

Final Order Denying Refund: 01-20171144R
Indiana Individual Income Tax
For the 2014 and 2015 Tax Years

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this determination.

HOLDING

Individuals were full-year Indiana residents for the 2014 and 2015 tax years because they failed to demonstrate that they effectively changed their domicile from Indiana to Washington. Individuals continued owning their house in Indiana and an Indiana Homestead deduction was claimed since 2010. Individuals were not entitled to additional refund because they properly filed their Indiana full-year returns (Form IT-40) reporting their income.

ISSUE

I. Indiana Individual Income Tax - 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; *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](#).

Taxpayers protest the Department's refund denial of individual income tax for the 2014 and 2015 tax years.

STATEMENT OF FACTS

Taxpayers (Husband and Wife) are individuals who owned an Indiana home since 2008 and sold their home in late 2016. An Indiana homestead credit was claimed on their home since 2010 until the 2016 sale of their home. Taxpayers timely filed married-jointly Indiana income tax returns for 2014 and 2015. In late 2017, Taxpayers amended their income tax returns for both years by filing Form IT-40X and IT-40PNR, claiming that they were entitled to additional refunds. Taxpayers stated that they "should have filed an IT-40PNR with the original filing as they move their tax home to Washington. Their employer erroneously continued to withhold Indiana and county taxes."

Upon review of Taxpayers' amended returns, the Indiana Department of Revenue ("Department") denied Taxpayers' claim for additional refund. The Department determined that Taxpayers were Indiana residents for both years and that they properly filed their original Indiana income tax returns reporting their Indiana income tax.

Taxpayers protested the Department's refund denial. An administrative hearing was held during which Taxpayers' representative explained the basis of their protest. This Final Order Denying Refund ensues and addresses Taxpayers' protest. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Residency.

DISCUSSION

Upon reviewing Taxpayers' Form IT-40Xs and IT-40 PNRs for both 2014 and 2015, the Department determined that Taxpayers were Indiana full-year residents for these years and were not entitled to additional refunds because Taxpayers were domiciled in Indiana. The Department explained, in relevant part, as follows:

We have reviewed your claim for a refund but must deny it because you maintained your legal residence in Indiana. You were only in Washington as a temporary assignment. All income earned as [] Indiana resident[s] is taxed by Indiana. You do not have to be physically present in Indiana the entire year to be considered a full-year resident.

Taxpayers, to the contrary, argued that they were entitled to additional refunds because they resided in Washington from July 2014 through July 2015, that their "tax home" was in Washington, and that their income earned during this period was not subject to Indiana income tax. Thus, the issue is whether Taxpayers demonstrated that they were not Indiana full-year residents and therefore were entitled to additional refund pursuant to their amended filings.

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 final determination 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**).

Taxpayers, in this instance, contended that in July 2014, they relocated to Washington due to a change of Husband's employment. Taxpayers asserted, in part, that,

At the time that the transfer occurred, [Taxpayers] believed that the move away from Indiana would be indefinite. In July 2015, [Husband] was informed that he was to be transferred back to Indiana.

Taxpayers maintained that they were entitled to additional refunds because a portion of their income was not subject to Indiana income tax. To support their protest, Taxpayers provided additional documentation, including a lease, a letter from Husband's employer, and the school records of Taxpayers' children, to show they were in Washington from July 2014 through July 2015.

Taxpayers may also qualify as Indiana residents if they spent 183 days or more during 2014 or 2015 in Indiana when they maintained a permanent place of residence in Indiana. IC § 6-3-1-12; [45 IAC 3.1-1-21](#). The Department however is not required to address this issue in this determination. Taxpayers did not dispute and did not demonstrate otherwise. 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). Therefore, the Department considered the issue whether Taxpayers were Indiana residents based on their domicile.

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.

In this instance, it is well-established that Taxpayers have been Indiana residents since late 1990s. The publicly verifiable records established that Taxpayers were the owners of their Indiana home since 2008 and claimed the Indiana homestead deduction on their Indiana home since 2010. 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). Thus, there is a rebuttable presumption that Taxpayers were Indiana residents for both years.

Upon review, Taxpayers' reliance on their documentation is misplaced. Specifically, Taxpayers' supporting documents showed that they signed a one-year lease for their stay in Washington from July 15, 2014 through July 15, 2015, and their children enrolled in schools in Washington. Taxpayers, however, did not provide other information to demonstrate that their intent to abandon their Indiana domicile. Without abandoning their Indiana domicile, the Department is not able to agree that Taxpayers effectively established the new one in the State of Washington. Particularly, Taxpayers did not rent their Indiana home; rather, they continued claiming the Indiana homestead deduction on their Indiana home. Taxpayers filed their original returns listing their Indiana address as current mailing address for both years. Taxpayers did not take additional steps to remove the homestead deductions which were presumably claimed in error. Taxpayers did not file their 2014 and 2015 state income tax returns in Washington. Taxpayers also did not obtain driver's licenses or register their vehicles in Washington, nor did Taxpayers register to vote in Washington. Eventually, at the end of lease, Taxpayers returned to Indiana in July 2015. Thus, the Department is not able to agree that Taxpayers effectively changed their domicile and were not Indiana residents for these years. Taxpayers' residence in the State of Washington was temporary.

In conclusion, the Department is mindful that there is no one set of standards that will accurately indicate the person's intent in every relocation. [45 IAC 3.1-1-22\(d\)](#). Under Indiana law, mere ownership of Indiana property does not necessarily make that owner an Indiana resident for state income tax purposes. However, Taxpayers failed to rebut the presumption that they were domiciled in Indiana and thus were not entitled to additional refunds for both 2014 and 2015.

FINDING

Taxpayers' protest of the residency issue is denied.

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