

Letter of Findings: 01-20171192
Individual Income Tax
For 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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 proved multiple times to the Department that he was not domiciled in Indiana for tax year 2013 and thus did not owe 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](#).

Taxpayer protests the imposition of Indiana individual income tax for the 2013 tax year.

STATEMENT OF FACTS

Taxpayer did not file an Indiana income tax return for tax year 2013. Based on the best information available to it, the Indiana Department of Revenue ("Department") determined that, for 2013, Taxpayer claimed the homestead exemption on his Indiana property. As such, the Department concluded that Taxpayer was an Indiana resident who should have filed a 2013 Indiana income tax return. The Department thus issued a tax assessment for 2013. Taxpayer timely protested the assessment. This Letter of Findings results. Additional facts will be provided as necessary.

I. Individual Income Tax - Residency.

DISCUSSION

The Department determined that Taxpayer was an Indiana resident during tax year 2013 because he took the homestead exemption on his Indiana property. The Department therefore concluded that Taxpayer was domiciled in Indiana in 2013 and his income was subject to Indiana income tax. Taxpayer contends that he moved to Florida in 2010 and had the homestead deduction removed from his Indiana property effective 2011. Therefore, Taxpayer argues that he was not domiciled in Indiana in 2013.

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 2013. 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, Taxpayer was able to establish that he did not spend more than 183 days in Indiana during 2013. Thus, in order to be considered a resident of Indiana during 2013, Taxpayer must have been 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**).

Taxpayer lived in and was employed in Indiana until May of 2010. At that time he moved to Florida where he lived until 2013. In December of 2013, Taxpayer moved to Nevada where he currently lives. In 2011 Taxpayer contacted the county auditor where his Indiana property was located informing the office that he had moved and no longer wished to claim the homestead exemption on his Indiana property. This request was confirmed in an email from the county auditor's office. The homestead deduction, however, was not removed and the Department used the deduction as the basis for assessing Taxpayer with Indiana income tax for tax year 2013. Taxpayer did not have any income from Indiana sources; the sole cause of the assessment was the homestead deduction.

In responding to the Department's assessment, Taxpayer sent a copy of the email from the county auditor's office which confirmed that Taxpayer requested that the homestead be removed in 2011. In the email the auditor's office admitted that "[Taxpayer] did what was required of [him], the fact that the Auditor's Office applied a deduction in error is not [Taxpayer's] fault or responsibility." Taxpayer sent this email to the Department on two separate occasions and the liability was not removed. These emails are sufficient in this case to meet Taxpayer's burden under IC § 6-8.1-5-1(c). The Department is notified to take notice of this type of evidence going forward. Residency cases are fact sensitive and turn on proof of intent. Taxpayer sufficiently proved his intent to abandon his Indiana domicile.

FINDING

Taxpayer's protest is sustained.

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