

**Supplemental Letter of Findings: 01-20181885  
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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 Supplemental Letter of Findings.

**HOLDING**

Individual submitted additional documents to establish that he abandoned his Indiana domicile when he worked in another state for the year of 2013.

**ISSUE**

**I. Income Tax–Domicile.**

**Authority:** IC § 6-8.1-5-1; *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); [45 IAC 3.1-1-22](#) (2017); [45 IAC 3.1-1-22.5](#) (2017); Letter of Findings 01-20180540 (June 28, 2018).

Taxpayer protests the imposition of Indiana individual income tax.

**STATEMENT OF FACTS**

Taxpayer is an individual. The Indiana Department of Revenue ("Department") determined that Taxpayer was an Indiana resident for tax year 2013 and thus owed Indiana individual income tax. Taxpayer protested the Department's determination of residency and the imposition of a penalty. An administrative hearing was held. Letter of Findings 01-20180540 (June 28, 2018), 20180829 Ind. Reg. 045180333NRA ("LOF"), was issued, denying Taxpayer's protest on both issues.

Taxpayer disagreed with the LOF and submitted additional documents to support his rehearing request. A rehearing was conducted based on the additional documentation submitted by Taxpayer. This Supplemental Letter of Findings ensues. Additional facts will be provided as necessary.

**I. Individual Income Tax–Domicile.**

**DISCUSSION**

The Department, based on various reasons, found that Taxpayer did not intend to abandon his Indiana domicile and eventually returned to Indiana. As a result, the Department concluded that for 2013, Taxpayer was required to file an Indiana Full-Year Resident Individual Income Tax return (Form IT-40), reporting and remitting his Indiana income tax and that Taxpayer was allowed to claim a tax credit for the state income tax he paid to other states.

Taxpayer disagreed, requesting a rehearing. Throughout the rehearing process, Taxpayer offered additional documentation to support his position. The issue here is whether Taxpayer demonstrated that he was not required to file the IT-40 return for 2013 because he effectively abandoned his Indiana domicile prior to 2013.

As explained previously in the LOF, Taxpayer is required to demonstrate that the assessment is incorrect. IC § 6-8.1-5-1(c). Furthermore, Taxpayer is required to provide verifiable 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). During the rehearing, relying on the additional documentation, Taxpayer continued to argue that he was not required to file IT-40 return and was not responsible for the additional income tax because in 2013 he was not domiciled in Indiana.

In 2017, the Department revised the Adjusted Gross Income Tax regulations. Some 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. Thus, a taxpayer may benefit from the application of the new regulations when the taxpayer's domicile is in dispute. Thus, while this Decision applies the new regulations accordingly, this Decision also references and incorporates all relevant statutes, regulations, facts, and the Department findings discussed in the LOF and addresses Taxpayer's protest, in turn, as follows:

[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).**

Throughout the rehearing process, to support his protest, Taxpayer submitted additional publicly verifiable documents, including a copy of his Voter Registration issued by State of Georgia. Specifically, Taxpayer's supporting documentation demonstrated, among other things, that he moved to Georgia in late 2012, that he leased a place in Georgia, that he registered his vehicle in Georgia, and that he registered to vote in Georgia.

Given the totality of the circumstances, the Department thus is prepared to agree that for 2013, Taxpayer was not domiciled in Indiana because his supporting documentation overcome the rebuttal presumption established under [45 IAC 3.1-1-22.5\(c\)](#).

Since Taxpayer demonstrated that the Department's proposed assessment of income tax is not correct, the penalty issue is moot.

### **FINDING**

Taxpayer's protest is sustained.

December 17, 2018

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