

**Letter of Findings: 01-20170134N
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 the fact that Individual lived and worked overseas during 2013, and based on the fact that Individual continued his Indiana home ownership, that he claimed the homestead credit on that home, and that his wife continued to occupy that home, the Department was unable to agree that Individual established the requisite intent to abandon his Indiana residency.

I. Individual Income Tax - 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; 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 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); 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](#).

Taxpayer argues that he was not a full-time resident of Indiana during 2013 and was not required to file an Indiana income tax return as a full-time Indiana resident during that year.

STATEMENT OF FACTS

Taxpayer is an individual who owns an Indiana home and who - according to Taxpayer - currently lives and works in a country outside the United States.

In November 2016, the Indiana Department of Revenue ("Department") sent Taxpayer a letter stating that "[b]ased on information reported to the [Department] we have determined that you have unreported income for the tax year 2013." The letter asked Taxpayer to "[s]end a letter that explains why you were not required to file a 2013 income tax return."

Taxpayer's representative responded January 2017 stating Taxpayer "is paying all the taxes in the country he [] currently resides" In that response, Taxpayer provided a copy of his Chinese driver's license and his passport.

In February 2017, the Department issued Taxpayer a proposed assessment of additional income tax.

Taxpayer's representative responded in a letter dated February 2017. Taxpayer's representative explained that Taxpayer "was physically present in another country and established residen[cy] and [a] home there." The representative further explained that Taxpayer "rented residential property, [was] paying taxes, and live[d] there for [the] entire year"

The Department responded that, based on its records, Taxpayer was "taking the Indiana Homestead Tax Credit" together with his wife and that by "taking the Homestead in which to receive this credit you must claim your domicile to be Indiana" The Department explained:

[I]f you are a United States Citizen domiciled in Indiana while in a foreign country, you must file your individual income tax return as a resident, ("Form IT 40"). As an Indiana resident, you are subject to tax on

income you received from all sources, including income earned in a foreign country that was included in your federal adjusted gross income, your income is taxable in the state of Indiana.

Taxpayer's representative provided a copy of Taxpayer's 2013 federal income tax return which excluded income earned in a country outside the United States. On the front page of that return, Taxpayer listed his "home address" as Indiana. However Taxpayer also provided a copy of federal form 2555 ("Foreign Earned Income") indicating that his "foreign address" was in a country outside the United States, that he worked for a foreign company, and that he was under contract with this company for "Permanent Employment." Taxpayer's representative also provided an untranslated foreign "tax payment" statement "list[ing] a tax payment for each month."

Taxpayer disagrees with the Department's determination that he was a full-time Indiana resident requiring him to file an Indiana IT-40 ("Full-Year Resident") tax return. An administrative hearing was conducted which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

I. Individual Income Tax - Residency.

DISCUSSION

The issue is whether Taxpayer was a resident of Indiana during 2013 requiring him to file an Indiana income tax return reflecting that full-time residency status.

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.

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.* 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.

In order to change one's domicile from Indiana to an out-of-state location, the law requires the "intent of establishing a home at that place," [45 IAC 3.1-1-22](#), along with "acts evidencing [an] intention to make the new domicile a home in fact" Bayh, 521 N.E.2d at 1317.

However, the law also requires a simultaneous manifestation of an intent to abandon the Indiana domicile. Id. As the law states, "[A] person has only one domicile at a given time" [45 IAC 3.1-1-22](#). Significantly, Taxpayer and his wife own an Indiana home and benefited from a Homestead Credit claimed on that home. In doing so, Taxpayer necessarily verified that the Indiana home was their "principal place of residence" and, by doing so, took advantage of the typically significant tax advantage associated with claiming the credit. IC § 6-1.1-12-37(a)(2).

As noted previously, Taxpayer's federal return lists Taxpayer as having an Indiana address. Taxpayer admits that he has retained ownership of his Indiana home and that his wife continues to live at that home. Taxpayer also admits that he claimed the "Homestead Credit" on that home in 2013 and that he continues to claim the credit. IC § 6-1.1-12-37(a)(2) defines a "homestead" as "an individual principal place of residence." (Emphasis added). If that location is no longer one's "principal 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.

Evaluating the documentation on a "case by case basis" in order to determine Taxpayer's "requisite intent," Taxpayer has not unequivocally established the intent to abandon his Indiana domicile and demonstrated the

"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" Taxpayer cannot be domiciled in both a country outside the United States and in Indiana. Although it is true that Taxpayer has a business, financial, and personal connection with a country outside the United States, he has not "abandoned" his Indiana home.

Taxpayer is required to file a 2013 tax return as a resident of this state. In fulfilling that requirement, the Department points out that Taxpayer is entitled to claim the "foreign income" deduction.

FINDING

Taxpayer's protest is respectfully denied.

Posted: 08/30/2017 by Legislative Services Agency
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