

**Letter of Findings: 01-20171191
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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 was able to show that for Indiana income tax purposes that he established a new domicile in a different state.

ISSUES

I. Income Tax–Domicile.

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

The Indiana Department of Revenue ("Department") determined that Taxpayer was an Indiana resident for tax year 2013. Based upon this, the Department issued a proposed assessment to Taxpayer for base tax, penalty, and interest for the year 2013. 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. *Id.* 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.

Regarding the homestead laws of Indiana, IC § 6-1.1-12-37(a)(2) 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. As will be seen below, Taxpayer actually moved to another state and has established that at the time of the move his intent was to remain in that other state.

The Department, in a letter dated July 12, 2017, stated the "department has determined that you must file a 2013 Indiana IT-40 because you were domiciled in Indiana." The letter goes on to state, "The department's records indicate that you received a Standard Homestead Deduction on your 2013 Indiana property taxes for [address of the home]."

Taxpayer's position is that he and his wife established a domicile in another state—referred to hereinafter as "State E." Taxpayer's protest letter states:

I officially relocated my residence to the state of [E] upon employment in [State E] and signing a lease agreement in February of 2011. In addition to physically relocating to [State E], the following events took place in 2012.

1. In January, 2012 I contacted a real estate agent to sell my home in [] Indiana
2. In February/March, 2012—I hired a painter to make the recommended changes to the house
3. On March [], 2012 an EF-4 tornado ripped through [] Indiana

Further, Taxpayer states "[t]he act of nature set a 2 year recover effort for my home and the area," and that it took "[n]early 12 months to repair the home" and that the tornado and damage prevented him "the opportunity to put the house on the market in 2012 as expected/planned." Taxpayer states he did not live in the Indiana home and "had to pay people/contractors to repair and keep watch over the property" since he lived several hours away in State E. Taxpayer states that the tornado "created an issue" that when he put the Indiana house on the market in 2013 that "no one wanted to move to [] Indiana" due to the "devastation seen for miles." Taxpayer states that his home was on the market for six months without an offer. In addition to the tornado, Taxpayer states that his wife had a health condition that "had taken a turn for the worse." Given his wife's health issues and the tornado, Taxpayer states "'Homestead Deduction' was the last thing on [his] mind." Taxpayer states that the home in Indiana that was damaged by the tornado eventually sold in 2015.

Taxpayer submitted documentation in support of his argument. Taxpayer and his wife filed a 2013 tax return for State E. Taxpayer also provided copies of his 2013 W-2, which shows the address as being in State E. Also included were e-mails in 2012 between Taxpayer and what appears to be the rental company regarding the gas stove at the rental property in State E, a copy of the lease for the rental property in State E, utility information for the rental property, e-mail correspondence in 2013 between the rental company and Taxpayer about a new lease agreement that stated "if you would like to discuss a possible purchase or lease/purchase agreement" that the rental company would do research on "that kind of purchase structure." There were additional e-mails discussing possible purchase of a home in State E between the rental company and Taxpayer, which evidences that Taxpayer had established his domicile in State E. Taxpayer, from the return address on his correspondence to the Department, was still at the address in State E in 2017.

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, Taxpayer took the homestead credit for a home in Indiana and Taxpayer had an Indiana driver's license. Taxpayer's argument is that given the tornado that damaged the Indiana home and his wife's medical condition that he overlooked those items. While these factors taken alone are not dispositive, when viewed in conjunction with the documentation that Taxpayer provided, the Department finds that Taxpayer has shown that he intended to abandon his Indiana domicile by establishing a new domicile in the other state.

FINDING

Taxpayer's protest is sustained.

II. Tax Administration—Penalty.

DISCUSSION

Taxpayer protests 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.

Since Taxpayer prevailed in his protest for Issue I, the protest of the penalty is moot.

FINDING

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

SUMMARY

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

March 29, 2018

Posted: 05/30/2018 by Legislative Services Agency
An [html](#) version of this document.