

Memorandum of Decision: 01-20200347R
Indiana Individual Income Tax
For the Tax Year 2017

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

HOLDING

Individuals were not domiciled in Indiana for the tax year 2017. Therefore, Individuals were not required to file an Indiana Individual Income Tax Return, IT-40.

ISSUE

I. Indiana Individual Income Tax - Residency - Domicile.

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; *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988); *Croop v. Walton*, 157 N.E. 275 (Ind. 1927); *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); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 3.1-1-21](#); [45 IAC 3.1-1-22.5](#).

Taxpayers protest the Department's proposed assessment for the 2017 tax year.

STATEMENT OF FACTS

Taxpayers ("Husband and Wife") currently live in Florida and used to reside in Indiana. Taxpayers filed an Indiana IT-40 for 2017. Taxpayers then subsequently filed an amended Indiana tax return seeking a refund because they determined that they were not Indiana residents. The Indiana Department of Revenue ("Department") determined that Taxpayers were Indiana residents and therefore subject to Indiana income tax for 2017. Therefore, the Department denied Taxpayers' refund request. Taxpayers protested the refund denial. An administrative hearing was held. This Letter of Findings ensues and addresses Taxpayers' protest of the proposed assessment for the tax year 2017. Additional facts will be provided, as necessary.

I. Indiana Individual Income Tax - Residency - Domicile.

DISCUSSION

The Department denied Taxpayers' refund request determining that Taxpayers were residents of Indiana for 2017. Taxpayers disagree with the Department and claim that they were residents of Florida in 2017 and not subject to Indiana income tax.

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). Thus, the taxpayer is required to provide documentation explaining and supporting his 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 "upon 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. 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.

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.

Additionally, [45 IAC 3.1-1-22.5](#) states in relevant part:

- (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 section 21 of this rule 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.

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 guidance in determining a taxpayer's domicile, the Department refers to *Croop v. Walton*, 157 N.E. 275 (Ind. 1927). In *Croop* a taxpayer, Mr. Walton, moved from Sturgis, Michigan to Elkhart, Indiana by selling his Michigan residence and purchasing a residence in Indiana, where he and his wife lived for several years for the benefits of his wife's health. Indiana assessed Mr. Walton state income tax on his intangible property. *Id.* at 276-78. Mr. Walton disagreed, arguing that his intangible property was not subject to Indiana taxes because he was domiciled in Michigan. *Id.* The court found that Mr. Walton: owned and managed a company and stores in Michigan; maintained his membership with lodges, clubs, and a church; on various occasions exercised his civil and political rights; and that Sturgis was used in his legal documents, including insurance policies, mortgages, leases, contracts, and other instruments. Ruling in favor of Mr. Walton, the court concluded that Mr. Walton did not change his domicile from Michigan to Indiana and his intangible property was not subject to certain Indiana taxes. The court explained, in relevant part, that:

The word "inhabitant," as used in our statute regulating the imposition of taxes, means "one who has his domicile or fixed residence in a place." **"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."**

No precise or exact definition of the term "**domicile**," which responds to all purposes, seems to be possible. It

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.**

Many cases collected in the works just cited have held that at times the cognate terms "residence" and "domicile" are synonymous, but many other cases there cited and quoted from have held that the two terms, when accurately used, are not convertible, but that there is a very clear and definite distinction between them. "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. . . .

Domicile is of three kinds-domicile of origin or birth, domicile by choice, and domicile by operation of law. . . . **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 reiterated similar analysis and determined that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though Mr. Bayh moved to different states for various reasons for many years. Specifically, the court illustrated, in relevant part, that:

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 place 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." A self-serving statement of intent is not sufficient to find that a new residence has been established. Intent and conduct must converge to establish a new domicile.

Id. at 1317-18 (Ind. 1988). (Internal citations omitted) (**Emphasis added**).

In short, any individual who was domiciled in this state during the taxable year is a resident. IC § 6-3-1-12(a). "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." *Bayh*, 521 N.E.2d at 1317.

Taxpayers were domiciled in Indiana prior to 2017. During the protest, Taxpayers provided their Florida driver's licenses, tax records with their Florida address, Florida voter registration cards, and proof that their Indiana property was sold in 2016. Based on this information the Department has determined that Taxpayers abandoned their Indiana domicile and therefore were not residents of Indiana in 2017. Taxpayers have met their burden as required by IC § 6-8.1-5-1(c). Thus, Taxpayer's protest is sustained.

FINDING

Taxpayer's protest is sustained.

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