

**Letter of Findings: 01-20160383N
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 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 This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.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

Individual with an Indiana domicile did not establish a new domicile by working overseas.

ISSUES

I. Income Tax–Residency.

Authority: IC § 6-3-1-12; IC § 6-8.1-5-1; IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; IC § 6-8.1-10-3; State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988); 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); [45 IAC 3.1-1-22](#).

Taxpayer protests the imposition of Indiana individual income tax for 2011.

STATEMENT OF FACTS

Taxpayer, an individual, was assessed Indiana adjusted gross income tax for the year 2011 by the Indiana Department of Revenue ("Department"). Taxpayer filed a protest and an administrative telephone hearing was held; this Letter of Finding ("LOF") results. Further facts will be provided as needed below.

I. Income Tax–Residency.

DISCUSSION

Taxpayer protests the imposition of Indiana adjusted gross income tax for the tax year 2011. Taxpayer argues that she worked outside of the United States for all of 2011 and was therefore not a resident of Indiana. The Department determined that Taxpayer was an Indiana resident for all of 2011.

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 she 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.

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.

State Election Bd. v. Bayh, at 1317.

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 her domicile in Indiana.

Residency cases are particularly fact sensitive thus the position relayed within this document pertains only to this case and its specific set of facts. With that in mind, we turn to the facts of Taxpayer's case.

Taxpayer's representative at the hearing stated that Taxpayer has been working in other countries since 2007 and only returned to Indiana in order to visit. The organization that Taxpayer works for is based out of another state within the United States. While overseas working in another country, Taxpayer got married. Taxpayer's spouse is not an Indiana resident. In correspondence to the Department, her representative stated:

Enclosed please find a copy of [Taxpayer's federal] tax return and the info[.] regarding driving in [overseas country]. [Taxpayer] does need to keep her license so I guess we are protesting that her income was not high enough to owe taxes.

In other words, Taxpayer's representative states that Taxpayer will continue to have an Indiana driver's license and by protesting only the amount—if any—of Indiana income tax owed Taxpayer has in effect conceded that she had an Indiana domicile for 2011. Additionally, the Department notes the following. As [45 IAC 3.1-1-22](#) states in relevant part, "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." Taxpayer has worked in multiple countries overseas—she has not established a new domicile overseas since she has not had requisite intent to make a specific place her home. Prior to her working overseas, Taxpayer's domicile was Indiana. She grew up in Indiana and went to Indiana schools. Further evidence that she did not abandon her Indiana domicile is the fact that Taxpayer has an Indiana driver's license that was issued in 2011. And as noted above, Taxpayer plans on keeping her Indiana driver's license. The Department's records also show that she registered a vehicle in Indiana in 2011. The Department finds that Taxpayer has not established a new domicile, therefore Indiana remained her domicile for 2011.

Since Taxpayer did not file an Indiana return for 2011, the Department's proposed assessment was based upon the best information available ("BIA") to the Department pursuant to IC § 6-8.1-5-1(b) and IC § 6-8.1-10-3(a). The former statute states in relevant part that if "the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department." Thus even though Taxpayer's protest is being denied, Taxpayer can still file her 2011 Indiana income tax return which will change the assessment amount from being a BIA proposed assessment to being based upon her actual tax information.

Lastly, the Department notes that interest and penalty were assessed. Interest is imposed pursuant to IC § 6-8.1-10-1, and the Department notes that waiver of interest is not permitted under IC § 6-8.1-10-1(e). A penalty was assessed pursuant to IC § 6-8.1-10-3(b). Taxpayer did not develop any argument regarding the penalty, thus Taxpayer is denied on the penalty. However, as noted above, if Taxpayer files her 2011 Indiana income return the amount of the interest and penalty will be based upon the actual base tax owed, instead of being based upon the BIA proposed assessment.

FINDING

Taxpayer's protest is denied.

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