

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 16380
[Redacted])
)
) Petitioners.) DECISION
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On December 7, 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 1995 and 1996 in the total amount of \$1,960.

On February 7, 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 received wages from Idaho sources for the taxable years 1995 through 1997. The Bureau researched the Tax Commission's records and found the taxpayers had not filed Idaho income tax returns for those years. The Bureau sent the taxpayers a letter asking them about their filing requirement with the state of Idaho, but the taxpayers did not respond. The Bureau obtained additional information [Redacted] and determined the taxpayers did have an Idaho filing requirement. The Bureau prepared income tax returns for the taxpayers and sent them a Notice of Deficiency Determination.

The taxpayers protested the Bureau's determination stating that their accountant figured that they only needed to file returns for 1996 and 1997. The taxpayers stated they had returns

prepared in 1999 for the tax years 1996 and 1997, but they forgot to mail them. The taxpayers provided copies of the returns with their protest letter.

The Bureau reviewed the taxpayers' returns. The Bureau determined the 1997 return was acceptable; however, the 1996 return was questioned because the taxpayers filed it as part-year residents of Idaho. The Bureau wrote the taxpayers telling them their 1997 return was accepted and that the Notice of Deficiency Determination was cancelled for 1997. The Bureau also asked the taxpayers to complete and return a questionnaire regarding 1996 and to submit information pertaining to 1995.

The taxpayers did not return the Bureau's questionnaire, or respond to the Bureau's letter or follow-up letter. Therefore, the Bureau 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 still the taxpayers did not respond. Therefore, the Tax Commission decided the matter based upon the information available.

In 1995 and 1996, the taxpayers received wages from Idaho sources. The total wages from Idaho sources for each year were in excess of the amounts listed in Idaho Code section 63-3030 for filing Idaho income tax returns. In addition to the wages from Idaho sources, the taxpayers received wages while working in other states.

The Bureau questioned the taxpayers' residency status as it was reported on the taxpayers' 1996 return. The Bureau looked at the information available and concluded the taxpayers might actually be domiciled in Idaho. Therefore, the Bureau sent the taxpayers a domicile questionnaire. The taxpayers did not return the questionnaire.

It is well-established law that everyone has a domicile and that no one can have more than one domicile at a time. Taylor v. Milam, 89 F. Supp. 880, 881 (W.D. Ark. 1950); ex parte Phillips, 275 Ala. 80, 152 So. 2d 144, 146 (1963); Smith v. Smith, 45 Cal. 2d 235, 288 P.2d 497, 499 (1955). It is equally established that a person's domicile gives the state of domicile the right to tax that 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). Idaho Code section 63-3013 states that an individual is considered a resident of Idaho if he is domiciled in Idaho. Idaho Code section 63-3002 states that the purpose of the Idaho income tax act is to impose a tax on residents of Idaho measured by their income from all sources. Therefore, if the taxpayers were domiciled in Idaho in 1995 and 1996, they were required to report their income from all sources to Idaho.

The information available suggests the taxpayers resided in Idaho and only left Idaho for temporary employment reasons. It is unknown whether both taxpayers left Idaho; however, because the taxpayers had high school age children during these years, the Tax Commission is inclined to believe Mrs. [Redacted] and the children remained in Idaho.

Domicile, once established, persists until a new domicile is legally acquired. In re Cooke's Estate, 96 Idaho 48, 524 P.2d 176 (1973). 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. The taxpayers have provided nothing to show their domicile was somewhere other than Idaho. They have also failed to show their intent to abandon Idaho or to acquire another state as their domicile. The taxpayers have not met their burden of proof. Albertson's, Inc. v. State, Dept. of Revenue, State Tax Com'n, 106 Idaho 810, 683 P.2d 846 (1984). The Tax Commission finds the taxpayers were domiciled in Idaho and were required to

report their income from all sources to Idaho for 1995 and 1996. Therefore, the Tax Commission adjusted the taxpayers' 1996 return to show the taxpayers were domiciled in Idaho and upholds the Bureau's determination for tax year 1995.

WHEREFORE, the Notice of Deficiency Determination dated December 7, 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 taxpayers pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1995	\$145	\$ 36	\$ 79	\$ 260
1996	970	243	445	<u>1,658</u>
			TOTAL DUE	<u>\$1,918</u>

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

An explanation of the taxpayers' rights to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2003.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2003, 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]

[Redacted]
