

**Memorandum of Decision: 01-20200216**  
**Individual Income Tax**  
**For the Year 2019**

**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 Memorandum of Decision.

**HOLDING**

Despite retaining ownership of their former Indiana home, the Department agreed that Individuals, who surrendered their Homestead property tax exemption, established that they intended to abandon their former Indiana domicile; Individuals' pension and annuity income should have been sourced to their Florida domicile and Individuals' originally claimed refund amount was correct.

**ISSUE**

**Authority:** IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-1.1-12-37; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *State Election Board v. Bayh*, 521 N.E.2d 1313 (Ind. 1988); *Croop v. Walton*, 157 N.E. 275 (Ind. 1927); [45 IAC 3.1-1-7\(2\)](#); [45 IAC 3.1-1-22](#); [45 IAC 3.1-1-22.5](#) (2017); [45 IAC 3.1-1-23](#); [50 IAC 24-2-5](#); Income Tax Information Bulletin 28 (November 2016).

Taxpayers argue that they are no longer residents of Indiana and the Department's decision assessing additional tax and denying them a refund of 2019 Indiana income tax withheld on their behalf was wrong.

**STATEMENT OF FACTS**

Taxpayers are married individuals who own homes in both Florida and Indiana. Taxpayers filed a joint 2019 IT-40PNR ("Part-Year or Full-Year Nonresident") Indiana income tax return. On that return, Taxpayers reported annuity and pension income.

In filing that 2019 return, Taxpayers expected to receive a refund of approximately \$16,000 on the ground that their pension and annuity income should have been sourced to Florida because they were no longer residents of Indiana but - as of 2019 - were residents of Florida.

The Indiana Department of Revenue ("Department") reviewed Taxpayers' return and disagreed with Taxpayers' calculations. The Department issued Taxpayers a letter stating that it had "discovered inconsistencies during processing." Taxpayers originally reported no taxable Indiana income; the Department "corrected" that amount to approximately \$11,000. The "correction" resulted in a reduced refund. Instead of receiving a \$16,000 refund, Taxpayers received a refund of approximately \$5,000.

Taxpayers disagreed with the Department's adjustment and submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayers explained the basis for their protest. This Memorandum of Decision results.

**I. Individual Income Tax - Indiana Residency.**

**DISCUSSION**

The issue is whether Taxpayers have met their burden of establishing that they were not Indiana residents during 2019, that their pension and annuity income should have been sourced to Florida because they established their residency in that state, and that the Department's decision denying the \$11,000 refund of income tax withheld on their behalf was wrong. There is no dispute that Taxpayers own a home in Indiana and they had previously claimed Indiana as their state of residency. However, Taxpayers argue that, as of 2019, they established a residency in Florida and that their income should have been sourced to that domicile.

In reviewing the issue raised by Taxpayers, the Department notes that, "[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." *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, interpretations of Indiana tax law contained within this decision, as well as the preceding audit decision, are entitled to deference.

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 . . . .

The Department has revised the Adjusted Gross Income Tax regulations. Some of the revisions were intended to clarify the definition of a person's domicile for Indiana income tax purposes and afford additional considerations in determining a person's domicile. For reference sakes, this Memorandum of Decision cites to these regulations as guidance.

[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.
- (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 [D]epartment 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).**

Thus, a new domicile is not necessarily created when an individual moves to a place outside of Indiana such as Florida. 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.* 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.**"

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' argument is they spent more time in Florida than Indiana during 2019, that their "primary residence is Florida," and that their pension and annuity distributions should have been sourced to Florida. In support of their argument, Taxpayers point to the instructions contained within Indiana's IT-40PNR 2019 instruction booklet which states, "Pensions and most interest and dividends are taxed by your state of residence when you receive them."

The Department's Income Tax Information Bulletin 28 (November 2016), 20161228 Ind. Reg. 045160560NRA, explains further:

Income received from Indiana sources is considered Indiana income to nonresidents, except certain types of Indiana source income subject to tax only by the taxpayer's state of legal residence. Interest, dividends, royalties, and gains from the sale of capital assets are subject to tax only by the taxpayer's state of legal residence unless such income results from the conduct of a trade or business in Indiana. If a trade or business is conducted in Indiana, the income should be reported as Indiana income. *Income from a qualified pension, annuity, or profit sharing plan is subject to tax by the taxpayer's state of legal residence.*

(*Emphasis added*).

[45 IAC 3.1-1-7\(2\)](#) provides as follows:

Income from a pension, annuity, profit-sharing, or stock-option plan that meets the qualifications of the Internal Revenue Code is taxed by the state of legal residence. Lump sum distributions from qualified plans are taxed by the state which, at the time of the distribution, is the taxpayer's legal residence. Whether a plan meets the qualifications of the Internal Revenue Code is determined by the Internal Revenue Service.

Thus Taxpayers' challenge to the Department's decision relies on verifying that - for Indiana income tax purposes - they were no longer Indiana residents during 2019. To that end, Taxpayers provided copies of their Florida voters' registration, their Florida driver's licenses, and evidence that two of their four vehicles are registered and insured in Florida.

Taxpayers also provided a copy of their "Notice of Change of Use of Property Receiving the Homestead

Exemption" indicating that they "purchased a home in Florida in Dec. 2017," that they "spent more time in Fl. than Indiana," and that they "[d]ecided to homestead in Fl. effective 1/1/2019." Taxpayers also provided a copy of their 2019 Indiana local property tax bill reflecting their decision and showing a corresponding 100 percent increase in their property tax bill from the previous year.

Under Indiana law, a "homestead" is a taxpayer's "principal place of residence . . . that is located in Indiana" and that "the individual owns . . ." IC § 6-1.1-12-37(a)(2). Homesteads are eligible annually for a "standard deduction from the assessed value of the homestead for an assessment date," i.e., the Homestead Exemption Credit. IC § 6-1.1-12-37(b). "'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).

Given the totality of the circumstances and after reviewing the documentation provided, the Department agrees that Taxpayers have met their burden of establishing that they were not Indiana residents during 2019 and their domicile that year was in Florida. Taxpayers have presented "substantial contrary evidence" contradicting the Department's determination that they were Indiana residents during the year at issue. [45 IAC 3.1-1-22.5\(c\)\(5\)](#). Their decision renouncing the Indiana Homestead credit and claiming the credit in Florida, establishes that they moved to that state with the "intent of abiding permanently without Indiana." [45 IAC 3.1-1-23](#). As explained in [45 IAC 3.1-1-22](#), "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 . . ." In this case Taxpayers' "[i]ntent and conduct . . . converge to establish Taxpayers' new domicile." *Bayh*, 521 N.E.2d at 1318.

#### FINDING

Taxpayers' protest is sustained.

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