

**Letter of Findings: 01-20221176  
Individual Income Tax  
For the Tax 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 (the "Department") 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 successfully proved that he was a part-year resident of Indiana for the tax year 2018 and the law allows him to claim a credit for income tax paid in New York.

### ISSUE

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

**Authority:** [IC 6-3-1-12](#); [IC 6-3-2-1](#); [IC 6-8.1-5-1](#); *Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2012); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); [45 IAC](#) § 3.1-1-22; [45 IAC](#) § 3.1-1-22.5; Income Tax Information Bulletin 28 (February 2022).

Taxpayer protests the assessment of Indiana individual income tax.

### STATEMENT OF FACTS

Taxpayer is an Indiana resident who moved outside of the state prior to the tax year at issue. He retained an Indiana homestead and worked for an out-of-state employer during 2018. He claimed no Indiana income and that taxes were withheld in New York (the state in which Taxpayer worked). Taxpayer filed an amended 2018 Indiana Part-Year Nonresident form after discovering that he originally filed a full-year resident return by mistake. On the amended return, Taxpayer noted that he lived in Indiana from January to April of 2018, and then lived in New York for the remainder of the taxable year. The Department determined that Taxpayer's reported federal adjusted gross income was understated based on information received from external third-party sources. At the hearing, Taxpayer provided additional documentation which included his (1) 2018 Indiana Part-Year or Full-Year Nonresident Individual Income Tax Return; (2) 2018 New York Nonresident and Part-Year Resident Income Tax Return; (3) 2018 W-2 from his employer; and (4) a receipt from his tax preparer confirming that his income tax return would be e-filed and no Indiana tax was due.

After determining that Taxpayer had underreported his Indiana income for 2018, the Indiana Department of Revenue ("Department") issued a proposed assessment for additional Indiana income tax. Taxpayer protested the assessment. A hearing was held, and this Letter of Findings results. Additional facts will be provided as necessary.

### DISCUSSION

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

Taxpayer protests the imposition of Indiana income tax for the 2018 tax year. The Department based its proposed assessment on Taxpayer's federally reported income and the amount of income reported on Taxpayer's Indiana return. Taxpayer protests that he filed a full-year return when he should have filed a part-year return.

As a threshold issue, all tax assessments are *prima facie* evidence that the Department's claim for unpaid tax is valid; the taxpayer bears the burden of proving that an assessment is incorrect. [IC 6-8.1-5-1\(c\)](#); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v.*

*Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2012). Consequently, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's position 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). 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.'" *Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, shall be entitled to deference.

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). 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 or maintain a permanent place of residence in Indiana and then spend more than 183 days in Indiana. Taxpayer provided sufficient evidence to show that he spent less than 183 days in Indiana in the 2018 taxable year. Thus, to be considered a resident of Indiana, Taxpayer must still have his domicile in Indiana, meaning he has not taken affirmative steps to change his domicile.

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 of the totality of facts, supported by object evidence, in each individual case.

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

[45 IAC 3.1-1-22.5](#)(c) further states:

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.

Based on publicly available property records, Taxpayer claimed a homestead credit in the tax year at issue. Without documentation to rebut the protest, Taxpayer is presumed to have domicile in Indiana. The Department's Income Tax Information Bulletin 28 (February 2022), 20220223 Ind. Reg. 045220044NRA, explains that:

When a person receives income from any state, possession, or foreign country . . . the taxpayer might be required to pay income taxes to both jurisdictions. The taxpayer may take a credit for taxes paid to other states against the taxpayer's Indiana adjusted gross income tax liability.

. . .

The credit is equal to the least of the following:

- The amount of income tax actually paid to the other state, possession, or foreign country on income from that jurisdiction;
- An amount of equal to the Indiana income tax rate multiplied by the adjusted gross income taxed by both Indiana and the jurisdiction; or
- The amount of Indiana adjusted gross income tax due to Indiana for the tax year.

Indiana law requires that part-year Indiana residents must file an Indiana individual income tax return and are subject to tax on the part of their total federal income that was received while they were Indiana residents and on income from Indiana sources received while they were nonresidents of Indiana.

Given the factors above and Taxpayer's documentation showing tax due in and remitted to New York, the Department has determined that the Taxpayer was a part-year resident of Indiana in 2018. Based on Information Bulletin 28, Taxpayer may, however, receive credit on his Indiana tax return for taxes paid in New York. Taxpayer has met his burden as required by [IC 6-8.1-5-1\(c\)](#). His protest is sustained, and his liability will be recalculated based on taxes already remitted to New York. Department will issue a revised assessment based on that calculation.

## FINDING

Taxpayer's protest is sustained.

August 23, 2023

*Finding Replaces: New*

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