

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16772
[Redacted])	
Petitioner.)	DECISION
)	
)	

On May 21, 2002, 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 years 1998 and 1999 in the total amount of \$2,161.

On July 19, 2002, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing but rather submitted additional information for consideration. The Tax Commission, having reviewed the file, hereby issues its decision.

The Tax Discovery Bureau (Bureau) received information from [Redacted] that a change was made to the taxpayer's [Redacted] taxable income for the tax year 1998. The Bureau reviewed the change and determined the change was applicable to the taxpayer's Idaho income tax return. However, the taxpayer failed to file a 1998 Idaho income tax return. The Bureau searched the Tax Commission's records and found the taxpayer had not filed any Idaho income tax returns.

The Bureau researched information available to the Tax Commission and found the taxpayer had connections with Idaho. The Bureau sent the taxpayer a letter asking him about his requirement to file Idaho income tax returns. The taxpayer responded that he was not required to file Idaho income tax returns. The Bureau gathered other information showing Idaho connections for the taxpayer and provided that information to the taxpayer in a letter requesting that he file Idaho returns. The taxpayer did not respond.

The Bureau determined the taxpayer had sufficient connections with Idaho to be required to file Idaho income tax returns. The Bureau obtained income information from [Redacted] and determined the taxpayer's income exceeded the threshold of Idaho Code section 63-3030. The Bureau prepared Idaho income tax returns for the taxpayer for tax years 1998 and 1999 and sent the taxpayer a Notice of Deficiency Determination.

The taxpayer protested the Bureau's determination. He stated he never worked in Idaho. He said that he lived in [Redacted] until June 26, 1999. The taxpayer stated he purchased a house in Idaho that was uninhabitable. The taxpayer had hoped to move to Idaho sooner, but his house in [Redacted] did not sell until May 18, 1999. He needed the proceeds from the sale of his [Redacted] house to make the house in Idaho livable.

The Bureau continued to correspond with the taxpayer and asked the taxpayer to complete an Idaho residency questionnaire. The taxpayer did not return the questionnaire. Therefore, the Bureau referred the matter for administrative review.

The Tax Commission sent the taxpayer a letter giving him two options for having the Notice of Deficiency Determination redetermined. The taxpayer responded with the completed residency questionnaire and asked that the Tax Commission consider his responses on the questionnaire in its redetermination. Therefore, the Tax Commission decided this matter based upon the information presented in the questionnaire and the information gathered by the Bureau.

Idaho Code section 63-3002 states the intent of the Idaho Legislature to impose a tax upon residents of the state of Idaho and upon nonresidents who have sources of income derived from within the state of Idaho. The record does not show any sources of income from Idaho; therefore, the issue in this case is the determination of when the taxpayer became a resident of Idaho.

The Bureau gathered information showing the taxpayer had Idaho connections as early as 1976. In 1976, the taxpayer purchased a house in [Redacted]Idaho. At the time the taxpayer purchased the Idaho property, he lived in [Redacted]. From 1976 to 1996, the record gives no information about the taxpayer. In 1996, the taxpayer registered a vehicle in Idaho. In 1997, the taxpayer obtained an Idaho driver's license and a resident fish and game license. In 1998, the taxpayer registered another vehicle in Idaho, purchased a resident fish and game license, and registered to vote in Idaho. In 1999, the taxpayer applied for the homeowner's exemption stating he occupied the dwelling in 1997.

The information the taxpayer provided stated that he retired in 1997 after a back injury. The taxpayer stated he never worked in Idaho. The taxpayer gave his address as [Redacted]. The taxpayer said it wasn't until May 1999 that his house in [Redacted] sold. The taxpayer stated his house in Idaho had been vandalized and was unlivable. He stated that as he had the money, he would come to Idaho and work on the house to make it livable. The taxpayer stated he would have moved to Idaho sooner but he needed the proceeds from the sale of his [Redacted] house to pay for the repairs on the Idaho house.

Idaho Code section 63-3013 defines a resident as,

[A]ny individual who:

- (a) Is domiciled in the state of Idaho for the entire taxable year; or
- (b) Maintains a place of abode in this state for the entire taxable year and spends in the aggregate more than two hundred seventy (270) days of the taxable year in this state. Presence within the state for any part of a calendar day shall constitute a day spent in the state unless the individual can show that his presence in the state for that day was for a temporary or transitory purpose.

Domicile is defined in IDAPA 35.01.01.030.02 Income Tax Administrative Rules as,

[T]he 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. An individual can have several residences or dwelling places, but he legally can have but one domicile at a time.

a. Domicile, once established, is never lost until there is a concurrence of a specific intent to abandon an old domicile, an intent to acquire a specific new domicile, and the actual physical presence in a new domicile.

IDAPA 35.01.01.040.02 Income Tax Administrative Rules defines temporary or transitory purpose as a stay not related to a significant business, employment or financial purpose or having significant family or social ties in Idaho. An individual is present in Idaho only for a temporary or transitory purpose if he does not engage in any activity or conduct in Idaho other than that of a vacationer, seasonal visitor, tourist, or guest. Presence in Idaho for 90 days or more during a taxable year is presumed to be for other than a temporary or transitory purpose.

The taxpayer stated that prior to the sale of his house in [Redacted] he only traveled to Idaho to work on the Idaho house as he had the money. He stated he stayed with friends, in RV parks, and camped at the Idaho house. The record shows the taxpayer's ties to Idaho before June 1999 were two vehicles registered in Idaho, Idaho driver's license, resident fish and game licenses, voter's registration, and the Idaho house.

It is clear that the taxpayer was domiciled in [Redacted] prior to 1996. Beginning in 1996, the taxpayer began to take steps to potentially change his domicile. In 1997, additional occurrences happened that brought the taxpayer closer to changing his domicile. (A back injury caused retirement.) From 1997 to 1999, the taxpayer appeared to make preparations for moving to Idaho. He began making repairs to the Idaho house; he put his [Redacted] house on the market; he acquired or purchased Idaho resident privilege licenses; he registered to vote in Idaho; and he registered vehicles in Idaho. These are all indications that the taxpayer had intent to change his domicile from [Redacted] to Idaho.

The taxpayer also had physical presence in Idaho. However, his physical presence appeared to be that of a seasonal visitor or a vacationer. The record does not give specific dates and times the taxpayer was in Idaho from 1996 to June of 1999. The only information available is the taxpayer's statements that he spent most of the time outside of Idaho. The only specific days the Bureau has for the taxpayer being in Idaho were the days when the taxpayer got his Idaho licenses, registered his vehicles, and registered to vote. Consequently, the taxpayer's physical presence in Idaho appears to be temporary or for transitory purposes.

As for the third element of changing one's domicile, intent to abandon the old domicile, it is apparent the taxpayer had this intent as his ultimate goal. The taxpayer put his house in [Redacted] up for sale. The taxpayer stated his move to Idaho would have been sooner if his [Redacted] house had sold sooner. He stated he was tied to the sale of the [Redacted] house before he could move to Idaho.

During the period from 1997 to June 1999, the taxpayer always returned to [Redacted] to accumulate money and to protect his interests in the sale of his assets. It appears from the record that the taxpayer spent most of his time in [Redacted] prior to the sale of his [Redacted] house. From the facts presented, the Tax Commission did not find that the taxpayer severed all his ties with or completely abandoned [Redacted] as his domicile until his [Redacted] house sold.

Therefore, the Tax Commission finds, from the information available, that the taxpayer did not abandon his [Redacted] domicile in 1997 or 1998. The Tax Commission finds the taxpayer changed his domicile to Idaho in June 1999. Consequently, the taxpayer was not required to file an Idaho income tax return for 1998, but he was required to file a part-year resident Idaho income tax return for 1999.

WHEREFORE, the Notice of Deficiency Determination dated May 21, 2002, 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>
1998	\$ 0	\$ 0	\$ 0	\$ 0
1999	153	38	37	<u>228</u>
			TOTAL DUE	<u>\$228</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 _____, 2003.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

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

[Redacted]