

Final Order Denying Refund: 01-20200280
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 Final Order Denying Refund.

HOLDING

Individual failed to provide evidence that she was a non-resident in 2019, therefore the Department's adjustments were correct and no additional refund is due.

ISSUE

I. Income Tax - Imposition.

Authority: IC § 6-8.1-5-1; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-3-1-3.5; IC § 6-3-1-12; *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 Revenue 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](#).

Taxpayer protests the reduction of her Indiana individual income tax refund.

STATEMENT OF FACTS

Taxpayer previously lived and worked in Indiana. For tax year 2019, Taxpayer filed an Indiana Full-Year Nonresident Individual Income Tax Return ("IT-40PNR"), reporting negative income and an Indiana refund of \$1,005. The Indiana Department of Revenue ("Department"), refunded \$552 of the \$1,005 refund claimed by Taxpayer. Taxpayer determined that her employer incorrectly reported her home state as Indiana on her Form W-2. Taxpayer's employer was "unwilling/unable to issue an amended W2[,]" nevertheless, Taxpayer filed an amended return to reflect her out-of-state status. The result of Taxpayer's amended return was an additional \$159 refund, for a total refund of \$711.

Taxpayer protested and chose to waive her right to an administrative hearing. This decision is based on the information available to the Department both internally and provided by Taxpayer with her protest. Additional facts will be provided as necessary.

I. Income Tax - Imposition.

DISCUSSION

Taxpayer filed an amended return to reflect her status as a non-resident but did not provide any documentation to support her status as a non-resident. The Department refunded \$711 of the \$1,005 claimed on Taxpayer's return. Taxpayer protested emphasizing that she was a non-resident in 2019, thus her original return, claiming a refund of \$1,005, was the correct return.

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 Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463,466 (Ind. 2012). Thus, a 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, 486 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*

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 properly and correctly file their federal income tax returns as required pursuant to the Internal Revenue Code. Thus, to efficiently and effectively compute what is considered the taxpayer's 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 taxpayer's taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

Residency cases are particularly fact sensitive thus the position relayed within this document pertains only to this case and its specific set of facts. 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 resident includes individuals who are domiciled in Indiana and/or maintain a permanent place of residence in Indiana and then spend more than 183 days in Indiana. In this case, Taxpayer indicated that they lived outside of Indiana for all of 2019. Therefore, in order to be considered a resident of Indiana during 2019, Taxpayer must have been domiciled in Indiana.

Domicile is defined by [45 IAC 3.1-1-22](#), which states:

- (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.

Thus, a new domicile is not necessarily created when an individual moves to an address outside Indiana. Instead, the individual must move to the new non-Indiana address and have intent to remain at that non-Indiana address.

For example, 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, taxpayer 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.

(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**.

(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."**

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 - 1318 (Ind. 1988).

(Emphasis added).

Taxpayer states that in 2019, she lived and worked in Texas. Taxpayer listed her Texas address on both her Federal and Indiana individual income tax returns, and, according to Taxpayer's Federal return, Taxpayer owned property in Indiana and earned rents from that property. Taxpayer's original IT-40PNR reflected just the income and expenses related to her Indiana property and calculated a refund of \$1,005. When processing Taxpayer's original IT-40PNR, it appears that the Department included income from other sources as Indiana income. Taxpayer believed that this was done because her W-2 indicated that she was an Indiana resident as well as a resident of Texas. Taxpayer attempted to obtain a corrected W-2 from her employer, but states that her employer was "unwilling/unable to issue an amended W2" and that it would take several weeks to obtain a corrected W-2. As such, Taxpayer filed an amended return to reflect her non-resident status. The result was that, in total, the Department refunded \$711 of the \$1,005 claimed.

Taxpayer protested indicating that her original return was correct and that because she lived in Texas in 2019 no additional income was attributable to Indiana. While the Department is sympathetic to Taxpayer's position, the full refund cannot be granted until or unless Taxpayer provides the Department with a corrected 2019 W-2 or proof that she was not domiciled in Indiana in 2019. Therefore, Taxpayer's protest is denied.

FINDING

Taxpayers' protest is denied.

September 29, 2020

Posted: 12/02/2020 by Legislative Services Agency
An [html](#) version of this document.