

**Letter of Findings: 01-20170889  
Indiana 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 Couple were Indiana residents for the tax year 2013 because after they established their domicile in Indiana beginning in 2012, they did not change their domicile to a different state. Married Couple thus were required to file their Indiana full-year resident individual income tax return for 2013. When Married Couple demonstrated that a portion of their income for 2013 was foreign source income and was excluded from taxation for federal income tax purposes, they would be entitled to the same treatment for Indiana income tax purposes.

### **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); *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](#); [45 IAC 3.1-1-22.5](#); [45 IAC 3.1-1-23](#); [50 IAC 24-2-5](#); Income Tax Information Bulletin 55 (September 2001).

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

### **STATEMENT OF FACTS**

Taxpayers (Husband and Wife) are individuals who bought a home and moved to Indiana in 2002. Taxpayers sold that Indiana home in 2010. In late 2012, Taxpayers purchased another house in Indiana. Taxpayers' children lived in that Indiana house and attended school there. Taxpayers and their children jointly own that house and Indiana homestead credit was claimed on that home. Taxpayers obtained Indiana Operator Licenses, which were renewed periodically.

The Indiana Department of Revenue ("Department") determined that Taxpayers were Indiana full-year residents for 2013, that they did not file the Indiana income tax return reporting their Indiana income tax, and that Indiana income tax was due for 2013.

Taxpayers timely protested the assessment. An administrative hearing was held. This Letter of Findings ensues and addresses Taxpayers' protest of the proposed assessments. Additional facts will be provided as necessary.

#### **I. Indiana Individual Income Tax - Non-filer - Residency.**

### **DISCUSSION**

The Department, based on verifiable information including Indiana real property records and records from the Indiana Bureau of Motor Vehicles, found that Taxpayers were Indiana residents for 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. Taxpayers claimed that in 2012 they moved away and lived in a foreign country because of

Husband's employment. Taxpayers asserted that, during 2013, they resided in an apartment in a foreign country provided by Husband's employer. As a result, Taxpayers argued that they were not Indiana residents for 2013. Taxpayers thus maintained that they were not required to file the IT-40 Form. Taxpayers did not dispute that they returned and currently live in Indiana and they have filed IT-40 since 2015. Thus, the issue is whether Taxpayers were Indiana residents for 2013 and, as a result, they were required to file the IT-40 Form for 2013.

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). "[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:

(1) Taxpayer Moving to Indiana

When a taxpayer moves to Indiana and becomes a resident and/or domiciliary of Indiana during the taxable year, Indiana will not tax income from sources outside Indiana which the taxpayer received prior to becoming an Indiana domiciliary. Indiana will, however, assess adjusted gross income tax on all taxable income after the taxpayer becomes an Indiana resident.

(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.

(3) Nonresident Citizens

An individual from Indiana who is permitted to file Federal income tax returns as a nonresident citizen is considered as being domiciled in Indiana and his income taxable as a resident citizen, if he maintains a place of abode in Indiana immediately prior to residing in a foreign country as a nonresident citizen of the United States, and has not permanently established his domicile in a foreign country or in another state.

The fact that ordinary rights of citizenship, including voting at public elections are present but not exercised, shall not prevent a person from being classified as a resident if he meets the other tests set out in this regulation.

(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 revisions intend to clarify the definition of a person's domicile for Indiana income tax purposes and afford more considerations in determining a person's domicile. Thus, a taxpayer is benefited from the application of the new regulations when the taxpayer's domicile is in dispute. 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, Taxpayers moved to Indiana and have lived in Indiana since 2002. The Department determined that, based on verifiable records, Taxpayers were Indiana residents during 2013 because in addition to periodically renewing their Indiana Operator Licenses, Taxpayers owned an Indiana house and an Indiana homestead credit was claimed.

Taxpayers however claimed that they sold their Indiana home in 2010. Although, in 2012, Taxpayers purchased another Indiana house, Taxpayers argued that they did not claim the homestead credit; rather, their son was the only person who lived and used that house while attending school. Taxpayers asserted that they lived in an apartment overseas provided by Husband's employer during 2013. Taxpayers thus maintained that they were not required to file the 2013 IT-40 Form because they were not Indiana residents for 2013. Therefore, to determine whether Taxpayers were Indiana residents for 2013, the Department must first determine whether Taxpayers effectively abandoned their Indiana domicile and acquired their domicile overseas prior to 2013.

It is well-established that Taxpayers lived in Indiana since 2002, that they maintained their Indiana Operator Licenses, that Taxpayers in two separate occasions, 2002 and 2012, purchased Indiana houses and that a homestead credit was claimed on the Indiana home during those years. In addition, Taxpayers' children attended Indiana state colleges. When an unemancipated student (namely, financially dependent) and the student's parents established they were domiciled in Indiana prior to the first day of the academic season for which resident classification was sought, the student was eligible for an in-state tuition benefits. Moreover, Taxpayers did not rent their Indiana home, that they paid all the utility expenses associated with their Indiana home, and that the Indiana homestead deduction has been claimed on their Indiana house. When the homestead deduction was claimed, Taxpayers necessarily affirmed that the Indiana home is their "true, fixed, permanent home to which [they have] the intention of returning after an absence." Otherwise, Taxpayers were required to notify the county that they no longer qualified for the homestead deduction within sixty days after the date of that change. IC § 6-1.1-12-37(f). Taxpayers here did not rent their Indiana home; rather their children have lived there while attending schools and Taxpayers paid for the house maintenance expenses, including utilities, during 2013. Thus, there is a rebuttable presumption that Taxpayers were Indiana residents for 2013 because they were domiciled in Indiana.

To support their protest, Taxpayers offered copies of the following documents:

- Husband's U.S. Passport (2008-2018), both photo page and visa pages
- Settlement Statement (HUD-1), sale of Taxpayer's first Indiana house in 2010
- Taxpayers' 2012 federal filing, including Form 1040, attached worksheets, and statements
- Signed Form 5473, Claim for Homestead Property Tax Standard / Supplemental Deduction
- Husband and their son's International Driver's Licenses issued in May 2014

Upon review, however, Taxpayers' reliance of their supporting documentation is misplaced. Specifically, Taxpayers have been living in Indiana since 2002. Although Taxpayers sold their first Indiana house in 2010, they continued maintaining their tie with Indiana. In particular, Taxpayers bought another house in Indiana and they

renewed their Indiana licenses. Taxpayers' children attended Indiana state colleges and received in-state tuition benefits. Thus, there is a rebuttable presumption that Taxpayers were Indiana residents for 2013 because they were domiciled in Indiana since 2002.

Taxpayers' documents showed that they did not have the intent to abandon their Indiana domicile. Taxpayers' supporting documentation further demonstrated that Husband worked for his employer, which is in the construction business overseas in different countries. Husband obtained multi-entry non-immigrant visas to work in various foreign countries for one year or two. It is legally impossible for Taxpayers to acquire lawful permanent residency in a foreign country or countries considering the nature of Husband's employment. To state it differently, unlike the immigrant visa holders (such as H-1B) in the United States who could become "green card" holders (i.e., lawful permanent residents or LPRs) and, ultimately, U.S. citizens when certain conditions are satisfied. Taxpayers here are unlikely to become "lawful permanent residents" of the foreign country where they stayed during 2013. In other words, Taxpayers did not intend to live indefinitely in the country; they lived there only temporarily. When Husband's work was completed, Taxpayers returned to Indiana. As Taxpayers explained during the hearing, the nature of Husband's employment requires Husband to move to different places assigned by his employer.

As discussed earlier, Taxpayers could have more than one residence and could be residents for more than one state, but they can only have one domicile at a given time. [45 IAC 3.1-1-22](#). However, in 2013, Taxpayers were prohibited from establishing their domicile in the foreign country where Husband worked on a construction job by operation of the law of that country.

On the other hand, Taxpayers' documentation further demonstrated that Taxpayers took affirmative steps in 2012 to show their intent to domicile in Indiana after they bought the Indiana home in 2012. Those affirmative steps included, but were not limited to, renewing their licenses and obtaining in-state tuition benefits for their children who attend Indiana state colleges. Those steps together with the fact that Taxpayers eventually returned and resided in Indiana support that Taxpayers did not abandon their domicile in Indiana.

As mentioned earlier, Taxpayers may also qualify as Indiana residents if they spent more than 183 days during 2013 in Indiana when they maintained a permanent place of residence in Indiana. IC § 6-3-1-12; [45 IAC 3.1-1-21](#). Since the Department concludes that Taxpayers were domiciled in Indiana, the question regarding whether Taxpayers spent more than 183 days of 2013 in Indiana is also moot.

Finally, for Indiana residents who worked overseas, Indiana is permitted to tax all income of the Indiana residents. However, the Indiana residents are entitled to a credit for tax they paid overseas. The Department's Income Tax Information Bulletin 55 (September 2001), 25 Ind. Reg. 242, explains in relevant part, as follows:

### III. RESIDENT STATUS AND DOMICILE

...

If you are a United States citizen domiciled in Indiana, and you go to a foreign country for a limited amount of time because of an assignment by your employer, . . . you do not lose or change your Indiana domicile unless you can clearly show that you intend to remain in that foreign country permanently and that you do not plan to return to Indiana.

### IV. TAXABILITY OF INCOME EARNED IN A FOREIGN COUNTRY

If you are a United States citizen domiciled in Indiana while in a foreign country, you must file your Indiana individual income tax return as a resident, (Form IT-40). As an Indiana resident, you are subject to tax on income you received from all sources, including income earned in a foreign country that was included in your federal adjusted gross income . . . .

A review of Taxpayers' 2012 federal income tax return suggested that Taxpayers had reported a portion of Husband's income earned in the foreign country as "Foreign Earned Income" in Form 2555 to be excluded from federal income tax for that tax year. Taxpayers thus are required to provide similar supporting documents, including Form 2555 to their federal income tax return for 2013, in order to properly claim this exclusion.

In conclusion "[e]ach assessment and each tax year stands alone." *Miller Brewing*, 903 N.E.2d at 69. The Department is mindful that there is no one set of standards that will accurately indicate the person's intent in every relocation. Under Indiana law, mere ownership of Indiana property does not necessarily make that owner an Indiana resident for state income tax purposes. However, given the totality of the circumstances, in the absence of other supporting documents, the Department is not able to agree that Taxpayers met their burden of proof.



Therefore, given a "case by case" review of Taxpayers' facts, documentation, circumstances, all of Taxpayers' income earned during 2013 was subject to Indiana income tax because after Taxpayers established their domicile in Indiana, their domicile remained in Indiana. Taxpayers thus are required to file Indiana IT-40 returns for 2013. To properly claim the exclusion of Husband's foreign source income, Taxpayers must provide their federal transcripts (including information of Form 2555) when they file their Indiana IT-40 returns.

### **FINDING**

Taxpayers' protest of the residency issue is respectfully denied.

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