

Letter of Findings: 01-20170230
Indiana 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Individuals, who formerly lived in Indiana, established that they were no longer full-time residents of Indiana; however, Individuals were required to file a 2013 IT-40PNR return reporting their Indiana source income.

ISSUE

I. Individual Income Tax - Indiana Residency.

Authority: IC § 6-3-2-1(a); IC § 6-3-1-12; IC § 6-3-2-2(a); *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 requiring them to file a 2013 full-time resident return was incorrect.

STATEMENT OF FACTS

Taxpayers are a married couple who formerly occupied an Indiana home. Taxpayers state that they moved to Virginia in 2011 but retained ownership of their former Indiana home during 2012 and 2013. Taxpayers filed a 2012 "Indiana Part-Year or Full-Year Nonresident Individual Income Tax Return" (IT-40PNR) in which they reported Indiana source income.

Taxpayers did not file a 2013 IT-40PNR return.

The Indiana Department of Revenue ("Department") sent Taxpayers a letter stating:

Based on information reported to the Indiana Department of Revenue, you may have unreported income 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 return.

Taxpayers were instructed to file the 2013 Indiana return, send a copy of a previously filed 2013 Indiana return, or send a letter explaining why Taxpayers were not required to file the return.

Taxpayers responded with the Department's "Residency Checklist." As completed, the checklist listed factors purporting to buttress Taxpayers' claim that they were full-time residents of Virginia during 2013. Taxpayers also provided a copy of their 2013 Virginia income tax return.

The Department issued Taxpayers a notice of "Proposed Assessment." Taxpayers continued to object to the Department's decision that they were required to file a 2013 Indiana return 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

Taxpayers argue that they are not required to file a 2013 Indiana income tax return as full-time residents of this state.

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.

As to the residency issue, based on the documentary evidence provided by the Department and the information provided by Taxpayer, there is insufficient evidence to establish that Taxpayers "[were] domiciled in this state during the taxable year[s]" "maintain[ed] a permanent place of residence in this state," or spent "more than one hundred eighty-three (183) days of the taxable year within this state . . ." IC § 6-3-1-12. Taxpayers provided copies of their Virginia income statements, Virginia bank statements, Virginia income tax return, and a receipt for a Virginia charitable contribution.

Nonetheless, Taxpayers should have filed a 2013 IT-40PNR return. The reason is found at IC § 6-3-2-2(a) which states:

With regard to corporations and nonresident persons, "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:

- (1) *income from real or tangible personal property* located in this state;
- (2) *income from doing business in this state*;
- (3) income from a trade or profession conducted in this state;
- (4) *compensation for labor or services rendered within this state*; and
- (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property to the extent that the income is apportioned to Indiana under this section or if the income is allocated to Indiana or considered to be derived from sources within Indiana under this section.

(Emphasis added).

As indicated on their Form 1099-MISC and W-2 Wage and Tax Statements, Taxpayers received 2013 income from the rental of their former Indiana home and from husband's Indiana employer. That Indiana source income should have been reported on the 2013 IT-40PNR return.

In short, Taxpayers are required to file the 2013 IT-40PNR returning reporting their income derived from sources within Indiana. Taxpayers should file that return within 30 days of the issuance of this Letter of Findings. Upon receipt, the Department will recalculate the amount of any remaining tax due.

FINDING

Taxpayers' protest is sustained in part and denied in part. Taxpayers were not full-time residents of Indiana during 2013, but the law requires them to file a 2013 IT-40PNR return reporting their Indiana source income.

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