

**Letter of Findings: 01-20150087  
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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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**

Individuals did not establish that they had no Indiana domicile during 2011. Therefore, the Department's assessments for 2011 Indiana income tax were not proven incorrect. Penalty could not be abated.

**ISSUES**

**I. Income Tax–Residency.**

**Authority:** IC § 6-3-1-12; IC § 6-8.1-5-1; State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988); [45 IAC 3.1-1-22](#); 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).

Taxpayers protest the imposition of Indiana individual income tax.

**II. Tax Administration–Penalty.**

**Authority:** IC § 6-8.1-10-3.

Taxpayers protest the imposition of a penalty.

**STATEMENT OF FACTS**

Taxpayers were a married couple ("Husband" and "Wife") for a portion of the tax year 2011. Taxpayers divorced during 2011. The Indiana Department of Revenue ("Department") determined that Taxpayers were Indiana residents for the tax year 2011 but that Taxpayers neither filed a 2011 Indiana individual income tax return nor paid any 2011 Indiana individual income taxes. Taxpayers 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**

Taxpayers protest the imposition of Indiana adjusted gross income tax for the tax year 2011. The Department determined that Taxpayers were Indiana residents for all of 2011 because they had claimed the homestead deduction on a house they owned in Indiana. Taxpayers argue that they were residents of another state in 2011. Further, Husband argues that he paid his 2011 Indiana income tax via shareholder withholding on a composite income tax return filed by an Indiana company ("Company") in which he is a shareholder. Therefore, Taxpayers argue, they did not need to file a 2011 Indiana income tax return nor did they owe any Indiana income tax for that year.

As a threshold issue, it is Taxpayers' 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 maintain a permanent place of residence in Indiana and then spend more than 183 days in Indiana. In this case, Taxpayers were able to establish that they did not spend more than 183 days in Indiana during 2011. Therefore, in order to be considered residents of Indiana during 2011, Taxpayers must have been domiciled here.

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).

Thus, 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. Taxpayers lived in a state without an individual income tax; therefore they did not file a state income tax return in any state other than Indiana. Husband owned a house in Indiana and claimed the homestead credit for property tax purposes. The shareholder information form from the entity which withheld Husband's portion of Indiana income tax on its consolidated return lists Husband's address as the Indiana address. Taxpayers were able to show that they had property and activities in the other state, such as: Husband's acquisition of a driver's license in the other state, payment of property taxes in the other state, preparation of a new last will and testament for Husband which lists the other state as his state of domicile, and a prenuptial agreement which lists Husband as domiciled in the other state and also as a resident of Indiana and which lists Wife as a resident of Indiana.

After review of these factors, the Department concludes that Husband and Wife did take steps to establish a new domicile in the other state but did not take any steps to abandon their Indiana domicile. Rather, they took active steps to maintain their Indiana domicile. As provided by the Indiana Supreme Court in *Bayh*, there 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 in order to lose one's domicile in Indiana. Here, Taxpayers did not intend to abandon the Indiana domicile. Since Taxpayers were domiciled in Indiana, they qualified as Indiana residents under IC § 6-3-1-12. Therefore, Taxpayers have not met the burden imposed by IC § 6-8.1-5-1(c) of proving the proposed assessment wrong. However, the Department recognizes that a portion of Husband's income was properly withheld by Company and Taxpayers' assessments have been reduced by that amount.

### FINDING

Taxpayers' protest is denied.

## II. Tax Administration - Penalty.

### DISCUSSION

Taxpayers protest the imposition of penalties pursuant to IC § 6-8.1-10-3, which provides:

- (a) If a person fails to file a return on or before the due date, the department shall send him a notice, by United States mail, stating that he has thirty (30) days from the date the notice is mailed to file the return. If the person does not file the return within the thirty (30) day period, the department may prepare a return for him, based on the best information available to the department. The department prepared return is prima facie correct.
- (b) If the department prepares a person's return under this section, the person is subject to a penalty of twenty percent (20[percent]) of the unpaid tax. In the absence of fraud, the penalty imposed under this section is in place of and not in addition to the penalties imposed under any other section.

In this case, Taxpayers did not file a return for their 2011 Indiana income tax and the Department had to prepare one for Taxpayers. Therefore, under IC § 6-8.1-10-3(b), Taxpayers were subject to a penalty.

### FINDING

Taxpayers' protest of the imposition of penalty is denied.

### SUMMARY

Taxpayers' Issue I protest regarding the imposition of adjusted gross income tax is denied. Taxpayers' Issue II protest regarding the imposition of penalty is denied.

*Posted: 02/24/2016 by Legislative Services Agency*  
An [html](#) version of this document.