

**Letter of Findings: 01-20231855  
Individual Indiana Income Tax  
For the Year 2009 to 2015**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

The Department agreed with Out-of-State Residents that they were neither domiciled in Indiana nor had they received Indiana source income during the years at issue. The Department was obligated to abate or refund any taxes, penalties, interest, or collection fees imposed upon or obtained from Out-of-State Residents.

### **ISSUE**

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

**Authority:** [IC 6-3-1-12](#); [IC 6-8.1-5-1](#); *Dept. 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); *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988); *Board of Medical Registration and Examination v. Turner*, 168 N.E.2d 193 (Ind. 1960); *Croop v. Walton*, 157 N.E. 275 (Ind. 1927); *Culbertson v. Bd. Of Comm'rs of Floyd County*, 52 Ind. 361 (1876); *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); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 3.1-1-22](#); [45 IAC 3.1-1-22.5](#); [45 IAC 15-11-2](#).

Taxpayers argue that they are not residents of Indiana, not required to file Indiana income tax returns, and not required to pay Indiana individual income tax.

### **STATEMENT OF FACTS**

Taxpayers are individuals currently residing outside Indiana. In 2017, the Indiana Department of Revenue ("Department") determined that Taxpayers were Indiana residents during the years 2009 to 2015 and should have filed Indiana individual income tax returns. As a result, the Department assessed Taxpayers approximately \$40,000 in Indiana income tax.

Taxpayers disagreed with the assessment and submitted a protest to that effect. In their protest, Taxpayers argued that they were not residents of Indiana during 2009 through 2015 and were not responsible for filing for or paying Indiana income tax.

Taxpayers submitted documentation intended to support their protest. This Letter of Findings is based on that documentation and on a telephone hearing conducted to consider Taxpayers' arguments.

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

### **DISCUSSION**

The issue is whether Taxpayers have established that they were not Indiana residents during 2009 through 2015 and not required to file for and report Indiana income tax.

#### **A. Taxpayers' Burden of Proof.**

As with any assessment of Indiana listed taxes, it is Taxpayers' responsibility here to establish that the assessments of tax, interest, penalty, and collection fees are - or were - incorrect. As stated in [IC 6-8.1-5-1\(c\)](#) and Indiana case law, "The 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." See also *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).

Taxpayers are required to provide documentation explaining and supporting their argument and 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, the Department points out that "[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). Thus, interpretations of Indiana tax law contained within this decision, as well as the preceding audit, are entitled to deference.

## B. Indiana's Individual Income Tax.

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." For income tax purposes, "The term '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](#).

Taxpayers claim that they are or were not "resident person[s]" or "domiciled" in Indiana during the years in question and did not receive "adjusted gross income derived from sources with Indiana . . ." as nonresidents.

## C. Domicile and Residency.

The assessments here at issue, began with a "notice of proposed" assessment in 2021. The Department here refers to the Department's "residency" regulatory guidance originally promulgated in 2017 as useful in explaining the Department's stance.

[45 IAC 3.1-1-22](#) (2017) 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](#) (2017) 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).**

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.**

'[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.**

*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."

**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.

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. (Internal citations omitted)(**Emphasis added**).

In *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court 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."

A person who leaves his places 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." **Intent and conduct must converge to establish a new domicile.**

*Id.* at 1317-18 (**Emphasis added**).

In addition, courts have considered a taxpayer's contemporaneous declarations identifying that taxpayer's "home." That information includes insurance policies, mortgages, contracts or other documents indicating the taxpayer's home. In addition, courts may consider membership in clubs, churches, or other social groups in a place. *Croop*, 157 N.E. at 278-79. Finally, courts have considered the location of taxpayer's household goods and mailing address. *Board of Medical Registration and Examination v. Turner*, 168 N.E.2d 193, 197 (Ind. 1960); *See also Culbertson v. Bd. Of Comm'rs of Floyd County*, 52 Ind. 361 (1876). However, a taxpayer "seeking to establish his claim of exemption from taxation on the ground of nonresidence is not required to show that his property was assessed elsewhere." *Croop*, 157 N.E. at 276.

#### **D. Addressing the Department's Assessment.**

In Taxpayers' case, the issue arose in 2017 when the Department first determined that one of the two Taxpayers previously utilized an Indiana mailing address. Taxpayers were instructed by the Department "to file IT-40 Individual Income Returns" and pay any resulting income tax.

What followed during the next years were repeated efforts on the part of Taxpayers to resolve the residency and assessment issues. Taxpayers attempted to file a protest, contacted the Department's collection division, contacted the Department's advocate's office, provided - on at least three occasions - documentation intended to support their arguments. That documentation included out-of-state lease agreements, utility bills, and copies of out-of-state drivers' licenses. Taxpayers submitted the documentation on three occasions and on three occasions were told that the information was lost due to a flood, or were misplaced, or were routinely discarded after twelve to eighteen months. Taxpayers resubmitted the documents on a fourth occasion in 2023.

The Department's and Taxpayers' records establishes that Taxpayers contacted the Department more than 40 times between 2017 and 2023 in an effort to address the issue or to respond to levies placed on their bank accounts.

The Department also acknowledges that Taxpayers employed an out-of-state attorney in their attempts to resolve

the tax issue and to refute the Department's efforts to collect the assessment.

The Department continued its efforts during the six years that followed. The Department, or its representative agency, undertook efforts to collect the \$40,000 liability. The Department filed fourteen tax warrants, its agents froze and levied upon Taxpayers' bank accounts, imposed collection costs, imposed penalties, added interest charges, and instructed its collection agency to continue its ongoing efforts to obtain the entire \$40,000.

Eventually, the Department agreed to accept Taxpayers' original 2017 correspondence and written objections as a timely protest which - after a telephone hearing - results in this administrative decision.

The Department here agrees that Taxpayers have provided information more than sufficient to establish that the Department should not have assessed the income tax. As to the Indiana mailing address, Taxpayers explained that the address was utilized as a convenience because they had moved from location to location during the years at issue. Taxpayers provided their out-of-state employer's "employment status" demonstrating that they had been employed outside Indiana beginning in at least 2005, that they were neither "resident person[s]" nor "domiciled" in Indiana during the years in question and did not receive "adjusted gross income derived from sources with Indiana . . ." as nonresidents.

### **E. Conclusions.**

Taking into account Taxpayers' documentation, and after reviewing the Department's own records, the Department agrees that the assessments at issue were wrong. In addition, any penalties or interest charges imposed during the six years this issue remained unresolved should be abated. [45 IAC 15-11-2\(c\)](#) requires that in order to establish "reasonable cause" necessary to justify abatement of the penalties, the affected taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed." The documentation is replete with information documenting that Taxpayers exercised "ordinary business care and prudence" in their efforts to address the assessments and the Department's collection activities.

Whatever the multi-year sequence of events which lead to the assessment and to the collection costs incurred by Department's agent, the Department agrees Taxpayers have met the burden of proving the proposed assessments wrong as required by [IC 6-8.1-5-1\(c\)](#). Taxpayers owe no remaining tax, any subsequent penalties should be abated, no interest amounts are due, and the Taxpayers must be refunded all collection costs or tax amounts levied upon and obtained from their bank accounts.

### **FINDING**

In all respects, Taxpayers' protest is sustained.

September 13, 2023

*Finding Replaces: New*

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