

**Letter of Findings: 01-20160134  
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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

By providing substantial documentation verifying her claim, Individual established that she had no Indiana domicile during 2011. Therefore, the Department's assessments for 2011 Indiana income tax were proven incorrect. Penalty was also abated.

### ISSUES

#### **I. Income Tax—Residency.**

**Authority:** IC § 6-1.1-12-37; IC § 6-3-1-12; IC § 6-8.1-5-1; State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988); [45 IAC 3.1-1-22](#); Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the imposition of Indiana individual income tax.

#### **II. Tax Administration—Penalty.**

**Authority:** IC § 6-8.1-10-3.

Taxpayer protests the imposition of a penalty.

### STATEMENT OF FACTS

Taxpayer is an individual. The Indiana Department of Revenue ("Department") determined that Taxpayer was domiciled in Indiana for the tax year 2011 but that Taxpayer neither filed a 2011 Indiana individual income tax return nor paid any 2011 Indiana individual income tax. Taxpayer protested the Department's determination of domicile and the imposition of income tax plus penalty. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

#### **I. Income Tax - Residency.**

### DISCUSSION

Taxpayer protests the imposition of Indiana adjusted gross income tax for the tax year 2011. The Department determined that Taxpayer was an Indiana domiciliary for 2011 because she and her husband were listed as the owners of an Indiana residence upon which the Indiana Homestead deduction had been claimed. Taxpayer argues that she was domiciled in another state in 2011 and has not been a resident of Indiana since moving to the other state in 2006. Further, Taxpayer states that her husband lives in Indiana and pays Indiana income and property taxes, thereby making him eligible to claim the Indiana homestead credit. Therefore, Taxpayer argues, she did not need to file a 2011 Indiana income tax return nor did she owe any Indiana income tax for that year.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." 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, a taxpayer is required to provide documentation explaining and supporting his or her 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.

Pursuant to IC § 6-3-1-12, a resident is defined as follows:

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, or (c) any estate of a deceased person defined in (a) or (b), or (d) any trust which has a situs 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 she did not spend more than 183 days in Indiana during 2011. Therefore, in order to be considered a resident of Indiana during 2011, Taxpayer must have been domiciled here.

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

"Domicile" Defined. 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).

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.

The Indiana Supreme Court considered the issue of the meaning of "domicile" in *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), in which the court provided:

Domicile means "the place where a person has his true, fixed, permanent home and principal establishment, and to which place he has, whenever he is absent, the intention of returning." *Turner*, 241 Ind. at 80, 168 N.E.2d at 196. Domicile can be established in one of three ways: "domicile of origin or birth, domicile by choice, and domicile by operation of law." *Croop*, 199 Ind. at 271, 157 N.E. at 278. The domicile of an unemancipated minor is determined by the domicile of his parents. *Hiestand v. Kuns* (1847), 8 Blackf. 345.

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." *Scott*, 171 Ind. at 361, 86 N.E. at 413.

**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."** Rogers, 226 Ind. at 35-36, 77 N.E.2d at 595-96. Id. at 1317. (**Emphasis added**).

Therefore, an examination of Taxpayer's acts is required to determine if Taxpayer had the intention to acquire a new domicile outside Indiana and to abandon her domicile in Indiana.

A review of the domiciliary criteria listed under [45 IAC 3.1-1-22](#) is illuminating in this matter.

After moving to the other state in 2006 and prior to 2011, which is the tax year at issue, Taxpayer: 1) obtained a driver's license in the other state; 2) purchased a villa in the other state; 3) set up utilities at the villa in the other state; 4) set up a banking account in the other state; 5) registered to vote in the other state; 6) purchased and registered a vehicle in the other state; 7) was elected to the board of the villa homeowner's association; 8) was elected president of the villa homeowners association; 9) enrolled in a state-sponsored HMO which requires residency of that state to enroll; 10) received 2011 unemployment benefits from the other state; and, 11) claimed the homestead exemption on the villa in the other state. Taxpayer provided documentation supporting these activities in the other state. Therefore, Taxpayer has clearly met five of the seven factors listed under [45 IAC 3.1-1-22](#) which are used in determining whether or not a new domicile has been created.

Also, Taxpayer provided documentation showing that her husband claimed the homestead deduction on the Indiana residence and that he is an Indiana resident. The relevant statute is IC § 6-1.1-12-37(a)(2) which states in relevant part:

**"Homestead" means an individual's principal place of residence:**

**(A) that is located in Indiana;**

**(B) that:**

**(i) the individual owns;**

**(ii) the individual is buying under a contract; recorded in the county recorder's office, that provides that the individual is to pay the property taxes on the residence;**

**(iii) the individual is entitled to occupy as a tenant-stockholder (as defined in 26 U.S.C. 216) of a cooperative housing corporation (as defined in 26 U.S.C. 216); or**

**(iv) is a residence described in section 17.9 of this chapter that is owned by a trust if the individual is an individual described in section 17.9 of this chapter; and**

**(C) that consists of a dwelling and the real estate, not exceeding one (1) acre, that immediately surrounds that dwelling.**

Except as provided in subsection (k), the term does not include property owned by a corporation, partnership, limited liability company, or other entity not described in this subdivision.

Taxpayer has shown that her husband met the criteria required by IC § 6-1.1-12-37(a)(2) for claiming the Indiana homestead deduction on the Indiana residence while she resided and was domiciled in the villa in the other state. This arrangement was necessitated due to the medical conditions of a relative in the other state for whom Taxpayer was and is the primary caregiver.

After review of these factors, the Department concludes that Taxpayer did take steps to establish a new domicile. As provided by the Indiana Supreme Court in Bayh, there 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 the change of domicile which is necessary to lose one's domicile in Indiana. Here, Taxpayer did intend to abandon the Indiana domicile by establishing a new residence/domicile in the other states. As provided by [45 IAC 3.1-1-22](#), the factors tethering Taxpayer to Indiana were outweighed by the factors showing her intent to establish a new domicile. Since Taxpayer was no longer domiciled in Indiana and since she spent less than 183 days in Indiana in 2011, she no longer qualified as an Indiana resident under IC § 6-3-1-12. Therefore, while it was reasonable for the Department to believe that a person who was listed as an owner of an Indiana residence upon which a homestead deduction had been claimed, Taxpayer has met the burden imposed by IC § 6-8.1-5-1(c) of proving the proposed assessment wrong.

## FINDING

Taxpayer's protest is sustained.

## II. Tax Administration - Penalty.

## DISCUSSION

Taxpayer protests the imposition of penalties pursuant to IC § 6-8.1-10-3, which provides:

(a) 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.

(b) 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.

In this case, Taxpayer did not file a return for her 2011 Indiana income tax. However, as explained above in Issue I, Taxpayer was no longer domiciled in or a resident of Indiana and was not required to file an Indiana individual income tax return. Taxpayer has been sustained in whole on the imposition of Indiana income tax for 2011, therefore the imposition of penalty is moot.

## FINDING

Taxpayer's protest of the imposition of penalty is sustained.

## SUMMARY

Taxpayer's Issue I protest regarding the imposition of adjusted gross income tax is sustained. Taxpayer's Issue II protest regarding the imposition of penalty is sustained.

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An [html](#) version of this document.