

**Letter of Findings: 01-20180534
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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Individual did not establish that he abandoned his Indiana domicile for the year of 2013.

ISSUES

I. Income Tax—Domicile.

Authority: IC § 6-1.1-12-37; IC § 6-3-1-12; IC § 6-8.1-5-1; IC § 6-3-3-3; *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](#).

Taxpayer protests the imposition of Indiana individual income tax.

II. Tax Administration—Penalty and Interest.

Authority: IC § 6-8.1-10-3; IC § 6-8.1-10-1; IC § 6-8.1-5-1.

Taxpayer protests the imposition of a penalty and interest.

STATEMENT OF FACTS

Taxpayer is an individual. The Indiana Department of Revenue ("Department") determined that Taxpayer was an Indiana resident for tax year 2013 and thus owed Indiana individual income tax. Taxpayer 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—Domicile.

DISCUSSION

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, 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 during 2013, 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.

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.

Bayh at 1317. **(Emphasis added)**. Therefore, an examination of Taxpayer's acts is required to determine if Taxpayer had the intention to acquire a new domicile outside of Indiana and to abandon his domicile in Indiana.

The Department, in a letter dated October 25, 2017, stated the following regarding tax year 2013:

After review of your account, you must file an Indiana Individual Income Tax Return Form IT-40 reporting your income for the above listed tax year(s).

In addition, you established your domicile in Indiana before the above listed tax year(s) by taking the

Homestead Exemption deduction on your property taxes for [Indiana address] with [Taxpayer's spouse]. In order to receive a homestead deduction, the property must be the individual's "principal place of residence". "Principal place of residence" means an individual's true, fixed, permanent home to which the individual has the intention of returning after an absence pursuant to [50 IAC 24-2-5](#).

The applicable law for homestead is found at IC § 6-1.1-12-37(a)(2), which states in relevant 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.

Taxpayer's representative states in correspondence—dated May 6, 2014—the following:

In 2012, [Taxpayer] filed an Indiana return thinking he was going to retire to Indiana. He lives in Chicago and always had at [Chicago address]. He decided in 2013 not to retire and filed federal and Illinois returns. All of his income is derived from his employment in Chicago. He has no Indiana income; therefore it is not necessary for him to file Indiana returns.

And in a letter dated November 9, 2017, Taxpayer's representative stated:

[T]axpayer did not retire in 2013 and mistakenly applied for a Homestead deduction on the Indiana property. The taxpayer is no longer receiving the Homestead deduction. The taxpayer is in the process of paying back the Homestead deduction that was erroneously taken in 2013.

After the hearing, Taxpayer's representative provided the Department with an *unsigned* 2013 Illinois income tax return and letter from Taxpayer stating he "voted in Illinois in 2013." No Illinois voter registration documents were provided to the Department. In a September 2017 letter Taxpayer's representative stated that he was providing W-2's "for 2014, 2015 and 2016," but the year at issue in this protest is 2013. Regarding the homestead issue, Taxpayer provided a copy of a letter from an Indiana county auditor stating:

It has come to our attention that you are receiving multiple homestead deductions. Indiana Code 6-1.1-12-37(f) states you may only receive one homestead deduction and it must be applied to your primary residence. Per [Taxpayer's accountant] from [accounting company], you incorrectly received the Homestead deduction for tax year 2013 payable 2014.

As noted, Taxpayer states he "is in the process of paying back" the homestead deduction for 2013, but Taxpayer did not provide the Department with evidence to that effect (for example, a photocopy of the payment to the Indiana county auditor). Additionally, under [45 IAC 3.1-1-22](#) the homestead issue is not the only relevant criteria in determining domicile.

Taxpayer was an Indiana resident for 2012 (Taxpayer filed an IT-40 for Indiana income tax in 2012). So the

question before the Department is whether or not Taxpayer abandoned his Indiana domicile and established a new one for 2013. Taxpayer has not met all of the criteria of the *Bayh* case. The Department's records show that Taxpayer had an Indiana driver's license from 2011 to 2014, which was renewed in 2014. In 2013 Taxpayer had a vehicle registered in Indiana, per Department records. Taxpayer's W-2 for 2013 lists Indiana. And, as previously noted, Taxpayer had taken the Indiana homestead credit for 2013 and did not begin the "process of paying [it] back" until November 2017. Taxpayer has also not established that his "non-Indiana address" in Illinois is where he intends remain. See [45 IAC 3.1-1-22](#) In fact, from the protest, Taxpayer's intent is to retire in Indiana.

For the reasons outlined above, Taxpayer has not met his burden of proof found in IC § 6-8.1-5-1(c). Lastly, the Department notes that pursuant to IC § 6-3-3-3, Taxpayer may be able to take a credit on his 2013 Indiana income tax return for any applicable taxes paid to the other state for the year at issue.

FINDING

Taxpayer's protest is denied.

II. Tax Administration—Penalty and Interest.

DISCUSSION

A penalty was imposed 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.

Taxpayer did not develop any specific argument regarding the penalty. Taxpayer has not met his burden of proof found in IC § 6-8.1-5-1(c) regarding the penalty. Regarding interest, it cannot be waived pursuant to IC § 6-8.1-10-1(e).

FINDING

Taxpayer's protest of the imposition of penalty and interest is denied.

SUMMARY

Taxpayer's protest of Issue I is denied; Taxpayer's protest of Issue II is also denied.

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