



which he requested that the petitioner file his 1999 through 2004 Idaho state tax returns within 30 days from the date of his letter. Since the petitioner did not respond to the specialist's letter, the Commission issued a NOD to the petitioner on August 18, 2006, [Redacted].

In the petitioner's protest letter received by e-mail on October 20, 2006, he stated in part:

While we do not contest the determination of tax deficiency as a whole, we note the following factual errors and request a redetermination. We will make available any supporting documents reasonably requested by the Tax Commission, to the best of our ability.

On determination (c) above, we note that [Redacted] earned income from the period August 1999 to August 2000 while not resident in the state of Idaho.

In the petitioner's letter dated November 25, 2006, they stated that they were not able to obtain the relevant documents and requested additional time to complete the file necessary for the redetermination they requested.

The specialist sent the petitioner a letter dated January 3, 2007, which requested the petitioner provide by February 2, 2007, his additional documentation to support the changes he wanted the specialist to make in his NOD for the years 1999 through 2004. The petitioner did not respond to this letter.

On February 8, 2007, the specialist sent the petitioner a letter in which he stated:

For 1999-2000 tax years, it appears that [Redacted] worked [Redacted] and remained domiciled in the state of Idaho. His W-2s for both years were sent to an Idaho address. If he paid taxes [Redacted], credit can be given when returns are provided. Otherwise, all of the income is taxable to Idaho because he was domiciled within the state of Idaho during that time. Idaho taxes income from all sources for Idaho residents domiciled within the state of Idaho.

The petitioner sent a letter dated March 7, 2007, in which he stated:

I am writing this letter to affirm upon my oath that I was not

resident in Idaho from May 15<sup>th</sup> 1999 to August 15<sup>th</sup> 2000. Unfortunately, I am unable to provide any official documents for this period, as I was [Redacted] for the majority of the period (except for periodic visits [Redacted] to see my wife, [Redacted]). I spent the final two and a half months of this time [Redacted], accompanying my parents on a trip.

[Redacted]

On April 20, 2007, the Tax Policy Specialist (policy specialist) sent the petitioner a letter to inform him of the alternatives for redetermining a protested NOD. A follow-up letter was sent to the petitioner on July 12, 2007. The petitioner did not respond to either letter.

This appears to be a domicile case for tax years 1999 and 2000. The petitioner filed federal income tax returns using a single filing status for taxable years 1999 through 2002. The petitioner did not file Idaho income tax returns.

Under Idaho's income tax laws, a resident of this state is required to report and pay income tax on all his or her taxable income regardless of source. A nonresident, on the other hand, is required to report and pay Idaho income tax on only his or her taxable income derived from Idaho sources. For taxable years beginning on or after January 1, 1996, the term "resident" is defined 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." Idaho Code § 63-3013 (1996).

Domicile is defined in the Tax Commission's 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." Income Tax Administrative Rule 030.02, IDAPA 35.01.01.030.02 (1999). The term "domicile" denotes the place where an individual has the intention to remain permanently or for an indefinite time.

While an individual can have several residences, he can legally only have one domicile at a time.

Domicile, once established, persists until a new domicile is legally acquired. In re Cooke's Estate, 96 Idaho 48, 59, 524 P.2d 176, 187 (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. See Idaho Income Tax Administrative Rule 030.02.a, IDAPA 35.01.01.030.02.a (1999).

The determination of domicile depends upon no one specific fact or combination of circumstances but upon all the evidence as a whole showing a preponderance in favor of some particular place as the person's domicile. Hall v. Wake County Bd. of Elections, 187 S.E.2d 52, 57 (N.C. 1972); Fry v. Fry, 76 N.E.2d 225, 229 (Ill. App. 1947). Therefore, the Tax Commission must look at all the available facts and circumstances to determine a taxpayer's domicile. In addition, since a taxpayer's subjective intent is difficult to gauge, actions are oftentimes accorded more weight in domicile decisions than conclusory declarations, since declarations can tend to be self-serving. See, e.g., Allen v. Greyhound Lines, Inc., 583 P.2d 613, 614 (Utah 1978); Baker v. Wisc. Dept. of Taxation, 18 N.W.2d 331, 334 (Wis. 1945). Simply put, in a domicile case, the taxpayer's actions often speak louder than words.

The burden of proof for establishing a change in domicile rests on the party asserting the change. State of Texas v. State of Florida, 306 U.S. 398, 427, 59 S.Ct. 563, 577 (1939). In addition, the party asserting the change in domicile must establish by clear and convincing evidence that the change actually occurred. Bodfish v. Gallman, 50 A.D.2d 457, 458, 378 N.Y.S. 2d 138, 140, (N.Y.App.Div. 1976); Baker v. Wisc. Dept. of Taxation, supra.

It is well settled in Idaho that a Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be correct. Albertson's Inc. v. State, Dept. of Revenue,

106 Idaho 810, 814 (1984); Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986). The burden is on the Petitioner to show that the tax deficiency is erroneous. Id. For the foregoing reasons, the Tax Commission finds that the petitioner failed to meet the burden in this case.

[Redacted] The petitioner has not provided the Commission with a contrary result to the determination of his income [Redacted] Therefore, the Commission must uphold the deficiency.

WHEREFORE, the Notice of Deficiency Determination dated August 18, 2006, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1999	\$ 999	\$250	\$505	\$ 1,754
2000	1,171	293	499	1,963
2001	2,461	615	861	3,937
2002	2,145	536	611	<u>3,292</u>
			TOTAL DUE	<u>\$10,946</u>

Interest is computed through December 28, 2007.

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

An explanation of the petitioner's right to appeal this decision is enclosed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2007, 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]

Receipt No.

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