

Letter of Findings: 01-20190220
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 Indiana Department of Revenue'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 This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.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 traveled for work throughout the 2013 tax year. Although he did not live in Indiana during the year, Individual failed to demonstrate that he intended to abandon his domicile in Indiana. The protest is denied.

ISSUE

I. Individual Income Tax - Domicile.

Authority: IC § 6-1.1-12-37; IC § 6-3-2-1; IC § 6-3-1-12; 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); *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); *Indiana Dep't of State Rev. 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](#); [45 IAC 3.1-1-22.5](#); [50 IAC 24-2-5](#).

Taxpayer protests the imposition of Indiana income tax.

STATEMENT OF FACTS

Taxpayer purchased a house in Indiana. He claimed a homestead deduction on the home and used it as his primary residence from 2010 through 2012. Taxpayer then moved to an apartment in Illinois after his employer assigned him work there. In March 2013, he moved to Florida, again at the behest of his employer. Seven months later, his employer again requested his transfer, this time sending Taxpayer to California. Taxpayer eventually returned to his home in Indiana between 2014 and 2015. While Taxpayer was living outside of Indiana, his house remained vacant except for one month when a family member briefly lived there. He still resides at this house in Indiana and has continued working for the same employer to this day.

The Indiana Department of Revenue ("Department") determined that Taxpayer had not filed an Indiana income tax return for 2013. The Department therefore issued a proposed assessment for 2013 Indiana income tax. Taxpayer timely protested the assessment and submitted an explanation and documentation to support his protest. Taxpayer did not provide a Protest Submission sheet, but after reviewing the documentation provided, a hearing was scheduled on the Taxpayer's behalf. After the hearing, the Department has written this Letter of Findings, which is based on discussions with Taxpayer at the hearing, documentation Taxpayer provided, and other documentation in the file. Additional facts will be provided as necessary.

I. Individual Income Tax - Domicile.

DISCUSSION

Based on information available to the Department, including Indiana real property records, Taxpayer was assessed Indiana individual income tax for tax year 2013. Taxpayer protested the assessment, asserting that he was traveling for work during the 2013 tax year and did not live in Indiana.

All tax assessments are prima facie evidence that the Department's claim for the 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). 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); *see also Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 485 n.9 (Ind. Tax Ct. 2012). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes a tax on the adjusted gross income of every Indiana resident. IC § 6-3-2-1(a). 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 person owes tax on their adjusted gross income if, during the tax year, they either (1) were domiciled in Indiana, or (2) maintained a permanent place of residence and spent more than 183 days in Indiana.

Taxpayer lived and worked outside of Indiana for the entire tax year in question and therefore did not spend more than 183 days in Indiana in 2013. Thus, to be considered a resident of Indiana, Taxpayer must have been **domiciled** in Indiana.

The Department recently revised its regulations, clarifying the definition of a person's domicile for Indiana income tax purposes. These revisions also allow for more considerations in determining a person's domicile, which generally benefits a taxpayer when his domicile is in dispute. This final determination thereby applies these new regulations accordingly.

[45 IAC 3.1-1-22](#) defines domicile 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). Thus, a new domicile is not necessarily created when an individual moves to a place outside Indiana. Instead, the individual must move to the new location and have an intent to remain there indefinitely.

[45 IAC 3.1-1-22.5](#) 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 (1) 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.
- (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 a 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).

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, the taxpayer did not change his domicile from Michigan to Indiana. The court explained, in relevant part, that:

"If the 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 or jurisdiction 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**).

Subsequently, in *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court further considered the meaning of "domicile" in determining that Mr. Bayh met the residency requirement for the office of Governor. The court concluded that Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. The court explained, 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....**There 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. (Internal citations omitted) (**Emphasis added**).

In this case, Taxpayer provided documentation supporting his position that he lived and worked in multiple locations outside of Indiana throughout the 2013 tax year. Leases were provided for locations in Illinois, California, and Florida. Bank statements also show purchases consistent with living in each of these states during portions of the lease terms. Each lease was for a full year period, which at times overlapped with other leases, but the Taxpayer explained at the hearing that this was due to him buying out leases to move again for work. Taxpayer also provided tax returns and W-2s showing mailing addresses in California for the 2013 tax year and Illinois for the 2012 tax year.

This documentation shows that Taxpayer lived outside of Indiana in 2013, but the totality of facts and circumstances do not show Taxpayer abandoned his Indiana domicile. While taxpayer moved for work more than once a year between multiple states, he spent multiple years living in his Indiana home both before and after this travel. While traveling, he did not rent out his home, instead keeping it unoccupied and available for his use on a moment's notice. He also continued claiming an Indiana homestead deduction each year he owned the home. The totality of the facts and circumstances support the conclusion that Taxpayer did not intend to abandon his Indiana domicile in 2013. He was merely on an extended business trip. Therefore, Taxpayer has failed to meet the burden imposed under IC § 6-8.1-5-1(c) of proving the proposed assessment wrong.

FINDING

Taxpayer's protest is denied.

June 28, 2019

Posted: 08/28/2019 by Legislative Services Agency
An [html](#) version of this document.