

Letter of Findings: 01-20170198
Individual Income Tax
For Tax Year 2014

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 was domiciled in Indiana in 2014, thus their income was subject to Indiana income tax.

ISSUE

I. Individual Income Tax - Residency.

Authority: IC § 6-8.1-5-1; IC § 6-3-2-1; IC § 6-3-1-12; *Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2011); *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988); *Croop v. Walton*, 157 N.E. 275 (Ind. 1927); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2011); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 3.1-1-22](#).

Taxpayers protest the imposition of Indiana individual income tax for the 2014 tax year.

STATEMENT OF FACTS

Husband and Wife ("Taxpayers") filed a timely 2014 Indiana tax return. An audit at the federal level resulted in an increase to the Taxpayers' 2014 Indiana taxable income as well as Taxpayers' Indiana tax liability. The Indiana Department of Revenue ("Department") billed Taxpayers for the increase and Taxpayers filed a timely protest. An administrative hearing was held and this Letter of Findings results. Additional facts will be provided as necessary.

I. Individual Income Tax - Residency.

DISCUSSION

As the result of a federal tax audit, the Department increased Taxpayers' 2014 Indiana taxable income and tax liability. Taxpayers protested on the basis that Husband did not reside in Indiana during 2014 and therefore his income should not be subject to Indiana income tax.

As a threshold issue, all tax assessments are *prima facie* evidence that the Department's claim for unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2011); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's position 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. 2011). 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, 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). Therefore, the first determination in this instance is whether or not Taxpayers were residents of Indiana in 2014. Pursuant to IC § 6-3-1-12, a 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. . . ." In other words, a resident includes individuals who are domiciled in Indiana or maintain a permanent place of residence in Indiana and then spend more than 183 days in Indiana. In this case, Taxpayers owned a home in Indiana in 2014. Wife lived in this home with Taxpayers' children for the entirety of 2014, therefore, Wife is a resident of Indiana. Any income Wife earned in 2014 is subject to Indiana income tax. Husband lived and worked in Connecticut and Texas in 2014, thus he did not spend more than 183 days in Indiana during 2014. Therefore, for Husband's income to be subject to Indiana income tax, he must be domiciled in Indiana.

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

For example, in *Croop v. Walton*, 157 N.E. 275 (Ind. 1927), a taxpayer 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. The taxpayer 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, taxpayer 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. at 277. (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. 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 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.**"

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).

Taxpayers moved to Indiana in 2005 so that Husband could work on his doctorate degree. In 2011, after obtaining this degree, Husband moved to Louisiana for work. In the beginning of 2014, Husband moved to Connecticut to work as a Postdoctoral Fellow. In August of 2014, Husband moved to Texas where he obtained permanent employment. According to Husband, he filed a Louisiana income tax return for the years that he lived and worked there. He did not file a Connecticut income tax return as he claims his Connecticut employer instructed him not to do so. Texas does not have a state income tax, therefore Husband did not file an income tax return for the income he earned in that state in 2014. While living outside of Indiana, Husband rented apartments while Wife and children lived in Indiana in the home Taxpayers owned. Taxpayers took the homestead deduction on their Indiana home. Husband noted that their vehicles were registered in Indiana, though Husband registered his car in Texas once he moved there. Husband further noted that Taxpayers were registered to vote in Indiana and had Indiana driver's licenses until moving to Texas.

Given the totality of the circumstances, the Department has determined that, for 2014, Husband was domiciled in Indiana, thus his income was subject to Indiana income tax. While Husband may have lived and worked outside of Indiana, his employment was temporary and he did not file income taxes in any other state in 2014. Wife and children stayed behind in Indiana indicating Taxpayers' intent to remain domiciled in Indiana until Husband found permanent employment in August of 2014. This is confirmed by the fact that once Husband found permanent employment, Wife and children followed him. Therefore, both Husband and Wife's income was subject to Indiana income tax for 2014.

FINDING

Taxpayer's protest is denied.

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An [html](#) version of this document.