

Letter of Findings: 01-20170232
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Married Individuals demonstrated that they were not Indiana residents for the 2013 tax year and were therefore not required to file a full-year Indiana individual income tax return.

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); *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 3.1-1-22.5](#); [50 IAC 24-2-5](#).

Taxpayers protest the Department's assessment of individual income tax for the 2013 tax year.

STATEMENT OF FACTS

Taxpayers (Husband and Wife) are individuals who reside in California. Taxpayers also owned a residence in Indiana. The Indiana Department of Revenue ("Department") determined that Taxpayers were Indiana full-year residents for the tax year 2013, that they did not file an Indiana income tax return, and that Indiana income tax was due for that year. Therefore, the Department issued Taxpayers a proposed assessment for income tax due as full-year residents for tax year 2013.

Taxpayers timely protested the assessment. An administrative hearing was held. This Letter of Findings ensues and addresses Taxpayers' 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 Indiana real property records, found that Taxpayers were Indiana residents for the tax year 2013, that they failed to file their Indiana full-year resident individual income tax return (Form IT-40), and that Indiana income tax was due for 2013. Taxpayers disagreed, stating that they have been residents of California since 1988 and filed a California state income tax return during 2013. The issue is whether Taxpayers were Indiana residents for the tax year at issue.

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). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. "[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).

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). 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.

Recently, the Department revised the Adjusted Gross Income Tax regulations. [45 IAC 3.1-1-22](#) (2017) now states as follows:

(a) "Domicile" means a person's domicile is the state or other place in which a person intends to reside permanently or indefinitely and to return to whenever he or she leaves the place. A person has only one (1) domicile at a given time even though that person may be statutorily a resident of more than one (1) state. **A person is domiciled in Indiana if he or she intends to reside in Indiana permanently or indefinitely and to return to Indiana whenever he or she leaves the state.**

(b) **A person is domiciled in a state or other place until such time as he or she voluntarily takes affirmative action to become domiciled in another place.** Once a person is domiciled in Indiana, that status is retained until such time as he or she voluntarily takes positive action to become domiciled in another state or country and abandons the Indiana domicile by relinquishing the rights and privileges of residency in Indiana.

(c) **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 permanent place of residence at that place. The intent to change one's domicile must be present and fixed and not dependent upon the happening of some future or contingent event.** 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.

(d) There is no one (1) set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the totality of facts, supported by objective evidence, in each individual case.

(Emphasis added).

[45 IAC 3.1-1-22.5](#) (2017) further outlines the factors in determining a person's domicile, as follows:

(a) The [D]epartment may require documentation from a person to evaluate domicile.

(b) The one hundred eighty-three (183) day and permanent place of residence threshold in IC [§] 6-3-1-12(b) and [\[45 IAC 3.1-1-21\]](#) is not a test for domicile.

(c) **A person is presumed not to have abandoned their state of domicile and established a new state or other place of domicile in a given year if, during that year, the person maintained a permanent place of residence (whether as an owner, renter, or other occupier of the residence) in that state and the person did more than one (1) of the following:**

- (1) Claimed a homestead credit or exemption or a military tax exemption on a home in that state.
- (2) Voted in that state.
- (3) **Occupied a permanent place of residence in that state or other place of domicile for more days of the taxable year than in any other single state.**
- (4) **Claimed a benefit on the federal income tax return based upon that state being the principal place of residence.**
- (5) **Had a place of employment or business in that state.**

A person may rebut this presumption through the presentation of substantial contrary evidence.

(d) If a person's domicile is not resolved by subsection (c), the [D]epartment may consider additional relevant factors to determine the person's state or other place of domicile, including the state or other place where the person:

- (1) maintained a driver's license or government issued identification card;
- (2) was registered to vote;
- (3) registered a vehicle;
- (4) claimed as dependents immediate family members who relied, in whole or in part, on the taxpayer for their support;
- (5) assigned or maintained a mailing address;
- (6) maintained bank accounts;
- (7) maintained active membership in a religious, social, cultural or professional organization;
- (8) received professional services; and
- (9) kept valuables or family heirlooms.

This list of additional, relevant factors is not exclusive. **(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).

The law regarding residency and domicile is well-established in Indiana. 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**).

In this instance, the Department determined that Taxpayers were Indiana residents during the 2013 tax year because Taxpayers owned Indiana real property and an Indiana homestead credit was claimed on that property from 2011 through 2015. Thus, to determine whether Taxpayers were Indiana residents for the 2013 tax year, the Department must first determine whether Taxpayers abandoned their California domicile and effectively acquired Indiana domicile prior to or during 2013.

Other records from the Department show that Taxpayers were both employed in California during 2013; Taxpayers had California cellular phone numbers; Husband received professional certification in California in 2011; and Husband filed bankruptcy in California in 1999. Thus, the only basis for finding that Taxpayers were full year Indiana residents in 2013 was the fact that they claimed the homestead exemption on their Indiana property, which implies that the property was Taxpayers' principal place of residence in accordance with IC § 6-1.1-12-37(a)(2).

Taxpayers stated that they purchased the Indiana property in 2006 with plans to retire in Indiana in the future, and spent approximately two to three months in Indiana per year. Taxpayers asserted that they mistakenly claimed the homestead exemption on the Indiana property based upon erroneous advice from legal counsel on their eligibility for the credit. Taxpayers have since contacted the county assessor's office and had the homestead exemption removed from their Indiana property and have been billed for the difference in property tax. Taxpayers provided documentation from the county assessor's office showing that the exemption was removed for tax years 2013, 2014, and 2015.

Taxpayers have demonstrated that they satisfy more than one of the requirements under [45 IAC 3.1-1-22.5\(c\)](#) for purposes of concluding that they were domiciled in California during the 2013 tax year. Taxpayers maintained a residence in California at which they spent more time than in Indiana; Taxpayers provided copies of their 2013 California income tax returns; and both Taxpayers were employed in California in 2013. Taxpayers overcame the only basis upon which the Department found that they were Indiana residents by removing the homestead exemption from their Indiana residence; however, it must be noted that claiming the homestead credit alone is not sufficient to conclude that a taxpayer is a legal resident of Indiana for purposes of imposing Indiana income tax. There is no other indication that Taxpayers intended to abandon their California residence prior to or during 2013 and make Indiana their residence.

Therefore, Taxpayers have met their burden under IC § 6-8.1-5-1(c) of showing that the Department's assessment was wrong. The Department concludes that Taxpayers were not Indiana residents in 2013 and were therefore not required to file a full-year resident income tax return. 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

Taxpayers' protest is sustained.

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