

**Supplemental Letter of Findings: 01-20160222
Individual 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 Letter of Findings.

HOLDING

Given the supplementary probate documentation provided during the rehearing, the Department agreed that Individual established the requisite intent to abandon his Indiana home in 2010 and establish a Florida domicile.

ISSUE

I. Individual Income Tax - Residency.

Authority: IC § 6-3-2-1(a); IC § 6-3-1-12; 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](#); Black's Law Dictionary 1219 (7th ed. 1999).

Taxpayer's representative argues that Taxpayer was not a full-year resident of Indiana, not required to file a 2011 Indiana individual income tax return, and that Department's previous administrative decision on the matter was incorrect.

STATEMENT OF FACTS

Taxpayer formerly lived in Indiana and owned a home in Indiana. The Indiana Department of Revenue ("Department") sent a letter to Taxpayer using his then-Florida address. The July 2015 letter stated that "[b]ased on information reported to the Indiana Department of Revenue, we have determined that you have unreported income for tax year 2011. The Department's letter instructed Taxpayer to 'file an Indiana return if you were an Indiana resident or had Indiana income and were required to file a federal income tax return.'"

In a response later that same month, Taxpayer's representative wrote to the Department stating that Taxpayer "was a resident of Florida" and that 2010 was the final year of Taxpayer's Indiana residency. Taxpayer's representative concluded that because Taxpayer "spent the majority of his time at his new Florida residence" and because he "had no Indiana source income in 2011" Taxpayer was not required to file an Indiana tax return.

The Department responded in a letter dated January 2016 stating that Taxpayer had "not shown an intention to change domicile and remain in another state permanently or indefinitely" and that Taxpayer's income was "taxable to Indiana."

Taxpayer's representative disagreed with the Department's decision and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. In documentation submitted at the time of the administrative hearing, the Department noted that Taxpayer passed away in November 2015.

A Letter of Findings was issued August 2016. The Letter of Findings denied Taxpayer's protest on the ground that, although Taxpayer had resided in Florida during 2010, "Taxpayer's representative has failed to establish that Taxpayer intended to permanently abandon his Indiana domicile, and manifested 'intent and conduct . . . to establish a new domicile'" in Florida.

Taxpayer disagreed with the decision and requested - and was granted - a rehearing. Taxpayer's representative explained the basis for the continued disagreement. This Supplemental Letter of Findings results.

I. Individual Income Tax - Residency.

DISCUSSION

The issue is whether Taxpayer's representative established that - for purposes of Indiana's individual income tax - Taxpayer was not a full-year resident of Indiana during 2011 because he "abandoned" his Indiana domicile in 2010.

Taxpayer's representative argues that Taxpayer established a Florida domicile before 2011. Taxpayer's representative points out that Taxpayer obtained a Florida driver's license, changed his automobile registration from Indiana to Florida, and updated his financial accounts to reflect his move to Florida. In addition, Taxpayer's representative notes that Taxpayer relinquished the Homestead Credit previously claimed on his Indiana home and claimed the credit on his Florida home. Taxpayer's representative also provided a copy of Taxpayer's federal 2010 income tax which designated Florida as his address.

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](#).

The Department again takes note of the fact that Taxpayer retained ownership of his Indiana home and that - at the time of his death - Taxpayer had returned to Indiana. However, the Department also acknowledges that the original Letter of Findings erred when it stated that Taxpayer claimed the Indiana Homestead Credit on that home for 2010.

In addition, Taxpayer's representative explains that Taxpayer's last will and testament listed "Palm Beach County, Florida as his residence"

Taxpayer's representative also provided evidence that Taxpayer's estate was probated in Florida. "Probate" refers to "[t]he judicial procedure by which a testamentary document is established to be a valid will [and] the proving of a will to the satisfaction of the court." Black's Law Dictionary 1219 (7th ed. 1999). The Palm Beach County's "Petition for Administration" indicated that Taxpayer was a "testate Florida resident," listed a Delray Beach Florida address, and that "[o]n the date of death, decedent was domiciled in Palm Beach County Florida." The court found that it had authority to probate Taxpayer's will because "decedent was domiciled in [Palm Beach County]."

In the court's "Letters of Administration," Taxpayer was listed as a resident of . . . Delray Beach, Fl. . . ."

Evaluating the supplementary documentation provided during the rehearing on a "case by case basis" in order to determine Taxpayer's "requisite intent," Taxpayer's representative has provided sufficient documentation to establish that Taxpayer intended to permanently abandon his Indiana domicile. The documentation leads to the conclusion that Taxpayer manifested "intent and conduct . . . to establish a new domicile" in Florida. As noted above in [45 IAC 3.1-1-22](#), "a person can only have one domicile at a given time"

FINDING

Taxpayer's protest is sustained.

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