

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16041
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On September 10, 2001, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing income tax, penalty, and interest for the taxable year 1997 in the total amount of \$3,566.

On October 9, 2001, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not respond to the Tax Commission's hearing rights letter and has provided no additional information. The Tax Commission, having reviewed the file, hereby issues its decision.

[Redacted]. [Redacted]. The Bureau researched the Tax Commission's records and found the taxpayer did not file an Idaho income tax return for 1997.

The Bureau sent the taxpayer a letter asking about his filing requirement with the state of Idaho. The taxpayer did not respond. The Bureau gathered further information on the taxpayer and determined he did have a filing requirement for tax year 1997. The Bureau prepared a return for the taxpayer and sent him a Notice of Deficiency Determination.

The taxpayer protested the Bureau's determination. He stated he did not reside in Idaho in a temporary or permanent status. The taxpayer stated the confusion might be coming from the fact that during 1997 he chose to keep a mailing address in Idaho to receive certain electrical licenses he renewed. He stated a stepson would forward these documents because the son always knew his whereabouts. The taxpayer stated his employment record would show that he worked in [Redacted] and that he was paid in those states. He stated any unemployment

compensation he received was delivered to a Washington address. The taxpayer stated the only money spent or earned in Idaho was his child support payments.

The Tax Commission sent the taxpayer a letter giving him two options for having the Notice of Deficiency Determination redetermined. The taxpayer did not respond to that letter so the Tax Commission sent him a follow-up letter. The taxpayer did not respond to that letter either. Therefore, the Tax Commission decided the matter based upon the information currently available.

The information the Bureau gathered during its research of the taxpayer included the taxpayer acquiring an Idaho driver's license for the years 1991, 1992, 1996, and 1997. The taxpayer also purchased Idaho resident fish and game licenses in 1994 through 1997. On the 1997 fish and game license, the taxpayer stated he was a resident and domiciled in Idaho for seven years. The taxpayer registered vehicles in Idaho in 1994 and 1995. He also registered boats and a trailer in Idaho from 1995 to 1998.

The Bureau sent the taxpayer a residency/domicile questionnaire but the taxpayer failed to return it to the Bureau or the Tax Commission. The taxpayer has only provided the information contained in his protest letter. Therefore, the information available from the taxpayer is limited.

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 is never lost until there is a concurrence of a specific intent to

abandon an old domicile, intent to acquire a specific new domicile, and the actual physical presence in a new domicile.

It is a fundamental rule of law that all persons have a domicile somewhere. Taylor v. Milam, 89 F.Supp. 880, 881 (W.D. Ark. 1950); ex parte Phillips, 275 Ala. 80, 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).

Generally, domicile is evidenced by where an individual has his primary home, where his business involvement is, where he spends most of his time, where he keeps his near and dear items, and where his family connections are located. In this case, the taxpayer revealed very little of this information. He stated he had a stepson in Idaho and that he worked in [Redacted]

However, the taxpayer did leave what is commonly called a "paper trail." The paper trail consists of obtaining Idaho driver's licenses, purchasing resident fish and game licenses, and registering motor vehicles and recreational vehicles in Idaho. This documentation shows the taxpayer considered himself an Idaho resident at those times. Therefore, the Tax Commission found that the taxpayer established a domicile in Idaho as early as 1991.

Domicile, once established, persists until a new domicile is legally acquired. In re Cooke's Estate, 96 Idaho 48, 524 P.2d 176 (1973). As previously stated, a concurrence of three factors must occur to change an individual's domicile: (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 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. Allen v. Greyhound Lines, Inc., 583 P.2d 613 (Utah 1978). The taxpayer provided nothing to show he abandoned Idaho and acquired another state as his domicile.

An individual who is domiciled in Idaho is considered a resident of Idaho and is required to report his income from all sources to Idaho. (Idaho Code sections 63-3013 and 63-3002.) However, if an individual who is domiciled in Idaho is absent from the state for a period of 15 consecutive months and is not present in the state for more than 60 days in any calendar year after the 15-month period, that individual shall not be considered a resident and not required to file a return with the state of Idaho.

The information available showed the taxpayer had definite ties with Idaho. The taxpayer did not provide anything to show he severed his ties with Idaho or met the safe harbor provision of Idaho Code section 63-3013. The burden of proof rests with the person asserting a change of domicile. Margani v. Sanders, 453 A.2d, supra, at 503; see generally, Restatement (Second) of Conflicts, § 19 (1971); R. Leflar, American Conflicts of Law, § 15, 3rd Ed. 1977. The taxpayer provided no information to show his domicile changed.

Since the taxpayer has not shown he abandoned Idaho and acquired another domicile or that he met the safe harbor provision in the Idaho Code, the Tax Commission finds the taxpayer was required to file a 1997 Idaho income tax return. The taxpayer also provided nothing to show that the return prepared by the Bureau was in error or incorrect. He has not met his burden of proof. (See Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984).) Therefore, the Tax Commission upholds the Bureau's computation of the taxpayer's Idaho income tax.

The Bureau added interest and penalty to the taxpayer's Idaho tax liability. The Tax Commission reviewed those additions and found them appropriate and in accordance with Idaho Code sections 63-3045 and 63-3046.

WHEREFORE, the Notice of Deficiency Determination dated September 10, 2001, is hereby APPROVED, AFFIRMED, and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1997	\$2,332	\$583	\$792	\$3,707

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

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

DATED this ____ day of _____, 2002.

IDAHO STATE TAX COMMISSION

COMMISSIONER

