

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 21141
[REDACTED],	)	
	)	DECISION
Petitioner.	)	
_____	)	

On January 3, 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 1998 and 1999 in the total amount of \$152,436.

On March 6, 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 made no further contact with the Tax Commission. The Tax Commission, having reviewed the file, hereby issues its decision.

The Tax Discovery Bureau (Bureau) received information that the taxpayer had been a long-time resident of Idaho until March or April 2007. The information provided stated that the taxpayer used an acquaintance’s address [Redacted] to give the appearance that he was a [Redacted] resident in order to avoid paying Idaho income tax on a million-dollar business deal. The Bureau researched the Tax Commission’s records and found that the taxpayer stopped filing Idaho individual income tax returns after filing a 1997 part-year resident return. The Bureau sent the taxpayer a letter asking about his requirement to file Idaho income tax returns. The taxpayer did not respond. The Bureau obtained information [Redacted] and various other sources available to the Tax Commission. The Bureau determined the taxpayer was required to file Idaho income tax returns for the taxable years 1998 through 2006. However, because the

taxpayer was employed [Redacted] beginning sometime in 2001, the Bureau only pursued the 1998 and 1999 tax years.

The Bureau prepared Idaho income tax returns for the taxpayer and sent him a Notice of Deficiency Determination. The taxpayer protested the Bureau's determination. The taxpayer stated he was not a resident of Idaho in 1998 and 1999. He stated he had two residences during those years, one [Redacted] that he received from a divorce and one [Redacted]. The taxpayer stated he did not spend more than 270 days each year in Idaho. The taxpayer stated he kept his personal possessions [Redacted], maintained a bank account [Redacted], and received his mail [Redacted]. The taxpayer also stated he did not receive Idaho source income during those years.

Not convinced, the Bureau asked the taxpayer to provide additional information that would show where the taxpayer was domiciled. The taxpayer did not respond to the Bureau's request. Therefore, the Bureau referred the matter for administrative review.

The Tax Commission sent the taxpayer a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. 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.

Prior to 1997, the taxpayer filed Idaho income tax returns with his wife as residents of Idaho. [Redacted], the taxpayer and his wife divorced. The taxpayer filed a part-year resident return with Idaho for that year. The taxpayer contends that he was domiciled [Redacted] after leaving Idaho [Redacted]. He obtained a [Redacted] driver's license and registered to vote [Redacted]. He established a bank account [Redacted] and received mail at his [Redacted] address.

The taxpayer's divorce was final [Redacted]. [Redacted], the taxpayer purchased a home he contracted to be built in [Redacted] Idaho. This house was likely under contract before the taxpayer's divorce, and it is unknown whether it was part of the divorce settlement. The marital home was and continues to be lived in by the taxpayer's ex-wife. Even though the taxpayer did not live in the marital home after the divorce, he did not quit claim his interest in the house to his ex-wife until March 2004.

The information available shows the taxpayer received mail at his new [Redacted] address from November 18, 1997, until November 2007. Of the 1099s he received in 1998 and 1999, some were mailed to a [Redacted] address, but most were mailed to the taxpayer's Idaho address. The record also shows the taxpayer kept the same telephone number for his [Redacted] home from [Redacted] 1997 until [Redacted] 2007.

The taxpayer stated he registered to vote [Redacted] and obtained a [Redacted] driver's license. However, the taxpayer never voted [Redacted] and the address used for both the driver's license and voter's registration was property owned and still owned [Redacted]. Nothing in the record shows the taxpayer rented or leased this property.

The taxpayer also stated he maintained bank accounts [Redacted]. However, it is apparent from the taxpayer's 1099s that he maintained bank accounts in Idaho too. In fact, the information shows the taxpayer had more banking activity in Idaho than he did [Redacted]. This could also be said of the taxpayer's investment activities.

Idaho Code section 63-3030(a)(1) provides the filing thresholds for Idaho residents. Idaho Code section 63-3013 defines resident:

- (1) The term "resident," for income tax purposes, means 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 forms the constitutional basis for the imposition of state income taxes on an individual. New York, ex rel. Cohn v. Graves, 300 U.S. 308 (1937); Lawrence v. State Tax Commission, 286 U.S. 276 (1932). Domicile is the place where an individual has his true, fixed, permanent home and to which place he has the intention of returning whenever he is absent. A person can have several residences, but only one domicile. Idaho Income Tax Rule 030.02 states, in part:

**02. Domicile.** The term domicile means 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.

a. Domicile, once established, is never lost until there is a concurrence of a specific intent to abandon an old domicile, an intent to acquire a specific new domicile, and the actual physical presence in a new domicile.

b. All individuals who have been domiciled in Idaho for the entire taxable year are residents for Idaho income tax purposes, even though they have actually resided outside Idaho during all or part of the taxable year, except as provided in Section 63 3013(2), Idaho Code.

Domicile is one location with which, for legal purposes, a person is considered to have the most settled and permanent connection and where he intends to remain and to return. Domicile is distinct from residence because domicile denotes a factual place of abode with permanency. Kirk v. Board of Regents of University of California, 78 Cal. Rptr. 260 (Cal. App. 1969).

Domicile requires an intent to make one's place of residency a home without the intention of returning to the former domicile. Residency does not require such intent. Hamlin v. Holland, 256 F.Supp. 25 (1966). It is well established that once a domicile of choice is established, it persists

until another is legally acquired. McMillon v. McMillon, 497 P.2d 331 (Colo. App. 1972); In re Estate of Cooke, 96 Idaho 48, 58-59, 524 P.2d 176 (1973).

Every person has a domicile at all times, but no person has more than one domicile at a time. Restatement 2d, Conflict of Laws, § 11(2). Even though a person has no home, he must nevertheless have a domicile. Restatement 2d, Conflict of Laws, § 11(m).

The question whether a domicile has been changed is one of fact rather than of law. Newcomb v. Dixon, 192 N.Y. 238 (1908). 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); Restatement 2nd, Conflict of Laws, § 19 (1971); R. Leflar, American Conflicts of Law, § 15, 3rd Ed. 1977.

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, supra.

In determining an individual's domicile, the Tax Commission looks at five primary factors that tend to show where an individual is domiciled. The factors are: 1) the individual's primary home, 2) the individual's business involvement, 3) where the individual spent their time, 4) the family connections of the individual, and 5) the location of the individual's near and dear items. Other minor factors considered by the Tax Commission include voter's registration, driver's licenses, vehicle registrations, hunting and fishing licenses, banking institutions, medical needs, and civic and social functions.

The Bureau asked the taxpayer to provide information regarding these factors but received nothing from the taxpayer. Since the taxpayer is claiming to have changed his domicile from Idaho [Redacted], he has the burden of showing that he abandoned Idaho and acquired [Redacted] as his domicile. State of Texas v. State of Florida, supra. He did not meet his burden. Of such situations, the U. S. Tax Court stated:

Petitioner has not established the factual allegations in its petition which are material and essential. Respondent was under no obligation to introduce evidence to rebut a fact alleged but not proven by petitioner. Short v. Philadelphia B. & W. R. Co., 23 Del. 108; 76 Atl. 363. The rule is well established that the failure of a party to introduce evidence within his possession and which, if true, would be favorable to him, gives rise to the presumption that if produced it would be unfavorable. Walz v. Fidelity-Phoenix Fire Ins. Co. of New York, 10 Fed. (2d) 22; certiorari denied, 271 U.S. 665; Equipment Acceptance Corporation v. Arwood Can Mfg. Co., 117 Fed. (2d) 442; Hann v. Venetian Blind Corporation, 111 Fed. (2d) 455; Bomeisler v. Jacobson & Sons Trust, 118 Fed. (2d) 261; Sears, Roebuck & Co. v. Peterson, 76 Fed. (2d) 243. This is especially true where, as here, the party failing to produce the evidence has the burden of proof or the other party to the proceeding has established a prima facie case. Moore v. Giffen, 110 Cal.A. 659; 294 Pac. 730; Indianapolis & Cincinnati Traction Co. v. Montfort, 80 Ind.A. 639; 139 N.E. 677.

Wichita Terminal Elevator Co. v. Commissioner, 6 T.C. 1158, 1165 (1946), affd. 162 F.2d 513 (10th Cir. 1947).

The taxpayer failed to show that he considered [Redacted] to be his 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). Furthermore, 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 met this burden. Therefore, the Tax Commission finds that the taxpayer did not abandon Idaho in 1998 or 1999 and was required to file Idaho individual income tax returns for both years.

The Tax Commission reviewed the returns the Bureau prepared for the taxpayer and found that they are a reasonably accurate representation of the taxpayer's Idaho taxable income for the taxable years 1998 and 1999. Therefore, the Tax Commission upholds the Bureau's determination of the taxpayer's Idaho income tax liability.

The Bureau added interest and penalty to the taxpayer's Idaho tax. The Tax Commission reviewed those additions and found them appropriate and in accordance with Idaho Code sections 63-3045 and 63-3046, respectively.

WHEREFORE, the Notice of Deficiency Determination dated January 3, 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 June 15, 2009):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1998	\$ 7,274	\$ 1,819	\$ 4,892	\$ 13,985
1999	78,576	19,644	47,122	<u>145,342</u>
			TOTAL DUE	<u>\$159,327</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

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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.

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