

**Letter of Findings: 01-20170136
Individual Income Tax
For the 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 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Despite retaining ownership of their former Indiana home, Individuals provided sufficient documentation establishing their intention to abandon their Indiana domicile and establish a permanent place of residence in California for purposes of Individuals' 2013 Indiana income tax.

ISSUE

I. Individual Income Tax - Indiana Residency.

Authority: IC § 6-3-1-12; Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); 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); [45 IAC 3.1-1-22](#).

Taxpayers argue that they were not Indiana residents during 2013 and that the Department's previous decision to the contrary was erroneous.

STATEMENT OF FACTS

Taxpayers previously lived in Indiana but now claim residency in California. In a letter dated December 2016, the Indiana Department of Revenue ("Department") forwarded Taxpayers correspondence stating that, based on information it had received, "you may have unreported income for tax year 2013." The Department subsequently issued a notice of "Proposed Assessment" dated February 2017. In a follow-up letter dated March 2017, the Department stated that it "determined that you must file a 2013 Indiana IT-40 because you were domiciled in Indiana." The Department stated that its "records indicate that you received a Standard Homestead Deduction on your 2013 Indiana property for [Indiana address]."

Taxpayers explained that they did not live in Indiana during 2012 through 2014 but admitted that they owned an Indiana rental property that had been their primary residence until 2010. Taxpayers provided copies of a February 2015 "Homestead Standard Deduction Notice Change" issued by Allen County, Indiana. The notice indicated that Taxpayers owed "back taxes due" for the years 2012, 2013, and 2014. Allen County determined that Taxpayers were not entitled to claim the deduction because the property was no longer their primary residence. Taxpayers paid the additional property tax and have provided the Department proof of payment.

In addition, Taxpayers filed a 2013 "Indiana Part-Year or Full-Year Nonresident Individual Income Tax Return" (IT-40PNR) in which they reported the rental income attributable to their Indiana rental property. Taxpayers also provided a copy of their 2013 "California Resident Income Tax Return" and their federal income tax return. Both the California and federal returns indicate that Taxpayers have a California address.

From the start, Taxpayers have disagreed with the Department's original proposed assessment on the ground that they were not full-time Indiana residents during 2013. An administrative hearing was conducted during which Taxpayers explained the basis for their protest. This Letter of Findings results.

I. Individual Income Tax - Indiana Residency.

DISCUSSION

The issue is whether Taxpayers have established that they were not full-year residents of Indiana during 2013 and that the proposed assessment of income tax should be set aside.

Taxpayers argue that they have been California residents since 2011 and that they have provided sufficient documentation to support their contention that they were not full-time Indiana residents during 2013.

In any protest, 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).

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, "[o]nce 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 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.

Taxpayers admit that they were not entitled to claim the homestead deduction on their Indiana property but explain that their "mortgage company automatically filed the homestead exemption for [them] annually and [they] failed to notify them it was not [their] primary residence" However, Taxpayers state that they have rectified the error and paid the additional property tax attributable to that error.

In addition to providing copies of Allen County's revocation of the homestead credit, verification of the additional property tax payment, their California income tax return, their federal return, Taxpayers have also provided copies of their California drivers licenses issued in 2012.

Evaluating the documentation on a "case by case basis" in order to determine Taxpayers' "requisite intent," Taxpayers have established that they intended to abandon their Indiana domicile, and manifested "intent and conduct . . . to establish a new domicile." As explained in [45 IAC 3.1-1-22](#), "a person can only have one domicile at a given time" In this case, Taxpayers have established that their domicile in 2013 was in California.

FINDING

Taxpayers' protest is sustained.

Posted: 07/26/2017 by Legislative Services Agency
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