

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 14255
[Redacted],)	
)	DECISION
Petitioner.)	
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On September 8, 1999, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing income taxes, penalties, and interest for the taxable years 1994 through 1996 in the total amount of \$7,416.

On October 4, 1999, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing but rather chose to submit some additional information for consideration. The Tax Commission, having reviewed the file, hereby issues its decision.

[Redacted]. When the Bureau compared this information to the return filed with Idaho, the Bureau found the taxpayer had not filed a 1995 return. In addition to that, the Bureau found the taxpayer had not filed a 1994 or 1996 Idaho income tax return.

The Bureau sent the taxpayer a letter asking if he met Idaho's filing requirements. The taxpayer responded saying he was not required to file. The taxpayer stated he lived and worked in Montana during those years but used his parents' address in Idaho as a permanent mailing address.

The Bureau did some additional research on the taxpayer, as is customary, and found the taxpayer had some additional ties to Idaho other than his parents' mailing address. The Bureau found the taxpayer acquired an Idaho driver's license in July 1993,

May 1995, and October 1996. The Bureau found the taxpayer registered his vehicle in Idaho for two of the years in question. And the Bureau found the taxpayer purchased a resident fish and game license in January 1994, April 1994, April 1995, and October 1996.

With this additional information, the Bureau decided to send the taxpayer a more extensive questionnaire. The taxpayer completed the questionnaire and returned it to the Bureau. The Bureau reviewed the completed questionnaire and determined the taxpayer was domiciled in Idaho during 1994 through 1996. The Bureau prepared returns for the taxpayer and sent him a Notice of Deficiency Determination.

The taxpayer protested the Bureau's determination saying the Bureau made a mistake in its determination. The taxpayer stated he filed and paid any and all taxes he was required.

The Tax Commission sent the taxpayer a letter setting forth two alternative methods for redetermining the Notice of Deficiency Determination. The taxpayer contacted the Tax Commission and provided some additional information about the years in question. The taxpayer stated he worked in Montana during those years. He did not have a residence in Idaho at that time but when he was in Idaho, he stayed with family and friends. The taxpayer stated he filed Montana income tax returns for those years as a resident of Montana. The Tax Commission asked the taxpayer for copies of his Montana returns.

Two weeks later, the taxpayer and his representative contacted the Tax Commission again. In that discussion, the taxpayer's representative pointed out that there was a mix up in the reporting of W-2 information to the IRS. A W-2 was reported as

belonging to the taxpayer when it actually belonged to the taxpayer's father. This mix up was cleared up with the IRS and the representative wanted the Tax Commission to be aware of the correction.

The taxpayer's representative stated some of the responses the taxpayer made on the Bureau's questionnaire were not totally accurate. She stated the taxpayer's responses could be taken to mean more than they should. The Tax Commission asked the taxpayer if he would provide a chronological history of his movements and information about his employment. The Tax Commission asked the taxpayer to put this in writing. The taxpayer complied with the Tax Commission's request.

The taxpayer lived in Idaho until September 1993 when he and his wife separated and got a divorce. At that same time, he left his employment in Idaho and began working for a company in Billings, Montana. The taxpayer's property in Idaho was sold shortly after his divorce. At that time, the taxpayer's ex-wife and children moved to Washington.

The taxpayer's new employer, in Montana, sent him to Hawaii to work until December 1993. Upon his return, the taxpayer took some time to visit his children in Washington and his parents in [Redacted], Idaho. He then returned to [Redacted] for his next assignment.

Throughout 1994, the taxpayer worked at various locations in Montana. He also went back to Hawaii for a short time. In 1994, most of his time was spent in Montana; however, he would travel to his parents' home in [Redacted] to check up on them and pick up any important mail. The taxpayer continually used his parents' address as his

permanent mailing address. During 1994, the taxpayer stated he spent approximately ten days in Idaho and ten days in Washington.

In 1995, the taxpayer was sent to [Redacted], Wyoming to work for three months. He then returned to [Redacted] and finished out the year working in many of the small towns in the area. The taxpayer stated his primary home was in [Redacted] where his job was based.

Domicile forms the constitutional basis for the imposition of state income taxes on an individual. New York, ex rel, Cohn v. Graves, 300 U.S. 308, 313 (1937); Lawrence v. State Tax Commission of Mississippi, 286, U.S. 276, 279 (1932). Domicile is defined in IDAPA 35.01.01.030 Idaho Administrative Income Tax Rules as the place where an individual has his true, fixed, permanent home and principal establishment, and to which place he has the intention of returning whenever he is absent. The term domicile denotes a place where an individual has the intention to remain permanently or for an indefinite time.

Domicile, once established, persists until a new domicile is legally acquired. In re Cooke's Estate, 96 Idaho 48, 524 P.2d 176 (1973). A concurrence of the intent to abandon the present domicile, the intent to acquire a new domicile, and the physical presence in the new domicile must occur to change an individual's domicile. (IDAPA 35.01.01.030.02.a Idaho Income Tax Administrative Rules.) Domicile is evidenced by a taxpayer's actions and declarations. Generally, actions are accorded more weight in domicile decisions since declarations can tend to be self-serving. Allan v. Greyhound Lines, 583 P.2d 613 (Utah 1978).

The determination of domicile depends upon no one fact or combination of circumstances, but upon the whole, taken together, showing a preponderance of evidence in favor of some particular place as the domicile. Hall v. Wake County Brd. of Elections, 280 N.C. 600, 187 S.E. 2d 52 (1972); Fry v. Fry, 332 Ill. App. 484, 76 NE 2d 225, 229 (1947). Therefore, the Tax Commission must look at all the available facts and circumstances to determine the taxpayer's domicile.

The Tax Commission looks at five primary factors when determining an individual's state of domicile. The primary factors are the individual's primary home, where the individual is actively involved in business, where the individual spends his time, where the individual keeps his near and dear items, and the individual's family connections.

An individual's home can be a physical building (house) or it can be a community to which the individual has established strong and endearing ties. In this case, the taxpayer has no physical building or house. The house he owned in Idaho was sold a couple of months after his divorce. The taxpayer has since acquired no other property. As far as community ties, the record points to no specific place. The Bureau contends [Redacted], Idaho has the taxpayer's community ties due in large part to his mailing address. However, the mailing address belonged to the taxpayer's parents, which he used to assure mail delivery. The taxpayer stated his primary home was in Montana. His job was based in Montana. He made his home where his job was.

In deciding this factor, the Tax Commission looked at the circumstances of why the taxpayer left Idaho and went to Montana. Prior to this time, the taxpayer's "home" was in Idaho, presumably in [Redacted]. After his divorce in 1993, the taxpayer left

Idaho, sold his "home", and moved to Montana. It appeared from the record the only reason the taxpayer ever returned to Idaho was to check up on his parents. During this period, the taxpayer always returned to his base of employment in [Redacted], Montana even after working elsewhere in Montana and outside of Montana. Therefore, the Tax Commission found the home factor in favor of Montana.

The active business involvement factor looks at the individual's pattern of employment. This includes where the individual operates his business if he is a sole proprietor, where he earns his wages if he is a wage earner, and where he actively participates in a partnership, limited liability company, or corporation. In this case, the taxpayer worked for a company based in [Redacted]. He was a wage earner working on job sites mostly in Montana. The taxpayer did do work in other states for brief periods of time; however, none of those states were Idaho. The taxpayer had no other involvement in business activities.

The taxpayer left Idaho and his previous employer in 1993. Since that time, the record shows no indication the taxpayer ever came back to Idaho for employment or business reasons. The taxpayer mostly worked in Montana and, whenever he was temporarily assigned to a site outside of Montana, he returned to Montana upon the completion of the job. Considering the available facts, the Tax Commission found the active business involvement factor favored Montana.

The time factor is an analysis of where an individual spends his time during the year. In this case, the taxpayer left Idaho in September 1993. He stated he only returned to Idaho to check on his parents and to pick up important mail. The taxpayer stated he was in Idaho for ten days in October 1994 and for another ten days during the Christmas

holidays. The taxpayer did not specify the amount of time he spent in Idaho in 1995 or 1996 other than to say he would occasionally spend a weekend with his parents to visit and to pick up mail.

Looking at the time factor purely as a quantitative analysis, the Tax Commission found it favored Montana. The record shows that after the taxpayer left Idaho in 1993 he only returned for visits and for recreational purposes.

The factor of items near and dear deals with the location of items an individual holds "near and dear" to his heart, items with sentimental value, and the personal items, which enhance the quality of life. The taxpayer stated he had no near and dear items after his divorce and house sale in 1993. The only entry in the record that would suggest near and dear items was the fish and game licenses purchased by the taxpayer. However, the act of purchasing a fish and game license does not show where the taxpayer kept his recreational equipment. Therefore, since the record is lacking in information regarding any near and dear items of the taxpayer, the Tax Commission found this factor non-determinative.

The last of the primary factors is the individual's family connections. This factor is an analysis of the individual's family both within and without Idaho. In this case, the taxpayer's parents lived in Idaho and the taxpayer regularly visited his parents. A fact to be considered with the taxpayer visiting his parents is that the taxpayer's father was disabled. Other family connections given in the record were the taxpayer's children. After the taxpayer's divorce in 1993, the taxpayer's ex-wife took the kids and moved to Washington. The taxpayer stated he visited his children regularly throughout the year.

The record does not contain a lot of information about the taxpayer's family connections. It is unknown if the taxpayer was an only child or whether he was the sibling living the closest to his parents. Considering the record, the Tax Commission did not find this factor conclusively pointed to Idaho in the determination of the taxpayer's domicile.

Reviewing these primary factors did not provide the Tax Commission with clear and convincing evidence of where the taxpayer was domiciled. Therefore, the Tax Commission looked to other information contained in the record and presented by the taxpayer.

The Bureau found that the taxpayer obtained Idaho driver's licenses during the years in question. However, the dates the taxpayer acquired the licenses were somewhat puzzling. Generally, Idaho driver's licenses during that time were valid for three years. The record shows the taxpayer renewed or obtained an Idaho license in July 1993, May 1995, and October 1996. These dates do not coincide with the regular renewal schedule. This raised questions within the Tax Commission as to taxpayer's ties with Idaho.

The taxpayer stated he registered his vehicle in Idaho and had an Idaho driver's license to keep his insurance with the same carrier. The taxpayer stated he had a 17-year history with his insurer and he wanted to keep it.

The Bureau also found the taxpayer purchased resident fish and game licenses. On the license he purchased in February 1998, the taxpayer stated he was domiciled in the state of Idaho for 36 years. This encompasses the years the Tax Commission reviewed in this matter.

On the other side, the taxpayer provided or the Tax Commission obtained copies of the taxpayer's resident income tax returns filed with the state of Montana for each of the years.

The Tax Commission looked at the concurrence of events stated in IDAPA 35.01.01.030.02.a Idaho Income Tax Administrative Rules. The Tax Commission believed the taxpayer had the intent to abandon Idaho as his domicile. The Tax Commission found as evidence of this, the taxpayer's actions of ending his employment in Idaho, finding new employment in Montana, the sale of his house in Idaho, and the divorce from his ex-wife.

The Tax Commission did not find anything in the record that clearly established the taxpayer's intent to acquire a new domicile. The only indications were the taxpayer moving to Montana, always returning to Montana after completing an out-of-state job and filing Montana resident income tax returns.

The physical presence in the new domicile was evident. The taxpayer lived and worked in Montana. The taxpayer was also in Idaho during the years in question; however, the time spent in Idaho was no more than a visitor or vacationer.

Considering all the available evidence and information, the Tax Commission was not convinced the taxpayer's domicile remained with Idaho for the taxable years 1994 through 1996. Therefore, the Tax Commission decided the Notice of Deficiency Determination should be cancelled.

WHEREFORE, the Notice of Deficiency Determination dated September 8, 1999 is hereby CANCELLED.

DATED this _____ day of _____, 2001.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2001, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

Receipt No. 7099 3400 0008 2504 0144

[REDACTED]