

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 20934
[REDACTED],)
) DECISION
Petitioner.)
_____)

On August 17, 2007, 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 year 2002 in the total amount of \$2,838.

On October 18, 2007, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer requested a telephone hearing which was held on March 25, 2008. The Tax Commission, having reviewed the file, hereby issues its decision.

The Tax Discovery Bureau (Bureau) received information that showed the taxpayer may have had a requirement to file an Idaho individual income tax return for 2002. The Bureau researched the Tax Commission’s records and found that the taxpayer did not file a return for 2002. The Bureau sent the taxpayer a letter asking him about his requirement to file an Idaho income tax return. The taxpayer did not respond to the Bureau’s letter, so the Bureau obtained additional information [Redacted] and determined the taxpayer was required to file an Idaho income tax return. The Bureau prepared an income tax return for the taxpayer and sent him a Notice of Deficiency Determination.

The taxpayer protested the Bureau’s determination. The taxpayer stated he was not required to file an Idaho individual income tax return for 2002 because he was a resident of Washington during that year. The taxpayer stated that in 2002 he did not have a fixed and permanent home. He stated he was living with friends and family of friends or renting in the

[Redacted] area during that time. It was a time when he was going through a divorce and custody battle.

The Bureau reviewed the information and determined the taxpayer did not break domicile with Idaho, but more importantly, the taxpayer had income from Idaho sources. Therefore, the Bureau referred the matter for administrative review.

The Tax Commission reviewed the matter and sent the taxpayer a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. The taxpayer requested, and was granted, a telephone hearing in which he provided the following information.

Prior to 2002, the taxpayer lived in [Redacted], Idaho. In late 2001, the taxpayer and his wife separated. He left Idaho and began living in [Redacted], Washington. At first, the taxpayer lived with friends [Redacted]. He later moved in with his now wife, [Redacted]. The taxpayer lived in [Redacted] until December 2003 when he purchased a house in [Redacted], Idaho.

The taxpayer stated his employment was always outside of Idaho. He was the branch manager of an office [Redacted]. When he lived in Idaho, his employer withheld Idaho income tax and when he moved to Washington, his employer continued withholding for Idaho tax.

The taxpayer stated he had an Idaho driver's license in 2002. He stated that he had recently purchased an eight-year license so he was reluctant to get a Washington license when he moved to Washington. The taxpayer stated he had a mail drop box in [Redacted], Idaho, that he used during his divorce and custody hearings, but at the same time, he also maintained a Washington address. It was not until he purchased a house in [Redacted] that he actually regained an Idaho address.

The taxpayer stated his children lived [Redacted] with their mother. He stated his time in Idaho, after the separation, could be measured in hours. The taxpayer stated the only time he was in Idaho after the separation was to pick up his children to take them back to his home in Washington or to attend one of his children's extra-curricular events. The taxpayer had no other family ties in Idaho.

The taxpayer stated his divorce was not amicable, in fact, seven years later there are still hostilities. The taxpayer stated his separation and divorce left bitter feelings among their once common friends. He stated his move [Redacted] removed him from the animosity he was feeling from the small community where he lived. There was little to keep him in [Redacted] Idaho, and since his employment had always been in [Redacted], it was an easy decision to move [Redacted]. When he left Idaho in 2001, he felt that all his ties to Idaho were severed except for the fact that his children lived in Idaho. He stated it was always his intent to return to Idaho, but that intention had to be tempered with [Redacted] intention to stay in Washington.

The taxpayer later provided a statement from his landlord verifying that he rented and occupied property [Redacted] from January 2002 to November 2003. He also provided a copy of a credit report dated August 14, 2002, showing his address as [Redacted], Washington, and a copy of his 2002 W-2 wage statement showing his address as [Redacted], Washington.

The Bureau asserted the taxpayer never fully abandoned his Idaho domicile and that he had income from Idaho sources. However, the taxpayer stated he did not work in Idaho; he worked in a branch office [Redacted]. He stated his employer withheld Idaho withholdings from his wages when he lived in Idaho. This being the case, the taxpayer's income was Washington source income not Idaho source. As such, Idaho can only tax the taxpayer's income if he was a resident of or domiciled in Idaho.

From the evidence available, it is clear the taxpayer was not residing in Idaho during 2002 through most of 2003. Therefore, the question becomes, did the taxpayer abandon Idaho and acquire Washington as his state of domicile? Domicile is that place where an individual has his true, fixed, and permanent home. The place he intends to return to whenever he is absent. (IDAPA 35.01.01.030.02.) 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 the actual physical presence in the new domicile.

The question whether a domicile has been changed is one of fact rather than of law, and the burden of proof rests upon the party who alleges a change. Newcomb v. Dixon, 192 N.Y. 238 (1908). The motives actuating a change of domicile are immaterial, except as they indicate intention. A change of domicile may be made through caprice, whim or fancy, for business, health or pleasure, to secure a change of climate, or a change of laws, or for any reason whatever, provided there is an absolute and fixed intention to abandon one and acquire another, and the acts of the person affected confirm the intention. Newcomb, *Ib.* When a new domicile has been actually acquired it does not necessarily revert, even if not followed by continuous residence. There may be many absences from the new place and protracted sojournings in the old, unless intention and residence unite again, when still another change of domicile is effected. Newcomb, *Ib.*

In this case, the taxpayer left his place of residence and home because of a divorce and the animosity he felt from the small community he considered home. The taxpayer's only remaining relationships in Idaho were with his children. When the taxpayer left Idaho he did not return except as a temporary or transitory visitor to get or be with his children. Other than his

children being in Idaho, the taxpayer felt that he severed his ties with Idaho even though at some point in time he intended to return.

The taxpayer did keep his Idaho driver's license and he did have a mail drop box in [Redacted], Idaho. Both of these could identify the taxpayer with Idaho, but considering the circumstances, neither is determinative of the taxpayer's domicile. The mail drop box was used to give the impression of his stability and he could not see wasting the money he spent on an eight-year Idaho driver's license and pay even more money for a Washington driver's license.

Looking at the tests for a change of domicile, the Tax Commission can see that the taxpayer intended to walk away or abandon the situation he was in and relocate to a place that was friendly and welcoming. That place just happened to be across the border in [Redacted], Washington. The taxpayer did set up residence [Redacted] and had physical presence in the state of Washington. The Tax Commission can also see that the taxpayer intended to establish himself in the new place and not return to the old. Even though the taxpayer may not have totally severed his connection with Idaho, namely his Idaho driver's license, the Tax Commission finds, considering the circumstances, the taxpayer did abandon Idaho and acquire Washington as his state of domicile. Therefore, the taxpayer was not required to file an Idaho income tax return for the taxable year 2002.

WHEREFORE, the Notice of Deficiency Determination dated August 17, 2007, is hereby CANCELLED.

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

DATED this _____ day of _____, 2008.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2008, 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]

Receipt No.
