

# Cases and Rulings in the News States A-M, Indiana Department of Revenue, IN—Letter of Findings No. 01-20160293, Indiana, (Dec. 28, 2016)

Indiana Register

## DEPARTMENT OF STATE REVENUE

01-20160293.LOF

Letter of Findings: 01-20160293

### Indiana Individual Income Tax

#### For The Tax Year 2012

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Individual was required to file a 2012 Indiana individual income tax return because he was domiciled in Indiana and thus was an Indiana resident.

#### ISSUE

##### I. Indiana Individual Income Tax - Non-filer.

**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; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Croop v. Walton, 157 N.E. 275 (Ind. 1927); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988); 45 IAC 3.1-1-21; 45 IAC 3.1-1-22; 45 IAC 3.1-1-23.

Taxpayer protests the Department's proposed assessment for the 2012 tax year.

#### STATEMENT OF FACTS

Taxpayer is an individual who was a longtime Indiana resident and currently lives outside of Indiana. Taxpayer has been licensed to practice medicine in Indiana since 1984. Taxpayer periodically renews his physician license since. In addition, Taxpayer maintained and renewed his Indiana driver's license. Taxpayer also renewed his vehicle registration with the Indiana Bureau of Motor Vehicles ("BMV").

Taxpayer did not file an Indiana income tax return for the tax year 2012. The Indiana Department of Revenue ("Department") determined that for the tax year 2012, Taxpayer was an Indiana resident, that Taxpayer failed to file his Indiana income tax return, and that Indiana income tax was due for the 2012 tax year.

Taxpayer timely protested the assessment. An administrative phone hearing was held. This Letter of Findings ensues and addresses Taxpayer's protest of the proposed assessment for the tax year 2012. Additional facts will be provided as necessary.

##### I. Indiana Individual Income Tax - Non-filer.

## DISCUSSION

The Department, based on publicly verifiable information, determined that Taxpayer was an Indiana resident. Specifically, the Department found that Taxpayer maintains an Indiana driver's license, which was renewed in 2012; that Taxpayer registered and periodically renewed his vehicle registration in Indiana; and that Taxpayer was licensed to practice medicine in Indiana and has been maintaining "Active" status regarding his Indiana physician license. The Department thus concluded that Taxpayer was an Indiana resident and therefore required to file his 2012 Indiana income tax return and that Indiana income tax was due for the 2012 tax year.

Taxpayer, to the contrary, claimed that he was not required to file his 2012 Indiana income tax return and did not owe any Indiana income tax because he moved to Louisiana to start his new employment at a local hospital. Taxpayer claimed that he rented an apartment while he worked in Louisiana during the tax year at issue and paid income tax there. The issue is whether, for the tax year 2012, Taxpayer was an Indiana resident and therefore subject to Indiana income tax.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC §6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment 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).

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(a). IC §6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. To efficiently and effectively compute what is considered the taxpayers' Indiana income tax, the Indiana statute refers to the Internal Revenue Code. 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.

In this instance, Taxpayer's supporting documentation demonstrated that he did not spend "more than one hundred eighty-three (183) days of" 2012 in Indiana. Thus, this Letter of Findings only addresses whether Taxpayer, a longtime Indiana resident and physician, was domiciled in Indiana during 2012.

*45 IAC 3.1-1-22* explains:

**For the purposes of this Act, a person has only one 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.**

**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 at that place. 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. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present 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.

( **Emphasis added**).

Additionally, 45 IAC 3.1-1-23(2) provides, in relevant part:

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.**

Accordingly, a new domicile is not necessarily created when individuals move to a new place. Rather, the individuals must move to the new place and have intent to remain there indefinitely. When a taxpayer becomes an actual domiciliary of another state, only his or her income derived from Indiana source will be subject to Indiana income tax. Otherwise, general rules apply.

In *Croop v. Walton*, 157 N.E. 275 (Ind. 1927), a taxpayer 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. The taxpayer 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, the taxpayer, 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. (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 (Ind. 1988) ( **Emphasis added**).

Taxpayer, in this instance, argued that he was not an Indiana resident for 2012 and did not have Indiana source income. Taxpayer stated, in relevant part, that:

I was not a resident of Indiana in 2012, and I did not earn any income in Indiana in 2012.... I moved to New Orleans June 24, 2010, and lived at [an apartment], until July 5, 2011.... I moved to New Orleans [again] on February 4, 2012 ... until August 14, 2014.

To support his protest, Taxpayer offered copies of his lease agreement and monthly payments for rent and utilities. Taxpayer also provided a copy of his 2012 Louisiana income tax return and a letter from his former employer stating that Taxpayer worked in Louisiana from February 2012 until December 2015. Taxpayer stated that he currently manages his own business in South Carolina although he still practices medicine occasionally.

As discussed earlier, Taxpayer may be considered a resident of more than one state at the same time. But, he can only have one domicile. Once his domicile is established, Taxpayer is presumed to be domiciled there until he abandons the old one and establishes a new domicile somewhere else. “Domicile is not determined by residence alone, but upon a consideration of all the circumstances of the case.” That is, a person may have more than one residence at the same time. From time to time, he may change from one address to another, temporarily or otherwise. But, changing mailing address alone is not sufficient to show a change of the person's domicile.

In this instance, Taxpayer was a longtime Indiana resident who obtained a physician's license to practice medicine in Indiana since 1984. Before leaving for new employment in Louisiana, Taxpayer sold his Indiana house, but continues using an address which he claimed to be his former spouse's Indiana address for license renewals, car registration, and insurance purposes. Taxpayer periodically renews and maintains his Indiana physician license “active” status. The renewals of his professional license alone is not sufficient to conclude Taxpayer's intent to remain - and thus be domiciled - in Indiana. However, Taxpayer also affirmatively and periodically renewed his Indiana driver's license and Indiana motor vehicle registration on his vehicle including the tax year at issue. Those actions further strengthen and support the fact that Taxpayer did not intend to abandon his Indiana domicile. Specifically, in this instance, Taxpayer presented his Indiana driver's license and

his Indiana motor vehicle registration to reduce the insurance premiums and to obtain a recreational license while he worked in Louisiana. The actions further expressly affirmed his ties with Indiana and demonstrated that he did not intend to abandon his Indiana domicile. Since Taxpayer has not abandon his Indiana domicile, he could not acquire a new domicile elsewhere.

In short, given the totality of the circumstances, Taxpayer was Indiana resident because he was domiciled in Indiana and thus was required to file 2012 Indiana income tax return.

### **FINDING**

Taxpayer's protest is respectfully denied.

*Posted: 12/28/2016 by Legislative Services Agency*

An *html* version of this document.