

**Letter of Findings: 01-20150668
Individual Income Tax
For the Years 2012 and 2013**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Former Indiana Residents were required to file Indiana income tax returns as full-time Indiana residents during 2012 and 2013 because the evidence showed that although they had purchased a Florida home, did not abandon their Indiana residence; Indiana Residents claimed the Homestead Credit on their Indiana residence and retained an Indiana driver's license.

ISSUES

I. Individual Income Tax - Residency.

Authority: IC § 6-1.1-12-37(a)(2); IC § 6-1.1-12-37(f); 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](#).

Taxpayers argue that they were not residents of Indiana during 2012 and 2013 and not required to file Indiana individual income tax returns as full-time residents.

II. Administration - Penalty.

Authority: IC § 6-3-4-4.1(b); IC § 6-3-4-4.1(d); IC § 6-8.1-5-1(c); IC § 6-8.1-10-2.1(a)(2); IC § 6-8.1-10-2.1(a)(3); IC § 6-8.1-10-2.1(d); [45 IAC 15-11-2\(b\)](#); [45 IAC 15-11-2\(c\)](#).

Taxpayers state that failure to pay any additional amount of Indiana income tax was not due to negligence and that the Department should exercise its discretion to abate the penalty.

STATEMENT OF FACTS

Taxpayers are a married couple who are Indiana residents. During 2012 and 2013, Taxpayers filed IT-40PNR ("Part-Year and Full-Year Nonresident") Indiana income tax returns.

The Indiana Department of Revenue ("Department") concluded that Taxpayers were full-time Indiana residents. The Department issued Taxpayers proposed assessments of additional Indiana income tax which resulted from that conclusion.

Taxpayers disagreed with that decision and submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayers explained the basis for their protest. This Letter of Findings results.

I. Individual Income Tax - Residency.

DISCUSSION

Taxpayers owned an Indiana home during 2012 and 2013. The Indiana home was sold in November 2013.

Taxpayers indicate that they moved to Florida for medical reasons, were unable to return to Indiana for those same reasons, and purchased a home in that state in 2011.

Taxpayers argue that they were not full-time residents of Indiana during 2012 and 2013 and the Department's decision to the contrary was wrong.

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.

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).

In an earlier case, 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 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 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.

In order to change one's domicile from Indiana to an out-of-state location, the law requires the "intent of establishing a home at that place," [45 IAC 3.1-1-22](#), along with "acts evidencing [an] intention to make the new domicile a home in fact" Bayh, 521 N.E.2d at 1317.

Certainly, Taxpayers took steps which evidence an intention to establish a new home in Florida. For example, Taxpayers purchased a new residence in that state and wife applied for a Florida driver's license in 2014. The Department neither ignores nor minimizes the significance of these specific actions.

However, the law also requires a simultaneous manifestation of an intent to abandon the Indiana domicile. Id. As the law states, "[A] person has only one domicile at a given time" [45 IAC 3.1-1-22](#). Significantly, Taxpayers retained full ownership of their Indiana home during 2012 and most of 2013. Equally significant, is the fact that Taxpayers continued to claim the Homestead Credit for their Indiana home. In doing so, Taxpayers necessarily verified that the Indiana home was their "principal place of residence" and, by doing so, took advantage of the typically significant tax advantage associated with claiming the credit. IC § 6-1.1-12-37(a)(2).

Having expressed an interest in and having taken steps to establish a domicile in Florida, Taxpayers nevertheless continued to claim the Homestead Credit. [IC 6-1.1-12-37](#)(f) in part states:

If an individual who is receiving the deduction provided by this section or who otherwise qualifies property for a deduction under this section:

- (1) changes the use of the individual's property so that part or all of the property no longer qualifies for the deduction under this section; or
- (2) is no longer eligible for a deduction under this section on another parcel of property because:
 - (A) the individual would otherwise receive the benefit of more than one (1) deduction under this chapter; or
 - (B) the individual maintains the individual's principal place of residence with another individual who receives a deduction under this section; the individual must file a certified statement with the auditor of the county, notifying the auditor of the change of use, not more than sixty (60) days after the date of that change.

The Department recognizes and does not dispute Taxpayer's argument that they were simply unable to sell their Indiana home until November 2013. However, during that time they were not required to claim the benefit of Homestead Credit which necessarily relies on their assertion that this state was their "principal place of residence."

It should also be noted that wife maintained her Indiana driver's license during 2012 and 2013, and both husband and wife were registered to vote in Indiana. Taxpayers did not manifest an intention to abandon the Indiana residence as evidenced by the fact that they continued to claim the Homestead Credit. 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"

Taxpayers did not establish that they abandoned their Indiana domicile during 2012 and 2013. Taxpayers did not change their residency status for purposes of the Indiana individual income tax during those two years and remain subject to the privileges and duties of that status.

Taxpayers were required to file Indiana income tax returns for 2012 and 2013.

FINDING

Taxpayers' protest is respectfully denied.

II. Administration - Penalty.

DISCUSSION

Taxpayers ask that the Department abate a ten-percent "underpayment" penalty.

IC § 6-3-4-4.1(b) imposes on each taxpayer the responsibility to make and pay a "declaration of estimated tax for the taxable years" if the amount of that estimated is more than \$1,000. Id.

IC § 6-3-4-4.1(d) imposes a penalty if a taxpayer fails to pay the correct amount of estimated tax.

The penalty prescribed by [IC 6-8.1-10-2.1\(b\)](#) shall be assessed by the department on corporations failing to make payments as required in subsection (c) or (f). However, no penalty shall be assessed as to any estimated payments of adjusted gross income tax which equal or exceed:

- (1) the annualized income installment calculated under subsection (c); or
- (2) twenty-five percent (25[percent]) of the final tax liability for the taxpayer's previous taxable year. Id.

IC § 6-8.1-10-2.1(a)(3) requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. IC § 6-8.1-10-2.1(a)(2) requires a ten-percent penalty if the taxpayer "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."

IC § 6-8.1-10-2.1(d) states that, "If a person subject to the penalty imposed under this section can show that the failure to . . . pay the full amount of tax shown on the person's return . . . or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty."

Departmental regulation [45 IAC 15-11-2\(b\)](#) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

Departmental regulation [45 IAC 15-11-2\(c\)](#) requires that in order to establish "reasonable cause," 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 IC § 6-8.1-5-1(c), "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." An assessment - including the negligence penalty - is presumptively valid.

As discussed in Part I above, the Department disagrees with Taxpayers' substantive argument. However, there is sufficient information to conclude that Taxpayers exercised "reasonable care, caution, or diligence . . ." and that the penalty should be abated.

FINDING

Taxpayer's protest is sustained.

SUMMARY

Taxpayers were required to file Indiana income tax returns for 2012 and 2013. However, Taxpayers' protest of the penalty is sustained.

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