

Letter of Findings: 01-20150419
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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

For purposes of the Indiana individual income tax, individual failed to establish that he had established a permanent Florida residence. Individual's uninterrupted ownership of his Indiana home - including claiming a Homestead Credit on that residence - manifested an intention to retain his Indiana domicile.

ISSUE

I. Income Tax—Residency.

Authority: IC § 6-8.1-5-1; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-3-1-3.5; IC § 6-3-1-12; IC § 6-1.1-12-37 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); Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014); Croop v. Walton, 157 N.E. 275 (Ind. 1927); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988); Yonkey v. State (1866), 27 Ind. 236; Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138; Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480; [45 IAC 3.1-1-22](#).

Taxpayer protests the imposition of Indiana individual income tax.

STATEMENT OF FACTS

Taxpayer is a retiree who resides in the State of Florida, including carrying a Florida driver's license, registering his motor vehicle there and voting there. According to Taxpayer, he returns to Indiana during the 3 to 4 months of summer, but he stated that he does not intend to return to Indiana on a permanent basis. Taxpayer, however, maintains his residence in Indiana on which a Homestead Credit is claimed. The Indiana Department of Revenue ("Department") determined that the Homestead Credit was sufficient to establish that Taxpayer was domiciled in Indiana and therefore owed Indiana income tax for the tax years 2011 and 2012. Further facts are supplied as necessary.

I. Income Tax - Residency.

DISCUSSION

Taxpayer protests the imposition of Indiana adjusted gross income tax for the tax years 2011 and 2012. The Department determined that Taxpayer was an Indiana resident for all of 2011 and 2012 because a Homestead Credit was claimed on residential real estate situated in Indiana of which, Taxpayer is a co-owner. Taxpayer argues that he was a resident of another state. Therefore, Taxpayer argues, he did not need to file an Indiana income tax return nor did he owe any Indiana income tax for those years.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for unpaid tax is valid; the Taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); 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, the Taxpayer is required to provide documentation explaining and supporting its 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. 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).

Indiana imposes a tax "upon 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 Taxpayer's taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

Pursuant to IC § 6-3-1-12, a 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. . . ." 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, Taxpayer was able to establish that he did not spend more than 183 days in Indiana during 2011 and 2012.** Therefore, in order to be considered (a) resident(s) of Indiana during 2011 and 2012, Taxpayer must have been domiciled in Indiana.

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

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.

For example, in *Croop v. Walton*, 157 N.E. 275 (Ind. 1927), a Taxpayer who was domiciled in Michigan sold his home in Michigan and moved to a new residence in Indiana where he and his wife lived for several years for the benefit of his wife's health. The Taxpayer lived in the Indiana home "on account of the mental and physical condition of his wife, and continued to occupy it until such time as she could safely return to [Michigan] to live." *Id.* At 276. The court concluded that, based on the level of activity he maintained in Michigan and lack of intention to abandon his domicile, Taxpayer did not change his domicile from Michigan to Indiana. The court explained, in relevant part, that:

If [a] Taxpayer has **two residences in different states**, he is **taxable at the place which was originally his domicile, provided the opening of the other home has not involved an abandonment of the original domicile and the acquisition of a new one.**

'[D]omicile' . . . is the place with which a person has a settled connection for legal purposes, either because his home is there or because it is assigned to him by the law, and is **usually defined as that place where a man has his true, fixed, permanent home, habitation, and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the**

intention of returning.

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

In explaining the difference between "residence" and "domicile," the court in Croop stated:

'Domicile' "is a residence acquired as a final abode. To constitute it there must be (1) residence, actual or inchoate; (2) the nonexistence of any intention to make a domicile elsewhere." "The domicile of any person is, in general, the place which is in fact his permanent home, but is in some cases the place which, whether it be in fact his home or not, is determined to be his home by a rule of law."

"Residence is preserved by the act, domicile by the intention." "Domicile is not determined by residence alone, but upon a consideration of all the circumstances of the case." "While a person can have but one domicile at a time, he may have concurrently a residence in one place . . . and a domicile in another."

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**.

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

In *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988) the Indiana Supreme Court considered the issue of the meaning of "domicile" in determining that Mr. Bayh met the residency requirement for the office of Governor. Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. The court stated, in pertinent 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 places of residence temporarily, but with the intention of returning, has not lost his original residence. *Yonkey v. State* (1866), 27 Ind. 236. Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." **Intent and conduct must converge to establish a new domicile.** *Bayh*, at 1317 - 1318 (Ind. 1988).

(**Emphasis added**).

In this matter, Taxpayer did not establish that he abandoned his Indiana domicile or his residency status of purposes of the Indiana individual income tax and remains subject to the privileges and duties of the status. By maintaining a residence in Indiana with a Homestead Credit, he does not make his intention to relinquish his Indiana domicile. Specifically, the Indiana Homestead Credit statute, IC § 6-1.1-12-37, defines a "Homestead" as an individual's principal place of residence that is located in Indiana. By maintaining the Homestead Credit, the Taxpayer avers that his Indiana residence is his principle place of residence. Simply put, the Taxpayer cannot claim to be an Indiana resident to receive a tax benefit under one statute and then deny Indiana residency in order to avoid paying another tax. Residency cases are particularly fact sensitive thus, the position relayed within this document pertains only to this case and its specific set of facts.

FINDING

Taxpayer's protest is denied.

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