpayer thus maintained that she was not an Indiana resident for the 2013 tax year and her 2013 income was not subject to Indiana income tax. To support her protest, Taxpayer provided additional documentation, including the lease and utility payments of her apartment in Louisiana for 2013, her Louisiana Driving Record, and her Louisiana Compensation Statement from Louisiana Supreme Court.

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 because she grew up in Indiana and attended the state university. Taxpayer's 2013 W-2 and 1099 income statements were mailed to her Indiana residence although she was licensed to practice law in Louisiana in April 2013 and had clerkship at the Louisiana Judicial Administrator Department. Publicly verifiable records established that upon completion of her clerkship, Taxpayer returned to Indiana where she renewed her Indiana Driver's License and registered her vehicle at the Indiana Bureau of Motor Vehicle. Taxpayer further took the step to be licensed to practice law in Indiana. Thus, there is a rebuttable presumption that Taxpayer was an Indiana resident for 2013.

Taxpayer's supporting documents demonstrated that, prior to 2013, she leased an apartment in Louisiana where she attended the law school. During her school years, Taxpayer titled and registered her vehicle in Louisiana. Taxpayer further obtained her professional attorney license and subsequently worked in Louisiana after graduation. Thus, Taxpayer did not spend more than 183 days in Indiana during 2013. Similar to Mr. Walton who was domiciled in Michigan before moving to Indiana, Taxpayer was a longtime Indiana resident and domiciled in Indiana before she decided to attend law school and move to Louisiana. Thus, to determine whether Taxpayer was an Indiana resident for 2013, the Department must first determine whether Taxpayer effectively changed her domicile to Louisiana.

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 the 1990s. Although Taxpayer moved to a different state after graduating from college, she was in transition. Taxpayer did not establish that she changed her Indiana domicile. Prior to attending the law school in Louisiana, Taxpayer was domiciled in Indiana. There was no dispute that Taxpayer attended law school in Louisiana, rented an apartment during school, and obtained a Louisiana driver's license. However, those steps were to facilitate Taxpayer's needs during school in a different state. In other words, Taxpayer established that she had a residence in Louisiana while she attended the law school. Those steps were not determinative factors that Taxpayer intended to abandon her Indiana domicile because upon conclusion her clerkship—completion her law school training—Taxpayer returned to Indiana. Taxpayer further took the affirmative steps to renew her Indiana Driver's License, renew her car registration in Indiana, and take the Indiana Bar Examination to be licensed to practice law in Indiana. In short, Taxpayer may intend to live in a state other than Indiana, but she had not abandoned her Indiana domicile. Taxpayer continued to maintain her ties with Indiana. Without abandoning her Indiana domicile, Taxpayer is not able to acquire a new one in a different state.

Given the totality of the circumstances, the Department is not able to agree that Taxpayer met her burden to demonstrate that she was not an Indiana resident for 2013 and thus she was required to file the 2013 Indiana Full-Year Resident Individual Income Tax Return. It should be noted, however, that Taxpayer had a W-2 income from her legal work in Louisiana. Taxpayer will be entitled to a credit in her 2013 Indiana income tax return for the tax she paid to Louisiana on the W-2 income.

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 Taxpayer's facts, documentation, circumstances, the Department

concluded that Taxpayer was an Indiana resident for 2013, her 2013 income was subject to Indiana income tax, and she was required to file her Indiana return. Taxpayer is also entitled to a credit for the state income tax she paid to Louisiana. To claim the tax credit, Taxpayer is required to provide transcripts of her 2013 federal and Louisiana income tax returns when she files her Indiana income tax return.

FINDING

Taxpayer's protest of Indiana residency for 2013 is respectfully denied. Taxpayer is required to file a 2013 Indiana full-year resident individual income tax return and is entitled to a credit for the state income tax she paid to Louisiana. To claim the tax credit, Taxpayer is required to provide transcripts of her 2013 federal and Louisiana income tax returns when she files her Indiana income tax return.

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