

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 17493
[Redacted]	)	
	)	DECISION
Petitioners.	)	
_____	)	

On April 4, 2003, the Tax Discovery Bureau of the Idaho State Tax Commission (Bureau) issued a Notice of Deficiency Determination to [Redacted] (taxpayers), proposing income tax, penalty, and interest for taxable years 1998 and 1999 in the total amount of \$4,916.

The taxpayers filed a timely protest and submitted a copy of their 1998 federal return. They did not request a hearing. Therefore, the Tax Commission, having reviewed the file, hereby issues its decision based upon the information contained in the file.

During the years in question, the taxpayers failed to file Idaho individual income tax returns even though information available to the Bureau suggested they satisfied the requirements stated in Idaho Code § 63-3030. [Redacted]

Because the taxpayers did not file state tax returns and did not answer correspondence from the Bureau, the Bureau prepared provisional returns and issued a deficiency notice based upon [Redacted] other available information from [Redacted] County and the Tax Commission.

Idaho Code § 63-3045 (1)(a) states:

63-3045. Notice of redetermination or deficiency -- Interest.  
(1) (a) If, in the case of any taxpayer, the state tax commission determines that there is a deficiency in respect of the tax imposed by this title, the state tax commission shall, immediately upon discovery thereof, send notice of such deficiency to the taxpayer by registered or certified mail or by other commercial delivery service providing proof of delivery, whichever is the most cost efficient. The notice shall be sent to the taxpayer's last address known to the state tax commission. The notice of deficiency shall be accompanied by an explanation of the specific reason for the determination and an explanation of the taxpayer's right to appeal. Within sixty-three (63)

days after such notice is mailed, the taxpayer may, at his option, file a protest in writing with the state tax commission and obtain redetermination of the deficiency.

In response to the deficiency notice, [Redacted] wrote that the taxpayers lived in their house in Idaho for approximately 120 days in 1998 and 160 days in 1999. She said they maintained the home for their disabled son and his wife. She said injuries, illness and other difficulties resulted in the taxpayers losing their jobs and returning to Idaho full time on January 2, 2000. She explained Idaho income tax liabilities from prior years and medical bills left them in financial ruin and eventually led to bankruptcy. She asked for assistance in filling out forms going back to 1992 to amend the figures from a prior determination and decision of the Idaho State Tax Commission.

Idaho Code § 63-3013, in 1998 stated in pertinent part:

63-3013. Resident. (1) The term "resident," for income tax purposes, means any individual who:

(a) Is domiciled in the state of Idaho for the entire taxable year; or . .

(Emphasis added.)

Domicile is defined in IDAPA 35.01.01.030 Idaho Administrative Income Tax 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.

Once a domicile of choice is established, it persists until another is legally acquired. In re Estate of Cooke, 96 Idaho 48, 59, 524 P2d 176 (1973). “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 claimed to be residents of Idaho when they registered to vote. They both voted as Idaho residents in the 1998 elections. Both taxpayers applied for and received an Idaho resident driver’s license and purchased Idaho resident fish and game licenses.

During the years at issue, the taxpayers maintained a home in Idaho where their son, daughter-in-law, and grandchild lived while the taxpayers were in [Redacted] working. The taxpayers paid the mortgage on the home and claimed the interest portion of the mortgage payments as an itemized deduction in their federal Schedule A. They claimed their son, daughter-in-law, and grandchild as dependents in their federal returns both years. [Redacted] said, “We returned to the home after January 2, 2000 full time...”

The Tax Commission finds, by clear and convincing evidence, during 1998 and 1999, Idaho was the taxpayers’ true, fixed, permanent home and principal establishment, and to which place they returned whenever they were absent. As Idaho residents, they were required by law to file Idaho individual income tax returns both years.

Each of the returns prepared by the Bureau allowed the taxpayers five personal exemptions. The Bureau further reduced the taxpayers’ Idaho adjusted gross income by using the standard deduction of \$7,100 for 1998 and itemized deductions of \$41,711 for 1999. Five grocery credits were allowed for each year. No state withholding was identified for either year.

A Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be accurate. Parsons v. Idaho State Tax Comm'n, 110 Idaho 572 (Ct. App. 1986). [Redacted] The Bureau’s determination is amended to correctly reflect the taxpayers’ itemized deductions rather than the standard deduction.

The Tax Commission has researched its own records pertaining to the taxpayers’ Idaho income tax returns for the years 1992 through 1997. The Bureau prepared Idaho returns on behalf of the taxpayers for those years based on state and federal records. The taxpayers appealed the determination, and the Tax Commission issued a decision upholding the Bureau’s determination.

The taxpayers did not appeal, and the decision became an assessment in June 2001. Those years cannot be reopened. (See Idaho Code § 63-3045B(1).)

WHEREFORE, the Notice of Deficiency Determination dated April 4, 2003, is hereby MODIFIED 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>
1998	\$ 1,343	\$ 336	\$ 453	\$2,132
1999	313	78	83	<u>474</u>
			TOTAL DUE	<u>\$2,606</u>

Interest is computed through February 15, 2004.

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

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

DATED this \_\_\_\_ day of \_\_\_\_\_, 2004.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this \_\_\_\_ day of \_\_\_\_\_, 2004, 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]

Receipt No.