DEPARTMENT OF STATE REVENUE

01-20200349.LOF

Letter of Findings: 01-20200349
Indiana Individual Income Tax
For Tax Year 2019

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 Letter of Findings.

HOLDING

Individual demonstrated that the proposed assessment was incorrect because for the tax year in question, she was not an Indiana resident and her income was not attributable to Indiana source.

ISSUE

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

Authority: 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; IC § 6-8.1-5-1; IC § 6-8.1-5-2; IC § 6-1.1-12-37; 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; *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); *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64 (Ind. 2009); *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).

Taxpayer protests the Department's refund denial and additional assessment for 2019.

STATEMENT OF FACTS

Taxpayer is an individual who currently resides in the State of Colorado ("Colorado"). In early 2020, Taxpayer timely filed an electronic IT-40PNR (Indiana Part-Year Resident or Full-Year Nonresident) return for 2019. On her 2019 IT-40PNR return, Taxpayer stated that she had zero ($0) Indiana income, requesting a full refund of tax withheld on her behalf. The Indiana Department of Revenue ("Department") reviewed the information and determined that Taxpayer was an Indiana resident and had Indiana income in 2019. As such, the Department adjusted Taxpayer's filing, denying Taxpayer's refund request; in turn, resulting in additional income tax assessment.

Taxpayer protested both the refund denial and assessment. A phone hearing was held. Taxpayer submitted additional supporting documentation to support her protest. This Letter of Finding ensues. Additional facts will be provided, as necessary.

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

DISCUSSION

After cross-referencing the Department's records and examining Taxpayer's filing for 2019, the Department determined that Taxpayer was an Indiana resident who had Indiana income and that Taxpayer owed additional income tax. The Department thus made "line-by-line" adjustments and assessed Taxpayer additional income tax pursuant to IC § 6-8.1-5-2.

Taxpayer, to the contrary, asserted that she was entitled to a full refund because she has been a permanent resident of Colorado since 2018 and "[a]ll of [her] income in 2019 was earned in the state of Colorado. . . ." As such, Taxpayer argued that she did not owe any Indiana income tax for 2019. Therefore, the issue in this case is whether Taxpayer's income was subject to Indiana income tax because she was an Indiana resident or her income was attributable to Indiana source.

As a threshold issue, 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 Dep't of State Revenue v. Rent-A-Center East, Inc*., 963 N.E.2d 463, 466 (Ind. 2012). "[E]ach assessment and each tax year stands alone." *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64, 69 (Ind. 2009). Therefore, 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); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

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. To efficiently compute Indiana resident's state income tax, the Indiana law references 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 the taxpayer's 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 3.1-1-22 (2017) provides:

> (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.
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> (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.
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> (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.
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> (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.

A person is presumed to be domiciled in Indiana if the person (1) claimed a homestead credit on an Indiana home, voted in Indiana, (3) occupied a permanent place of residence in Indiana 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 Indiana being the principal place of residence, or (5) had a place of employment or business in Indiana. 45 IAC 3.1-1-22.5(c)(2017). Nonetheless, the "person **may rebut this presumption** through the presentation of substantial contrary evidence." *Id*. **(Emphasis added).**

45 IAC 3.1-1-23 explains further how "residency" affects a taxpayer's income tax liability, in relevant part, as follows:

> (1) Taxpayer Moving to Indiana
> When a taxpayer moves to Indiana and becomes a resident and/or domiciliary of Indiana during the taxable year, Indiana will not tax income from sources outside Indiana which the taxpayer received prior to becoming an Indiana domiciliary. Indiana will, however, assess adjusted gross income tax on all taxable income after the taxpayer becomes an Indiana resident.

> (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.
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> . . .
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> (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. . . .

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."**
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> '[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.**
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> *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."
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> **"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."**
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> 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.**
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> *Id*. (Internal citations omitted) **(Emphasis added).**

The Indiana Supreme Court subsequently, in *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), 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."**
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> A person who leaves his places of residence temporarily, but with the intention of returning, has not lost his original residence. . . .
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> 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.**
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> *Id*. at 1317-18 (Ind. 1988) **(Emphasis added).**

The Department in this case changed Taxpayer's 2019 filing because since 2014, Taxpayer has been filing her IT-40 returns - with an Indiana address - reporting her Indiana income, including the tax year 2019 in question. Since Taxpayer continued using the same Indiana address to file her 2019 return, the Department recalculated Taxpayer's Indiana adjusted gross income tax, starting with her federal adjusted gross income.

Taxpayer disagreed. Taxpayer contended that she moved to Colorado since 2018 and has become a permanent resident of Colorado. Taxpayer maintained that all her income in 2019 was earned in the state of Colorado. Taxpayer explained further, in relevant part:

> As I live in an apartment and have erratic mail delivery, I continue to use my [parents'] home as my official mailing address and that was listed on my tax form so that may have led to the confusion. . .

To support her protest, in addition to her 2019 Colorado Individual Income Tax filing, Taxpayer offered her apartment lease and utility bills. Taxpayer also obtained her Colorado Driver License and registered to vote in Colorado. Therefore, based on the information and supporting documentation provided by Taxpayer, the Department is prepared to agree that for the tax year 2019, Taxpayer was a nonresident for Indiana income tax purposes because Taxpayer did not spend more than 183 days within Indiana and has changed her domicile to Colorado.

As mentioned earlier, Indiana imposes a tax "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)(4) specifically includes "compensation for labor or services rendered within this state." In this instance, the Department is prepared to agree that for 2019 Taxpayer worked for an out-of-state company in Colorado. As such, that income is not subject to Indiana income tax under IC § 6-3-2-2(a)(4).

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. Taxpayer met her burden demonstrating that the Department incorrectly adjusted her 2019 filing and denied her refund request for the Tax Years at Issue. Nonetheless, as mentioned above, "[e]ach assessment and each tax year stands alone." *Miller Brewing*, 903 N.E.2d at 69. Taxpayer is required to document the same if similar circumstances reoccur in different tax years.

FINDING

Taxpayer's protest is sustained.

September 29, 2020

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An html version of this document.