

**Letter of Findings: 01-20150136
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Despite retroactively surrendering her claim to a homestead credit on her Indiana home, Indiana Individual failed to establish that she abandoned her Indiana domicile while living briefly in Florida. For purposes of Indiana's individual adjusted gross income tax, Indiana Individual remained an Indiana resident subject to that tax.

ISSUE

I. Individual Income Tax - Residency.

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

Taxpayer protests the assessment of Indiana individual income tax on the ground that she was not a resident of Indiana during 2011.

STATEMENT OF FACTS

The Indiana Department of Revenue ("Department") issued Taxpayer a letter dated October 2013. The letter was sent to Taxpayer's Indiana address. The letter stated:

Based on information reported to the Indiana Department of Revenue, we have determined that you have unreported income for the year 2011. You must file an Indiana return if you were an Indiana resident or had Indiana income and were required to file a federal income tax return.

The letter asked Taxpayer to file an Indiana return, send a copy of that return if one had already been filed, or provide the reasons and documentation Taxpayer believed established it was not necessary for her to file the 2011 return.

Taxpayer provided a copy of an "extended vehicle service" contract which listed her Florida address. In addition, Taxpayer provided a copy of a 2013 "warranty deed" indicating that Taxpayer purchased a Florida residence for \$10.

In apparent response to the proposed Indiana assessment, Taxpayer revoked her Indiana homestead credit which she had claimed on her Indiana home.

Taxpayer timely protested, and an administrative protest was scheduled to allow Taxpayer the opportunity to further explain the basis for her protest. Taxpayer declined to take part in the hearing but instructed the hearing officer to issue a decision based on her protest letter and the documents provided along with that letter. This Letter of Findings results.

I. Individual Income Tax - Residency.

DISCUSSION

The issue was whether Taxpayer was a 2011 resident of Indiana and required to file a 2011 Indiana income tax return. There is no dispute that Taxpayer received income from Indiana sources during that year.

In her March 2015 protest letter, Taxpayer explained that she lived in a home owned in Florida in 2011. She explained that "mistakenly claimed" the 2011 homestead credit on her Indiana home but had subsequently revoked that claim and purportedly paid the amount of credit. Taxpayer further explained that she has since sold her Florida home, moved back to Indiana, and filed a 2014 Indiana income tax return.

Taxpayer continues to disagree with the Department's position that she was an Indiana resident during 2011.

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, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident 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.

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. (Emphasis added).

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.

As pointed out in [45 IAC 3.1-1-22](#) claiming the benefit of a homestead exemption or credit is a factor in determining in which state an individual resides for purposes of Indiana's income tax law. 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) (Emphasis added). 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).

Taxpayer centers her argument on the fact that she retroactively gave up the benefit of the 2011 homestead credit originally claimed on her Indiana residence. However, the homestead credit is only one of the factors considered when determining whether someone has either obtained or abandoned an Indiana residence.

Taxpayer established a domicile in Indiana prior to 2011. Taxpayer moved to Florida, bought a home in Florida, but retained the Indiana residence. In order to establish that she no longer is an Indiana resident, Indiana law requires that "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" Croop 157 N.E. at 278.

In this case, Taxpayer claimed simultaneous homestead exemptions in both Florida and Indiana. Although Taxpayer retroactively addressed the issue of claiming two apparently contradictory credits, the fact that she continued to view her residence as an alternative residence (and then did in fact return to Indiana) establishes that she had no intention of abandoning her Indiana domicile. As a result, Taxpayer retained her Indiana residence and her Indiana tax obligations.

Taxpayer has not met her burden under IC § 6-8.1-5-1(c) of establishing that the proposed assessment was wrong.

FINDING

Taxpayer's protest is respectfully denied.

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An [html](#) version of this document.