

**Letter of Findings: 01-20160628
Individual Income Tax
For Tax Year 2013**

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 Indiana Department of Revenue'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 This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.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

Proposed assessment on Husband and Wife's 2013 Indiana income tax return was appropriate because Husband's income was not included on the return; the associated penalty was waived but the associated interest was statutorily required and cannot be waived.

ISSUES

I. Individual Income Tax - Domicile.

Authority: IC § 6-1.1-12-37; IC § 6-3-2-1; IC § 6-3-1-12; IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); 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); Indiana Dep't of State Rev. v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014); Croop v. Walton, 157 N.E. 275 (Ind. 1927); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988); [45 IAC 3.1-1-22](#); [50 IAC 24-2-5](#).

Taxpayers protest the imposition of Indiana income tax.

II. Individual Income Tax - Amount.

Authority: IC § 6-3-5-3; IC § 6-3-3-3; [45 IAC 3.1-1-1-76](#); [45 IAC 3.1-1-74](#).

Taxpayers protests the assessment of additional income tax.

III. Tax Administration - Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayers request that the Department abate the negligence/late filing penalty.

IV. Tax Administration - Interest.

Authority: IC § 6-8.1-10-1.

Taxpayers protest the imposition of interest on its tax liability.

STATEMENT OF FACTS

Taxpayers ("Husband" and "Wife") both work and file married-filing-jointly federal and state individual income tax returns. Husband is a traveling professor while Wife and children live in Indiana. For tax year 2013, Husband earned income in Kansas while Wife earned income in Indiana. In April 2014 Taxpayers filed their 2013 tax returns which included a 2013 Federal tax return reporting both incomes, a 2013 part-year resident Kansas tax return ("K-40") reporting both incomes, and a full-year resident Indiana tax return ("IT-40") reporting only Wife's income.

In August of 2016 the Indiana Department of Revenue ("Department") issued Taxpayers a proposed assessment for 2013 income tax. The assessment explained that:

We have compared the Federal Adjusted Gross Income and Exemptions and/or dependents reported on your Federal and State Returns for the period indicated on the front of this notice. These amounts do not agree. This bill is for the State and County (if applicable) tax due on this discrepancy in income.

Taxpayers timely protested and submitted a signed 2013 income tax return by filing an Indiana Part-Year and Full-Year Non Resident return ("IT-40PNR") to support their protest. An administrative hearing was held and this Letter of Findings results. Additional facts will be provided as necessary.

I. Individual Income Tax - Domicile.

DISCUSSION

The Department assessed Taxpayers additional income tax because the income reported on their 2013 Federal return did not match the income reported on their 2013 IT-40. Taxpayers protested the assessment for several reasons, asserting that Husband's income was not subject to Indiana income tax and that the assessment was incorrect because their IT-40PNR showed that they are entitled to additional refund.

All tax assessments are prima facie evidence that the Department's claim for the tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment 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); see also *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes a tax "upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). Pursuant to IC § 6-3-1-12, a 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. . . ." In other words, a resident includes individuals who are **domiciled** in Indiana or **maintain a permanent place of residence in Indiana and then spend more than 183 days in Indiana**.

Wife lived and worked in Indiana for the tax year in question, thus she is a resident based on time spent in Indiana alone. Husband lived and worked in Kansas through the end of the school year (approximately May 31, 2013), as indicated on Husband's 2013 K-40. He then spent four months in Indiana before he moved on to his next assignment outside of Indiana. Husband did not spend more than 183 days in Indiana in 2013. Thus, to be considered a resident of Indiana, Husband must have been **domiciled** in Indiana.

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

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).

Indiana law further defines "[h]omestead" as "an individual's place of residence . . . that is located in Indiana" and that "the individual owns" IC § 6-1.1-12-37(a)(2). "'Principal place of residence' means an individual's true, fixed, permanent home to which the individual has the intention of returning after an absence." [50 IAC 24-2-5](#). A taxpayer is entitled to claim a deduction, known as a homestead deduction (or exemption), against taxes imposed on his or her homestead property pursuant to IC § 6-1.1-12-37(e). When the taxpayer is no longer qualified for the homestead deduction (or exemption), the taxpayer must notify the auditor of the county where the homestead is located within sixty days after the date of that change. IC § 6-1.1-12-37(f).

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.

For example, in *Croop v. Walton*, 157 N.E. 275 (Ind. 1927), a taxpayer who was domiciled in Michigan sold his home in Michigan and moved to a new residence in Indiana where he and his wife lived for several years for the benefit of his wife's health. The taxpayer lived in the Indiana home "on account of the mental and physical condition of his wife, and continued to occupy it until such time as she could safely return to [Michigan] to live." *Id.* at 276. The court concluded that, based on the level of activity he maintained in Michigan and lack of intention to abandon his domicile, taxpayer did not change his domicile from Michigan to Indiana. The court explained, in relevant part, that:

"If [a] taxpayer has **two residences in different states**, he is **taxable at the place which was originally his domicile, provided the opening of the other home has not involved an abandonment of the original domicile and the acquisition of a new one.**"

"[D]omicile" . . . is the place with which a person has a settled connection for legal purposes, either because his home is there or because it is assigned to him by the law, and is **usually defined as that place where a man has his true, fixed, permanent home, habitation, and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the intention of returning.**

Id. at 277. (Internal citations omitted) (Emphasis added).

In explaining the difference between "residence" and "domicile," the court in *Croop* stated:

'Domicile' "is a residence acquired as a final abode. To constitute it there must be (1) residence, actual or inchoate; (2) the nonexistence of any intention to make a domicile elsewhere." "The domicile of any person is, in general, the place which is in fact his permanent home, but is in some cases the place which, whether it be in fact his home or not, is determined to be his home by a rule of law."

"Residence is preserved by the act, domicile by the intention." "Domicile is not determined by residence alone, but upon a consideration of all the circumstances of the case." "While a person can have but one domicile at a time, he may have concurrently a residence in one place . . . and a domicile in another."

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.**

Id. at 277-78. (Internal citations omitted) (Emphasis added).

Subsequently, in *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court further considered the meaning of "domicile" in determining that Mr. Bayh met the residency requirement for the office of Governor. The court concluded that Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. The court explained, in pertinent part:

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."**

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." **Intent and conduct must converge to establish a new domicile.**

Id. at 1317-18 (Ind. 1988). (**Emphasis added**).

In the instant case, Taxpayers moved from California to Indiana in 2007. Taxpayers own a home in Indiana on which they claim a homestead deduction. By doing so, Taxpayers expressly informed the State of Indiana that they were entitled to the benefit of paying a lower property tax because their Indiana home is their "true, fixed, permanent home to which [they have] the intention of returning after an absence." In other words, by claiming a homestead deduction, Taxpayers declare that their Indiana home is their principal residence. While Husband travels for work, his family remains in Indiana and he returns to Indiana when the school year is complete. Wife lives and works in Indiana full-time. In addition to registering one of their cars in Indiana, Taxpayers have a car registered in California, but none in Kansas. Husband has an Indiana driver's license issued in 2012, expiring in 2018. Although Husband registered to vote in Kansas in 2012, he subsequently registered to vote in Indiana in 2016. Given the totality of the circumstances, Husband was domiciled in Indiana in 2013 thus his income was subject to Indiana income tax.

FINDING

Husband was domiciled in Indiana for the tax year at issue therefore Taxpayers' assertion that Husband's income was not subject to Indiana tax is denied.

II. Individual Income Tax - Amount.

DISCUSSION

Taxpayers believe that the assessment was unfair because the information available to the public regarding proper filing procedure and definition of "Indiana Resident" is inadequate. As a result, Taxpayers were unable to determine how to correctly file their 2013 Indiana return.

As determined above, both Husband and Wife are domiciled in Indiana. Therefore, Taxpayers are required to file an IT-40, reporting both Husband and Wife's 2013 income. Husband worked in Kansas in 2013. Kansas, however, is not one of the states which have reciprocal agreements with Indiana. [§ IC 6-3-5-3](#); [45 IAC 3.1-1-76](#). Assuming Husband properly filed his 2013 Kansas state income tax return, reporting and remitting income tax to Kansas, Taxpayers will be entitled to claim a credit for the tax paid to Kansas (excluding local/county income tax) when they properly file their IT-40, pursuant to [IC § 6-3-3-3\(a\)](#), which provides as follows:

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).

A further review of the Department's records showed that in proposing the assessment, the Department did not allow the credit as it was not claimed and there was a discrepancy between Taxpayers' Federal and Indiana adjusted gross incomes. To claim the credit Taxpayers must enclose Federal as well as state return transcripts in their IT-40. See also [45 IAC 3.1-1-74](#).

For tax year 2013, Husband was domiciled in Indiana, thus he was an Indiana resident and his income was subject to Indiana income tax. Taxpayers incorrectly reported only Wife's income on their 2013 IT-40, therefore the Department appropriately proposed an assessment. Nevertheless, Taxpayers' documentation demonstrated that the amount of the proposed assessment could be overstated because Husband's W2 income for 2013 was subject to Kansas income tax and Taxpayers may be able to claim a credit on their IT-40 for the state income tax paid to Kansas. Without the correctly filed IT-40, however, the Department is not able to properly review and determine the correct amount of tax due for 2013 and is also unable to agree that Taxpayers are entitled to additional refund.

In order to determine the correct amount of Taxpayers' Indiana income tax liability for 2013, Taxpayers are required to amend their 2013 IT-40, reporting both incomes within thirty (30) days from the date this decision is issued.

FINDING

Taxpayer's protest is sustained provided that they amend their 2013 IT-40 return, reporting both incomes within 30 days from the date this decision is issued. Upon receiving Taxpayers' amended IT-40, the Department will review and recalculate Taxpayers' income tax liability accordingly. Otherwise, Taxpayers' protest is respectfully denied.

III. Tax Administration - Negligence Penalty.

DISCUSSION

The Department imposed a ten percent negligence penalty. Taxpayers argue that they should not be responsible for the penalty because their IT-40 was timely filed and they filed their IT-40 following the guidance provided by the Department. Taxpayers also argue that the penalty should be abated as the Department did not inform Taxpayers of the discrepancy until 2016.

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a ten (10) percent negligence penalty if the taxpayer:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department[.]

[45 IAC 15-11-2](#)(b) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty as provided in [45 IAC 15-11-2](#)(c), as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

In the instant case, Taxpayers demonstrated that they attempted to comply with Indiana law by requesting an Advisory Letter from the Department for guidance so they could properly file their Indiana returns. Although the Advisory Letter and other Departmental guidance Taxpayers received caused some confusion over which form Taxpayers should have filed, Taxpayers made a good faith effort following the Department's instructions. Accordingly, the Department waives the penalty.

FINDING

Taxpayers' protest of the negligence penalty is sustained.

IV. Tax Administration - Interest.

DISCUSSION

Taxpayers protest the imposition of interest. Under IC § 6-8.1-10-1, "[i]f a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment." The Department cannot waive this interest under IC § 6-8.1-10-1(e) because it is statutorily required. Therefore, Taxpayers' protest of interest is denied.

FINDING

Taxpayers' protest of interest is denied.

SUMMARY

Taxpayers' protest of Issue I is denied; Husband is domiciled in Indiana, therefore his income is subject to Indiana tax. Taxpayers are sustained on Issue II provided that they properly amend their 2013 IT-40 return, reporting both incomes within 30 days from the date this decision is issued. Upon receiving Taxpayers' amended IT-40, the Department will review and recalculate Taxpayers' Indiana income tax liability accordingly. Otherwise, Taxpayers' protest is respectfully denied.

Taxpayers' protest of Issue III, negligence penalty, is sustained. However, Taxpayers' protest of Issue IV is respectfully denied.

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