

**Letter of Findings: 01-20170523
Income Tax
For the Year 2014 & 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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 established that they were not domiciled in Indiana during 2014 and 2015. Therefore, the Department's assessment for 2014 and 2015 Indiana income tax was proven incorrect. Penalty was also 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); *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 individual 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 were Indiana residents for tax years 2014 and 2015, and that Taxpayers neither filed an Indiana individual income tax return nor paid any Indiana individual income tax for the years 2014 and 2015. Taxpayers protested the Department's determination of residency and the imposition of a penalty. An administrative telephone 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 tax years 2014 and 2015. The Department determined that Taxpayers were Indiana residents for those years, stating in a December 21, 2016, letter to Taxpayers that they "have unreported income for tax year(s) 2014-2015." The Department's position is that the Taxpayers were domiciled in Indiana in the years before 2014 and 2015 and that Taxpayers returned to Indiana in 2016. Thus, the Department believes that Taxpayer retained their Indiana domicile for 2014 and 2015. Taxpayers argue that they were residents of a different state in 2014 and 2015 and were not domiciled in Indiana for that period.

As a threshold issue, it is Taxpayers' 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, a resident is defined 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, Taxpayer was able to establish that he did not spend more than 183 days in Indiana during 2013. Therefore, in order to be considered a resident of Indiana, Taxpayer must have been domiciled here.

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, an examination of Taxpayers' acts is required to determine if Taxpayers had the intention to acquire a new domicile outside of Indiana and to abandon their domicile in Indiana.

A review of the domiciliary criteria listed under [45 IAC 3.1-1-22](#) is illuminating in this matter. Taxpayers' protest letter states that the "family had already moved into the [other state] at the end of 2013." Further, the letter states that the couple "opened a business in [the other state], under his wife[']s [] name" The business, per Taxpayers, was "operated from November 18th, 2013 until November 20th, 2015." As further evidence, Taxpayer enclosed "rental lease agreements for their apartment" in the other state, which ran from November 2013 to July 2014 and "renewed once until December 2014." Taxpayers then moved to another address in the other state. That lease ran until December 2015. Also sent to the Department: copies of their utility bills in the other state, information pertaining to a doctor's visit in the other state, and copies of income tax returns for the other state for 2014 and 2015. Taxpayers also included Form 1040, Schedule C, "Profit or Loss From Business" for the years at issue, which listed Taxpayers' address as being in the other state.

Subsequent to the hearing, Taxpayers provided additional documentation, which included the following: (1) a copy of a "Registration Certificate" for the business from the revenue department for the other state (that certificate shows the business start date as being November 21, 2013); (2) a copy of the lease for the business that states the lease "shall be 3 years, beginning on December 1, 2013, and ending at the end of the day on November 30, 2016"; (3) copies of medical identification cards from the other state's Human Services Department; (4) health records for their children from the other state; (5) the husband's vehicle registration information from the other state, dated 2015; (6) and a copy of information sent by the federal government to the husband, with the address that the information was mailed to being in the other state.

Taxpayers have clearly met some of the factors listed under [45 IAC 3.1-1-22](#) which are used in determining whether or not a new domicile has been created. The *Bayh* case shows that to change one's domicile there 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 the change of domicile. In the present case, Taxpayers have sufficiently shown that they intended to abandon their Indiana domicile by establishing a new domicile in the other state for the years at issue. In conclusion, Taxpayers have provided the Department with documentation to meet their burden of proof found in IC § 6-8.1-5-1(c).

FINDING

Taxpayers' protest is sustained.

II. Tax Administration—Penalty.

DISCUSSION

Taxpayers also 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, as outlined in **Issue I** *supra*, Taxpayers have been sustained in whole on the imposition of Indiana income tax for 2014 and 2015, thus the imposition of penalty is moot.

FINDING

Taxpayers' protest of the imposition of penalty is sustained.

SUMMARY

Taxpayers' protest regarding the imposition of Indiana adjusted gross income tax is sustained. Taxpayers' protest regarding the imposition of penalty is sustained.

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