DEPARTMENT OF STATE REVENUE

01-20160386N.LOF

Letter of Findings: 01-20160386N
Indiana Individual Income Tax
For The Tax Years 2011 & 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

For purposes of the Indiana individual income tax, although Individual neglected to change her mailing address for an income source, Individual provided sufficient documentation to show that Individual was not required to file 2011 and 2012 Indiana individual income tax returns because Individual was not an Indiana resident.

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.

Taxpayer protests the Department's proposed assessment for the 2011 and 2012 tax years.

STATEMENT OF FACTS

The Indiana Department of Revenue ("Department") determined that Taxpayer was an Indiana resident for 2011 and 2012, that Taxpayer failed to file the 2011 and 2012 Indiana income tax returns, and that Indiana income tax was due.

Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer 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 Taxpayer income tax for the 2011 and 2012 tax years on the ground that Taxpayer had an Indiana Income Source. Thus, the Department deemed Taxpayer as an Indiana resident that failed to file the 2011 and 2012 Indiana income tax returns, and that the Indiana income tax was due.

Taxpayer contended that she was not required to file the 2011 and 2012 Indiana income tax returns because Taxpayer was not an Indiana resident. Specifically, Taxpayer asserted that she was domiciled in Ohio. Additionally, Taxpayer claimed that she was a resident in Ohio for 2011 and 2012 and filed the income tax returns reporting her income tax to Ohio.

The issue is whether, for 2011 and 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, 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**.
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> **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.**
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> 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:
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> (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.
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> (**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**."
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> 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**.
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> 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."
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> "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 . . . .
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> 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.
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> (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."**
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> A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence.
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> 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).
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> (Internal citations omitted) (**Emphasis added**).

Taxpayer explained that she moved to Ohio for work and her only tie to Indiana was due to her using her mother's address to send bank statements following her move to Ohio. Due to her difficulty in receiving her bank statements and replacement cards during her move to Ohio, she was directed by a Bank representative to keep her mom's address, as that was the easiest way to ensure that Taxpayer received the necessary mail. During the protest process, Taxpayer submitted additional documentation to support her assertion that she was not an Indiana resident and did not owe any Indiana income tax for 2011 and 2012. Specifically, Taxpayer's supporting documents included:

- Ohio Driver's License
- Ohio BMV registration
- Ohio Tax returns
- Rental Statement for Ohio address
- Renter's Insurance Billing Statement covering Ohio Address
- Car Insurance Statement and cards sent to Ohio Address
- Electric bills at the Ohio Address
- Cable bills at the Ohio Address

Other than visiting family once or twice a year and neglecting to change her banking address, Taxpayer has no other attachment to Indiana. Upon review, Taxpayer's supporting documentation demonstrated that Taxpayer was not domiciled in Indiana in 2011 and 2012. While Taxpayer did not change the address of an income source from her mother's Indiana address, Taxpayer did not move back to Indiana, nor did Taxpayer spend 183 days or more in Indiana in 2011 and 2012.

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 Taxpayer met the burden of proof to demonstrate that she was not an Indiana resident for 2011 and 2012.

FINDING

Taxpayer's protest is sustained.

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