

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 14994
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On June 1, 2000, the Tax Discovery Bureau of the Idaho State Tax Commission (Bureau) issued a Notice of Deficiency Determination to [Redacted] (taxpayer). The Notice of Deficiency Determination proposed additional use tax and related penalty and interest in the total amount of \$3,261 for the period of October 1998.

The taxpayer timely protested and requested a redetermination on July 13, 2000. The taxpayer chose not to participate in an informal conference. This decision is based on the information currently contained in the Commission’s file. The Commission has reviewed the file, is advised of its contents, and now issues its decision. For the reasons set forth below, the Commission affirms the Notice of Deficiency Determination with interest updated through June 30, 2001.

The taxpayer is an airline pilot. The taxpayer’s wife and daughter reside in Boise, Idaho. In July 1998, the taxpayer and his wife purchased a home in Boise, which they continue to maintain. It is undisputed that the taxpayer’s wife has resided in the Boise home since they purchased it. However, the taxpayer claims that he was not an Idaho resident during October 1998. As an airline pilot he spent much of his time in states other than Idaho. The taxpayer maintains he established residences in Texas and Wyoming rather than Idaho.

In a separate income tax case, the taxpayer disputed his Idaho residency and claimed his income was not subject to Idaho individual income tax. The Commission disagreed, found the

taxpayer to be a resident, and asserted the taxpayer owed Idaho individual income tax regarding taxable years 1995 through 1997.

The taxpayer and his wife filed an action with the Fourth Judicial District Court for the State of Idaho to dispute tax deficiencies asserted by the Commission (Ada County District Court case number CV OC00-02023D). During the course of the court action, the Commission discovered the taxpayer and his wife purchased an airplane in October of 1998. In the taxpayer's deposition in another district court case (Ada County District Court case number CV DR97-0044D), the taxpayer stated he and his wife purchased the plane for \$47,000 from an individual in [Redacted], California. The plane was a 1973 Cessna 177 RG. Both the taxpayer and his wife flew the plane. The plane was kept in [Redacted], Idaho and "worked on" in [Redacted], Idaho. The plane was sometimes stored in [Redacted], Idaho and [Redacted], Wyoming when the taxpayer flew there. The taxpayer and his wife gave the taxpayer's daughter (who resides in [Redacted], Idaho with the taxpayer's ex-wife) rides in the plane.

On November 3, 1999, the Bureau sent correspondence to the taxpayer asking him to supply additional information regarding his purchase of the plane. The Bureau's correspondence advised the taxpayer that the aircraft may be subject to Idaho sales or use tax. The Bureau requested additional information to make a final determination regarding the taxability of the plane.

The taxpayer responded on December 14, 1999. He advised the Bureau that he was currently disputing his Idaho residency with the Commission concerning Idaho individual income taxes. The taxpayer also stated he had paid sales tax to the state of Wyoming and requested a credit for the taxes paid to Wyoming. In a photocopy of a check produced by the taxpayer on February 14, 2000, the Bureau determined the taxpayer made a tax payment to the

state of Wyoming on November 30, 1999; a date after the taxpayer received the Bureau's request for information, but before the taxpayer responded to the request.

In a letter dated February 17, 2000, the Bureau responded to the taxpayer's submission of the photocopied check. The Bureau explained that based on the information contained in the taxpayer's deposition, it appeared the taxpayer and his wife lived in Idaho when they bought the plane in October of 1998. The Bureau also advised the taxpayer that the State of Idaho only allows credit for taxes paid to another state if the taxes were correctly paid to the other state. To assist the taxpayer in resolving this matter, the Bureau again asked the taxpayer to supply additional information.

On March 16, 2000, the taxpayer responded with some general written statements. The taxpayer asserted he was not an Idaho resident in October of 1998 when he and his wife purchased the plane. The taxpayer also stated he was in the process of moving from Texas to Wyoming. His records were still packed and in boxes. He asked for additional time to obtain specific records, which he would then forward to the Bureau. The Bureau agreed and gave the taxpayer an additional 60 days to submit documentation.

On May 22, 2000, the taxpayer called the Bureau to advise that it was his position that he was not a resident of Idaho in October of 1998 and therefore he was not responsible for Idaho use tax. The taxpayer did not submit any additional documentation.

The Bureau explained that it would issue a Notice of Deficiency Determination regarding the use tax and that the taxpayer could file a protest if he wished to appeal the determination. As indicated above, the Bureau issued a Notice of Deficiency Determination and the taxpayer filed a protest.

The Bureau asserts the taxpayer is responsible for use tax on the plane pursuant to Idaho Code § 63-3621, which imposes a five percent (5%) use tax on the storage, use, or other

consumption of tangible personal property in this state. The tax is imposed on the value of the property and a recent sales price is presumptive evidence of the value of the property. A person is presumed to store, use or otherwise consume tangible personal property in Idaho when a person purchases the property from an out-of-state retailer and ships or brings the property into Idaho.

Idaho Code § 63-3615(a) defines the term “storage” as any keeping or retention in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state of tangible personal property purchased from a retailer. Idaho Code § 63-3615(b) defines the term “use” to “include the exercise of any right or power over tangible personal property incident to the ownership or the leasing of that property by any person.” The Idaho Supreme Court held that the definition of “use” as contained in Idaho Code § 63-3615(b) is intended to be construed broadly. K Mart Corp. v. Idaho State Tax Com’n, 111 Idaho 719 (1986).

The Bureau asserts the taxpayer used the plane in Idaho as indicated by the taxpayer’s testimony in his deposition and his Idaho residency. In contrast, the taxpayer asserts the primary use of the plane occurred outside the state of Idaho as evidenced by his residency in Texas during October 1998 and his payment of sales tax to Wyoming on November 30, 1999. The taxpayer contends he was not an Idaho resident and only visited Idaho to see his wife and daughter.

The taxpayer made the same argument concerning his obligation to file Idaho individual income tax returns and to pay Idaho individual income tax. The district court conducted a trial, examined the residency issue and recently issued a decision rejecting the taxpayer’s argument.

In Findings of Fact and Conclusions of Law dated December 26, 2000, the court established several facts and conclusions that are pertinent to the case now before the

Commission involving use tax. Based on the totality of the evidence, the court found that from May of 1993 through June of 1994, the taxpayer established his domicile in the state of Idaho. During the trial the taxpayer testified he moved to [Redacted], Texas in June 1994 until March 2000, at which time the taxpayer claimed to have moved to [Redacted], Wyoming. However, the court found the taxpayer failed to present any credible evidence to show he changed his domicile from Idaho to Texas. The court concluded the taxpayer was an Idaho resident during the period of June 1994 through March 2000.

When the taxpayer and his wife purchased their current home in [Redacted], Idaho, in July 1998, the taxpayer certified on the deed of trust that he intended to occupy the home as his principal residence for at least one year. In addition to the deed of trust, the taxpayer signed a Uniform Residential Loan Application and two separate occupancy statements in which he certified he was purchasing the [Redacted] home as his primary and principal residence. Based on this and other evidence, the court concluded “the evidence shows that [the taxpayer] continued to live in [Redacted] and continued to consider [Redacted] to be his principal home and primary residence.” (FOFCOL at p. 9).

The district court also made several relevant conclusions of law. A resident is any individual who was domiciled in Idaho. Once domicile is established, it persists until another domicile is legally acquired. In re Cooke’s Estate, 96 Idaho 48 (1973). In addition, as between two or more residences, a person’s domicile is generally at that place that his immediate family lives and that is the center of his social and civic affairs. Pletcher v. Montana Dept. of Revenue, 930 P.2d 656, 659 (Mont. 1996); Manthey v. Commissioner of Revenue, 468 N.W. 2d 548 (Minn. 1991). The taxpayer’s wife and daughter are Idaho residents living in [Redacted], Idaho.

Applying these facts and conclusions of law, the district court held the taxpayer was domiciled in [Redacted] and therefore the taxpayer was an Idaho resident. Although the time

period before the court involved taxable years 1995 through 1997, the findings and conclusions further demonstrate the taxpayer was domiciled in Idaho in July of 1998 and evidenced an intention to remain domiciled in Idaho for at least one year thereafter. According to the taxpayer's own statements, he did not attempt to change his domicile again until he purportedly moved to Wyoming in March 2000.

The taxpayer did not appeal the district court's decision. The Commission notes that, for purposes of use tax applied to aircraft, the term "resident" is defined in the same manner as the term is defined for Idaho individual income tax purposes. Based on the district court's decision and the additional testimony of the taxpayer in his deposition of December 1998, the Commission finds the taxpayer resided in Idaho and stored or used the plane in Idaho during the period in question. The aircraft does not appear to fall under the statutory exception as an aircraft purchased by a nonresident for use solely outside the state of Idaho.

The Commission further finds the tax payment to the state of Wyoming does not entitle the taxpayer to a credit against his use tax liability. A credit is not allowed for taxes paid erroneously to another state. The payment of taxes to Wyoming in November 1999 may have bolstered the taxpayer's argument concerning his residency during the related income tax proceedings before the district court. However, the district court addressed the taxpayer's ties to Wyoming as well as Texas. "He continued to reside in [Redacted], his immediate family was located in [Redacted], and his purported ties to [Redacted], Texas were incidental at best. The same can be said for [the taxpayer's] ties to Wyoming." (FOFCOL at p. 13). Any use of the plane in Wyoming also appears to be incidental to the taxpayer's storage and use of the plane in [Redacted].

The Commission also notes that while the Idaho use tax is 5% of the sales price of the tangible personal property, the sales tax in Wyoming is less than 5%. The taxpayer has not

explained why he would submit a 5% sales tax to Wyoming when Wyoming imposes a lesser tax.

It is well settled in Idaho that a Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be correct. Albertson's Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814 (1984); Parsons v. Idaho State Tax Com'n, Dept. of Revenue, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986). The burden is on the taxpayer to show the tax deficiency is erroneous. Id. In this case, the taxpayer only stated he is not a resident of Idaho and that he paid sales tax to Wyoming. He has not presented any other evidence that would support his claim that his purchase and storage or use of the aircraft in Idaho is exempt from the Idaho use tax. Since the taxpayer has failed to meet his burden in the present case, the Tax Commission finds that the amount shown as due on the Notice of Deficiency Determination is true and correct.

WHEREFORE, the Notice of Deficiency Determination dated June 1, 2000, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest for the period of October 1998:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$2,350	\$588	\$484	\$3,422

Interest is computed through June 30, 2001, and interest will continue to accrue until paid in full.

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

An explanation of the taxpayer's rights to appeal this decision is enclosed 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]

ADMINISTRATIVE ASSISTANT 1