

**Letter of Findings: 01-20231622  
Individual Income Tax  
For the Years 2021**

**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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 is a prior Indiana resident that was assessed for individual income tax. Individual met his burden of proof that a portion of his income was not subject to individual income tax in Indiana because it was foreign income, and he was not domiciled in Indiana.

### ISSUE

#### I. Individual Income Tax - Foreign 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](#); *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); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); [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 assessment of individual income tax in 2021.

### STATEMENT OF FACTS

Taxpayer was a resident of Indiana for a portion of 2021. Taxpayer was enrolled as a student and was working for an Indiana-based university. In February 2021, Taxpayer moved from Indiana back to his family home in another state. In March 2021, Taxpayer then moved to a foreign country. When Taxpayer filed his Indiana tax returns, he listed his full income as taxable in Indiana for 2021 but remitted the amount of tax that would apply to income earned in Indiana. The Department of Revenue ("Department") determined that Taxpayer owed additional income tax. Taxpayer protested the assessment. An administrative hearing was held. This Letter of Findings results. Additional facts will be provided as necessary.

#### I. Individual Income Tax - Foreign Income.

### DISCUSSION

The Department, based on Taxpayer's return, found that Taxpayer was an Indiana resident for 2021 and that additional Indiana income tax was due for 2021. Taxpayer disagreed and filed an IT-40PNR stating that he was a part-time nonresident of the state. In February 2021, Taxpayer moved back to his home state, and then in March 2021, he moved to a foreign country. As a result, Taxpayer argued that he was not a full-time Indiana resident for 2021.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. A proposed assessment is prima facie evidence the Department's claim for the unpaid tax is valid. [IC 6-8.1-5-1\(c\)](#). The burden of proving the proposed assessment is wrong rests with the person against whom the proposed assessment is made. *Id.*; See e.g. *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). 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 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](#)(b). [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 file their federal income tax returns as required pursuant to the Internal Revenue Code. Thus, to efficiently and effectively compute what is considered the taxpayers' Indiana income tax, the Indiana statute refers to the [IC 6-3-1-3.5](#)(a) provides the starting point to determine the taxpayers' 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](#).

[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.

(3) Nonresident Citizens

An individual from Indiana who is permitted to file Federal income tax returns as a nonresident citizen is considered as being domiciled in Indiana and his income taxable as a resident citizen, if he maintains a place of abode in Indiana immediately prior to residing in a foreign country as a nonresident citizen of the United States, and has not permanently established his domicile in a foreign country or in another state.

The fact that ordinary rights of citizenship, including voting at public elections are present but not exercised, shall not prevent a person from being classified as a resident if he meets the other tests set out in this regulation.

(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.

Recently, the Department revised the Adjusted Gross Income Tax Regulations with the intention to clarify the definition of a person's domicile for Indiana income tax purposes and afford more considerations in determining a person's domicile. Thus, Taxpayer benefits from the application of the new regulations when the taxpayer's domicile is in dispute. This Decision thus applies the new regulations accordingly.

[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 [D]epartment 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 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; or
- (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).**

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 this instance, Taxpayer moved to Indiana to be a graduate student at an Indiana-based university. Taxpayer worked for the university as a researcher, then in February 2021 he moved back to his family home in the other state. The Department determined that, based on verifiable records, Taxpayer was not an Indiana resident during 2021 because he never intended to be domiciled in Indiana. Taxpayer kept his home state driver's license, mailing address, and bank accounts. Further, Taxpayer's vehicle was registered in his home state, and he was registered to vote in his home state.

In conclusion, the Department is mindful that under [45 IAC 3.1-1-22](#)(d) there is no one set of standards that will accurately indicate the person's intent in every relocation. Given the totality of the circumstances, with the provided documents, the Department agrees that Taxpayer met the requirement of proving the proposed assessment wrong, as established under [IC 6-8.1-5-1](#)(c). Therefore, given a "case by case" review of Taxpayers' facts, documentation, and circumstances, not all of Taxpayer's income earned during 2021 was subject to Indiana income. Since Taxpayer originally remitted Indiana income tax on the amount of Indiana source income, the Department's assessment will be dismissed.

### **FINDING**

Taxpayer's protest is sustained.

September 21, 2023

*Finding Replaces: New*

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