

**Letter of Findings: 01-20140649**  
**Indiana Individual Income Tax**  
**For The Tax Year 2011**

**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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 2011 Indiana individual income tax return because he was domiciled in Indiana and was an Indiana resident.

**ISSUE**

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

**Authority:** IC § 6-1.1-12-37; 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; [45 IAC 3.1-1-21](#); [45 IAC 3.1-1-22](#); [50 IAC 24-2-5](#); 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); Bruns v. Dep't of State Revenue, 725 N.E.2d 1023 (Ind. Tax Ct. 2000); 705 Ill. Comp. Stat. Ann. 305/2 (West 1998); Webster's New Riverside University Dictionary (1988).

Taxpayer protests the Department's proposed assessment for the 2011 tax year.

**STATEMENT OF FACTS**

Taxpayer is individual who owns a home in Indiana. Taxpayer did not file an Indiana income tax return for the tax year 2011. The Indiana Department of Revenue ("Department") determined that for the tax year 2011, Taxpayer was an Indiana resident, that Taxpayer failed to file his Indiana income tax return, and that Indiana income tax was due for the 2011 tax year.

Taxpayer timely protested the assessment. An administrative hearing was held. This Letter of Findings ensues and addresses Taxpayer's protest of the proposed assessment for the tax year 2011. 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 owns a home in Indiana and claims the "homestead" deduction (or exemption) on his Indiana home. Taxpayer maintains an Indiana driver's license, which was renewed in 2012. In addition, Taxpayer registered and periodically renewed his vehicle registration in Indiana. The Department thus concluded that Taxpayer was required to file his 2011 Indiana income tax return and that Indiana income tax was due for the 2011 tax year.

Taxpayer, to the contrary, claimed that he was not required to file his 2011 Indiana income tax return and did not owe any Indiana income tax because he was domiciled in Illinois and was not an Indiana resident for the tax year at issue. The issue is whether, for the tax year 2011, 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.

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).**

Indiana law further defines "[h]omestead" as "an individual's principal place of residence . . . that is located in Indiana" and that "the individual owns . . ." IC § 6-1.1-12-37(a)(2). "'Principal place of residence' means an individual's true, fixed, permanent home to which the individual has the intention of returning after an absence." [50 IAC 24-2-5](#). A taxpayer is entitled to claim a deduction, known as homestead deduction (or exemption), against taxes imposed on his or her homestead property pursuant to IC § 6-1.1-12-37(e). When the taxpayer is no longer qualified for the homestead deduction (or exemption), the taxpayer must notify the auditor of the county where the homestead is located within sixty days after the date of that change. IC § 6-1.1-12-37(f).

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.

For example, 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 referenced *Bruns v. Dep't of State Revenue*, 725 N.E.2d 1023 (Ind. Tax Ct. 2000), to support his argument that he was not an Indiana resident for 2011. In *Bruns*, Dr. David Bruns, an automobile owner was assessed Indiana motor vehicle exercise tax on the ground he was Indiana resident. Dr. Bruns maintained a permanent residence in Illinois and his driver's license and license plate were issued in Illinois. Because he was employed by the State of Indiana, Dr. Bruns commuted and stayed in a rooming house during weekdays in

Indiana, but he always returned to his Illinois residence. The Indiana Tax Court determined that Dr. Bruns was not responsible for the tax because Mr. Bruns was domiciled in Illinois.

In this instance, Taxpayer stated in relevant part that "I confess to [claim] 'Indiana Homestead Deduction.'" Taxpayer also admitted during the hearing that he maintains an Indiana driver's license which was renewed in 2012. Moreover, Taxpayer agreed that he registered or renewed the license plate of his motor vehicle in Indiana. Nonetheless, Taxpayer contended in relevant part that:

My domicile is at . . . Illinois, though I continue to own property in Indiana. My domicile changed from Indiana to Illinois in 2001 or 2002 following my retirement. . . .

Taxpayer asserted that he is registered to vote in Illinois since 2002, had a will that mentioned Illinois, and was summoned for petit jury duty in Illinois. Taxpayer also contended that "I have close ties with Chicago," and "in most years . . . I have subscribed to both the Chicago Symphony Orchestra and Lyric Opera of Chicago. Each attendance at a performance generally involves an overnight stay in Chicago." Thus, Taxpayer believed that he changed his domicile to the State of Illinois. Taxpayer further claimed that he did not spend 183 days or more in Indiana because he spent time visiting other states (in the United States) or a foreign country where he has shared ownership of a house. To support his protest, Taxpayer submitted additional documentation which includes his 2010 "Last Will," his 2011 Illinois Individual Income Tax Return, his letter to the Internal Revenue Service ("IRS"), Summons For Standby Jury Service, and excerpts of boarding passes. Thus, the first question is whether Taxpayer effectively changed his domicile to the State of Illinois and thus was not domiciled in Indiana.

As discussed earlier, Taxpayer may be considered a resident for 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 wrote to IRS changing his mailing address. Additionally, Taxpayer was summoned for "Standby Jury Service" in an Illinois county. One of the requirements is to be an inhabitant of that county to serve as a petit juror in Illinois. 705 Ill. Comp. Stat. Ann. 305/2(1) (West 1998). To "inhabit" is to "reside in" and "inhabitant" means "[a] resident." Webster's New Riverside University Dictionary 629 (1988). Taxpayer further offered a four-page living will made in 2010, stating "[Taxpayer] . . . of . . . Illinois, make this Will . . . ." Taxpayer's supporting documentation demonstrated that he has more than one residence and he took the first step and intended to move to Illinois.

On the other hand, Taxpayer has owned his Indiana home for more than a decade. For the tax year 2011, Taxpayer affirmatively claimed the Indiana homestead deduction on his Indiana home. By doing so, Taxpayer expressly informed the State of Indiana that he is entitled to the benefit of paying a lower property tax and that his "true, fixed, permanent home to which [he] has the intention of returning after an absence." Taxpayer stated that he was a person of Illinois in his 2010 will, but the will was prepared by an attorney whose office is located in Indiana. Periodically, Taxpayer renewed and maintains his Indiana driver's license and Indiana license plate on his vehicle. The renewal of his Indiana license further expressly affirmed his Indiana tie with Indiana and demonstrated that he did not intend to abandon his Indiana domicile. Thus, although Taxpayer frequented Chicago and spent more time in Illinois, he eventually returned to his Indiana home. Similar to Mr. Bruns who maintained his domicile in Illinois, Taxpayer retained and did not abandon his Indiana domicile.

Finally, because Taxpayer maintained a permanent place of residence in Indiana, he may also qualify as Indiana resident when he spent more than 183 days during the year at issue in Indiana. IC § 6-3-1-12; [45 IAC 3.1-1-21](#). Taxpayer presented airline boarding passes and airline tickets, but declined the Department's request to submit copy of his passport to substantiate his assertion. Without additional documentation, those travel documents could not be verified. Since the Department concludes that Taxpayer was domiciled in Indiana, the question regarding whether Taxpayer spent more than 183 days of the 2011 year in Indiana is moot.

In short, given the totality of the circumstances, Taxpayer was Indiana resident because he was domiciled in Indiana and thus was required to file 2011 Indiana income tax return.

## FINDING

Taxpayer's protest is respectfully denied.

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