DEPARTMENT OF STATE REVENUE

01-20140669.LOF

Letter of Findings: 01-20140669
Indiana Individual Income Tax
For The Tax 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Individual was required to file a 2011 Indiana individual income tax return because he was an Indiana Resident. Individual was responsible for the negligence penalty because he failed to establish reasonable cause for penalty abatement.

ISSUES

I. Indiana Individual Income Tax - Residency: Domicile.

Authority: IC § 6-1.1-12-37; 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; 45 IAC 3.1-1-21; 45 IAC 3.1-1-22; IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Croop v. Walton, 157 N.E. 275 (Ind. 1927); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988).

Taxpayer protests the Department's proposed assessment for the 2011 tax year.

II. Tax Administration - Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayer protests the imposition of the negligence penalty.

STATEMENT OF FACTS

Taxpayer is an individual who owns a house in Indiana. Taxpayer claimed the "homestead" deduction (or exemption) pursuant to Indiana law. Taxpayer did not file his Indiana income tax return for the tax year 2011. The Indiana Department of Revenue ("Department") determined that for the tax year 2011, Taxpayer was an Indiana resident, that Taxpayer failed to file his Indiana income tax return, and that Indiana income tax was due for 2011.

Taxpayer timely protested the assessment. An administrative phone hearing was held. This Letter of Findings ensues and addresses Taxpayer's protest of the proposed assessment for the tax year 2011. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Residency: Domicile.

DISCUSSION

The Department determined that Taxpayer was an Indiana resident, that he failed to file his 2011 Indiana income tax return, and that Indiana income tax was due for 2011. Taxpayer, to the contrary, claimed that he was not required to file his 2011 Indiana income tax return and he did not owe any Indiana income tax because he was not an Indiana resident for the tax year at issue. The issue is whether, for the tax year 2011, Taxpayer was an Indiana resident and therefore was subject to Indiana income tax.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette

Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment 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).

Indiana imposes a tax "on 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 § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. For Indiana income tax purposes, the presumption is that taxpayers properly and correctly file their federal income tax returns as required pursuant to the Internal Revenue Code. Thus, to efficiently and effectively compute what is considered the taxpayers' Indiana income tax, the Indiana statute refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayers' taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

For Indiana income tax purposes, 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; see also 45 IAC 3.1-1-21. Nonresident is "any person who is not a resident of Indiana." IC § 6-3-1-13.

Additionally, 45 IAC 3.1-1-22 states:

> For the purposes of this Act, **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**.
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> **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 the 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.**
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> 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 present in each individual case. Relevant facts in determining whether a new domicile has been established include, but are not limited to:
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> (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.
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> (**Emphasis added**).

Under Indiana law "[h]omestead" is defined as "an individual's principal place of residence . . . that is located in Indiana" and that "the individual owns . . . ." IC § 6-1.1-12-37(a)(2). A taxpayer is entitled to claim a deduction, known as homestead deduction (or exemption), against taxes imposed on his or her homestead property pursuant to IC § 6-1.1-12-37(e). When the taxpayer is no longer qualified for the homestead deduction (or exemption), the taxpayer must notify the auditor of the county where the homestead is located within sixty days after the date of that change. IC § 6-1.1-12-37(f).

In Croop v. Walton, 157 N.E. 275 (Ind. 1927), a taxpayer, Mr. Walton, moved from Sturgis, Michigan to Elkhart, Indiana by selling his Michigan residence and purchasing a residence in Indiana, where he and his wife lived for several years for the benefit of his wife's health. Indiana assessed Mr. Walton state income tax on his intangible property. Id. at 276-78. Mr. Walton disagreed, arguing that his intangible property was not subject to Indiana taxes because he was domiciled in Michigan. Id. The court found that Mr. Walton owned and managed a company and stores in Michigan; that Mr. Walton maintained his membership with lodges, clubs, and a church in Sturgis, Michigan; that Mr. Walton on various occasions exercised his civil and political rights in Sturgis, Michigan; and

that Sturgis, Michigan was used in Mr. Walton's legal documents, including policies of insurance, mortgages, leases, contracts, and other instruments. Ruling in favor of Mr. Walton, the court concluded that Mr. Walton did not change his domicile from Michigan to Indiana and his intangible property was not subject to certain Indiana taxes. The court explained, in relevant part, that:

> The word "inhabitant," as used in our statute regulating the imposition of taxes, means "one who has his domicile or fixed residence in a place." "**If the taxpayer has two residences in different states, he is taxable at the place which was originally his domicile, provided the opening of the other home has not involved an abandonment of the original domicile and the acquisition of a new one**."
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> No precise or exact definition of the term "**domicile**," which responds to all purposes, seems to be possible. It is the place with which a person has a settled connection for legal purposes, either because his home is there or because it is assigned to him by the law, and **is usually defined as that place where a man has his true, fixed, permanent home, habitation, and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the intention of returning**.
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> Many cases collected in the works just cited have held that at times the cognate terms "residence" and "domicile" are synonymous, but many other cases there cited and quoted from have held that the two terms, when accurately used, are not convertible, but that there is a very clear and definite distinction between them. "Domicile," . . . "is a residence acquired as a final abode. To constitute it there must be (1) residence, actual or inchoate; (2) the nonexistence of any intention to make a domicile elsewhere." "The domicile of any person" . . . "is, in general, the place which is in fact his permanent home, but is in some cases the place which, whether it be in fact his home or not, is determined to be his home by a rule of law."
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> "Residence is preserved by the act, domicile by the intention." "Domicile is not determined by residence alone" but upon a consideration of all the circumstances of the case . . . .
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> Domicile is of three kinds-domicile of origin or birth, domicile by choice, and domicile by operation of law. . . . **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**. Id. at 277-78.
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> (Internal citations omitted) (**Emphasis added**).

In State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court reiterated similar analysis and determined that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though Mr. Bayh moved to different states for various reasons for many years. Specifically, the court illustrated, 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."**
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> **A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence.**
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> 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 1317-18 (Ind. 1988).
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> (Internal citations omitted) (**Emphasis added**).

During the protest process, Taxpayer stated that he relocated to Florida before 2011 after he retired. Taxpayer asserted that he was not an Indiana resident; rather, he was a resident of Florida for the tax year 2011. Specifically, Taxpayer maintained that after leasing apartments for some time, in April 2011, he bought a

condominium in Florida, which has been his primary residence since. Taxpayer further asserted that in addition to holding a Florida driver's license, he obtained a "Concealed Weapon on Firearm License" and registered his vehicle in Florida. Taxpayer also claimed that he registered to vote in Florida. Taxpayer explained that while his house in Indiana has been occupied by one of his relatives, he occasionally visits his family and friends in Indiana. In addition to an affidavit, a copy of October 2008 cable service bill, and a copy of his Florida Driver's License, Taxpayer submitted three sample copies of his checks showing expenses incurred in 2011, a copy of "Concealed Weapon on Firearm License," and a copy of his doctor's diagnoses to support his protest. Taxpayer further provided a copy of the first page of a document which appears to be a transfer of an unknown property for "the sum of $10 and valuable consideration." Nonetheless, none of his voting registration and his motor vehicle registration was provided.

Upon review, however, the Department is not able to agree that Taxpayer was not an Indiana resident for the tax year at issue. First, Taxpayer's cable service bill, Florida Driver's Licenses, "Concealed Weapon on Firearm License" and the information of his doctor's diagnoses were not relevant to this protest because those documents were related to 2008, 2012, or 2013. These documents are beyond the scope of his protest.

Second, Taxpayer stated that his checks showed that he had a Florida address for 2011 when he paid for certain expenses. However, the copies of the checks alone were not sufficient to support Taxpayer's assertion; the checks in this instance at best demonstrated that he paid for expenses which included a $215 payment for "bathroom" in May 2011 and a $275 payment for "HOA Fees" in April 2011.

Even if assuming these payments were paid, as Taxpayer claimed, for the expenses concerning his apartment or condominium in Florida, these documents failed to support the facts that Taxpayer legally and effectively became a Florida resident. Specifically, for the 2011 tax year, Taxpayer claimed the "homestead" deduction (or exemption) on his house in Indiana. Taxpayer did not apply for the "homestead" deduction (or exemption) in the state of Florida after he purchased a condominium in 2011, nor did he notify the auditor of the county in Indiana that he was no longer eligible for his Indiana "homestead" deduction (or exemption) pursuant to IC § 6-1.1-12-37(f). Taxpayer may have more than one residence during 2011, but he claimed the "homestead" on his Indiana house for the tax year 2011 pursuant to the Indiana law. Whether his family member, not himself, lived in his Indiana house is irrelevant. Taxpayer has not lost his original domicile because when he left his Indiana residence he intended to return. A further review of the Department's records showed that from October 2006 through November 2014, Taxpayer listed his Indiana address as his primary mailing address. Although Taxpayer changed his primary address to his Florida address in November 2014, he subsequently changed his primary address back to an address in Indiana again in June 2015.

In short, any individual who was domiciled in this state during the taxable year is a resident. IC § 6-3-1-12(a). "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." Bayh, 521 N.E.2d at 1317. Additionally, "[a] person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence." Id. Thus, the Department is not able to agree that Taxpayer effectively and legally changed his domicile. In the absence of other verifiable supporting documentation, the Department is not able to agree that Taxpayer met his burden of proof.

FINDING

Taxpayer's protest is respectfully denied.

II. Tax Administration - Negligence Penalty.

DISCUSSION

Taxpayer requested that the Department abate the negligence penalty.

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a negligence penalty if the taxpayer:

(1) fails to file a return for any of the listed taxes;
(2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
(3) incurs, upon examination by the department, a deficiency that is due to negligence;

(4) fails to timely remit any tax held in trust for the state; or
(5) is required to make a payment by electronic funds transfer (as defined in IC 4-8.1-2-7), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department.

45 IAC 15-11-2(b) further states:

> "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty when "the taxpayer affirmatively establishes that the failure . . . was due to reasonable cause and not due to negligence." 45 IAC 15-11-2(c). The taxpayer "must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section." Id. The Department is mindful that "[r]easonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case."

In this instance, a review of the Department's records showed that from October 2006 through November 2014, Taxpayer listed his Indiana address as the primary address. Taxpayer did not provide sufficient documents to demonstrate that the steps he took lead him to reasonably believe he relocated to Florida. Also, a further review of the Department's records showed that Taxpayer did not have a good history of compliance. Given the totality of the circumstances, the Department is not able to agree that Taxpayer affirmatively demonstrated that his failure to file and to pay tax for the tax year 2011 was due to reasonable cause and not due to negligence.

FINDING

Taxpayer's protest of the negligence penalty is respectfully denied.

SUMMARY

For the reasons discussed above, Taxpayer's protest of the Department's proposed assessment for the 2011 tax year is denied. Taxpayer's protest of the negligence penalty is also respectfully denied.

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