

# Cases and Rulings in the News States A-M, Indiana Department of Revenue, IN—Letter of Findings Nos. 01-20160264, 01-20160265, Indiana, (Dec. 28, 2016)

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## DEPARTMENT OF STATE REVENUE

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Letter of Findings: 01-20160264 and 01-20160265

### Indiana Individual Income Tax

#### For The Tax Years 2012 and 2013

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

For purposes of the Indiana individual income tax, Husband and Wife appropriately filed the 2012 and 2013 Indiana Individual income tax returns because Wife became an Indiana resident and 2012 and Husband became an Indiana resident in 2013.

#### ISSUE

##### I. Indiana Individual Income Tax - Residency: Domicile.

**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.

Taxpayers protest the Department's proposed assessments for the 2012 and 2013 tax years.

#### STATEMENT OF FACTS

The Indiana Department of Revenue ("Department") determined that Taxpayers were Indiana residents for the tax year 2012 and 2013, that Taxpayers failed to correctly file their 2012 and 2013 Indiana income tax returns and that additional Indiana income tax was due.

Taxpayers disagreed with the assessments and submitted protests to that effect. An administrative hearing was conducted during which Taxpayers explained the basis for the protest. This Letter of Findings results. Additional facts will be provided as necessary.

##### I. Indiana Individual Income Tax - Residency: Domicile.

## DISCUSSION

The Department assessed Taxpayers additional income tax for the 2012 and 2013 tax years on the ground that Taxpayers were Indiana residents, that they failed to file correctly their 2012 and 2013 Indiana income tax returns, and that additional Indiana income tax was due.

Taxpayers contended that Wife moved to Indiana in March 2012 to care for an aging family member. Taxpayers contended that Husband moved to Indiana in June 2013. Specifically, Taxpayers asserted that Husband was domiciled in Florida from 1999 to June 2013. Additionally, Taxpayers claimed that they filed the 2012 return to reflect Wife as a resident of Indiana from March 2012 to December 31, 2012. Taxpayers filed the 2013 return to reflect Wife as an Indiana resident and Husband as an Indiana resident from June 30, 2013 to December 31, 2013. Taxpayers provided copies of the Indiana tax returns that they filed.

The issue is whether, for the tax years 2012 and 2013, Husband 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, taxpayers are required to provide documentation explaining and supporting their 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. For Indiana income tax purposes, the presumption is that taxpayers properly and correctly 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 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.

Additionally, *45 IAC 3.1-1-22* states:

**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**).

Thus, 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.

In *Croop v. Walton*, 157 N.E. 275 (Ind. 1927), a taxpayer, Mr. Walton, moved from Sturgis, Michigan to Elkhart, Indiana by selling his Michigan residence and purchasing a residence in Indiana, where he and his wife lived for several years for the benefits of his wife's health. Indiana assessed Mr. Walton state income tax on his intangible property. *Id.* at 276-78. Mr. Walton disagreed, arguing that his intangible property was not subject to Indiana taxes because he was domiciled in Michigan. *Id.* The court found that Mr. Walton owned and managed a company and stores in Michigan; that Mr. Walton maintained his membership with lodges, clubs, and a church in Sturgis, Michigan; that Mr. Walton on various occasions exercised his civil and political rights in Sturgis, Michigan; and that Sturgis, Michigan was used in Mr. Walton's legal documents, including policies of insurance, mortgages, leases, contracts, and other instruments. *Id.* Ruling in favor of Mr. Walton, the court concluded that Mr. Walton did not change his domicile from Michigan to Indiana and his intangible property was not subject to certain Indiana taxes. *Id.* The court explained, in relevant part, that:

The word "inhabitant," as used in our statute regulating the imposition of taxes, means "one who has his domicile or fixed residence in a place." " **If the 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.**"

No precise or exact definition of the term " **domicile**," which responds to all purposes, seems to be possible. It 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.**

Many cases collected in the works just cited have held that at times the cognate terms "residence" and "domicile" are synonymous, but many other cases there cited and quoted from have held that the two terms, when accurately used, are not convertible, but that there is a very clear and definite distinction between them. "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 ....

Domicile is of three kinds-domicile of origin or birth, domicile by choice, and domicile by operation of law.... **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 277-78.

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

In *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court reiterated similar analysis and determined that Mr. Bayh met the residency requirement for the office of Governor because Mr.

Bayh's domicile remained in Indiana even though Mr. Bayh moved to different states for various reasons for many years. Specifically, the court illustrated, in relevant part, that:

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 place 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." A self-serving statement of intent is not sufficient to find that a new residence has been established. Intent and conduct must converge to establish a new domicile. Id. at 1317-18 (Ind. 1988).

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

During the protest process, Taxpayers submitted additional documentation to support their assertions that Husband was not an Indiana resident until June 30, 2013 and did not owe any additional Indiana income tax for tax years 2012 and 2013. Specifically, Taxpayers' supporting documents included:

- Husband's Florida driver's license records from 1999
- Copies of actual Florida driver's licenses issued June 2, 2006 and July 31, 2012.
- Warranty Deed for Florida home dated March 1, 2012.
- Husband's lease agreement in Florida through May 9, 2013.
- Utility activity in the Florida residence through June 2013.
- Letter from Husband's employer confirming residency and fulltime employment through August 2013.
- Husband's voting record in Florida through the 2012 Presidential election
- Husband's Indiana driver's license issued in August 27, 2013.

Upon review, Taxpayers' supporting documentation demonstrated that Husband was not domiciled in Indiana until June 30, 2013. While Taxpayers did purchase a house in Indiana in 2011, the records supported that Wife did not physically move to Indiana until March 2012 and Husband until 2013.

In short, any individual who was domiciled in this state during the taxable year is a resident in this State. IC §6-3-1-12(a). "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.'" Bayh, 521 N.E.2d at 1317-18. In short, the Department agrees that Taxpayers met their burden of proof to demonstrate that Wife was an Indiana resident in 2012 and Husband was not an Indiana resident until June 30, 2013.

## FINDING

Taxpayers' protest is sustained.

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

An *html* version of this document.