

**Letter of Findings Number: 01-20130079
Individual Income Tax
For the Years 2009, 2010, and 2011**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Individual Income Tax – Imposition.

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 § 6-3-3-3; IC § 6-8.1-5-1; State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988).

Taxpayer protests the imposition of Indiana individual income tax.

STATEMENT OF FACTS

Taxpayer is an individual. Prior to mid-2009, Taxpayer was an Indiana resident. However, according to Taxpayer, Taxpayer began employment outside Indiana in mid-2009 and has continued to work and live in Indiana.

Sometime after mid-2009, Taxpayer returned to Indiana and renewed his Indiana driver's license. Based on this renewal, the Indiana Department of Revenue ("Department") determined that Taxpayer was an Indiana resident for the years in question. The Department assessed Taxpayer additional tax, which Taxpayer protested. The Department conducted an administrative hearing and this Letter of Findings results. Additional facts will be supplied as necessary.

I. Individual Income Tax – Imposition.

DISCUSSION

Taxpayer protests the imposition of individual income tax for 2009, 2010, and 2011. Taxpayer claims to have not been a resident of Indiana during those years. The issue is whether Taxpayer was an Indiana resident for the years in question.

IC § 6-3-2-1(a) provides that:

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.

IC § 6-3-1-3.5(a) provides that "In the case of all individuals, 'adjusted gross income' (as defined in Section 62 of the Internal Revenue Code), modified as follows: [List of modifications]"

IC § 6-3-1-12 defines "resident" as:

The term "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, or (c) any estate of a deceased person defined in (a) or (b), or (d) any trust which has a situs within this state.

IC § 6-3-1-13 states "The term 'nonresident' means any person who is not a resident of Indiana."

Even though Taxpayer was not physically located in Indiana for the periods in question (except for occasional visits) and did not work in Indiana during the periods in question, the issue of whether Taxpayer was domiciled in Indiana remains. If Taxpayer was domiciled in Indiana, he is a resident under IC § 6-3-1-12 regardless of his physical location or his duration in any jurisdiction.

The Indiana Supreme Court considered the issue of the meaning of "domicile" in State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988). In that case, Mr. Bayh desired to run for governor of the state. Pursuant to public discussions 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 the determination 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. A change of domicile requires an actual moving with an intent to move 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." Id. (citing State ex rel. Flaughen v. Rogers, 77 N.E.2d 594, 595-96 (Ind. 1948)).

Further, "A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence." Bayh, 521 N.E.2d at 1317. (citing Yonkey v. State (1866), 27 Ind. 236) As further stated in Bayh,

Where an old resident and inhabitant, having his domicil from his birth in a particular place, goes to another place or country, the great question whether he has changed his domicile... will depend mainly upon the question, to be determined from all the circumstances, whether the new residence is temporary or permanent.... If the departure from one's fixed and settled abode is for a purpose in its nature temporary, whether it be business or pleasure, accompanied with an intent of returning... as soon as such purpose is accomplished; in general, such a person continues to be an inhabitant... for all purposes of enjoying civil and political privileges, and of being subject to civil duties.

Bayh, 512 N.E.2d at 1317 (quoting *Culbertson v. Board of Commissioners of Floyd County*, 52 Ind. 361, 368-69 (1876)).

In this case, even though Taxpayer has provided some indicia of establishing a residence outside Indiana, such as assuming employment outside Indiana, renting real estate outside Indiana, and filing a tax return as a full-year resident of another state for one year, Taxpayer has not provided sufficient information at this time to establish that he renounced his Indiana domicile and affirmatively established a new domicile. Thus, Taxpayer has not met his burden of establishing that the proposed assessments were incorrect pursuant to IC § 6-8.1-5-1(c).

Taxpayer raises an alternative assertion that, even if the Department determines that he is an Indiana resident, Taxpayer is entitled to a credit for taxes paid to other jurisdictions pursuant to IC § 6-3-3-3. With regard to this contention, Taxpayer has provided returns from other states demonstrating that he is entitled to a credit for taxes paid to other states. Therefore, Taxpayer's protest is sustained to the extent provided under IC § 6-3-3-3.

FINDING

Taxpayer's protest is respectfully denied with regard to domicile. Taxpayer's protest is sustained with regard to the credit for taxes paid to other states as provided under IC § 6-3-3-3.

Posted: 05/29/2013 by Legislative Services Agency
An [html](#) version of this document.