

**Letter of Findings: 01-20150093  
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 2011 Indiana individual income tax return because he was an Indiana resident. Individual was not responsible for the negligence penalty because he established reasonable cause for penalty abatement. The Department cannot waive the interest.

### ISSUES

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

**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; [45 IAC 3.1-1-21](#); [45 IAC 3.1-1-22](#); IC § 6-8.1-5-1; IC § 6-1.1-12-37; 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 and Interest.**

**Authority:** IC § 6-8.1-10-2.1; IC § 6-8.1-10-1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the negligence penalty and interest.

### STATEMENT OF FACTS

Taxpayer is an individual who owns a residence in Indiana and lived in that residence until 2002. Taxpayer moved to Florida in 2002 while still maintaining a residence in Indiana. The Indiana Department of Revenue ("Department") determined that Taxpayer was an Indiana resident for the tax year 2011, and that Taxpayer failed to file his 2011 Indiana income tax return. The Department therefore, issued a proposed assessment for 2011 for income tax, penalty, and interest.

After receiving the proposed assessment Taxpayer 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 assessed Taxpayer income tax for the 2011 tax year on the ground that Taxpayer was an Indiana resident and that he failed to file his 2011 Indiana income tax return. Taxpayer contends that he was not required to file a 2011 Indiana income tax return because he was not an Indiana resident. 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 his 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. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayer's taxable income and to calculate what would be Indiana income tax after applying certain additions and subtractions.

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.**

**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.**

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:

- (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.

**(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 the "homestead deduction", 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," 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).

For guidance in determining a taxpayer's domicile, the Department refers to Croop v. Walton, 157 N.E. 275 (Ind. 1927). In Croop, 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 benefits 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; maintained his membership with lodges, clubs, and a church; on various occasions exercised his civil and political rights; and that Sturgis was used in his legal documents, including insurance policies, mortgages, leases, contracts, and other instruments. Ruling in favor of Mr. Walton, the court concluded that he 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."**

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.**

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."

"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 . . .

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. (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."**

**A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence.**

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). (Internal citations omitted) (**Emphasis added**).

During the protest process, Taxpayer submitted additional documentation to support his assertion that he was not an Indiana resident and did not owe any Indiana income tax for the tax year 2011. The documents included bank statements with his Florida address, Florida driver's license, Florida vehicle registration, his last will and testament dated 2007, and 2011 Federal return, showing his Florida address.

The Department determined that Taxpayer was domiciled in Indiana in 2011 based on Taxpayer's use of the homestead deduction. Publicly available information shows that Taxpayer took a homestead deduction on his

Indiana residence for 2011. Taxpayer's documentation does not rebut the burden that he was not domiciled in Indiana. When a taxpayer takes the Indiana homestead deduction, they are receiving a deduction on their property taxes, and telling the local government that they are not only living in that residence but that the residence is their principal residence. IC § 6-1.1-12-37(a)(2). When a taxpayer leaves Indiana to move to a state that has no state income tax without removing the Indiana homestead deduction on its Indiana residence, this fact calls into question whether the taxpayer is truly abandoning his Indiana residence. Furthermore, the taxpayer is simultaneously receiving a property tax deduction in Indiana for a residence that the Taxpayer is implicitly characterizing as his principal residence; while at the same time avoiding Indiana state income tax by claiming not to be domiciled in Indiana.

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 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 1317-18. Taxpayer failed to do so. Therefore, Taxpayer has failed to prove the proposed assessment wrong as required by IC § 6-8.1-5-1(c).

## FINDING

Taxpayer's protest is respectfully denied.

## II. Tax Administration - Negligence Penalty and Interest.

### DISCUSSION

#### A. Negligence Penalty.

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, Taxpayer demonstrated that the steps he took since 2008 lead him to reasonably belief that he relocated to Florida. Also, a further review of the Department's records showed that the proposed assessment at issue was Taxpayer's first assessment and that Taxpayer overall maintained a good history of compliance. Given the totality of the circumstances, the Department is prepared 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.

Taxpayer however is on notice that should similar circumstances arise the negligence penalty may not be abated.

**B. Interest.**

Taxpayer asserts that he does not owe interest. Indiana imposes interest on overdue tax pursuant to IC § 6-8.1-10-1(a), which states:

If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

In the case of the interest assessed, the Department has no discretion to abate or adjust the amount of interest owed. IC § 6-8.1-10-1(e). Taxpayer's request to refund to interest imposed is denied.

**FINDING**

Taxpayer's protest of the negligence penalty is sustained, and Taxpayer's protest of interest is 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 sustained and interest protest is denied.

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