

**Letter of Findings: 01-20170138
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Based on the fact that Individuals owned an Indiana home, spent substantial time during the year at that home, operated an Indiana business, and claimed the Indiana homestead credit on their Indiana property, Individuals failed to establish their intention to abandon their Indiana domicile and establish a permanent place of residence in Tennessee for purposes of Individuals' 2013 Indiana income tax.

ISSUE

I. Individual Income Tax - Indiana Residency.

Authority: IC § 6-1.1-12-37(a)(2); IC § 6-1.1-12-37(f); IC § 6-3-2-1(a); 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 are individuals who own homes in both Indiana and Tennessee. The Indiana Department of Revenue ("Department") sent Taxpayers a notice dated December 2016 stating that "you may have unreported income for tax year 2013" The notice stated that Taxpayers were required to file a return "if you were an Indiana resident or had Indiana income" Alternatively, Taxpayers were instructed to "send a letter that explains why you were not required to file a 2013 Indiana income tax return." The notice stated that if the Taxpayer chose the latter, they were instructed to also "provide supporting documentation with that explanation."

In December 2016, the Department issued Taxpayers' a proposed assessment of additional income tax based on the "best information available" to the Department.

Taxpayers responded stating that they owned homes in both Indiana and Tennessee, that they spent time at both locations, that they were not required to file Tennessee income tax returns, that they benefitted from taking the homestead credit in Indiana, and that they were registered to vote in Tennessee. Taxpayers further explained that they owned vehicles that were titled in Tennessee, that they received mail at both their Indiana and their Tennessee homes, that they belonged to social organizations in both states, and that they currently operate an Indiana business. Taxpayers also provided a copy of the federal income tax returns indicating an Indiana address.

The Department wrote back in a letter dated February 2017 acknowledging receipt of Taxpayers' information. The letter stated:

After reviewing your account our records indicate for the tax year 2013 you've tak[en] the Indiana Homestead Tax Credit at [Indiana address]. By taking the Homestead in which to receive this credit you must claim your domicile to be Indiana[] which makes your W2's and 1099's taxable to the state of Indiana.

The Department's February letter instructed Taxpayers to file an Indiana 2013 tax return or "sending in a letter of

protest" Taxpayers chose to submit a protest. An administrative hearing was conducted by telephone 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 domiciled in Indiana during 2013 and that the proposed assessment of income tax should be set aside.

Taxpayers raise numerous arguments that the assessment of Indiana tax was unwarranted and that they "have never violated any law" Taxpayers emphasize that they possess Tennessee drivers' licenses and that they are registered to vote in Tennessee.

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).

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 new 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 occupy homes in both Indiana and Tennessee and that they claimed and took advantage of the homestead credit on their Indiana home. IC § 6-1.1-12-37(a)(2) defines a "homestead" as "an individual's principal place of residence." (Emphasis added). If that location is no longer one's "principal place of residence," IC § 6-1.1-12-37(f) in part requires:

If an individual who is receiving the deduction provided by this section or who otherwise qualifies property for a deduction under this section:

- (1) changes the use of the individual's property so that part or all of the property no longer qualifies for the deduction under this section; or
- (2) is no longer eligible for a deduction under this section on another parcel of property because:
 - (A) the individual would otherwise receive the benefit of more than one (1) deduction under this chapter; or
 - (B) the individual maintains the individual's principal place of residence with another individual who receives a deduction under this section; the individual must file a certified statement with the auditor of the county, notifying the auditor of the change of use, not more than sixty (60) days after the date of that change.

There is no evidence that Taxpayers took the steps outlined in IC § 6-1.1-12-37(f) necessary to renounce the credit. Considering that they operate an Indiana business and evaluating the documentation on a "case by case basis" in order to determine Taxpayers' "requisite intent," the evidence establishes that they have not abandoned their Indiana domicile or 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, and for purposes of Indiana's individual income tax, Taxpayers were Indiana residents and were required to file their Indiana income tax return.

FINDING

Taxpayers' protest is respectfully denied.

Posted: 07/26/2017 by Legislative Services Agency
An [html](#) version of this document.