DEPARTMENT OF STATE REVENUE

01-20140640.SLOF

Supplemental Letter of Findings: 01-20140640
Indiana 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 Supplemental Letter of Findings.

HOLDING

Individual remained subject to Indiana's individual income tax filing requirement notwithstanding having acquired a Florida residence and conducting other activities in that state; Individual's continued ownership of an Indiana home along with his presence in this state more than 183 days during 2011 established that he had an Indiana income tax filing obligation.

ISSUES

I. Individual Income Tax - Residency.

Authority: Croop v. Walton, 157 N.E. 275, 278 (Ind. 1927); State v. Evans, 810 N.E.2d 335 (Ind. Ct. App.); 45 IAC 3.1-1-22; Stranahan v New York State Tax Commn, 416 N.Y.S.2d 836 (N.Y. App. Div. 1979).

Taxpayer argues he was not a resident of Indiana during 2011 and not subject to Indiana's individual income tax that year.

II. Individual Income Tax - Calculation.

Authority: IC § 6-8.1-5-1(b); IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer maintains that the Department miscalculated the amount of any 2011 income tax owed.

III. Tax Administration - Penalty.

Authority: IC § 6-8.1-10-2.1(a); IC § 6-8.1-10-3.

Taxpayer asks that the Department abate a twenty-percent penalty.

STATEMENT OF FACTS

The Indiana Department of Revenue ("Department") contacted Taxpayer's representative in August 2014 asking Taxpayer why he "was not required to file a 2011 Indiana income tax return." Taxpayer's representative responded September 2014 explaining that Taxpayer maintained a Florida residence during 2011 and that Taxpayer was under no obligation to file Indiana income tax return that year.

Nonetheless, the Department issued Taxpayer an assessment of 2011 Indiana income tax. Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. A Letter of Findings was issued in December 2015 holding that Taxpayer was a 2011 Indiana resident and required to file and Indiana income tax return.

Taxpayer disagreed with the conclusions contained within the Letter of Findings and raised issues which were not addressed in that first decision.

A rehearing was conducted during which Taxpayer's representatives pressed the issue of whether or not Taxpayer was - under Indiana tax law - a resident of this state during 2011.

This Supplemental Letter of Findings results. It incorporates by references the facts, statements of law, analysis, and conclusion set out in Letter of Findings 01-20140640 (December 2, 2015).

I. Individual Income Tax - Residency.

DISCUSSION

As explained in Taxpayer's letter requesting a rehearing, Taxpayer maintains "it is clear that the Taxpayer's domicile was in the State of Florida both before, during, and after the Year in Issue."

Taxpayer continues his argument that he was not an Indiana resident during 2011:

> As the Indiana Supreme Court has said and the Department recognized in its LOF, residency is established by "evidence of the acts undertaken in furtherance of the requisite intent which makes the intent manifest and believable." The Taxpayer has provided exactly what is required - evidence of his intent to permanently reside in Florida. Both the facts and the evidence support this conclusion.

The December 2015 Letter of Findings recognized that "Taxpayer has provided evidence that he set down roots in Florida." However:

> Taxpayer continues to maintain an active presence in Indiana including continued ownership of his Indiana home along with his ongoing and extended presence in this state more than 183 days during 2011. According to Taxpayer, his presence in this state is not by choice but by his wish to receive medical treatment at a facility he believes most competent to provide that medical care. However, Indiana's statute is not based on whether a person is present in this state by choice or by practical - and quite reasonable - necessity. In Taxpayer's case, the rule is clear; "The term 'resident' includes . . . 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. Taxpayer retained ownership of an Indiana home and spent more than 183 days in this state during 2011.

Taxpayer presents facts which he concludes make "manifest" his intent to move from this state and establish a Florida residence despite that the fact that he is in this state - receiving medical treatment at an Indiana medical facility - for more than 183 days.

Those factors include:

- Taxpayer moved from Indiana to Florida in 2009 changing his permanent residency from Indianapolis to Florida;
- Taxpayer claimed a homestead tax exemption for his Florida residence during 2011;
- Taxpayer obtained a Florida driver's license which was in force during 2011;
- Taxpayer moved his vehicles from Indiana to Florida and transferred registration of those vehicles from Indiana to Florida;
- Taxpayer purchased a new car in 2011, purchased that car in Florida, registered the car in Florida, and titled the car in that state;
- Taxpayer obtained car insurance from a Florida vendor in 2009. That insurance was in effect during 2011 and continues to be in effect;
- Taxpayer filed his federal income tax return and gift tax return for 2011 giving Florida as his current address;
- Taxpayer joined Florida social organizations in 2009 and continued his membership with those organizations during 2011.

Taxpayer cites to State v. Evans, 810 N.E.2d 335 (Ind. Ct. App.) for the proposition that Indiana law is not to be interpreted in such a way as to produce absurd results.

> When interpreting a statute, appellate courts independently review a statute's meaning and apply it to the facts of the case under review. If a statute is unambiguous, that is, susceptible to but one meaning, we must give the statute its clear and plain meaning. If a statute is susceptible to multiple interpretations, however, we must try to ascertain the legislature's intent and interpret the statute so as to effectuate that intent. We presume the legislature intended logical application of the language used in the statute, so as to avoid unjust or absurd results. Id. at 357.

According to Taxpayer, "To make the determination that spending time in a hospital for treatment of [] cancer would result in an individual being a resident of the State of Indiana creates both an unjust and absurd result that the Indiana courts prohibit."

Although not dispositive of the issue, Taxpayer cites to a New York state decision, Stranahan v New York State Tax Commn, 416 N.Y.S.2d 836 (N.Y. App. Div. 1979) which held that "the time spent in a medical facility for the treatment of that illness should not be counted in determining whether such a nondomiciliary was a resident of the State for income tax purposes during such confinement." Id. at 838.

Pursuant to IC § 6-3-1-12(b), "The term 'resident' includes . . . . 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 . . . ." Taxpayer owns an Indiana home and had an ongoing and extended presence in this state for more than 183 day during 2011. The Department finds insufficient reason to depart from its earlier determination that Taxpayer was a "resident" of Indiana during 2011 because he owned a home in this state and spent more than 183 days here.

Although Taxpayer provided evidence of his intent to establish a life for himself elsewhere, Taxpayer owns a home in Indiana and - voluntarily or otherwise - spent more than 183 days in this state. As explained in the December 2015 Letter of Findings, "Taxpayer retained ownership of an Indiana home and spent more than 183 days in this state during 2011." Taxpayer has not "abandoned" his original domicile or his residency status and - for the purposes of Indiana's income tax law - remains subject to the privileges and duties of that status.

FINDING

Taxpayer's protest is respectfully denied.

II. Individual Income Tax - Calculation.

DISCUSSION

For the sake of clarity, this Supplemental Letter of Findings addresses concerns that the original assessment of tax was inaccurate. As explained by Taxpayer, "There is no basis to maintain the amount the Taxpayer owes [is] the amount of tax liability detailed in the Proposed Assessment."

The Department's assessments were based on the "best information available" to the Department at the time the assessment was issued. As with any tax bill, the 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).

In the absence of the Taxpayer's own 2011 return, the Department issued proposed assessments based on the information available to it. The Department's use of the best information available to calculate the proposed assessment is authorized under IC § 6-8.1-5-1(b), which provides in part that "If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department."

Taxpayer has provided a copy of his 2011 federal income tax return which - according to Taxpayer - provides a better, more accurate indication of his income that year. Although this Supplemental Letter of Findings has no basis upon which to conclusively determine that the Taxpayer's Indiana income tax liability is anything other than what was first determined, the Department's Audit Division is requested to review the federal return and to make any adjustment to the Indiana liability which is warranted.

FINDING

To the extent that the Department's Audit Division determines that Taxpayer owes a lesser amount of Indiana tax then first assessed, Taxpayer's protest is sustained.

III. Tax Administration - Penalty.

DISCUSSION

Taxpayer believes that the penalty assessed was incorrect. As Taxpayer explains, "[T]he proposed assessment of penalties are without explanation whatsoever . . . . [and] [t]he Department has not attempted to carry its burden of proof to substantiate the imposition of penalties." Taxpayer concludes the penalties are "inherently arbitrary, and capricious, and void ab initio."

The penalties to which Taxpayer refers were assessed pursuant to IC § 6-8.1-10-3 which provides as follows:

> 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.
>
> 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.

Unlike the underpayment, late, or "negligence" penalties set out in IC § 6-8.1-10-2.1(a), the twenty percent penalty does not contain a provision which allows for abatement of the penalty for "reasonable cause" or because there was no "willful neglect" on the part of Taxpayer.

In the case of the penalty assessed pursuant to IC § 6-8.1-10-3, the Department concludes that there is no statutory basis upon which to provide Taxpayer the relief sought.

FINDING

Taxpayer's protest is respectfully denied.

Posted: 06/29/2016 by Legislative Services Agency
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