

**Letter of Findings: 01-20190193
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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 had no Indiana domicile during 2013. Therefore, the Department's assessment for 2013 Indiana income tax is correct. Penalty is not abated.

ISSUES

I. Income Tax—Residency.

Authority: IC § 6-1.1-12-37; 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](#); [50 IAC 24-2-5](#).

Taxpayer protests the imposition of Indiana individual income tax.

II. Tax Administration—Penalty.

Authority: IC § 6-8.1-10-3.

Taxpayer protests the imposition of a penalty.

STATEMENT OF FACTS

Taxpayer is an individual. The Indiana Department of Revenue ("Department") determined that Taxpayer was domiciled in Indiana for the tax year 2013 but that Taxpayer neither filed a 2013 Indiana individual income tax return nor paid any 2013 Indiana individual income tax. Taxpayer protested the Department's determination of domicile and the imposition of income tax plus penalty. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Income Tax—Residency.

DISCUSSION

Taxpayer protests the imposition of Indiana adjusted gross income tax for the 2013 tax year. The Department determined that Taxpayer was an Indiana domiciliary for 2013 based primarily on the information that Taxpayer had claimed the homestead credit on an Indiana residence. Taxpayer states that he resided in and was domiciled in another state in 2013 and had not been a resident of Indiana since moving to another state in 2010. Further, Taxpayer states that he had shut off the water utility to the Indiana residence sometime around 2013. This, Taxpayer argues, is evidence that he could not have lived in the Indiana residence in 2013. Therefore, Taxpayer argues, he did not need to file a 2013 Indiana income tax return nor did he owe any Indiana income tax for that year.

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 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 states that he did not spend more than 183 days in Indiana during 2013. Alternately, in order to be considered a resident of Indiana during 2013, Taxpayer must have been domiciled here.

[45 IAC 3.1-1-22](#) further defined "Domicile" during the tax year at issue as:

"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.

Since [45 IAC 3.1-1-22](#) referred to the homestead credit as a factor in determining domicile, the relevant statute regarding the homestead credit is 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*).

Therefore, when he claimed the homestead deduction, Taxpayer claimed that the dwelling was his principal place of residence, as provided by IC § 6-1.1-12-37(a)(2). Also, [50 IAC 24-2-5](#) states:

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

Next, the Indiana Supreme Court considered the issue of the meaning of "domicile" in *State Election Bd. v. Bayh*, 521 N.E.2d 1313, 1317 (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.
(*Emphasis added*).

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

In this case, the Department determined that, since he was listed as having claimed a homestead credit on an Indiana residence, Taxpayer was considered to have been domiciled in Indiana. Taxpayer states that he moved to another state in 2010 and that he has not returned to Indiana for any time greater than a visit since 2010. In the course of the protest process, Taxpayer provided copies of his W-2 tax form for the years 2009 through 2017. This, Taxpayer states, establishes that his employer withheld state taxes for the other state. During the administrative hearing, Taxpayer stated that he had records to support his position that the Indiana residence was uninhabitable beginning sometime around 2013 when he had the water utility disconnected. The Indiana house was thereafter used as a storage facility, according to Taxpayer. Taxpayer was allowed two weeks after the administrative hearing to find and send in such supporting documentation. After six weeks, no such documentation arrived and the Department makes its determination on the basis of what records supporting Taxpayer's position that he moved to another state are available.

After review of Taxpayer's W-2 tax forms, the Department is unable to conclude that Taxpayer has established that he moved to another state with the intent to remain in that state permanently and to abandon his Indiana domicile in 2010. While the W-2s do have an address in the state which Taxpayer says he moved to permanently in 2010, W-2s by themselves establish neither the duration of residency in the other state nor the intention of Taxpayer to abandon his Indiana domicile. Taxpayer has not met the burden imposed by IC § 6-8.1-5-1(c) of proving the proposed assessment wrong.

FINDING

Taxpayer's protest is denied.

II. Tax Administration—Penalty.

DISCUSSION

Taxpayer protests the imposition of penalty 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, Taxpayer did not file a return for 2013 Indiana income tax. IC § 6-8.1-10-3 contains no provision for waiver of the penalty imposed. If Taxpayer had been sustained in Issue I above, imposition of penalty would have been moot. However, Taxpayer did not provide documentation supporting his protest in Issue I and was denied. Therefore, penalty may not be waived.

FINDING

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

SUMMARY

Taxpayer's Issue I protest regarding the imposition of adjusted gross income tax is denied. Taxpayer's Issue II protest regarding the imposition of penalty is denied.

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