

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 14421
[Redacted],)	
)	DECISION
Petitioners.)	
_____)	

On October 20, 1999, the staff of the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers), proposing income tax, penalty, and interest for the taxable years 1992 through 1997, in the total amount of \$10,893.

On December 12, 1999, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers initially requested a hearing but later stated they would submit additional documents for the Tax Commission's consideration. However, the taxpayers failed to provide additional information regarding the petition for redetermination. Therefore, the Tax Commission, having reviewed the file, hereby issues its decision.

The Bureau [Redacted] found the taxpayers may have had a filing requirement. The Bureau contacted the taxpayers and requested a residency/domicile questionnaire be filled out to determine their filing requirement. The taxpayers did not return the questionnaire. Therefore, the Bureau reviewed the available information and issued a Notice of Deficiency Determination proposing an Idaho tax liability for the taxable years 1992 through 1997. The taxpayers appealed the Bureau's determination stating they moved to [Redacted], Washington in 1991. In addition, they stated they have since been employed in Washington.

Pursuant to Idaho Code section 63-3002, an Idaho resident must report all income wherever derived and a nonresident must report all income derived from Idaho sources. Idaho

Code section 63-3013 defines a resident as any individual who resided in the state for the entire taxable year or is domiciled in the state of Idaho.

The issue presented in this case is where was the taxpayers' domicile for the years in question. It is a fundamental rule of law that all persons have domicile somewhere. Taylor v. Milam, 89 F. Supp. 880, 881 (W.D. Ark. 1950); ex parte Phillips, 275 Ala. 80, 82, 152 So.2d 144, 146 (1963). Equally, no person has more than one domicile at a time. Smith v. Smith, 45 Cal.2d 235, 288 P.2d 497, 499 (1955).

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 Income Tax Administrative 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, 59, 524 P.2d 176,187 (1973). A concurrence of three factors must occur to change an individual's domicile. The factors are (1) the intent to abandon the present domicile, (2) the intent to acquire a new domicile, and (3) physical presence in the new domicile. IDAPA 35.01.01.030.02.a Income Tax Administrative Rules. Domicile is evidenced by a taxpayer's action and declarations.

The record showed the taxpayers admitted being Idaho residents in 1990 and 1991. The taxpayers continued to renew their Idaho driver's licenses using a [Redacted], Idaho address. Mr. [Redacted] also purchased resident fish and game licenses using a [Redacted] address and

claimed to be a twenty-year resident in 1998. On their application for a homeowner's exemption in 1999, the taxpayers stated the home was their primary home in 1993. Furthermore, the taxpayers filed their federal returns using a [Redacted] address. Based on the foregoing, the Bureau determined the taxpayers were domiciled in Idaho between 1992 and 1997.

The taxpayers claimed to have moved to Washington and become employed there in 1991. If this were true, the taxpayers may still have been domiciled in Idaho but not required to file per the safe harbor provision of Idaho Code section 63-3013. Idaho Code section 63-3013(2) states an individual shall not be considered a resident of Idaho if he or she is absent from the state for at least four hundred forty-five (445) days in fifteen consecutive months. However, the taxpayers provided nothing to support their claim of absence from the state or qualifications for the safe harbor provision. Therefore, the Tax Commission upholds the Bureau's determination of tax, penalty, and interest for 1992 through 1997.

WHEREFORE, the Notice of Deficiency Determination dated October 20, 1999, is hereby APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1992	\$1,663	\$416	\$1,151	\$ 3,230
1993	619	155	363	1,137
1994	369	92	188	649
1995	1,185	296	502	1,983
1996	1,422	356	485	2,263
1997	1,665	416	422	<u>2,503</u>
			TOTAL DUE	<u>\$11,765</u>

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayers' right to appeal this decision is included with this decision.

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:

[REDACTED] Receipt No. [Redacted]
[REDACTED][REDACTED]

ADMINISTRATIVE ASSISTANT 1