

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 21106
)
) DECISION
Petitioner.)
_____)

On February 21, 2008, 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 2002 through 2005 in the total amount of \$12,695.

On April 22, 2008, 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 not provided any additional information for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

As part of the Tax Commission’s discovery program, the Tax Discovery Bureau (Bureau) identified the taxpayer as an individual that might have a filing requirement with the state of Idaho. The Bureau reviewed the Tax Commission’s records and found the taxpayer had not filed individual income tax returns since at least the tax year 1997. The Bureau sent the taxpayer a letter asking him about his requirement to file Idaho individual income tax returns. The taxpayer stated that he filed returns for 1998 and 1999. He stated that in 2000 through 2005 he worked the summers in [Redacted]; he did not work in Idaho. The taxpayer stated he was not required to file Idaho income tax returns because he did not earn income in Idaho.

The Bureau considered the taxpayer’s statements with the information available and determined the taxpayer was required to file Idaho income tax returns. The Bureau obtained

additional information from the [Redacted] and prepared income tax returns for the taxable years 2002 through 2005 for the taxpayer. The Bureau sent the taxpayer a Notice of Deficiency Determination, which he protested.

The taxpayer restated his position that he did not work in Idaho during 2002 through 2005. [Redacted]. He stated that when he was in Idaho during those years he was not employed. Therefore, in his opinion, he did not owe any Idaho tax, interest, or penalty.

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 to the Tax Commission's letter, so a follow-up letter was sent to the taxpayer. The taxpayer still failed to respond. Therefore, the Tax Commission decided the matter based upon the information available.

The taxpayer argued that he was not required to file Idaho income tax returns because he did not work in Idaho during the years in question. The taxpayer stated he worked [Redacted] during the summer of each of those years. He stated his residence was [Redacted] when he was employed; therefore, he was not required to file Idaho income tax returns.

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 35.01.01.030.02). 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 IDAPA 35.01.01 Income Tax Administrative Rule 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. 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, 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).

From the information available, the Tax Commission did not find that the taxpayer separated himself from Idaho when he left to pursue employment in [Redacted]. The taxpayer retained his Idaho driver's license throughout the years he was in [Redacted]. He purchased Idaho resident fish and game licenses every year. He registered to vote in Idaho in 2004 stating he had been a resident for 23 years, and he voted in the 2004 general election in Idaho. The taxpayer registered his vehicles in Idaho, he used an Idaho address on his federal income tax returns, and he lived in Idaho during the off season.

The taxpayer did not present anything to show he considered [Redacted] to be a permanent home 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). For all practical purposes, the appearance is the taxpayer was in [Redacted] for employment purposes only. Nothing was presented to show that the taxpayer went to [Redacted] make [Redacted] his permanent, indefinite home. Therefore, the Tax Commission finds the taxpayer was domiciled in Idaho during the years 2000 through 2005 and, as such, he was required to file Idaho income tax returns.

The returns the Bureau prepared for the taxpayer reflect an Idaho domicile. In Idaho, a State Tax Commission deficiency determination is presumed to be correct and the burden is on the taxpayer to show that the deficiency is erroneous. Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986). The taxpayer has

not provided anything that would suggest a contrary result; he has not met his burden of proof. Therefore, the Tax Commission upholds the Bureau's determination.

WHEREFORE, the Notice of Deficiency Determination dated February 21, 2008, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest (computed to April 15, 2009):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2002	\$2,127	\$ 532	\$ 787	\$ 3,446
2003	2,201	550	698	3,449
2004	2,177	544	560	3,281
2005	2,105	526	415	<u>3,046</u>
			TOTAL DUE	<u>\$ 13,222</u>

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 _____, 2009.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2009, 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.
