

Letter of Findings: 01-20160304
Individual Income Tax
For the Year 2011

NOTICE: IC § 6-8.1-1-3.5 and IC § 6-4-22-7 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 resident provided evidence sufficient to establish that her decision to attend college and post-graduate school outside the state manifested an intention to abandon her former Indiana domicile and establish a domicile outside Indiana.

I. Indiana Individual Income Tax - Residency.

Authority: IC § 6-1.1-12-37(f); IC § 6-3-1-12; IC § 6-3-2-1(a); 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); 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](#).

Taxpayer argues that she was not an Indiana resident during 2011 and was not required to file an Indiana return as a full-year resident of this state.

STATEMENT OF FACTS

Taxpayer is an individual currently residing outside Indiana. The Indiana Department of Revenue ("Department") determined that Taxpayer was an Indiana resident during 2011 and that she had failed to file the requisite Indiana income tax return. The Department issued a proposed assessment for individual income tax. Taxpayer disagreed with the proposed assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

The issue is whether Taxpayer established that she was not a full-year resident of Indiana during 2011.

Taxpayer explains that she was living at her parents' Indiana residence until 2009 when she left to attend college in Kentucky. Taxpayer states that she was living in Kentucky during 2011. Taxpayer explains that since graduating from college, she moved to New York in order to complete her graduate studies, that she completed those graduate studies, and that she is now employed in New York.

Tax assessments are prima facie evidence that the Department's claim for the unpaid 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.* at 1317 (Internal citations omitted).

The Indiana 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.

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](#).

Taxpayer explains that while attending college in Kentucky, she used her parent's childhood mailing address on her federal tax return. However, Taxpayer provided a copy of her 2011 Kentucky income tax return, a copy of her Kentucky rental agreement, and other documentary evidence intended to establish that she moved from Indiana and was residing in Kentucky during 2011.

The Department, in turn, provided evidence that Taxpayer renewed her Indiana driver's license in 2010.

Although attending an out-of-state educational institution is typically insufficient to establish that one has "abandoned" his or her Indiana residence, in this case, the fact that she filed a 2011 Kentucky income tax return, the evidence that she has since moved to New York, and that she is now employed in that state is sufficient to establish that her 2009 move from Indiana to Kentucky was intended to be permanent. The Department is mindful that there is no one set of standards that will accurately indicate the person's intent in every relocation. Given a "case-by-case" review of Taxpayer's facts, documentation, and circumstances, Taxpayer has met her burden of establishing that by 2011, she "abandoned" her Indiana domicile and established a domicile in another state. Therefore, Taxpayer manifested an "intention to abandon the old domicile [and] the intention to acquire a new one"

FINDING

Taxpayer's protest is sustained.

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