

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 16960
[Redacted])
) DECISION
Petitioner.)
_____)

On July 2, 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 1993 through 2000 in the total amount of \$23,366.

On July 26, 2002, 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 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 taxpayer used an Idaho address on his federal income tax returns and that the taxpayer acquired and purchased Idaho driver's licenses and Idaho resident fish and game licenses. The Bureau researched the Tax Commission's records and found the taxpayer has never filed an Idaho income tax return. The Bureau sent the taxpayer a letter asking him about his requirement to file Idaho income tax returns. The taxpayer did not respond.

The Bureau obtained additional information [Redacted] and determined the taxpayer did have sufficient income to be required to file Idaho income tax returns. The Bureau also determined, from the information available, that the taxpayer was domiciled in Idaho and therefore was required to report his income from all sources to Idaho. The Bureau prepared income tax returns for the taxpayer and sent him a Notice of Deficiency Determination.

The taxpayer disagreed with the Bureau's determination. The taxpayer stated he was born, raised, educated, and entered military service in [Redacted]. He made a career of the military with a home of record and legal residence of [Redacted]. The taxpayer stated when he retired from the Air Force, he settled in Idaho. He had no intention of returning to [Redacted]. He loved Idaho. The taxpayer surrendered his [Redacted] driver's license and acquired an Idaho driver's license. He licensed his vehicle in Idaho and purchased a house in [Redacted], Idaho.

Shortly after he retired from the military, the taxpayer's father died leaving him and his three sisters the family ranch in [Redacted]. The taxpayer stated he needed to return to [Redacted] to help take care of the ranch. He said he was unable to spend much time in Idaho; however, he did spend as much of the summers in Idaho as possible.

The taxpayer stated he filed returns with [Redacted]a during these years because his now ex-wife was living and working in [Redacted]. He would have also filed returns in [Redacted] but [Redacted] does not have an income tax. The taxpayer stated he never filed Idaho returns because he only got to visit Idaho; he was spending the majority of his time in [Redacted].

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). 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.

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 available information shows the taxpayer had a home in Idaho and a quarter interest in the family homestead in [Redacted]. The [Redacted] home was at one time the taxpayer's home. However, it is clear from the taxpayer's statements, that the house in Idaho was the taxpayer's primary home after he retired from the military.

In 1996 and 1997, the taxpayer reported a schedule C business on his federal income tax returns. The taxpayer gave the address of that business as [Redacted], Idaho. Since the taxpayer was retired, he had no other source of income from business activities. It is unknown how much time the taxpayer spent on his sole-proprietorship but the activity was reported as being in Idaho.

The taxpayer stated he spent most of his time in [Redacted] after his father passed away. However, domicile is not necessarily lost by protracted absence from home where the intention to return remains. Wilson v. Pickens, 444 F. Supp. 53 (W.D. Okl. 1977). The taxpayer stated several times that he intended and wanted to be in Idaho.

From the information available, the taxpayer's family (sisters) was in [Redacted]. There was no indication the taxpayer had any children. The taxpayer did state that he had a lady friend in Idaho that he had known for many years.

The record is silent as to where the taxpayer kept his near and dear items. However, one can assume the taxpayer kept some of those items in Idaho, as it appeared he was a sportsman of sorts by the purchase of Idaho resident fish and game licenses.

When the taxpayer retired, he did things that showed he considered himself an Idaho resident. He purchased a home in Idaho; he claimed the homeowner's exemption on his Idaho house; he acquired Idaho driver's licenses in 1992 and 1996; he purchased Idaho resident fish and game licenses in 1994, 1995, 1996, 1997, 1999, 2000 and 2001; and he registered vehicles in Idaho. All these things give the impression that the taxpayer was holding himself out to be domiciled in Idaho.

Therefore, from the information available, the Tax Commission finds the taxpayer created a sufficient "paper trail" that established an Idaho domicile. The Tax Commission agreed with the Bureau that the taxpayer's domicile changed to Idaho in 1993. As a result, the taxpayer was required to file and report all his income from whatever source derived to Idaho beginning with the taxable year 1993.

The Bureau added interest and penalty in accordance with Idaho Code sections 63-3045 and 63-3046. The Tax Commission reviewed those additions and found them appropriate.

WHEREFORE, the Notice of Deficiency Determination dated July 2, 2002, 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>
1993	\$1,848	\$ 462	\$1,344	\$ 3,654

1994	1,631	408	1,063	3,102
1995	1,702	426	961	3,089
1996	1,555	389	749	2,693
1997	1,422	356	561	2,339
1998	2,038	510	647	3,195
1999	1,899	475	464	2,838
2000	2,331	583	383	<u>3,297</u>
			TOTAL DUE	<u>\$24,207</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]
[Redacted]_____