

**Letter of Findings: 01-20150094**  
**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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 established that he was not an Indiana resident in 2011 and therefore owed no Indiana income tax for that year. Since no base tax was owed, penalty was dismissed.

### **ISSUES**

#### **I. Income Tax–Residency.**

**Authority:** IC § 6-3-1-12; IC § 6-8.1-5-1; [45 IAC 3.1-1-22](#); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988); Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the imposition of Indiana individual income tax.

#### **II. Tax Administration–Penalty.**

**Authority:** IC § 6-8.1-10-3.

Taxpayer protests the imposition of a penalty.

### **STATEMENT OF FACTS**

Taxpayer is an individual. The Indiana Department of Revenue ("Department") determined that Taxpayer was an Indiana resident for the tax year 2011 but that Taxpayer neither filed a 2011 Indiana individual income tax return nor paid any 2011 Indiana individual income tax. Taxpayer protested the Department's determination of residency and the imposition of income tax plus penalty. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

#### **I. Income Tax–Residency.**

### **DISCUSSION**

Taxpayer protests the imposition of Indiana adjusted gross income tax for the tax year 2011. The Department determined that Taxpayer was an Indiana resident for all of 2011 because he claimed the property tax homestead deduction on a house he owned in Indiana. Taxpayer argues that he and his family left Indiana in 2005 and established a domicile in another state. Therefore, Taxpayer argues, he was neither an Indiana resident nor did he have an Indiana domicile for the tax year 2011. Therefore, Taxpayer argues, he did not need to file a 2011 Indiana income tax return nor did he owe any Indiana income tax for that year.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a

statute that an agency is 'charged with enforcing. . . [courts] 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). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

Pursuant to IC § 6-3-1-12, a resident is defined as follows:

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, or (c) any estate of a deceased person defined in (a) or (b), or (d) any trust which has a situs within this state.

In other words, a resident includes individuals who are domiciled in Indiana and/or spend more than 183 days in Indiana.

Domicile is defined by [45 IAC 3.1-1-22](#), which states:

"Domicile" Defined. 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).

In other words, a new domicile is not necessarily created when an individual moves to an address outside Indiana. Instead, the individual must move to the new non-Indiana address and have intent to remain at that non-Indiana address.

The Indiana Supreme Court considered the issue of the meaning of "domicile" in *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), in which the court provided:

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." Scott, 171 Ind. at 361, 86 N.E. at 413. **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." Rogers, 226 Ind. at 35-36, 77 N.E.2d at 595-96. Id. at 1317. (Emphasis added).

Therefore, an examination of Taxpayer's acts is required to determine if Taxpayer had the intention to acquire a new domicile outside Indiana and to abandon his domicile in Indiana.

A review of the domiciliary criteria listed under [45 IAC 3.1-1-22](#) is illuminating in this matter. Taxpayer moved to

another state in 2005 after he secured a full-time job in the other state. Taxpayer was able to supply documentation establishing that he and his family lived in the other state beginning in 2005. The documentation included property tax payments for a residence in the other state for 2011 which listed that location as Taxpayer's principal residence, federal form 1099-R listing state income tax withheld for the other state for 2011, and W-2 tax forms listing Taxpayer's address in the other state for 2011. Most significantly, Taxpayer provided documentation that he had contacted the county auditor in the Indiana county where he had the Indiana residence and cancelled the homestead deduction dating back to 2010. Additionally, Taxpayer provided documentation establishing that he had paid back the amounts equal to the homestead deductions taken for the years 2010, 2011, 2012, 2013, and 2014.

While it is true that Taxpayer took the property tax homestead deduction on the Indiana house, it is also true that Taxpayer retracted the previously claimed deduction and paid the appropriate amount of property tax. In all, it is clear that Taxpayer did intend to abandon his Indiana domicile and to acquire a new domicile in the other state, thereby meeting the standard explained by the court in Bayh. Taxpayer undertook numerous acts to evidence his intention to abandon his Indiana domicile and to establish a new domicile in the other state. Also, Taxpayer was able to provide documentation establishing that he spent less than 183 days in Indiana during 2011, as explained by IC § 6-3-1-12(b). Thus, while the Department's initial determination was reasonable considering the two previously mentioned factors it reviewed, Taxpayer has met the burden imposed under IC § 6-8.1-5-1(c) of proving the proposed assessment wrong.

### **FINDING**

Taxpayer's protest is sustained.

## **II. Tax Administration—Penalty.**

### **DISCUSSION**

Taxpayer protests the imposition of a penalty pursuant to IC § 6-8.1-10-3. As explained in Issue I above, in the course of the protest process Taxpayer provided adequate explanation and documentation to explain why he did not file an Indiana income tax return for 2011. In the instant case, Taxpayer has been sustained on the imposition of base tax; therefore the penalty is reduced to zero also.

### **FINDING**

Taxpayer's protest to the imposition of the penalty is sustained.

### **SUMMARY**

Taxpayer's Issue I protest regarding the imposition of adjusted gross income tax is sustained. Taxpayer's Issue II protest regarding the imposition of penalty is sustained.

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