

Letter of Findings: 01-20150033
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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, individual failed to establish that he had established a permanent Nevada or Michigan residence. Individual's uninterrupted ownership of his Indiana home - including claiming the Homestead Credit on that residence - manifested an intention to retain his Indiana domicile.

ISSUE

I. Individual Income Tax - Residency.

Authority: IC § 6-1.1-12-37(a)(2); IC § 6-1.1-12-37(f); 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\(3\)](#).

Taxpayer protests the assessment of individual Indiana income because Taxpayer argues he was not a resident of Indiana during 2011.

STATEMENT OF FACTS

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

I. Individual Income Tax - Residency.

DISCUSSION

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, "Once 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 Indiana 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.

Taxpayer disagrees with the assessment on the ground that he established a residency elsewhere; first in Nevada and subsequently in Michigan.

Taxpayer explains that he first relocated to Nevada in 2009 and established a domicile in that state. To that end, Taxpayer provided a copy of an apartment lease agreement signed November 2011, a Nevada vehicle registration receipt, and a Nevada driver's license. Taxpayer further explains:

We also had a renter's insurance policy for the apartment, auto insurance [] for our vehicle, mail service established, voter registration, and utilities for our Nevada residence.

Taxpayer's employer announced it was ceasing business operations in Nevada beginning December 2011. As a result, Taxpayer resigned July 2011 and sought employment elsewhere. Taxpayer was hired by a company located in Michigan and - according to Taxpayer - resided in Michigan "for the remainder of 2011 and through 2013" Taxpayer provided a copy of his Michigan business card, Michigan vehicle registration, a W-2 form issued by his Michigan employer, a 2011 Michigan income tax return, a copy of his Michigan apartment lease, and a copy of his insurer's "Explanation of Benefits" which designated a Michigan address. In addition, Taxpayer states that "residing in Michigan was a condition of employment for a Corporation position for [employer]." The Michigan employer's home office was located in Indiana and - at least initially - that employer issued Taxpayer W-2 forms listing Taxpayer's Indiana address as his residence.

Taxpayer further explains that while at his employer's Indiana home office location, he experienced a medical problem which led to an unanticipated decision to relocate back to Indiana.

During the period while he worked in Nevada and Michigan, Taxpayer retained his Indiana home. However, Taxpayer explained that "[b]ecause of the severe real estate decline in property values, we decided not to place our house on the market and re-evaluate in response to property value assessments and economic job conditions." Taxpayer explained that his adult son and his wife occupied the Indiana home during the time he spent in Nevada and Michigan. During the period in which Taxpayer was outside the state, some of Taxpayer's mail was delivered to one of the two out-of-state locations, but some of the mail was delivered to Taxpayer's Indiana home address.

During 2011, portions of Taxpayer's income were received from locations in Indiana, Massachusetts, Nevada, Kentucky, Ohio, Michigan, New York, and Minnesota.

In order to change one's domicile from Indiana to an out-of-state location, the law requires the "intent of establishing a home at that place," [45 IAC 3.1-1-22](#), along with "acts evidencing [an] intention to make the new domicile a home in fact" Bayh, 521 N.E.2d at 1317.

Certainly, Taxpayer took certain steps which evidence an intention to establish a new domicile in Nevada or - alternatively - in Michigan. The Department neither ignores nor minimizes the significance of these specific actions.

However, the law also requires a simultaneous manifestation of an intent to abandon the Indiana domicile. *Id.* As the law states, "[A] person has only one domicile at a given time" [45 IAC 3.1-1-22](#). Significantly, Taxpayer retained full ownership of his Indiana home during all of 2011, made no attempt to dispose of that home, used the home as the residence for his wife and adult son, and continued to receive mail at that location. Most significant, is the fact that Taxpayer continued to claim the Homestead Credit for his Indiana home. In doing so, Taxpayer necessarily verified that the Indiana home was his "principal place of residence" and, by doing so, took advantage of the typically significant tax advantage attendant to claiming the credit. IC § 6-1.1-12-37(a)(2).

Having expressed an interest in and having taken steps to establish a domicile in Nevada and later Michigan, Taxpayer was not required to claim the credit. IC § 6-1.1-12-37(f) in part states:

If an individual who is receiving the deduction provided by this section or who otherwise qualifies property for a deduction under this section:

- (1) changes the use of the individual's property so that part or all of the property no longer qualifies for the deduction under this section; or
- (2) is no longer eligible for a deduction under this section on another parcel of property because:
 - (A) the individual would otherwise receive the benefit of more than one (1) deduction under this chapter;

or

(B) the individual maintains the individual's principal place of residence with another individual who receives a deduction under this section; the individual must file a certified statement with the auditor of the county, notifying the auditor of the change of use, not more than sixty (60) days after the date of that change.

Taxpayer did not establish an intention to abandon the Indiana residence but continued to make active use of that home. It is long held Indiana law that to change one's domicile, "[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, 245 (Ind. 1866), a change of residency "requires an intention in order to change the domicile, 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 domicile"

Taxpayer did not establish that he abandoned his Indiana domicile or his residency status for purposes of the Indiana individual income tax and remains subject to the privileges and duties of that status.

FINDING

Taxpayers' protest is respectfully denied.

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