

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
)
[Redacted]) DOCKET NO. 16285
)
Petitioners.) DECISION
)
)
_____)

On November 5, 2001, the staff of the Tax Discovery 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 1997 and 1998 in the total amount of \$11,870.

On January 3, 2002, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not respond to the Tax Commission's hearing rights letter and have provided nothing further for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The Tax Discovery Bureau (Bureau) received information that the taxpayers had Idaho source income for the taxable years 1997 and 1998. The Bureau sent the taxpayers a letter asking them about their Idaho filing requirement for both years. The taxpayers did not respond. The Bureau gathered additional information on the taxpayers and determined the taxpayers were required to file Idaho income tax returns. The Bureau prepared income tax returns for the taxpayers and sent them a Notice of Deficiency Determination.

The taxpayers protested the Notice of Deficiency Determination and submitted income tax returns for 1997 and 1998. The Bureau accepted the taxpayers' 1998 return but did not agree with the way the taxpayers reported their income on the 1997 return. The Bureau requested additional information from the taxpayers of which the taxpayer only provided part of the

information. The Bureau made the request again and received no response from the taxpayers. The Bureau then referred the matter for administrative review.

The Tax Commission sent the taxpayers a letter giving them two options for having the Notice of Deficiency Determination redetermined. The taxpayers did not respond. The Tax Commission sent the taxpayers a follow-up letter but the taxpayers still failed to respond. Therefore, the Tax Commission decided the matter based upon the information available.

The taxpayers filed resident income tax returns with the State of Idaho for the taxable years 1994, 1995, 1996, and 1999. The return the taxpayers submitted for 1998 was also an Idaho resident income tax return. However, for 1997, the taxpayers submitted a return showing that they were part-year residents of Idaho. The taxpayers claimed to have been in Idaho for only three months in 1997. The taxpayers excluded [Redacted] wages and some interest income from Idaho taxable income.

The Bureau questioned whether the taxpayers actually abandoned Idaho during the nine months they claimed to be non-residents of Idaho. The Bureau sent the taxpayers a domicile questionnaire, but the taxpayers did not return the questionnaire. The Bureau found that [Redacted] purchased an Idaho resident fish and game license in May 1997; registered two vehicles in Idaho in 1997, one in February and the other in September; and that [Redacted] obtained Idaho driver's licenses in 1991, 1995, and 1999. The taxpayers also received the homeowner's exemption in 1997.

Idaho Code section 63-3013 states that a resident for income tax purposes is any individual who is domiciled in Idaho for the entire taxable year. 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 (P.C. Ark. 1950); Ex parte Phillips, 275 Ala. 80, 152 So. 2d 144, 146 (1963). The existing domicile, whether of origin or selection, continues until a new one is acquired, and the burden of proof rests upon the party who alleges the change. Bodfish v. Gallman, 378 N.Y.S. 2d 138, 141, 50 A.D.2d 457 (1976).

The taxpayers had a prior history of filing resident Idaho income tax returns. The taxpayers acquired Idaho driver's licenses, registered vehicles in Idaho, purchased an Idaho resident fish and game license, and claimed the homeowner's exemption. This type of activity shows the taxpayers considered themselves residents of and domiciled in Idaho. However, the taxpayers apparent argument is that they were not domiciled in Idaho for all of 1997; therefore, they have the burden of proving their domicile changed.

The taxpayers provided the Bureau with two physical addresses in Washington to show that they were present in Washington in 1997. Other than the 1997 return and their statements, this was the only information the taxpayers provided. However, an individual's domicile is not necessarily lost by a protracted absence from the home where the intention to return remains. Wilson v. Pickens, 444 F. Supp. 53 (W.D. Okl. 1977).

The taxpayers' filing history with Idaho suggests the taxpayers may have left Idaho for employment in [Redacted]. However, the taxpayers did not provide anything to show they intended to abandon Idaho as their domicile or that they even left Idaho. The evidence shows [Redacted]

worked for a company in [Redacted] in 1997, but that employment continued through 1998 when the taxpayers submitted a 1998 return as Idaho residents.

The taxpayers provided nothing to show their domicile changed. Therefore, the Tax Commission must conclude that the taxpayers' domicile remained with Idaho rather than changing to [Redacted] in 1997. Since the taxpayers' domicile was Idaho in 1997, the taxpayers were required to report all their income to Idaho on their 1997 return. Therefore, the Tax Commission adjusted the 1997 return submitted by the taxpayers to show the taxpayers as being domiciled in Idaho.

In addition to the domicile adjustment, the Tax Commission found that the taxpayers did not report all their wages on the 1997 return they submitted. [Redacted] Those wages were not reported on the 1997 return. Since those wages were part of the taxpayers' gross income, the Tax Commission added them to the taxpayers' 1997 return.

As for the taxpayers' 1998 return, the Tax Commission agreed with the Bureau that the return the taxpayers submitted represented the taxpayers' taxable income better than the return prepared by the Bureau. Therefore, the Tax Commission accepted the taxpayers' 1998 return, subject to the normal review processes of the Tax Commission.

The Bureau added interest and penalty to the taxpayers' tax deficiency determined on the returns it prepared. The Tax Commission reviewed those additions and found that they were appropriate per Idaho Code sections 63-3045 and 63-3046. Furthermore, the Tax Commission found that interest and penalty should be added to the returns the taxpayers submitted.

WHEREFORE, the Notice of Deficiency Determination dated November 5, 2001, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is 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	\$2,856	\$ 714	\$1,028	\$ 4,598
1998	1,363	341	384	<u>2,088</u>
			TOTAL DUE	<u>\$ 6,686</u>

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

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

DATED this ____ day of _____, 2002.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that I have on this ____ day of _____, 2002, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:
[Redacted]