

**Letter of Findings: 01-20170187
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 returning to Indiana in 2014, Former Indiana Residents' move to New York and their three-year employment in that state were indicative of an intention to abandon their former Indiana domicile in 2011; Former Indiana Residents were not subject to Indiana's individual income tax in 2013 as full-time residents of this state.

ISSUE

I. Individual Income Tax - Indiana Residency.

Authority: 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](#).

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 currently living in Indiana. The Indiana Department of Revenue ("Department") sent Taxpayers a letter dated December 2016. The letter stated:

Based on information reported to the Indiana Department of Revenue, you may have unreported income tax for tax year 2013. You must file an Indiana return if you were an Indiana resident or had Indiana income and were required to file a federal income tax return.

Taxpayers replied explaining that they were residents of New York during 2013 and were so since 2011. The Department responded in a March 2017 letter.

The [D]epartment's records indicate that you received a Standard Homestead Deduction on your 2013 Indiana property taxes for [Indiana address]. A condition of receiving this deduction is that you must certify the property is your principle place of residence. Because you received this deduction in the listed tax year(s), in conjunction with other factors, the [D]epartment concluded that your domicile was in Indiana.

The Department issued Taxpayers a "proposed assessment" of 2013 individual income tax. Taxpayers disagreed with the assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayers explained the basis for the protest. This Letter of Findings results.

I. Individual Income Tax - Indiana Residency.

DISCUSSION

The issue is whether Taxpayers have provided sufficient information to establish that they were not residents of

Indiana during 2013 and were, as a result, not required to file an Indiana income tax return for that year as full-time Indiana residents.

Taxpayers admit that they were former and are now current Indiana residents and they owned an Indiana home during 2013. However, Taxpayers explain that they moved to New York in 2011 in order to pursue careers in that state, that they were unable to sell their former Indiana home, that they rented their homes during the interim, and that they only returned to Indiana in 2014. Taxpayers admit that they claimed and took advantage of the Indiana homestead credit. However, Taxpayers argue that their claim to the homestead credit was inadvertent and have taken steps to correct that error. To that end, Taxpayers disclaimed the credit taken in 2013 and 2014 and paid the resulting additional property tax. Taxpayers provided a copy of a letter from the city auditor confirming the renunciation and acknowledging receipt of the approximately \$3,500 property tax payment.

Taxpayers also provided a copy of their 2013 federal income tax return which lists a New York address. In addition, Taxpayers provided a copy of their 2013 New York "Resident Income Tax Return" again listing their New York address.

All 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.* 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.

The Department is mindful that there is no one set of standards that will accurately indicate the person's intent in every relocation. However, after considering Taxpayers' explanation and reviewing the documents Taxpayers provided, the Department agrees that the Taxpayers have met their burden of establishing that the assessment was wrong because they manifested the requisite intent to "abandon" their Indiana domicile in 2011 and establish a domicile outside this state. In effect, Taxpayers were not domiciled in Indiana during 2013 and were not required to file an Indiana income tax return as full-time residents of this state.

FINDING

Taxpayers' protest is sustained.

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