

Letter of Findings: 01-20150194
Individual Indiana Income Tax
For the Years 2011 and 2012

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Despite having worked for two years outside the United States and taking steps to establish a home there, Individual was unable to establish that - for purpose of Indiana's income tax - he "abandoned" his Indiana domicile. Individual's Dutch work permit allowed him to work in that country for only two years, he continued to claim the homestead credit on his local property tax returns while abroad, and he eventually returned to Indiana.

ISSUE

I. Individual Income Tax - Residency.

Authority: IC § 6-3-2-1(a); IC § 6-3-1-12; IC § 6-8.1-5-1(c); Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); State Election Board v. Bayh, 521 N.E.2d 1313 (Ind. 1988); In the Matter of Evrard, 333 N.E.2d 765 (Ind. 1975); Board of Medical Registration and Examination v. Turner, 168 N.E.2d 193 (Ind. 1960); Croop v. Walton, 157 N.E. 275 (Ind. 1927); Culbertson v. Bd. Of Comm'rs of Floyd County, 52 Ind. 361 (1876); Yonkey v. State, 27 Ind. 236 (Ind. 1866); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 3.1-1-22](#); [45 IAC 3.1-1-23\(3\)](#).

Taxpayer protests the assessment of individual Indiana income tax because Taxpayer argues he was not a resident of Indiana during 2011 and 2012.

STATEMENT OF FACTS

The Indiana Department of Revenue ("Department") assessed Taxpayer for 2011 and 2012 Indiana individual income tax. Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer explained the basis for the assessment. This Letter of Findings results.

I. Individual Income Tax - Residency.

DISCUSSION

Taxpayer owned a home located in Indiana and worked for an Indiana company. In 2011, Taxpayer left work with the Indiana company and began working for another company headquartered in New Jersey. Taxpayer was assigned to work outside the United States. Taxpayer relocated to the Netherlands and worked from that location during 2011 and 2012.

While in the Netherlands, Taxpayer leased an apartment, obtained a Dutch work permit, and filed Dutch tax returns. The Dutch permit allowed Taxpayer to work in the Netherlands for two years. Notwithstanding the two-year limit, Taxpayer obtained a month-to-month extension allowing him to continue working in that country.

However, Taxpayer was unable to sell his Indiana home at the time he left the United States. He continued to pay property tax on the home and claimed a homestead credit each time he paid tax. Taxpayer eventually sold the home in 2014.

After his work assignment in the Netherlands was complete, Taxpayer returned to Indiana in 2013 and bought a

new home in Indiana. Taxpayer continues to live in that second Indiana home.

Taxpayer continues to work for the New Jersey company and - in that capacity - is frequently called to travel for extended periods outside the United States.

Taxpayer filed Indiana income tax returns in the years before 2011 and in the years following his return to Indiana. Taxpayer maintained his Indiana driver's license during the years he was absent from Indiana. Nonetheless, Taxpayer concludes that he was not a resident of Indiana during 2011 and 2012 and was not required to file Indiana returns during those years.

All tax assessments are prima facie evidence that the Department's claim for the tax is valid, and each taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position 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). In reviewing a taxpayer's argument, the Indiana Supreme Court has held, that when it examines a statute that an agency is "charged with enforcing . . . we 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).

Indiana imposes an income tax on "the adjusted gross income of every resident person . . ." IC § 6-3-2-1(a). For income tax purposes, "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 . . ." IC § 6-3-1-12.

Additionally, an individual who files federal income tax returns as a nonresident citizen "is considered as being domiciled in Indiana and his income taxable as a resident citizen, if he maintains a place of abode in Indiana immediately prior to residing in a foreign country as a nonresident citizen of the United States, and has not permanently established his domicile in a foreign country or in another state . . ." [45 IAC 3.1-1-23\(3\)](#).

To establish a domicile, a taxpayer "must be physically present at a place, and must have the simultaneous intent of establishing a home at that place." [45 IAC 3.1-1-22](#). For income tax purposes, "a person has only one domicile at a given time even though that person maintains more than one residence at that time." *Id.* Additionally, "Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur." *Id.* "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." *Croop v. Walton*, 157 N.E. 275, 278 (Ind. 1927). In *State Election Board v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court considered the standard by which a "domicile" is established. The court determined that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. Specifically, the court stated, 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. *Id.* 1317 (Internal citations omitted).

The supreme court concluded that:

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 1318 (Internal citations omitted).

The Indiana Supreme Court stated that in order to establish a new residence, a taxpayer "must show . . .

evidence of acts undertaken in furtherance of the requisite intent, which make that intent manifest and believable." In the Matter of Evrard, 333 N.E.2d 765, 768 (Ind. 1975).

The Department's regulation provides that "[t]here is no one set of standards that will accurately indicate the person's intent in every relocation." [45 IAC 3.1-1-22](#). Instead, the determination is made on a case by case basis. Id. Facts to be considered include:

- (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. Id.

In addition, courts have considered a taxpayer's contemporaneous declarations identifying that the taxpayer's "home;" insurance policies, mortgages, contracts or other instruments indicating the taxpayer's home; and membership in clubs, churches, or other social groups in a place. Croop, 157 N.E. at 278-79. Finally, courts have considered the location of the taxpayer's household goods and mailing address. Board of Medical Registration and Examination v. Turner, 168 N.E.2d 193, 197 (Ind. 1960); See also, Culbertson v. Bd. Of Comm'rs of Floyd County, 52 Ind. 361 (1876). However, a taxpayer "seeking to establish his claim of exemption from taxation on the ground of nonresidence is not required to show that his property was assessed elsewhere." Croop, 157 N.E. at 276.

Taxpayer supplied copies of his Dutch apartment lease, a copy of his Dutch work permit, and a copy of his Dutch driver's license. Taxpayer believes that this documentation is sufficient to establish that he "abandoned" his Indiana domicile in 2011, established a domicile in the Netherlands during 2011 and 2012, and only reestablished his Indiana domicile when he returned to Indiana in 2013.

The Department is unable to agree that Taxpayer's absence from the United States during 2011 and 2012 is sufficient to establish that - for purposes of Indiana's tax laws - Taxpayer had established a new domicile outside of Indiana. As summarized, in Bayh, A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence. 521 N.E.2d at 1317. Given the two-year length of his stay there, Taxpayer took necessary steps to establish a new home for himself in the Netherlands such as renting an apartment, obtaining a two-year work permit, and filing Dutch tax returns. However, there is evidence to establish Taxpayer did not "abandon" his Indiana residence because he continued to claim the first Indiana home as his "primary residence" on his property tax returns, because his stay in the Netherlands was limited by the terms of his Dutch work permit, and because he did in fact return to Indiana in 2013.

It is long held Indiana law that to change one's domicile, "[T]here must be an abandonment of the first domicile with an intention not to return to it" Croop, 157 N.E. at 278. (Emphasis added). As the Indiana Supreme Court held in Yonkey v. State, 27 Ind. 236 (Ind. 1866), a change of residency "requires an intention in order to change the domicile, and . . . if a person leaves his place of residence temporarily, on business or otherwise, but with the intention of returning, he does not thereby lose his domicile"

Taxpayer did not establish that he abandoned his Indiana domicile or his residency status for purposes of the Indiana individual income tax and remains subject to the privileges and duties of that status.

FINDING

Taxpayer's protest is respectfully denied.

Posted: 03/30/2016 by Legislative Services Agency
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