

Letter of Findings: 01-20170090
Income Tax
For the Years 2011-2015

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Married couple provided documentation establishing that domicile was not in Indiana for 2011-2015. Thus the couple proved that they were not subject to Indiana adjusted gross income tax. Therefore, the Department's assessments of the 2011-2015 Indiana income tax were proven incorrect. Additionally, the penalty was abated.

ISSUES

I. Income Tax– Residency.

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

Taxpayers protest the imposition of Indiana adjusted gross income tax.

II. Tax Administration–Penalty.

Authority: IC § 6-8.1-10-3.

Taxpayers protest the imposition of a penalty.

STATEMENT OF FACTS

Taxpayers are a married couple. The Indiana Department of Revenue ("Department") determined that Taxpayers filed a tax return in 2011 but did not file any subsequent returns. The Department therefore determined that Taxpayers were subject to Indiana income tax and penalty for the years 2011-2015. Taxpayers protested the Department's determination that they were subject to Indiana income tax and penalty. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Income Tax–Residency.

DISCUSSION

Taxpayers protest the imposition of Indiana adjusted gross income tax for the years 2011-2015. The Department determined that they owed the tax under IC § 6-3-2-1, because Taxpayers filed an Indiana income tax return and then did not file in the following years. Taxpayers argue that they only filed the 2011 return to get a refund because their employer ("Employer") erroneously withheld Indiana taxes on their income. Therefore, Taxpayers argue that they did not need to file any subsequent Indiana income tax returns, nor did they owe any Indiana income tax for the years in question because they did not have domicile or any income that would be directly allocated to Indiana.

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, defines a *resident* 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, Taxpayers were able to establish that they did not spend more than 183 days in Indiana during any of the years in question. Therefore, in order to be considered a resident of Indiana during 2011-2015, Taxpayers must have been domiciled there.

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.*
- (Emphasis added).*

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. Id. at 1317. (Emphasis added).

Therefore, in order to determine if Taxpayers are subject to the gross income tax, an examination of Taxpayers' domicile is necessary to determine whether or not the services they performed were in Indiana.

A review of the domiciliary criteria listed under [45 IAC 3.1-1-22](#) is illuminating in this matter. Taxpayers' only connection to Indiana is through Employer. Taxpayers never had any Indiana criteria as listed under [45 IAC 3.1-1-22](#). Of paramount importance is the fact that Taxpayers have established that they were never residents of Indiana and were never domiciled in Indiana. Consequently, Taxpayers have satisfied the *Bayh* factors and their domicile is not in Indiana.

Additionally, Taxpayers have provided sufficient documentation to establish that their compensation was not derived from sources within Indiana. Taxpayers explained that they filed an Indiana non-resident tax return because Employer, who is located in Indiana, erroneously withheld Indiana tax on their salaries. Consequently, they only filed an Indiana tax return in order to obtain a refund of the erroneously withheld Indiana tax. Thus, as Taxpayers are residents of and are domiciled in another country, the salaries they earned was from employment there. Thus, the income is not subject to tax in Indiana. Therefore, while it was reasonable for the Department to initially believe that the Taxpayers should have continued filing Indiana returns, Taxpayers have met the burden imposed by IC § 6-8.1-5-1(c) of proving the proposed assessment wrong.

FINDING

Taxpayers protest is sustained.

II. Tax Administration - Penalty.

DISCUSSION

Taxpayers protest the imposition of penalties pursuant to IC § 6-8.1-10-3, which provides:

(a) If a person fails to file a return on or before the due date, the department shall send him a notice, by United States mail, stating that he has thirty (30) days from the date the notice is mailed to file the return. If the person does not file the return within the thirty (30) day period, the department may prepare a return for him, based on the best information available to the department. The department prepared return is prima facie correct.

(b) If the department prepares a person's return under this section, the person is subject to a penalty of twenty percent (20[percent]) of the unpaid tax. In the absence of fraud, the penalty imposed under this section is in place of and not in addition to the penalties imposed under any other section.

In this case, Taxpayers were sustained in total in Issue I above. Since the penalty at issue is based on base tax and since base tax is zero, Taxpayers' protest of the penalty imposed under IC § 6-8.1-10-3(b) is moot.

FINDING

Taxpayers' protest of the imposition of penalty is sustained.

SUMMARY

Taxpayers Issue I protest regarding the imposition of adjusted gross income tax is sustained. Taxpayers Issue II protest regarding the imposition of penalty is sustained.

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An [html](#) version of this document.