

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

In the Matter of the Protest of )  
 ) DOCKET NO. 21142  
[REDACTED], )  
 )  
 ) DECISION  
 )  
Petitioner. )  
\_\_\_\_\_ )

On March 11, 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 2003, 2005, and 2006 in the total amount of \$15,854.

On May 12, 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 anything 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 [Redacted] that the taxpayer received wages in 2003 for work performed in Idaho. The Bureau searched the Tax Commission’s records and found that the taxpayer did not file an Idaho individual income tax return for 2003, 2005, and 2006. The Bureau sent the taxpayer a letter asking him about his requirement to file Idaho income tax returns. The taxpayer did not respond, so the Bureau obtained additional information [Redacted] and determined the taxpayer was required to file Idaho individual income tax returns. The Bureau prepared income tax returns for the taxpayer and sent him a Notice of Deficiency Determination.

The taxpayer protested the Bureau’s determination. He stated he was not a resident of Idaho; he was domiciled and employed [Redacted]. The taxpayer stated his income for the years

in question was generated [Redacted]; he had no income from Idaho. The taxpayer stated, for 2005, all his income was earned [Redacted] and he filed a [Redacted] income tax return that year. The taxpayer stated he would provide documents and other information to support his position.

The Bureau allowed the taxpayer additional time to provide his documentation and information, but the taxpayer failed to provide anything. 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 by which a protested Notice of Deficiency Determination could be redetermined. The taxpayer did not respond, so the Tax Commission sent a follow-up letter to the taxpayer. The taxpayer still failed to respond, so the Tax Commission decided the matter based upon the information available.

The information available shows the taxpayer received wages in 2003 on which his employer withheld Idaho income tax. The taxpayer was registered to vote in Idaho beginning in 1995, and he voted in Idaho elections in 2000, 2002, 2004, and 2006. The taxpayer purchased Idaho driver's licenses in 2002 and 2004. The taxpayer purchased resident fish & game licenses in 1994 and 2002 stating he was domiciled in Idaho since 1988. The taxpayer filed Idaho resident income tax returns for the tax years 1995 through 2002 and 2004.

The taxpayer stated that without further investigation it looks as if he was an Idaho resident. However, per the definitions, he is not an Idaho resident, and there is doubt that he should have filed Idaho income tax returns for 2001, 2002, and 2004. The taxpayer did provide his work history from July 2001 to December 2007. His history showed he began working outside of Idaho in September 2001 and was not employed in Idaho through 2007. Contrary to

this is the W-2 Wage and Tax Statement the taxpayer's employer filed with the Tax Commission for tax year 2003. The same employer the taxpayer lists in his employment history. If the taxpayer was truly working outside Idaho, the W-2 may have been filed with Idaho based on what the employer was asked to do by the taxpayer. Of the years the taxpayer worked for this employer, 2003 is the only year the taxpayer did not file an Idaho income tax return.

The issue here is not that the taxpayer may have worked outside of Idaho during the years in question. The issue is whether the taxpayer was required to file Idaho individual income tax returns for those years because he was a resident of Idaho and/or domiciled in Idaho.

Idaho Code section 63-3013 defines a resident as an individual who is domiciled in Idaho for the entire year; or who has maintained a place of abode in Idaho for the entire year and spends, in the aggregate, more than 270 days of the year in Idaho. Domicile is defined as that place where an individual has his true, fixed, and permanent home. The place he intends to return to whenever he is absent. (Income Tax Administrative Rules 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). Mere length of time cannot convert physical presence or residence into domicile. Taylor v. Milan, 89 F.Supp. 880 (1950). Furthermore, 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 evidence and information available shows that the taxpayer established his domicile in Idaho as early as 1992. He purchased Idaho driver's licenses and resident fish and game licenses; he registered to vote in Idaho and voted in several Idaho elections; he filed Idaho resident income tax returns; and he registered vehicles in Idaho. These actions all indicate an acquired Idaho domicile. Domicile, once established, persists until a new domicile is legally acquired. In re: Cooke's Estate, 96 Idaho 48, 524 P.2d 176 (1973).

The taxpayer failed to present any evidence, information, or documentation that shows he abandoned his Idaho domicile and acquired a domicile in another state. He has not met his burden of proof. Newcomb v. Dixon, supra.

The taxpayer did state that in 2005 all his income was earned [Redacted] and that he filed a [Redacted] income tax return that year. Yet he has not provided a copy of that return or anything else that would reduce or eliminate his Idaho tax.

Idaho Code section 63-3002 states it is the intent of the Idaho legislature to impose a tax on residents measured by their income from all sources. Since the taxpayer did not show that he acquired a new domicile, his domicile remained with Idaho. In re: Cooke's Estate, supra. Since his domicile was still Idaho, the taxpayer was a resident of Idaho (Idaho Code section 63-3013), and he was required to pay a tax based upon his income from all sources. Therefore, the Tax Commission upholds the Bureau's determination that the taxpayer was required to file Idaho individual income tax returns.

The Tax Commission reviewed the returns the Bureau prepared and, based upon the available information, finds that they are a reasonable representation of the taxpayer's Idaho taxable income for the years in question. 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 March 11, 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 August 1, 2009):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2003	\$1,594	\$ 399	\$529	\$ 2,522
2005	3,671	918	778	5,367
2006	6,286	1,572	937	<u>8,795</u>
			TOTAL DUE	<u>\$16,684</u>

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

An explanation of the taxpayer'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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