TITLE 45 DEPARTMENT OF STATE REVENUE

Proposed Rule
LSA Document #16-497

DIGEST

Adds 45 IAC 3.1-1-21.5 to define permanent place of residence. Amends 45 IAC 3.1-1-22 concerning the definition of domicile. Adds 45 IAC 3.1-1-22.5 concerning the determination of domicile. Effective 30 days after filing with the Publisher.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

45 IAC 3.1-1-21.5; 45 IAC 3.1-1-22; 45 IAC 3.1-1-22.5

SECTION 1. 45 IAC 3.1-1-21.5 IS ADDED TO READ AS FOLLOWS:

45 IAC 3.1-1-21.5 "Permanent place of residence" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-12

Sec. 21.5. (a) "Permanent place of residence" means a building or structure where a person can live that:
(1) the person maintains, whether the individual owns it or not; and
(2) is suitable for year-round use.

(b) A residence maintained by a person primarily for the purpose of obtaining an educational degree is not a permanent place of residence.

(c) If a person is under a guardianship or conservatorship, the individual maintains a permanent place of residence in Indiana if he or she satisfies the criteria of subsections (a) and (b) as a result of the guardian or conservator's acts.

(Department of State Revenue; 45 IAC 3.1-1-21.5)

SECTION 2. 45 IAC 3.1-1-22 IS AMENDED TO READ AS FOLLOWS:

45 IAC 3.1-1-22 "Domicile" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-12

Sec. 22. **(a)** "Domicile" ~~Defined. For the purposes of this Act,~~ **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 ~~maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.~~ **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 ~~home~~ **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.

~~The determination of a person's intent in relocating is necessarily a subjective determination.~~ **(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, ~~present~~ **supported by objective evidence,** in each individual case. ~~Relevant facts in determining whether a new domicile has been established include, but are not limited to:~~

~~(1) Purchasing or renting residential property~~
~~(2) Registering to vote~~
~~(3) Seeking elective office~~
~~(4) Filing a resident state income tax return or complying with the homestead laws of a state~~
~~(5) Receiving public assistance~~
~~(6) Titling and registering a motor vehicle~~
~~(7) Preparing a new last will and testament which includes the state of domicile.~~

(Department of State Revenue; Reg 6-3-1-12(020); filed Oct 15, 1979, 11:15 a.m.: 2 IR 1520; errata, 2 IR 1743)

SECTION 3. 45 IAC 3.1-1-22.5 IS ADDED TO READ AS FOLLOWS:

45 IAC 3.1-1-22.5 Determination of domicile

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-12

Sec. 22.5. (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.

(Department of State Revenue; 45 IAC 3.1-1-22.5)

Notice of Public Hearing

Posted: 03/01/2017 by Legislative Services Agency
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