

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 19393
[REDACTED],	)	
	)	DECISION
Petitioner.	)	
_____	)	

On February 24, 2006, 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 2001 through 2003 in the total amount of \$16,385.

On April 27, 2006, 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 may have a filing requirement with the state of Idaho. The Bureau researched the Tax Commission's records and found that the taxpayer stopped filing Idaho income tax returns with the tax year 2000. The Bureau sent the taxpayer letters asking about his requirement to file Idaho income tax returns. The taxpayer did not respond to the Bureau's letters. The Bureau [Redacted] determined the taxpayer was required to file Idaho individual income tax returns. The Bureau prepared returns for the taxpayer and sent him a Notice of Deficiency Determination.

The taxpayer protested the Bureau's determination. He stated he needed an additional 30 days to present a proper response. He stated for the tax year 2001 his return should have been filed as married filing joint with his ex-wife. In addition, for 2002 and 2003 the taxpayer stated

he was not living in Idaho [Redacted]. The taxpayer provided a copy of a reference letter from the company he worked for to show he was not in Idaho in 2002 and 2003.

The Bureau allowed the taxpayer the additional time he requested, but at the end of that time the taxpayer failed to provide anything to support his position or arguments. Therefore, the Bureau referred the matter for administrative review. The Tax Commission sent the taxpayer a letter giving him two alternative methods for having the Notice of Deficiency Determination redetermined. The taxpayer did not respond. The Tax Commission sent a follow-up letter to the taxpayer, but still the taxpayer failed to respond. Therefore, the Tax Commission decided the matter based upon the information available.

The taxpayer filed resident Idaho income tax returns for the tax years 1997 through 2000. The taxpayer did not file income tax returns for tax years 2001 through 2003. The taxpayer maintained an Idaho driver's license throughout the years renewing it in 1999 and 2003. The taxpayer purchased resident fish and game licenses in 1999 through 2002. The taxpayer also registered motor vehicles and recreational vehicles in Idaho in 2002 and 2003.

Idaho Code section 63-3002 states the intent and purpose of the Idaho Income Tax Act,

[T]o impose a tax on residents of this state measured by Idaho taxable income wherever derived and on the Idaho taxable income of nonresidents which is the result of activity within or derived from sources within this state.

Idaho Code section 63-3013 defines resident as any individual who is domiciled in Idaho for the entire year or who maintains a place of abode in Idaho and is present in the state for more than 270 days in the taxable year.

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). 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). In domicile law three things must happen for a change of domicile to occur: 1) intent to abandon the old domicile; 2) intent to acquire a new domicile; and 3) physical presence in the new domicile. See Idaho Income Tax Administrative Rules 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. Allen v. Greyhound Lines, Inc., 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. Milam, 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).

The taxpayer stated he did not live in Idaho during 2002 and 2003. However, his purchasing of Idaho fish and game licenses, Idaho driver's licenses, and registering vehicles in Idaho show the taxpayer considered himself an Idaho resident. In addition to the licenses and registrations, the letter from the taxpayer's contract employer stated the taxpayer was [Redacted] since September 2002. That statement gives the indication that if the taxpayer did leave Idaho, it may not have been until September 2002. Furthermore, the letter states the taxpayer worked [Redacted]. It is unknown for sure, but it can be assumed that Idaho is included [Redacted].

From the information available, the Tax Commission does not see that the taxpayer made a permanent and indefinite move [Redacted]. The taxpayer provided no documentation or information to show a [Redacted] change of domicile [Redacted]. There is nothing in the record that shows a permanent home [Redacted] with all the sentiment, feeling, and permanent association that goes with calling a place a home. See Starer v. Gallman, 50 A.D.2d 28, 377 N.Y.S.2d 645 (1975). Therefore, the Tax Commission finds the taxpayer was domiciled in Idaho during the years 2002 and 2003 and as such was required to file Idaho income tax returns for those years.

As for the tax year 2001, the taxpayer did not argue that he was not required to file an Idaho income tax return. Rather, he stated the filing status used by the Bureau was incorrect. The taxpayer claimed his correct filing status was married filing joint. However, once again the taxpayer has provided nothing to show that the married filing joint status was the proper filing

status. However, the Tax Commission did obtain information [Redacted] that shows a return was filed for the tax year 2001 as single. In most cases, the filing status on an individual's federal income tax return is the same filing status for the Idaho return. Therefore, absent an amended federal return and any information showing the single filing status is incorrect, the Tax Commission upholds the Bureau's 2001 determination.

WHEREFORE, the Notice of Deficiency Determination dated February 24, 2006, 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>
2001	\$7,754	\$1,939	\$2,260	\$11,953
2002	1,429	357	325	2,111
2003	2,031	508	354	<u>2,893</u>
			TOTAL DUE	<u>\$16,957</u>

Interest is calculated to March 1, 2007.

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2006, 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.

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