

INFORMATION BULLETIN # 55

INCOME TAX

SEPTEMBER 2001

(Replaces Information Bulletin # 55, dated April 1988)

DISCLAIMER: Information Bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on the Department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: DETERMINATION OF RESIDENCE FOR INDIVIDUALS LEAVING INDIANA FOR EMPLOYMENT IN A FOREIGN COUNTRY

REFERENCES: IC 6-3-1-11; IC 6-3-1-12; IC 6-3-4-4.1; and 45 IAC 3.1-1-22

INTRODUCTION:

The purpose of this Bulletin is to briefly summarize the responsibilities for an individual who is working in a foreign country and still maintains his residency and domicile in Indiana.

I. RESIDENT DEFINED

The term “resident” means (a) any individual who was domiciled in Indiana during the taxable year; (b) any individual who maintains a permanent place of residence in Indiana and spends more than one hundred eighty three (183) days of the taxable year in Indiana; (c) any estate of a deceased person defined in (a) or (b); or (d) any trust which has a situs in Indiana.

II. DOMICILE DEFINED

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 a 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 presented in each individual case. Relevant facts in determining whether a new domicile has been established include: (1) purchasing or renting residential property; (2) registering to vote; (3) filing a resident state income tax return; (4) receiving public assistance; (5) titling and registering a motor vehicle; or (6) preparing a last will and testament which includes the state of domicile.

III. RESIDENT STATUS AND DOMICILE

You may be a resident of Indiana for income tax purposes even though you were living, working, or studying abroad during the taxable year.

To determine your resident status for income tax purposes, you must consider where you were domiciled and where you maintained a permanent place of abode during the taxable year.

If you are a United States citizen domiciled in Indiana, and you go to a foreign country for a limited amount of time because of an assignment by your employer, or for study, research or any other purpose, you do not lose or change your Indiana domicile unless you can clearly show that you intend to remain in that foreign country permanently and that you do not plan to return to Indiana.

IV. TAXABILITY OF INCOME EARNED IN A FOREIGN COUNTRY

If you are a United States citizen domiciled in Indiana while in a foreign country, you must file your Indiana individual income tax return as a resident, (Form IT-40). As an Indiana resident, you are subject to tax on income you received from all sources, including income earned in a foreign country that was included in your federal adjusted gross income.

If you are domiciled in Indiana and then go to a foreign country and clearly show your intent to establish your domicile outside of Indiana, then you must file your Indiana individual income tax return as a part-year resident, (Form IT-40PNR). As a part-year resident you are subject to tax on all your income from all sources for the part of the year you were an Indiana resident, and on any business income from Indiana for the part of the year you were a nonresident of Indiana.

V. FOREIGN TAX CREDIT

If you are entitled to a credit for taxes paid to a foreign country on your federal return, you may also be allowed a credit for Indiana income tax purposes. The computation of this credit is the same as computing the credit for taxes paid to other states. The credit is the lesser of (a) an amount equal to the Indiana tax rate multiplied by the income subject to tax in both Indiana and the foreign country; or (b) the actual amount of tax paid to the foreign country. This credit cannot exceed your Indiana adjusted gross income tax.

In order to be allowed a credit for tax paid to a foreign country you must attach a copy of Federal Form 1116, (Computation of Foreign Tax Credit), to your Indiana tax return.

VI. EXTENSION OF TIME TO FILE

If you are a United States citizen traveling, living or studying in a foreign country at the time your federal personal income tax is due, you qualify for an automatic two-month extension for filing your federal return. If you qualify for this federal extension, you are automatically entitled to the same extension plus thirty days for filing your Indiana personal income tax return. You do not have to request or apply for the Indiana extension as long as you attach to your Indiana return a statement that you qualify for the federal extension.

Also, if you receive an extension beyond the two-month period for filing your federal return, you are again automatically entitled to a similar extension for filing your Indiana return. Attach a copy of your approved federal extension to your Indiana return.

This is an extension of time to file and not an extension of time to pay. If a remittance is due, Form IT-9, (Indiana Department of Revenue Extension of Time to File), should be filed and payment made on or before the due date of the tax return.

VII. COUNTY TAX

If your county of residence was an adopting county on January 1 of the tax year, you are subject to county income tax. If you are an Indiana resident you must have an Indiana county as your county of residence, even though you may be in a foreign country at the time. The county tax is computed on Schedule CT-40 (County Tax Schedule for Indiana Residents) located in the Indiana individual income tax booklet.

VIII. PAYMENT OF ESTIMATED TAX

A taxpayer who expects to owe four hundred dollars (\$400) or more in Indiana adjusted gross income tax and/or four hundred dollars (\$400) or more in county income tax after subtracting all credits against the tax, is required to pay estimated tax. If you are paying estimated tax for the first time, you should mail Form ES-40 to the Department. You can make the first installment on the tax return. Mailing the Form ES-40 will ensure that you receive the estimated income tax voucher booklet for the remaining installments.

A ten percent (10%) penalty will be assessed for underpayment of estimated taxes. For further information, you may request Information Bulletin #3 from the Department or through its website at www.in.gov/dor/publications/bulletin/index.html



Kenneth L. Miller
Commissioner