

**Letter of Findings: 01-20140470  
Individual Income Tax  
For the 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

For purposes of the Indiana individual income tax husband and wife failed to establish that they had established a permanent, Florida residence. Husband and wife's continued lease of their Indiana home - transferred previously to a qualified trust - established that they had not abandoned their original Indiana domicile.

### ISSUE

#### **I. Individual Income Tax - Residency.**

**Authority:** IC § 6-3-2-1(a); IC § 6-3-1-12; IC § 6-8.1-5-1(c); Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); State Election Board v. Bayh, 521 N.E.2d 1313 (Ind. 1988); In the Matter of Evrard, 333 N.E.2d 765 (Ind. 1975); Board of Medical Registration and Examination v. Turner, 168 N.E.2d 193 (Ind. 1960); Croop v. Walton, 157 N.E. 275 (Ind. 1927); Culbertson v. Bd. Of Comm'rs of Floyd County, 52 Ind. 361 (1876); Yonkey v. State, 27 Ind. 236 (Ind. 1866); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 3.1-1-22](#); [45 IAC 3.1-1-23\(2\)](#); [45 IAC 3.1-1-23\(3\)](#).

Taxpayers protest the assessment of individual Indiana income tax because Taxpayers argue they were not residents of Indiana during 2011.

### STATEMENT OF FACTS

The Indiana Department of Revenue ("Department"), in a letter to Taxpayers dated May 2014, concluded that "[b]ased on information reported to the Indiana Department of Revenue, we have determined that you have unreported income for tax year 2011." Subsequently, the Department issued a "Proposed Assessment" of 2011 individual Indiana income tax. Taxpayers disagreed with the assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayers' representative explained the basis for the protest. This Letter of Findings results.

#### **I. Individual Income Tax - Residency.**

### DISCUSSION

The issue is whether Taxpayers have provided sufficient evidence to demonstrate that they are no longer residents of Indiana but have established a permanent Florida domicile.

The Department disagreed with Taxpayers' assertion that they were not residents of Indiana during the tax year at issue and issued a proposed assessment of additional individual income tax and interest. Taxpayers protested the imposition of income tax, stating that they are no longer residents of Indiana. As explained by Taxpayers' representative, "[Taxpayer] maintains his domicile and permanent residence and abode in Florida and accordingly, is a nonresident of Indiana."

All tax assessments are prima facie evidence that the Department's claim for the tax is valid, and each taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation

explaining and supporting his or her challenge that the Department's position 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). In reviewing a taxpayer's argument, the Indiana Supreme Court has held, that when it examines a statute that an agency is "charged with enforcing . . . we defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party." *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes an income tax on "the adjusted gross income of every resident person . . . ." IC § 6-3-2-1(a). For income tax purposes, "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 . . . ." IC § 6-3-1-12.

Additionally, an individual who files federal income tax returns as a nonresident citizen "is considered as being domiciled in Indiana and his income taxable as a resident citizen, if he maintains a place of abode in Indiana immediately prior to residing in a foreign country as a nonresident citizen of the United States, and has not permanently established his domicile in a foreign country or in another state . . . ." [45 IAC 3.1-1-23\(3\)](#).

To establish a domicile, a taxpayer "must be physically present at a place, and must have the simultaneous intent of establishing a home at that place." [45 IAC 3.1-1-22](#). For income tax purposes, "a person has only one domicile at a given time even though that person maintains more than one residence at that time." *Id.* Additionally, "[o]nce a domicile has been established, it remains until the conditions necessary for a change of domicile occur." *Id.* "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." *Croop v. Walton*, 157 N.E. 275, 278 (Ind. 1927).

In *State Election Board v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court considered the standard by which a "domicile" is established. The court determined that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. Specifically, the court stated, 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." A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence. *Id.* 1317 (Internal citations omitted).

The supreme court concluded that:

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 1318 (Internal citations omitted).

In an earlier case, the Indiana Supreme Court stated that in order to establish a new residence, a taxpayer "must show . . . evidence of acts undertaken in furtherance of the requisite intent, which make that intent manifest and believable." In the *Matter of Evrard*, 333 N.E.2d 765, 768 (Ind. 1975).

The Department's regulation provides that "[t]here is no one set of standards that will accurately indicate the person's intent in every relocation." [45 IAC 3.1-1-22](#). Instead, the determination is made on a case by case basis. *Id.* Facts to be considered include:

- (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. Id.

In addition, courts have considered a taxpayer's contemporaneous declarations identifying that taxpayer's "home;" insurance policies, mortgages, contracts or other instruments indicating the taxpayer's home; and membership in clubs, churches, or other social groups in a place. Croop, 157 N.E. at 278-79. Finally, courts have considered the location of taxpayer's household goods and mailing address. Board of Medical Registration and Examination v. Turner, 168 N.E.2d 193, 197 (Ind. 1960); See also, Culbertson v. Bd. Of Comm'rs of Floyd County, 52 Ind. 361 (1876). However, a taxpayer "seeking to establish his claim of exemption from taxation on the ground of nonresidence is not required to show that his property was assessed elsewhere." Croop, 157 N.E. at 276.

Taxpayers are - or were - longtime residents of Indiana. There is no dispute that they own or owned a home in Indiana and that they continue to make exclusive use of that home on at least a part-time basis. However, Taxpayers explained that in 1999 they entered into a "Qualified Personal Residence Trust" in which they purportedly transferred ownership interest of their Indiana residence to the qualified trust with their daughter as trustee. The trust agreement contained a provision allowing Taxpayers to occupy the Indiana residence for five years without paying rent.

In 2004, Taxpayers entered into a "Residential Lease" with the trust in which the Taxpayers agreed to pay monthly rent of \$6,500. In return, Taxpayers obtained the right to use and occupy the Indiana home "exclusively as a private single family residence." Taxpayers' daughter - as trustee - agreed not to assign the lease, sublet the property, or grant any third party the right to use the Taxpayers' home. In addition, trustee daughter agreed to "make no significant alterations to the buildings on the demised premises or construct any additional building or make other significant improvements on the demised premises with the prior written consent of [Taxpayers]."

Under the terms of the lease agreement, Taxpayers were "responsible for arranging and paying for all utility services required on the [Indiana residence]" and to "keep and maintain the leased premises and appurtenances in good, clean, attractive, and first class condition and repair during the term of [the] Lease." Taxpayers were responsible for paying the cost of "fire and general casualty insurance for the premises" along with "liability insurance of the premises." The parties agreed that both Taxpayers and the trust would be designated as joint "insureds" on the insurance policy.

Insofar as payment of the property's "real property taxes, fees and special assessments," the trust agreed to pay the costs but that the Taxpayers would "promptly reimburse" the trust for those costs.

Nonetheless, Taxpayers maintain that they are no longer Indiana residents but have established a permanent Florida residence. Taxpayers state that they rent "residential property in Florida," occupy the Florida residence "over six months per year," are "registered to vote in Polk County, Florida since September 5, 2000 for federal and local elections," have "titled and registered two motor vehicles in Florida," "filed Florida intangibles tax returns until the intangibles tax was repealed," filed "federal income tax returns using [their] Florida address," "hold a Florida driver license," "lists Florida as [husband's] domicile in his last will and testament," and are members of both a Florida social club and church.

However, information obtained by the Department establishes that Taxpayers applied for and obtained Indiana vehicle license plates in 2011, 2012, and 2014 and - in applying for those license plates - listed Indiana as their home address. In addition, Taxpayers applied and received an "Indiana Disability Parking Placard" in 2012 under authority of IC § 9-18-22-1.

Taxpayers' representative points to [45 IAC 3.1-1-23\(2\)](#) which states in part:

Indiana will not tax income of a taxpayer who moves from Indiana and becomes an actual domiciliary of another state or country except that income received from Indiana sources will continue to be taxable.

However, Taxpayers' representative states that "[husband] did not have Indiana sourced income in 2011, as all his income is derived from publicly traded and other portfolio investment income (capital gain, dividend, and interest)."

Taxpayers argue that have provided evidence that they occupy a Florida home and have performed specific acts which establish that the Florida home is now their permanent residence for purposes of the Indiana individual income tax. However, as explained by the supreme court in Bayh, "A change of domicile requires an actual moving with an intent to go to a given place and remain there." Bayh, N.E.2d at 1317. In this case, Taxpayers have not manifested an intention to abandon their Indiana residence but continue to rent their Indiana home and

obligated themselves, under the terms of the lease agreement, to perform many of the activities consistent with home ownership in exchange for the right to occupy their home "exclusively as a private single family residence." Taxpayers' application for Indiana vehicle license plates in 2011, 2012, and 2014 further manifests the Taxpayers' intention to maintain and not abandon their Indiana residency status. It is long held Indiana law that to change one's domicile *[sic]*, "[T]here must be an abandonment of the first domicile with an intention not to return to it . . . ." Croop, 157 N.E. at 278 (Emphasis added). As the Indiana Supreme Court held in *Yonkey v. State*, 27 Ind. 236 (Ind. 1866), a change of residency "requires an intention in order to change the domicil, and . . . if a person leaves his place of residence temporarily, on business or otherwise, but with the intention of returning, he does not thereby lose his domicil . . . ."

Taxpayers have not established that they abandoned their Indiana domicile or their residency status for purposes of the Indiana individual income tax and remain subject to the privileges and duties of that status.

### **FINDING**

Taxpayers' protest is respectfully denied.

*Posted: 04/29/2015 by Legislative Services Agency*  
An [html](#) version of this document.