

Letter of Findings: 01-20150680
Income Tax
For The Tax 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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Individual did not provide sufficient documentation to establish that he did not owe 2011 individual income tax in Indiana.

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); [45 IAC 3.1-1-22](#).

Taxpayer protest the imposition of Indiana individual income tax.

STATEMENT OF FACTS

Taxpayer is an individual who currently resides in Florida, but maintains a residence in Indiana. The Indiana Department of Revenue ("Department") determined that Taxpayer was an Indiana resident for the tax year 2011 and that Taxpayer failed to file his 2011 Indiana income tax return. The Department therefore issued a proposed assessment for 2011 income tax, penalty, and interest.

Taxpayer protested the assessment. An administrative hearing was held with Taxpayer's authorized Power of Attorney representative. This Letter of Findings ensues and addresses Taxpayer's protest of the proposed assessment for the tax year 2011. Additional facts will be provided as necessary.

I. Income Tax - Residency.

DISCUSSION

The Department assessed Taxpayer income tax for the 2011 tax year on the grounds that Taxpayer was an Indiana resident who had failed to file a 2011 Indiana income tax return. The Department had information that showed Taxpayer had an Indiana mailing address for 2011, claimed an Indiana property tax homestead deduction in 2010, 2011, 2013, and 2014, and had multiple Indiana vehicle registrations. Taxpayer contends that he was not required to file a 2011 Indiana income tax return because he was not an Indiana resident during the 2011 tax year. Taxpayer retired in 2009 and moved to Ft. Myers, Florida in 2010. However, Taxpayer maintained his previous residence in order to visit his children. The issue is whether, for the tax year 2011, Taxpayer was an Indiana resident and therefore subject to Indiana income tax for 2011.

As a threshold issue, all tax assessments are prima facie evidence supporting the Department's claim for unpaid tax is; the taxpayer bears the burden of proving any assessment 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 to the Department's assessment. 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.

Indiana imposes a tax "on 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, the evidence suggests that Taxpayer's residence in Indiana constituted a domicile for the 2011 tax year.

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.

(Emphasis added).

Under Indiana law "[h]omestead" is defined as "an individual's principal place of residence that is located in Indiana" and that "the individual owns" IC § 6-1.1-12-37(a)(2). A taxpayer is entitled to claim a deduction, known as homestead deduction, against taxes imposed on his or her homestead property pursuant to IC § 6-1.1-12-37(e). When the taxpayer is no longer qualified for the homestead deduction, the taxpayer must notify the auditor of the county where the homestead is located within sixty days after the date of that change. IC § 6-1.1-12-37(f).

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 with intent to remain, while abandoning the 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. Indiana assessed the taxpayer, Mr. Walton, income tax based on the fact that he owned and managed a company and stores; maintained his membership with lodges, clubs, and a church; exercised his civil and political rights on multiple occasions; and used his Michigan address on legal documents. 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. *Id.* at 1317 - 1318 (Ind. 1988).

(Emphasis added).

During the protest process, Taxpayer submitted additional documentation to support his assertion that he did not owe any Indiana income tax for the tax year 2011. Taxpayer stated that he retired and moved to Florida with the intent to remain there, as shown by the itemized listing of improvements made to the property purchased in Fort Myers. In addition, Taxpayer carried a Florida driver's license until 2012, when the license expired, and registered multiple vehicles in Indiana. In 2010, Taxpayer began filing his Federal tax return using his Florida address.

However, this evidence is counterbalanced. Taxpayer retained his Indiana residence and continued to claim the Indiana homestead property tax deduction in 2010, 2011, 2013, and 2014. Also, after Taxpayer's Florida license expired, Taxpayer applied for and received an Indiana license to replace it. Taxpayer also spent more than 183 days in Indiana in 2012 while receiving medical treatment. Taxpayer also retained multiple Indiana registered vehicles. In 2010, he received taxable income from Indiana in the form of a loan repayment. Finally, he

maintained a business interest through co-ownership of real property, of which he was named the legal custodian, with his Indiana address listed. In essence, while the Taxpayer may have demonstrated a desire to create a new residence in Florida, he did not demonstrate the requisite intention to abandon Indiana domicile, as provided in by the court in Bayh.

Based on the above, Taxpayer has not presented enough information to show he had not abandoned his Indiana domicile and is therefore required to file an Indiana individual income tax return for 2011. Taxpayer has not met the burden required by IC § 6-8.1-5-1(c). The Department notes that 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

Taxpayers' protest is denied.

Posted: 08/31/2016 by Legislative Services Agency
An [html](#) version of this document.