

**Letter of Findings: 01-20160139
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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Individual did have Indiana domicile during 2011. However, Individual also correctly paid state income tax to the state of residence for that year. Credit against Indiana income tax reduced Indiana income tax due to zero. Therefore, the Department's assessment for 2011 Indiana income tax was proven incorrect. Penalty was also abated.

ISSUES

I. Income Tax—Residency.

Authority: IC § 6-1.1-12-37; IC § 6-3-3-3; 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); [50 IAC 24-2-5](#).

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 he was listed as the owner of an Indiana residence upon which the Indiana Homestead deduction had been claimed. Taxpayer argues that he was a resident of another state in 2011 and that he correctly paid state income tax to the state of residence. Therefore, Taxpayer argues, he did not need to file a 2011 Indiana income tax return nor did he 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 he 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 his 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 2007, Taxpayer: 1) signed a lease on a home in the other state; 2) moved his family to the other state; 3) set up utilities at the house in the other state; and, 4) enrolled his child in kindergarten in the other state. Taxpayer provided documentation supporting these activities in the other state. Therefore, Taxpayer has clearly met some of the factors listed under [45 IAC 3.1-1-22](#) which are used in determining whether or not a new domicile has been created.

However, the Department notes that, prior to moving to the other state, Taxpayer owned a house in Indiana and claimed a Homestead deduction upon that house. 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.

Therefore, when he claimed the homestead deduction, Taxpayer claimed that the dwelling was his principle place of residence, as provided by IC § 6-1.1-12-37(a)(2). Also, [50 IAC 24-2-5](#) states:

"Principal place of residence" means an individual's true, fixed, permanent home to which the individual has the intention of returning after an absence.

Also of relevance is the fact that in 2012 Taxpayer and his family returned to live in Indiana. As the court in Bayh explained, "A change of domicile requires an actual moving with an intent to go to a given place and remain there." Bayh, at 596. Taxpayer's ongoing claiming of the Indiana property tax homestead deduction and its requirement that the residence in question is the Taxpayer's primary residence, and the fact that the family returned to Indiana in 2012, the Department cannot agree that Taxpayer changed his domicile as defined by the Bayh decision.

Still, it remains that Taxpayer did pay state income tax to the state in which he and his family resided in 2011. As provided by IC § 6-3-3-3:

(a) Whenever a resident person has become liable for tax to another state upon all or any part of his income for a taxable year derived from sources without this state and subject to taxation under [IC 6-3-2](#), the amount of tax paid by him to the other state shall be credited against the amount of the tax payable by him. Such credit shall be allowed upon the production to the department of satisfactory evidence of the fact of such payment, except that such application for credit shall not operate to reduce the tax payable under [IC 6-3-2](#) to an amount less than would have been payable were the income from the other state ignored. The credit provided for by this subsection shall not be granted to a taxpayer when the laws of the other state, under which the adjusted gross income in question is subject to taxation, provides for a credit to the taxpayer substantially similar to that granted by subsection (b).

(b) Whenever a nonresident person has become liable for tax to the state where he resides upon his income for the taxable year derived from sources within this state and subject to taxation under [IC 6-3-2](#), the proportion of tax paid by him to the state where he resides that his income subject to taxation under [IC 6-3-2](#)

bears to his income upon which the tax so payable to the other state was imposed shall be credited against the tax payable by him under [IC 6-3-2](#), but only if the laws of the other state grant a substantially similar credit to residents of this state subject to income tax under the laws of such other state, or impose a tax upon the income of its residents derived from sources in this state and exempt from taxation the income of residents of this state. No credit shall be allowed against the amount of the tax on any adjusted gross income taxable under [IC 6-3-2](#) that is exempt from taxation under the laws of the other state.

In this case, the other state in which Taxpayer resided during 2011 did allow a similar credit for its residents who owed state income taxes to other states in which they resided, as required by IC § 6-3-3-3(a). Since the tax rate in the other state was greater than the rate in Indiana and since one hundred percent of Taxpayer's income for 2011 was sourced in the other state, Taxpayer's credit under IC § 6-3-3-3 is greater than the amount of Indiana income tax which would have been due for 2011. Therefore, Taxpayer has met the burden of proving the proposed assessment wrong, as required by IC § 6-8.1-5-1(c).

In conclusion, Taxpayer did take steps to establish a new residence, but did not take enough 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 not intend to abandon the Indiana domicile by establishing a new domicile in the other state. As provided by [45 IAC 3.1-1-22](#), the factors tethering Taxpayer to Indiana were not outweighed by the factors showing his intent to establish a new domicile. Since Taxpayer was domiciled in Indiana he still qualified as an Indiana resident under IC § 6-3-1-12. Also, Taxpayer's credit for state income taxes paid to the other state for 2011 was greater than the amount of Indiana income tax which would have been due for that year, as provided by IC § 6-3-3-3. Therefore, 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 his 2011 Indiana income tax. However, as explained above in Issue I, Taxpayer did not owe Indiana income tax due to a credit for income taxes paid to the other state. 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 Indiana adjusted gross income tax is sustained. Taxpayer's Issue II protest regarding the imposition of penalty is sustained.

Posted: 01/25/2017 by Legislative Services Agency
An [html](#) version of this document.