

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 17318
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On March 7, 2003, 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 2001 in the total amount of \$20,803.

On May 6, 2003, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing but rather chose to submit whatever additional information the Tax Commission needed. The Tax Commission, having reviewed the file, hereby issues its decision.

The Tax Discovery Bureau (Bureau) received information that pointed to a filing requirement for the taxpayer. The Bureau reviewed the Tax Commission's records and found that the taxpayer had not filed Idaho individual income tax returns for the taxable years 1993 through 2001. 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 [Redacted] determined the taxpayer was required to file Idaho individual income tax returns. The Bureau prepared returns for the taxpayer [Redacted] and sent the taxpayer a Notice of Deficiency Determination.

The taxpayer protested the Bureau's determination saying he was not an Idaho resident during those years. The Bureau acknowledged the taxpayer's protest and asked the taxpayer to complete a residency/domicile questionnaire. The taxpayer agreed and returned a completed

questionnaire to the Bureau. The Bureau reviewed the taxpayer's responses and determined the taxpayer was indeed domiciled in Idaho and required to file Idaho income tax returns. The Bureau communicated its findings to the taxpayer, and the taxpayer responded that he still disagreed. Therefore, the Bureau referred the matter for administrative review.

The Tax Commission reviewed the case and sent the taxpayer a letter giving him two alternative methods for having the Notice of Deficiency Determination redetermined. The taxpayer responded that he would be sending additional information for the Tax Commission to consider.

The taxpayer provided information and documentation stating that he resided on board a [Redacted] flagged vessel during his employment from 1990 through 2002. The taxpayer stated he moved from Idaho in 1990. He was employed with a company based out of [Redacted] working on ocean-going research vessels. The taxpayer provided a letter from his employer that stated he worked on board their research vessels approximately 240 days each year for the years 1990 to 1996. After 1996, the taxpayer was on board approximately 190 days per year. The taxpayer stated he had no business activities in Idaho and owned no property in Idaho until 1997 when he purchased a house. The house was used as a vacation home; however, he did rent it to friends for a short time. The taxpayer did not claim the homeowner's exemption on the house. The taxpayer stated he rented living space in [Redacted] and [Redacted] from 1993 through 2001. He stated he did a lot of traveling and was never in one place very long. He traveled in and out of the United States but was never outside the United States long enough to qualify for federal tax-exempt status. The taxpayer said he realized that he was somewhat of a vagrant, but his job allowed him to travel extensively so that is what he did. The taxpayer stated he did everything he could not to be a resident of or domiciled in Idaho.

Idaho Code section 63-3013 defines a resident for income tax purposes. The code states that a resident is an individual who is domiciled in Idaho or is an individual that maintains a place of abode in Idaho for the entire taxable year and spends in the aggregate more than 270 days of the taxable year in Idaho.

Idaho Code section 63-3013A defines a part-year resident as any individual who is not a resident and who has changed his domicile from Idaho or to Idaho during the taxable year, or who has resided in Idaho for more than one day during the taxable year.

Idaho Code section 63-3014 defines a nonresident as any individual who is not a resident or a part-year resident.

Idaho State Tax Commission Rules IDAPA 35.01.01.030.02 defines the term domicile 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. Domicile once established is never lost until there is a concurrence of a specific intent to abandon the old domicile, intent to acquire a specific new domicile, and physical presence in the new domicile.

The Bureau asserted that the taxpayer's domicile did not change from Idaho when he left Idaho for employment reasons. The Bureau relied on statements the taxpayer provided in the residency/domicile questionnaire; the fact that the taxpayer maintained an Idaho driver's license throughout the years; he purchased a house in Idaho; he purchased a resident fish and game license in 1999; and he seemed to always return to Idaho whenever he was not working.

The Tax Commission reviewed the same information and found that there were inconsistencies in the information the taxpayer provided. The Tax Commission sought clarification from the taxpayer and received additional information. The taxpayer stated that when he completed the Bureau's questionnaire he did not know the significance of some of his

responses. He stated that when he created the itinerary of his travels he made a blanket reference to coming back to [Redacted] Idaho. He said he was trying to recreate the past ten years of travel from old passport information and didn't realize the relevance of his reference to [Redacted]. He stated that he did not always return to Idaho after a work assignment. The taxpayer stated he generally went to [Redacted] to be with his children. He stated he rented a "park model" trailer from his ex-wife, which was in close proximity to where his children lived. There he could take the kids to school and attend their after-school activities. The taxpayer stated his time in Idaho was spent vacationing and visiting his parents and friends. His response in the questionnaire did not accurately describe the time he was in Idaho.

The Tax Commission also wanted more clarification on the initial time that the taxpayer spent outside of Idaho when he first took employment with [Redacted]. Specifically, the Tax Commission was looking to see if the taxpayer qualified for safe harbor as provided in Idaho Code section 63-3013. The taxpayer stated that when he started work for [Redacted] in May 1990, he did not return to Idaho within the fifteen-month period. He further stated that the time he spent in Idaho was less than 60 days in any of the following years.

As previously stated, Rule 030.02 defines domicile 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. Domicile once established is never lost until there is a concurrence of a specific intent to abandon the old domicile, intent to acquire a specific new domicile, and physical presence in the new domicile. Once a domicile of choice is established, it persists until another is legally acquired. In re of Estate of Cooke, 96 Idaho 48, 59, 524 P.2d 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).

Since the taxpayer's domicile was Idaho prior to May 1990, the presumption is the Idaho domicile continues until the taxpayer establishes a new domicile. In re Estate of Cooke, *supra*. The taxpayer did not show he established a new domicile after he left Idaho. The facts show that the taxpayer maintained ties, albeit limited, to Idaho throughout all the years. He did not do the things one would expect of an individual if he was abandoning one place and acquiring another. Therefore, the Tax Commission found the taxpayer's domicile remained in Idaho.

However, when the taxpayer left Idaho in May 1990, there is no evidence showing that he was back in Idaho until November 18, 1991, when he acquired or renewed his Idaho driver's license. After that date, there are only sporadic dates when it is clearly evident the taxpayer was in Idaho. Idaho Code section 63-3013(2) states in pertinent part,

(2) An individual shall not be considered a resident, but may be considered a part-year resident, during a period of absence from this state described as follows:

(a) The period begins with an individual leaving this state if the individual is absent from this state for at least four hundred forty-five (445) days in the first fifteen (15) months.

(b) During such period, but excluding the first fifteen (15) months, the individual was not present in this state for more than sixty (60) days in any calendar year.

(c) During such period, the individual did not maintain a permanent place of abode in this state at which his spouse (unless he and his spouse are legally separated) or minor or dependent children are present for more than sixty (60) days during any calendar year. . .

(f) The individual did not, during such period, claim Idaho as his tax home for federal income tax purposes.

(g) The period ends with an individual returning to this state if such individual remains or resides in the state for more than sixty (60) days.

Since the information available is not contradictory to the taxpayer's statements that he left Idaho, was away from the state for more than 15 months, and was not in Idaho for more than 60 days in any year, the Tax Commission found the taxpayer met the safe harbor provisions of Idaho Code section 63-3013(2). Furthermore, there is nothing in the record that shows the taxpayer received income from Idaho sources. Therefore, the Tax Commission finds the taxpayer was not required to file Idaho income tax returns for the tax years 1993 through 2001.

WHEREFORE, the Notice of Deficiency Determination dated March 7, 2003, is hereby CANCELLED.

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

DATED this ____ day of _____, 2004.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2004, 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]
[Redacted]

Receipt No.

[REDACTED]
