

**Letter of Findings: 01-20170378**  
**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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 2013. Therefore, the Department's assessment for 2013 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; IC § 6-1.1-12-37; *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](#); [50 IAC 24-2-5](#).

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, referred to hereinafter as "H" for husband "W" for wife as needed for clarity. The Indiana Department of Revenue ("Department") determined that Taxpayers were Indiana residents for tax year 2013, and that Taxpayers neither filed an Indiana individual income tax return nor paid any Indiana individual income tax for the year 2013. 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 year 2013. The Department determined that Taxpayers were Indiana residents for those years, stating in a February 1, 2017, letter to Taxpayers that they took the "Indiana Homestead Exemption Credit on property" located in Indiana. Taxpayers argue that they were residents of a different state within the United States for 2013—hereinafter referred to as "State Z"—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**).

The Department's proposed assessment, per the February 1, 2017 letter, was based upon the "Indiana Homestead Exemption Credit." The pertinent statute is IC § 6-1.1-12-37(a)(2), which states in part:

**"Homestead" means an individual's principal place of residence:**

(A) **that is located in Indiana;**

(B) **that:**

(i) **the individual owns;**

(ii) the individual is buying under a contract; recorded in the county recorder's office, that provides that the individual is to pay the property taxes on the residence;

(iii) the individual is entitled to occupy as a tenant-stockholder (as defined in 26 U.S.C. 216) of a cooperative housing corporation (as defined in 26 U.S.C. 216); or

(iv) is a residence described in section 17.9 of this chapter that is owned by a trust if the individual is an individual described in section 17.9 of this chapter; **and**

(C) **that consists of a dwelling and the real estate, not exceeding one (1) acre, that immediately surrounds that dwelling.**

Except as provided in subsection (k), the term does not include property owned by a corporation, partnership, limited liability company, or other entity not described in this subdivision.

(**Emphasis added**).

Additionally, when a taxpayer claims the homestead exemption, the dwelling has to be their principal place of residence, as provided by IC § 6-1.1-12-37(a)(2). [50 IAC 24-2-5](#) defines that as:

"Principal place of residence" means an individual's true, fixed, permanent home to which the individual has the intention of returning after an absence.

And, as the court in *Bayh* explained, "A change of domicile requires an actual moving with an intent to go to a given place and remain there." *Bayh*, at 596.

Taxpayers state in their protest letter that although in 2000 they were married in Indiana, that they were residents of another state for 2013:

[Taxpayers] lived in [State Z] all of 2013. They owned their home and paid their mortgage. They earned only [State Z] income according to W-2 forms and a 1009G. [*sic*] They registered and licensed their vehicles in [State Z] and were issued [State Z] driver's licenses.

(*Internal exhibit citations omitted*).

A copy of the "Claim for Homestead Property Tax Credit" was provided by Taxpayers. It is dated from 2005 and lists H on the form along with another person. Taxpayers state that the other person on the form is H's sister. Taxpayers state that the sister "uses the homestead exemption," which "has apparently triggered an IDR rule that residency is automatically assumed as a result." Taxpayers state that H's mother "transferred by quitclaim deed the home at [Indiana address]" to H and his sister. Taxpayers further state that there was "no designation of tenancy on the deed." Taxpayers argue that H's sister lives at the home and she is entitled to the homestead exemption, and that Taxpayers live in State Z.

Taxpayers have provided documentation supporting their argument, which included the following:

- The 2013 mortgage interest statement for the home in State Z;
- 2013 W-2 forms showing State Z for their address and also State Z as the address for their respective employers;
- 1099-G form showing that in 2013 they received benefits from State Z;
- State Z vehicle registration information for 2013;
- State Z motor vehicle division records for Taxpayers;
- A copy of Taxpayer's marriage license records for Indiana, with a "Marriage Date" in the year 2000;
- The quitclaim deed for the Indiana property, showing the transfer to H and his sister;
- The Claim for Homestead Property Tax Credit filed in May of 2005, listing H and his sister. The form is signed by the sister;
- 2013 banking statements for Taxpayers listing their address as State Z;
- A veterinary bill for one of their pets, dated 2013; the animal hospital is in State Z;
- 2013 utility bills for the home in State Z.

Taxpayers have provided the Department with documentation to meet their burden of proof found in IC § 6-8.1-5-1(c). H's mother transferred property to him and his sister. It was the sister that lived at the Indiana property, and the sister that signed the Claim for Homestead Property Tax Credit form. Taxpayers provided the Department with numerous documents and information establishing that they were residents of State Z for the year 2013.

### 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 2013, 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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