

**Letter of Findings: 01-20150193
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Husband and Wife were residents in Indiana for the tax year 2011. Therefore, Husband and Wife were required to file an Individual Income Tax Return. Husband and Wife showed reasonable cause to waive negligence penalty, but the interest will not be waived.

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; [45 IAC 3.1-1-21](#); 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).

Taxpayers protest 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](#).

Taxpayers protest the imposition of the negligence penalty and interest.

STATEMENT OF FACTS

Taxpayers ("Husband" and "Wife") moved to Maryland beginning of 2011 for new employment. Taxpayers owned property and lived in Indiana until July 2011. Wife and their children, however, did not move with Husband until late July 2011. The Indiana Department of Revenue ("Department") determined that Taxpayers were Indiana residents for the tax year 2011 and that Taxpayers failed to file their 2011 Indiana income tax return. The Department therefore, issued a proposed assessment for 2011 income tax, penalty, and interest.

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

I. Indiana Individual Income Tax - Residency.

DISCUSSION

The Department assessed Taxpayers income tax for the 2011 tax year on the ground that Taxpayers were Indiana residents and that they failed to file their 2011 Indiana income tax return. Taxpayers contend that they were not required to file a 2011 Indiana income tax return because they were not Indiana residents. The issue is whether, for the tax year 2011, Taxpayers were Indiana residents and were therefore 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; taxpayers bear 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, taxpayers are 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 filed jointly.

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.

During the protest process, Taxpayers submitted additional documentation to support the assertion that they were not Indiana residents and did not owe any Indiana income tax for the tax year 2011. The documents included Taxpayer's jointly filed federal return with their Maryland address, Husband's pay stub and W2 showing Taxpayers' Maryland address and state withholding tax, a 1099 with Taxpayers' Maryland address, a corrected 1099 with Taxpayers' Maryland address, and a Notification of Personnel showing Taxpayers' Maryland address. During the hearing, Husband stated that Wife did not work during 2011. Taxpayers argue that the Department has no jurisdiction over Husband's Maryland income.

Upon review, the documents provided during the hearing process do not demonstrate that Taxpayers were not domiciled in Indiana. First, Taxpayers had been longtime Indiana residents who maintained a primary residence in Indiana. Publicly available information shows that, for the tax year 2011, Taxpayers still maintained a residence in Indiana and still claimed the homestead deduction on the residence. Furthermore, Taxpayers still own the house in Indiana and take the homestead deduction. They are currently renting out the Indiana residence. The same publicly available information notes that Taxpayer has not removed the homestead deduction on the residence.

While Husband did live and work in Maryland during the entire tax year, Wife remained in Indiana for more than 183 days. Taxpayers filed jointly on their federal return even though Husband was the sole wage earner. In addition, IC § 6-1.1-12-37 provides that an individual may still claim the homestead deduction even if the individual's spouse owns property outside Indiana, provided certain affirmative statements are filed with the county clerk, none such statements were filed in this case. Taxpayers were domiciled in Indiana during 2011, did not file the appropriate statements with the county clerk as required by IC § 6.1-1-12-37, and filed a joint income tax return. Thus, the income listed on the joint return is subject to Indiana tax as provided by IC § 6-3.1-20-1. Taxpayers have not met the burden of proving the proposed assessment wrong, as required by IC § 6-8.1-5-1(c).

FINDING

Taxpayers' protest is respectfully denied.

II. Tax Administration - Negligence Penalty and Interest.

DISCUSSION

A. Negligence Penalty.

Taxpayers 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, Taxpayers have demonstrated good past compliance. Furthermore, given the totality of the circumstances, the Department does agree that Taxpayers affirmatively demonstrated that their failure to file and to pay tax for the tax year 2011 was due to reasonable cause and not due to negligence. Therefore, the Department will waive the penalty.

B. Interest.

Taxpayers assert that they do 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). Taxpayers' request to abate interest is denied.

FINDING

Taxpayers' protest of the negligence penalty is sustained and interest is denied.

SUMMARY

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

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