

**Letter of Findings: 01-20221072
Indiana Individual Income Tax
For the Year 2018**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 failed to prove that she was not a resident (or domiciled) of Indiana for the tax year 2018.

ISSUE

I. Individual Income Tax - Residency.

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; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [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](#).

Taxpayer protests the imposition of Indiana individual income tax.

STATEMENT OF FACTS

Taxpayer filed her "Protest Submission Form" indicating that she was protesting individual income tax and that she was requesting a "Final determination without a hearing." In so doing, as the Protest Submission Form notes, Taxpayer was forgoing an administrative hearing and asking, "the Department to make its decision based on the written protest and documentation (if any) the taxpayer presents along with the protest, and waives the right to a hearing." Taxpayer also indicated that she was providing the Department with "new documentation that has not been previously reviewed by the department[.]"

Taxpayer's submitted protest consisted of, in part, the following: (1) a December 22, 2021, letter to the Department; (2) a copy of a 2018 Alabama income tax return for Taxpayer and her spouse; (3) W-2's; (4) 2018 Amended U.S. Individual Income Tax Return; and (5) various federal tax schedules for 2018. This Letter of Findings results from review of Taxpayer's documentation and the Department's records. Further facts will be supplied as required below.

I. Individual Income Tax - Residency.

DISCUSSION

The Department, on December 16, 2021, issued a proposed assessment for income tax for the year 2018. The Department's proposed assessment stated in pertinent part that "your Indiana Individual Income tax for the tax period ending December 31, 2018, indicates that you owe" an additional amount.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "[t]he notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[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).

Indiana imposes an adjusted gross income tax on all residents. IC § 6-3-2-1(a). Taxpayer's Indiana income is determined by starting with the federal adjusted gross income and making certain adjustments. IC § 6-3-1-3.5(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, 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.

[45 IAC 3.1-1-22](#) 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](#) 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).

In the case at hand, Taxpayer states in her December 22, 2021, letter:

I am sending documentation supporting my part year residency in Indiana. I was only a resident of Indiana for two and half months in the year 2018, the rest of the year I was a resident of the state of Alabama.

As part of her protest submission, Taxpayer provided a copy of her (and her spouse's) 2018 Individual Income Tax Return for Alabama. However, Taxpayer has not specified when during the year 2018 she moved to Alabama, nor shown what her domicile was in 2018. Taxpayer did not provide the Department with any of the relevant factors listed in [45 IAC 3.1-1-22.5](#) (e.g., a copy of her 2018 driver's license; where she was registered to vote in 2018; etc.). The 2018 Alabama individual income tax return does not establish that Taxpayer was not domiciled to Indiana; it also does not establish when Taxpayer moved from Indiana to Alabama. As [45 IAC 3.1-1-23](#) notes, "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." Thus, Taxpayer has not met her burden of proof pursuant to IC § 6-8.1-5-1(c).

However, Taxpayer provided a copy of the amended joint return she filed with the federal government. While this federal return is not controlling on the Department for the reasons explained above, it does contain relevant income information such as would be found in any supporting documentation. The Department is instructed to review the information that Taxpayer has provided, and to the extent that Taxpayer's documentation breaks out her 2018 income and her spouse's income, then Taxpayer should only be assessed the portion that reflects her 2018 taxable Indiana income tax liability.

FINDING

Taxpayer's protest is denied; however, as noted above, the Department is instructed to review the information that Taxpayer provided as part of her protest.

October 24, 2022

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An [html](#) version of this document.