

Letter of Findings Number: 08-0063
Adjusted Gross Income Tax
For Tax Period: 2006

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ISSUE

I. Adjusted Gross Income Tax – Imposition.

Authority: IC § 6-3-2-1(a), [IC 6-3-2-2\(a\)](#), IC § 6-8.1-5-1(c). *State Election Board v. Evan Bayh*, 521 N.E.2d 1212 (Ind. 1988).

The Taxpayer protests the imposition of the Indiana adjusted gross income tax.

STATEMENT OF FACTS

The Taxpayer worked in Afghanistan and filed a 2006 Indiana adjusted gross income tax return indicating tax due to the state of \$1,936. The Taxpayer remitted \$100 with the return. Later, the Taxpayer filed an amended Indiana adjusted gross income tax return as a nonresident indicating that there was no adjusted gross income tax due the state and requesting a refund of the \$100 paid with the original return. The Indiana Department of Revenue (Department) issued a bill to the Taxpayer for the remainder of the 2006 adjusted gross income taxes owed as computed on the original return, penalty, and interest. A hearing was held and this Letter of Findings results.

I. Adjusted Gross Income Tax – Imposition.

DISCUSSION

The Department assessed adjusted gross income tax on the Taxpayer's income as an Indiana resident. The Taxpayer protested the assessment of additional tax. The Taxpayer contended that he did not spend enough time in Indiana during 2006 to be considered a resident because he was working in a civilian position in Afghanistan.

The issue to be determined is whether or not the Taxpayer was an Indiana resident for purposes of Indiana adjusted gross income taxation during the 2006 tax year.

All tax assessments are presumed to be valid. IC § 6-8.1-5-1(c). The Taxpayer bears the burden of proving that any assessment is incorrect. *Id.*

Indiana imposes an adjusted gross income tax pursuant to the following provisions of IC § 6-3-2-1(a):

Each taxable year, a tax at the rate of three and four-tenths percent (3.4%) of adjusted gross income is imposed upon 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.

For purposes of adjusted gross income tax, IC § 6-3-1-12 defines the term "resident" as "any individual who was domiciled in this state during the taxable year." In accordance with this definition, the Taxpayer would be considered an Indiana resident and subject to tax on income earned during the period when he was domiciled in Indiana.

Indiana tax assessments are presumed to be correct and taxpayers bear the burden of proving that any particular assessment is incorrect. IC § 6-8.1-5-1 (b).

The Indiana Supreme Court considered the issue of the meaning of "domicile" in *State Election Board v. Evan Bayh*, 521 N.E.2d 1212 (Ind. 1988). In that case, Mr. Bayh desired to run for governor of the state. Pursuant to public discussion concerning whether Mr. Bayh met the residency requirements for governor, Mr. Bayh sought a declaratory judgment determining whether he met the residency requirement. The Indiana Supreme Court affirmed the trial court's decision that the standard for residency was whether or not Mr. Bayh had an Indiana domicile. It also affirmed that Mr. Bayh was domiciled in Indiana.

Domicile in Indiana is defined as "the place where a person has his true, fixed, permanent home and principal establishment, and to which place he has, whenever he is absent, the intention of returning." *Id.* at 1317. Domicile is not determined by the location of the person's body. Once established, a person's domicile is presumed to continue until the person's actions provide adequate evidence that, along with moving to another jurisdiction, the person intends to establish a domicile in the new residence. Whether or not the person has successfully established a new domicile is a question of fact to be determined by the trier of fact. *Id.* at 1317. Some of the facts considered were that Mr. Bayh paid in-state tuition at Indiana University, out-of-state tuition at the University of Virginia law school and voted in the elections in Vigo County, Indiana. He also registered for the draft from Indiana. The Supreme Court considered these acts adequate evidence to prove that Mr. Bayh intended to return to Indiana and retained his Indiana domicile even though he had lived outside the state for several years.

In this case, the Taxpayer filed Indiana tax returns for the tax years 1993, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, and 2004. The Taxpayer lived in Indiana with his wife the year before he went to work in Afghanistan. He went directly to Afghanistan from Indiana. The Taxpayer's wife remained in Indiana throughout

2006. The Taxpayer built a house in Indiana during 2006 for himself and his wife. The Taxpayer had an Indiana driver's license which he renewed during the year 2006. The Taxpayer is registered to vote in Indiana. Although the Taxpayer spent less than thirty days in Indiana during 2006, the totality of the Taxpayer's actions clearly indicate that the Taxpayer intended to remain domiciled in Indiana rather than changing his domicile to another jurisdiction.

The Taxpayer did not meet his burden of proving that he was entitled to file a non resident Indiana adjusted gross income tax return for the tax year 2006 pursuant to IC § 6-3-1-12.

FINDING

The Taxpayer's protest is respectfully denied.

CONCLUSION

The Taxpayer's protest is denied.

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