

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[REDACTED],) DOCKET NO. 17890
)
Petitioner.) DECISION
)
_____)

On January 6, 2004, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing additional income tax and interest for the taxable years 1999 and 2000 in the total amount of \$5,913.

On February 9, 2004, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing but rather chose to provide additional information and documentation for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayer timely filed his 1997, 1998 and 2000 Idaho individual income tax returns as a nonresident of Idaho. The taxpayer did not file an Idaho income tax return for tax year 1999. The Income Tax Audit Bureau (Bureau) reviewed the taxpayer's filings and determined the taxpayer's nonresident filing status needed further examination. The Bureau contacted the taxpayer; requested information, which the taxpayer provided; reviewed the information provided; and determined the taxpayer was domiciled in Idaho. The Bureau adjusted the taxpayer's 2000 Idaho return and prepared a 1999 return for the taxpayer. The 1997 and 1998 returns were not adjusted because they were past the statute of limitations for making adjustments. The Bureau sent the taxpayer a Notice of Deficiency Determination, which the taxpayer protested.

The taxpayer stated that he was not domiciled in Idaho in 1999. He stated he listed his Idaho house for sale in March 1999 and again in October 1999. The house sold on Thanksgiving Day 1999 but did not close until March 2000. The taxpayer stated he rented an apartment in Bay City, Texas in 1999 and that Texas was his domicile. He stated he worked in Texas and Louisiana in 1999. In 2000, his employment moved his base of operations to Minden, Nevada where he worked in Nevada, Arizona, Utah, California, and Idaho. The taxpayer stated he did not live in his Boise home in 1999 or 2000.

The matter was referred for administrative review, and the Tax Commission sent the taxpayer a letter giving him two alternatives for having the Notice of Deficiency Determination redetermined. The taxpayer wanted to provide additional information and requested that the Tax Commission provide him with a list of the information it needed. The Tax Commission reviewed the taxpayer's case and developed numerous questions for the taxpayer to answer. The taxpayer responded to the Tax Commission's questions, which are now part of the record. The Tax Commission reviewed the taxpayer's responses and made a preliminary determination. The Tax Commission sent its preliminary determination to the taxpayer and asked him if he had anything further he wanted the Tax Commission to consider. The taxpayer did not respond. Therefore, the Tax Commission issues its decision based upon the information presented.

Idaho Code section 63-3002 states that a resident of this state is required to report and pay a tax on all his or her taxable income regardless of the source. Idaho Code section 63-3013 defines the term "resident" as any 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 the Tax Commission's 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. An individual can have several residences or dwelling places, but he legally can have but one domicile at a time." Income Tax Administrative Rule 030.02 (IDAPA 35.01.01.030.2 (2000)). The essential distinction between residence and domicile is that domicile requires intent to remain at one place for an indeterminate or indefinite period. Reubelmann v. Reubelmann 38 Idaho 159, 164, 220 P 404, 405 (1923). Domicile, once established, persists until a new domicile is legally acquired. In re Cooke's Estate, 96 Idaho 48, 524 P.2d 176 (1973). A concurrence of three factors must occur to change an individual's domicile. The factors are (1) the intent to abandon the present domicile, (2) the intent to acquire a new domicile, and (3) physical presence in the new domicile. Income Tax Administrative Rule 030.02.a (IDAPA 35.01.01.030.02.a). See also, Pratt v. State Tax Commission, 128 Idaho 883, 885 n.2, 920 P.2d 400, 402 n.2 (1996). Whether an individual has the specific intent to create a new domicile is evidenced by that individual's actions and declarations. Generally speaking, in domicile cases an individual's actions are accorded more weight than his declarations since declarations can tend to be deceptive and self-serving. Allan v. Greyhound Lines, 583 P.2d 613, 614 (Utah 1978).

In determining where an individual is domiciled, the fact-finder must look at all the surrounding facts and circumstances. No one fact or circumstance is, by itself, determinative. Rather, the decision-maker must analyze all the relevant facts and determine whether, taken as a whole, those facts point in favor of some particular place as the person's domicile. Since a person's domicile, once established, is presumed to continue until legally changed, the burden of

proof is always on the party asserting a change in domicile to show that a new domicile was, in fact, created. State of Texas v. State of Florida, 306 U.S. 398, 427, 59 S.Ct. 563, 577 (1939).

It takes no particular period of time to acquire a new domicile, the result being achieved when the person is physically present in the new place with a state of mind regarding the new place as home. Moreover, mere length of time cannot convert physical presence or residence into domicile. Taylor v. Milan, 89 F.Supp. 880 (1950). 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).

In 1994, the taxpayer purchased a home in Boise, Idaho. He filed Idaho resident income tax returns up until tax year 1997. The taxpayer and his ex-wife got a divorce in Idaho in February 1996. The taxpayer's son graduated from an Idaho high school in June 1996. The taxpayer had an Idaho driver's license that he renewed in 1999. The taxpayer's actions clearly show that as early as 1994, Idaho was his domicile of choice.

Since Idaho was the taxpayer's domicile as early as 1994, the taxpayer has the burden of showing that he abandoned Idaho and acquired another state as his domicile. The taxpayer argued that his domicile changed to Texas in 1999 when he rented an apartment in Bay City, Texas for two months. He then claims his domicile changed to Nevada in 2000 when his employment moved him to Nevada. However, when the taxpayer was in both of these places, he did not do anything to establish himself as a permanent or indefinite fixture. He did nothing to identify himself with either Texas or Nevada. Even his employment was such that it took him to other states where he lived in the same type of accommodations that he did in Texas and Nevada. The two-month rental of the apartment in Texas is the closest the taxpayer came to becoming

established anywhere other than Idaho. However, as previously stated, the taxpayer did nothing to show that he was in Texas for anything other than for employment.

When he listed his Idaho home for sale in 1999, it can be assumed that he had the intent to abandon Idaho. However, even after the sale of his house, the taxpayer did not sever his ties with Idaho. All his possessions that were in his house remained in Idaho until he moved them to Arizona sometime in 2001. It was not until the taxpayer moved his belongings from Idaho to Arizona, acquired an Arizona driver's license, and registered a vehicle in Arizona in 2001 that he showed any intention to acquire another state as his domicile. These events also indicate the taxpayer's intent to abandon Idaho. As for the third prong, physical presence, the taxpayer's presence in Arizona appeared to be no different than when he was in Idaho. He more than likely spent very little time in Arizona, but rather lived and stayed in hotels and motels near where he was working.

Since the taxpayer was domiciled in Idaho and he is asserting his domicile changed, the taxpayer bears the burden of showing that his domicile changed. State of Texas v. State of Florida, supra. The taxpayer has not met that burden. Furthermore, the taxpayer did not show that he met the qualifications of Idaho's safe-harbor provision for filing Idaho individual income tax returns. Therefore, the Tax Commission upholds the Bureau's determination that the taxpayer's domicile remained in Idaho for the taxable years 1999 and 2000.

WHEREFORE, the Notice of Deficiency Determination dated January 6, 2004, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
1999	\$1,678	\$582	\$2,260
2000	3,180	849	<u>4,029</u>
		TOTAL DUE	<u>\$6,289</u>

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

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

DATED this ____ day of _____, 2005.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2005, 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]
[REDACTED]
[REDACTED]
