

Letter of Findings: 01-20170536
Individual Income Tax
For the 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 Retiree failed to establish that he abandoned his Indiana residency and was not required to file an Indiana 2013 Indiana income tax return.

ISSUE

I. Indiana Individual Income Tax - Residency.

Authority: IC § 6-1.1-12-37(a)(2); IC § 6-1.1-12-37(e); IC § 6-1.1-12-37(f); IC § 6-3-1-3.5(a); IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-3-2-1(a); IC § 6-3-2-2(a); IC § 6-8.1-5-1(c); *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\(a\)](#); [45 IAC 3.1-1-22\(b\)](#); [45 IAC 3.1-1-22\(c\)](#); [45 IAC 3.1-1-22.5](#); [45 IAC 3.1-1-23](#); [50 IAC 24-2-5](#).

Taxpayer protests the Department's assessment of additional 2013 individual income tax on the ground that he was not an Indiana resident during 2013.

STATEMENT OF FACTS

Taxpayer is an individual retiree who formerly lived in Indiana and now lives in California. The Indiana Department of Revenue ("Department") contacted Taxpayer in a December 2016 letter. The letter stated that "[b]ased on information reported to the Indiana Department of Revenue, you may have unreported income for tax year 2013." The letter directed Taxpayer to file a 2013 Indiana tax return, send a copy of a previously filed 2013 Indiana tax return, or "[s]end a letter that explains why you were not required to file a 2013 Indiana income tax return."

Taxpayer responded that he was a California resident, that all his income was derived from California, that he periodically spent time in Indiana, but that he kept an apartment in California. In addition, Taxpayer completed the Department's "Residency Checklist."

The Department issued Taxpayer a proposed assessment of additional 2013 income tax. Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer explained the basis for his protest. This Letter of Findings results.

I. Indiana Individual Income Tax - Residency.

DISCUSSION

The issue is whether Taxpayer has established that he was not an Indiana resident during 2013 and - as a result - not required to file an Indiana income tax return that year.

In this instance, Taxpayer's protest stems from the Department's proposed assessment of additional income tax. As a threshold issue, all such 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 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:

(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.

...

(4) Part-Time Resident Individuals

Persons residing in Indiana but living part of the year in other states or countries will be deemed residents of Indiana unless it can be shown that the abode in the other state or country is of a permanent nature. Domicile is not changed by removal therefrom for a definite period or for a particular purpose. A domicile, once obtained, continues until a new one is acquired

Recently, the Department revised the Adjusted Gross Income Tax regulations. Some of the revisions intended to clarify the definition of a person's domicile for Indiana income tax purposes and afford more considerations in determining a person's domicile. This Decision thus applies the new regulations accordingly.

[45 IAC 3.1-1-22](#) (2017) 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 Department 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 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; or
- (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 Department 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).

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**).

In this instance, the Department determined that Taxpayer was a 2013 Indiana resident because he claimed the "homestead credit" on an Indiana home owned by Taxpayer and his wife. Taxpayer explains that he moved to California in 1979 and that he acquired the Indiana home which he eventually intends to use as his permanent retirement home. Taxpayer further explains that the Indiana property tax was paid by his mortgage provider and that he was unaware the mortgage provider was claiming the homestead credit. Taxpayer also explains that he periodically returns to Indiana in order to visit family members located here.

Taxpayer has provided documents purporting to establish that he was a California resident during 2013.

- 2013 California income tax return;
- 2013 federal income tax return shows an Indiana address;
- California driver's license;
- 1099 and W-2 statements from California and Indiana payors;
- 2013 California lease agreement.

However, the documentation provided also reflect Taxpayer's Indiana address. Some of the W-2s list Taxpayer's Indiana address; Taxpayer's federal income tax return lists Taxpayer's Indiana address; the California income tax return lists Taxpayer's Indiana address. While Taxpayer rents an apartment in California, Taxpayer owns a home in Indiana for which he obtained the Indiana homestead credit.

As mentioned earlier, "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. . . ." [45 IAC 3.1-1-22\(a\)](#). "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." [45 IAC 3.1-1-22\(b\)](#). "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." [45 IAC 3.1-1-22\(c\)](#). "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." In other words, "[t]o 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.

Given the fact that Taxpayer owns an Indiana home and claims the Indiana homestead credit on that home, the Department is not prepared to agree that Taxpayer "abandoned" his Indiana residence. As required under Indiana law, in order to change ones residency, there must be an intention of "abandoning" their first domicile while manifesting an intention to reside elsewhere "permanently, or at least indefinitely." *Id.*

FINDING

Taxpayer's protest is respectfully denied.

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