

Letter of Findings: 01-20150106; 01-20150457
Indiana 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 This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.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

Married couple provided sufficient documentation to establish that they were not residents of Indiana for the year 2011, and therefore were not subject to Indiana income tax.

ISSUES

I. Indiana Individual Income Tax - Residency.

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; IC § 6-3.1-20-1; 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); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988); [45 IAC 3.1-1-21](#); [45 IAC 3.1-1-22](#); [45 IAC 3.1-1-23](#).

Taxpayers' protest the Department's proposed assessment of Indiana income tax.

II. Tax Administration -Penalty and Interest.

Authority: IC § 6-8.1-10-3; IC § 6-8.1-10-1.

Taxpayers' protest the imposition of the penalty and interest.

STATEMENT OF FACTS

In 2014 the Indiana Department of Revenue ("Department") sent Taxpayers letters that stated that the Department had "determined that you have unreported income for tax year 2011." Taxpayers protested the Department's proposed assessments for Indiana income tax, penalty, and interest. An administrative telephone hearing was held; this Letter of Finding results. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Residency.

DISCUSSION

The Department's tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; a 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, a taxpayer is required to provide documentation explaining and supporting their challenge that the Department's assessment is wrong.

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 taxpayers' taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point. Furthermore, IC § 6-3.1-20-1 defines Indiana income as "adjusted gross income of an individual taxpayer, and the individual's spouse, if the individual files a joint adjusted gross income tax return."

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.

[45 IAC 3.1-1-21](#) states:

An Indiana resident is:

- (a) **Any individual who was domiciled in Indiana during the taxable year**, or
 - (b) Any individual who maintains a permanent place of residence in this state and spends more than 183 days of the taxable year within this state; or
 - (c) Any estate of a deceased person defined in (a) or (b) [subsections (a) or (b) of this section], or
 - (d) Any trust which has a situs within this state.
- (**Emphasis added**).

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.

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 property tax 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 dated of that change. IC § 6-1.1-12-37(f).

The Department also notes [45 IAC 3.1-1-23](#), which states in relevant part:

(2) Taxpayer Moving from Indiana

Any person who, on or before the last day of the taxable year, changes his residence or domicile from Indiana to a place without Indiana, with the intent of abiding permanently without Indiana, is subject to adjusted gross income tax on all taxable income earned while an Indiana resident. Indiana will not tax income of a taxpayer who moves from Indiana and becomes an actual domiciliary of another state or country except that income received from Indiana sources will continue to be taxable.

In *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court 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 Supreme Court stated in relevant part:

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

Taxpayers state that in 2008 they bought property in Florida with the intention of making Florida their state of residence, and for Indiana to be a place where they vacation for "about four to six weeks a year." Taxpayers provided the Department with various documentation to show that they had in fact changed to a Florida domicile. That documentation included a utility bill from a Florida utility company, voter registration information showing that the husband registered to vote in Florida in 2008, voting history information for Florida, driver's licenses for Florida for both husband and wife issued in 2008, a letter from the residential community in Florida where they live stating that they "have been residents and stockholders in [the] park since March, 2008," and information from an Indiana county auditor's office showing the repayment of a homestead deduction.

Pursuant to Bayh and [45 IAC 3.1-1-22](#), Taxpayers have documented relevant facts to establish that their domicile in 2011 was Florida and not Indiana.

FINDING

Taxpayers' protest is sustained.

II. Tax Administration -Penalty and Interest.

DISCUSSION

Taxpayers were assessed a penalty under IC § 6-8.1-10-3, and interest per IC § 6-8.1-10-1. Since Taxpayers prevailed in their protest, as discussed in **Issue I** supra, the assessment of penalty and interest is moot.

FINDING

Taxpayers' protest of the penalty and interest is sustained.

SUMMARY

For the reasons discussed above, Taxpayers' protest of the Department's proposed assessment for the 2011 tax year is sustained. Taxpayers' protest of the penalty and interest is moot.

Posted: 11/25/2015 by Legislative Services Agency
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