

**Supplemental Letter of Findings: 01-20160276
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 is not part of the analysis contained in this Supplemental Letter of Findings.

HOLDING

Despite the fact that former Indiana Residents returned to Indiana in 2013, the Department agreed that former Indiana Residents provided evidence sufficient to establish that their 1971 decision to move to California and their subsequent moves to foreign countries, manifested an intention to abandon their domicile and establish a domicile outside Indiana; Indiana Residents were not subject to Indiana's individual income tax during 2011.

ISSUE

I. Indiana 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 Evard, 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](#); [45 IAC 3.1-1-23](#)(3).

Taxpayers argue that they were not Indiana residents during 2011 and were not required to file a 2011 Indiana return as full-year residents of this state.

STATEMENT OF FACTS

In a letter dated February 2015, the Department of Revenue ("Department") notified Taxpayers that they "have unreported income for the tax year [2011] . . . and must file an Indiana return if you were an Indiana resident or had Indiana income and were required to file a federal income tax return."

Taxpayers responded in writing later that month stating that they lived in Kuwait from 2003 until 2013 on an "overseas assignment" before returning to Indiana.

Taxpayers subsequently challenged the assessment on the ground that they were not full-year Indiana residents during 2011.

An administrative hearing was conducted by telephone during which Taxpayers' representatives explained the basis for the protest.

The Department issued a Letter of Findings dated August 2016 denying Taxpayers' protest on the ground that Taxpayers' domicile remained in Indiana during 2011, remained in Indiana during their stay outside Indiana, and that their claim to an Indiana Homestead Credit was "indicative of their intention to return to their home state."

Taxpayers requested and were granted a rehearing. The rehearing was conducted by telephone during which Taxpayers explained the basis for their continued protest. This Supplemental Letter of Findings results.

I. Indiana Individual Income Tax - Residency.

DISCUSSION

The issue - as in their original protest - is whether Taxpayers established that they were not full-year residents of Indiana during 2011.

Taxpayers are current Indiana residents after having returned from living outside the country. However, Taxpayers argue that they were residents of Kuwait from 2003 through 2013, never resided in Indiana during that time, that their income was "totally foreign (Kuwaiti) sourced," that they did not hold an Indiana drivers' licenses from . . . 1972 until 2015, and that they never voted in Indiana.

During the hearing, Taxpayers provided a timeline of their residency following their original move from Indiana.

- In 1971, Taxpayers moved from Indiana to California and resided in that state until 1993;
- Taxpayers (husband) accepted an offer to work in Thailand, left California, and "established residency in Thailand for four years;"
- Taxpayers left Thailand in 1997, relocated to Poland, and worked in that country until 1999;
- Taxpayers left Poland in 1999, relocated to Korea, and remained in that country for one year;
- In 2000, Taxpayers moved to Canada and remained in that country for three years;
- In August 2003, Taxpayers (husband) accepted a position in Kuwait, remained in that country for 10 years, and "became Kuwaiti residents" from that year onward;
- In January 2010, Taxpayers (husband), along with two siblings, inherited an Indiana home from his deceased father;
- Taxpayers (husband) purchased his siblings' share of the Indiana home with the intention of maintaining the home, repairing the home, and selling it "for a profit;"
- Taxpayers (husband) sold the Indiana home in March 2016.

Taxpayers admit that they received the benefit of the property tax credit on the Indiana home in 2011. However, Taxpayers explain the deduction "was a one-time deduction resulting from the Greene County property tax roll-over policy." Taxpayers provided a letter from the Green County Auditor. In that letter, the auditor explains that because the transfer of the home from father to Taxpayers occurred in March 2010, the "deductions carry over for the next year . . . even if the owner does not file for the deductions." The auditor further explain that for 2012, "the deduction was not applied [because Taxpayers] did not file the Homestead deduction"

On the issue of the Homestead Credit, Taxpayers concluded that they "should not be penalized" based on the automatic carry-forward of the property tax credit from 2010 to 2011.

Taxpayers provided information relevant to the years they lived and worked in Kuwait. Taxpayers provided Kuwaiti drivers' licenses, Kuwaiti Civil Identification cards, a 2010 Kuwaiti residency permit, a 2011 Kuwaiti residency permit, a 2011 wage statement for income earned in Kuwait, their son's "confirmation of enrollment" in a Kuwaiti middle school for 2008 through 2013, their daughter's Kuwaiti residency permit for 2011 through 2013, and their daughter's Kuwaiti school attendance records for 2010 through 2011.

Taxpayers also provided a copy of their 2011 federal income tax return - prepared by a California accounting firm - listing an Indiana address. Taxpayers explain that the address listed is that of Taxpayers' (husband's) sister. The federal return included a copy of the federal form 1116 "Foreign Tax Credit" listing the Taxpayer(s) as a "resident of . . . Kuwait."

All tax assessments are prima facie evidence that the Department's claim for the 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.

Additionally, an individual who files federal income tax returns as a nonresident citizen "is considered as being domiciled in Indiana and his income taxable as a resident citizen, if he maintains a place of abode in Indiana immediately prior to residing in a foreign country as a nonresident citizen of the United States, and has not permanently established his domicile in a foreign country or in another state" [45 IAC 3.1-1-23](#)(3).

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. 1317 (Internal citations omitted).

The 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 Evard, 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.

Although garnering the benefit of a Homestead Credit is typically sufficient to establish one's domicile in the state for the year at issue, in this case the fact that Taxpayers moved to California in 1971, lived in that state for twenty-two years, and thereafter relocated to foreign countries until 2013, is sufficient to establish that Taxpayers were not "domiciled" in Indiana during 2011. The Department is mindful that there is no one set of standards that will unfailingly indicate a person's intent in every relocation. However, given a "case-by-case" review of Taxpayers' facts, documentation, and circumstances, Taxpayers have met their burden of establishing that they "abandoned" their Indiana domicile in 1971 and effectively established a domicile in another state. Therefore, Taxpayers manifested an "intention to abandon the old domicile [and] the intention to acquire a new one" Taxpayers were not domiciled in this state during 2011 and not required to file an Indiana income tax return that year.

FINDING

Taxpayers' protest is sustained.

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