

**Letter of Findings: 01-20170982
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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Individual provided sufficient documentation to establish that she did not owe 2013 individual income tax in Indiana.

ISSUE

I. Income Tax-Residency.

Authority: IC § 6-8.1-5-1; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-3-1-3.5; IC § 6-3-1-12; IC § 9-24-1-1.5; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Croop v. Walton*, 157 N.E. 275 (Ind. 1927); *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988); [45 IAC 3.1-1-22](#).

Taxpayer protests the imposition of Indiana individual income tax.

STATEMENT OF FACTS

Taxpayer is an individual who currently resides in Illinois. The Indiana Department of Revenue ("Department") determined that Taxpayer was an Indiana resident for the tax year 2013 and that Taxpayer failed to file her 2013 Indiana income tax return. The Department therefore issued a proposed assessment for 2013 income tax, penalty, and interest.

Taxpayer protested the assessment. Taxpayer requested a final determination without an administrative hearing. This Letter of Findings ensues and addresses Taxpayer's protest of the proposed assessment for the tax year 2013. Additional facts will be provided as necessary.

I. Income Tax - Residency.

DISCUSSION

The Department assessed Taxpayer income tax for the 2013 tax year on the grounds that Taxpayer was an Indiana resident who had failed to file a 2013 Indiana income tax return. The Department had information that showed Taxpayer had an Indiana mailing address for 2013, an Indiana driver's license for 2007-2013, and had an Indiana vehicle registration. Taxpayer contends that she was not required to file a 2013 Indiana income tax return because she was not an Indiana resident during the 2013 tax year.

As a threshold issue, all tax assessments are *prima facie* evidence supporting the Department's claim for unpaid tax is; the taxpayer bears the burden of proving any assessment incorrect. IC § 6-8.1-5-1(c); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. 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 to the Department's assessment. 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.'" *Dept. 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 "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. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayer's taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

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 and/or maintain a permanent place of residence in Indiana and then spend more than 183 days in Indiana. In this case, the evidence suggests that Taxpayer's residence in Indiana constituted a domicile for the 2013 tax year.

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 with intent to remain, while abandoning the 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. Indiana assessed the taxpayer, Mr. Walton, income tax based on the fact that he owned and managed a company and stores; maintained his membership with lodges, clubs, and a church; exercised his civil and political rights on multiple occasions; and used his Michigan address on legal documents. 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.**

(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**.

(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. *Yonkey v. State* (1866), 27 Ind. 236.

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 - 1318 (Ind. 1988).

(Emphasis added).

Taxpayer argued that she was not an Indiana resident for the year at issue. Taxpayer stated she lived and worked in Illinois from 2011-2014. Taxpayer provided her federal tax return for 2013 showing an Illinois address, a W2 showing an Indiana P.O. Box address, part of her Illinois return, and a letter from her previous employer stating that she was employed by them in Illinois from 2011-2014.

The possession of an Indiana driver's license 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.

The Department based its proposed assessment on the fact that Taxpayer had an Indiana driver's license. Taxpayer has addressed and rebutted the factors that led to the Department's assessment. Furthermore, the address on the W2 was a P.O. Box address, which is not a residential address. Taxpayer has met her burden of proving the proposed assessment to be incorrect as required by IC § 6-8.1-5-1(c), and she is not subject to Indiana income tax for the tax year 2013 because she was a nonresident.

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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