BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NO. 21740
[Redacted]	)	
	)	DECISION
Petitioner.	)	
	)	

On December 5, 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 taxable years 2003 and 2004 in the total amount of $7,537.

On February 4, 2009, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer requested a hearing which was held September 8, 2009. The Tax Commission, having reviewed the file, hereby issues its decision.

From a compilation of Tax Commission information, the Tax Discovery Bureau (Bureau) found that the taxpayer failed to file individual income tax returns for taxable years 2003 and 2004. The Bureau sent the taxpayer letters asking about his requirement to file income tax returns for those years but received no response. The Bureau obtained additional information [Redacted] and other third party sources. The Bureau determined the taxpayer was required to file Idaho income tax returns for both taxable years 2003 and 2004. The Bureau prepared income tax returns for the taxpayer and sent him a Notice of Deficiency Determination.

The taxpayer protested the Bureau's determination stating that he moved [Redacted] in August 2003. He provided a statement [Redacted] to verify he worked [Redacted] from August 20, 2003, to August 20, 2005. [Redacted].

The Bureau followed up with the taxpayer by sending him a questionnaire to determine his domicile. The taxpayer completed and returned the questionnaire. The Bureau reviewed the information provided and determined the information was evidence that the taxpayer was domiciled in Idaho during 2003 and 2004. The Bureau held firm in its determination of the taxpayer's requirement to file Idaho individual income tax returns and sent 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 chose to have a hearing. During the hearing, the taxpayer provided additional information for the determination of his domicile. The Tax Commission reviewed all the information available and hereby renders its decision.

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, 313 (1937); Lawrence v. State Tax Commission of Mississippi, 286, U.S. 276, 279 (1932). Domicile is defined in Idaho Income Tax Administrative Rule 030 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. The term domicile denotes a place where an individual has the intention to remain permanently or for an indefinite time.

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. Pratt v. State Tax Commission, 128 Idaho 883, 885 n.2, 920 P.2d 400, 402 n.2 (1996). 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 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).

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). 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.

From the information available, the taxpayer's domicile of origin was Idaho, and until August 19, 2003, the taxpayer was unquestionably domiciled in Idaho. The taxpayer left Idaho [Redacted] because he was unemployed and a friend referred him [Redacted]. The taxpayer stated the job initially started as a trial, but after a couple of weeks he decided to stay. The taxpayer stated the employment prospects [Redacted] were good and the work was available year round. The taxpayer stated his housing [Redacted] was employer provided; an apartment [Redacted]. He stated most everything was provided by his employer because the work was out-of-town or away from his base. The taxpayer stated he worked seven days a week and an average of ten hours a day. He stated he did get breaks from work when the workers were rotated.

The taxpayer stated his first trip back to Idaho was in March or April 2004 for a week to ten days. He stated he usually worked six to eight months and took a week to ten days off for a trip to Idaho. The taxpayer stated he enjoyed working and he enjoyed the people. [Redacted] when he left [Redacted] and the only reason he left [Redacted] was because the owner of the company ran the business into the ground and his employment ended. The taxpayer returned to Idaho in 2006.

In determining an individual's domicile, the Tax Commission looks at five primary factors. The primary factors are the individual's primary home, where the individual is actively involved in business, where the individual spends his time, where the individual keeps his near and dear items, and the individual's family connections.

An individual's home can be a physical building (house) or it can be a community to which the individual has established strong and endearing ties. In this case, the taxpayer had no physical building or house. If the taxpayer owned a house in Idaho, it was given up in an earlier divorce. As for community ties, the record points to no specific place where the taxpayer considered himself connected. However, Idaho seems to have the established and endearing ties. The taxpayer stated he was a resident [Redacted]; he worked [Redacted]. The taxpayer did not provide anything to show he was part of the community where he worked. In fact, the taxpayer stated most of his time spent [Redacted] was at various job sites away from the apartment where he lived.

In deciding this factor, the Tax Commission looked at the circumstances of why the taxpayer left Idaho [Redacted]. As previously stated, the taxpayer's domicile prior to going

[Redacted] was Idaho. His home was Idaho. The record shows the only reason the taxpayer went [Redacted] was for employment. [Redacted], the taxpayer made no connections. In Idaho, the taxpayer hunted and fished; [Redacted], the taxpayer went on fishing trips as a spectator. The taxpayer stated he took his golf clubs [Redacted] but did not claim to be a member of any golf course. Therefore, because the taxpayer had no real connections [Redacted], the Tax Commission found the home factor favored Idaho.

The active business involvement factor looks at the individual's pattern of employment. This includes where the individual operates his business if he is a sole proprietor, where he earns his wages if he is a wage earner, and where he actively participates in a partnership, limited liability company, or corporation. In this case, the taxpayer worked for a company based [Redacted]. He was [Redacted] working on various job sites [Redacted]. The taxpayer had no other involvement in business activities.

The taxpayer left Idaho for employment in August 2003. The taxpayer continued working [Redacted] until the company folded and he returned to Idaho in 2006. The record shows no indication the taxpayer came back to Idaho for employment or business reasons in 2003 or 2004. Considering the available facts, the Tax Commission found the active business involvement factor favored [Redacted].

The time factor is an analysis of where an individual spends his time during the year. In this case, the taxpayer left Idaho in August 2003. He stated he returned to Idaho every six to eight months to visit his daughter. The taxpayer stated he was in Idaho for a week to ten days on three occasions while he was working [Redacted]. The taxpayer stated his first trip to Idaho was in March or April 2004.

Information available to the Tax Commission shows the taxpayer was in Idaho during the month of February 2004 dealing with a violation of failure to provide proof of insurance, he was in Idaho on March 14, 2004, to purchase a resident fish and game license, and he was in Idaho on April 15, 2004, when he renewed his Idaho driver's license. This documented information does not correspond with the taxpayer's statement; however, after April 2004 there is nothing to dispute the taxpayer's statement. Therefore, from a purely quantitative analysis, the time factor favors [Redacted] beginning with August 2003.

The factor of items near and dear deals with the location of items an individual holds "near and dear" to his heart, items with sentimental value, and the personal items which enhance the quality of life. The taxpayer stated he had nothing to take [Redacted] when he left in August 2003. However, he later stated he took everything but his guns, which included his golf clubs. The taxpayer stated he started bow hunting in Idaho before he left [Redacted]. He also stated he did not hunt or fish [Redacted]. Therefore, one can assume the taxpayer left his bow hunting gear in Idaho with his guns.

The taxpayer did purchase Idaho fish and game licenses for both 2003 and 2004. The 2003 license was purchased at the end of 2002, and the 2004 license was purchased in March 2004. The purchase of the fish and game licenses shows that the taxpayer does fish and hunt and that this activity may be near and dear to him. Since the taxpayer did not hunt and fish [Redacted], although he apparently did golf in Alaska, the Tax Commission found the near and dear factor slightly favors Idaho due to the multi-facet activity of hunting and fishing over golfing.

The last of the primary factors is the individual's family connections. This factor is an analysis of the individual's family both within and without Idaho. In this case, the taxpayer had a pre-teen daughter in Idaho and a son who might have lived [Redacted] during these years. The taxpayer also stated he left his guns with his mother in Idaho. The taxpayer stated he lived with a girlfriend from June 2002 to March 2003. It is unknown whether this girlfriend later became the taxpayer's wife in 2005, for which he filed a married filing joint Idaho part-year resident return.

The record does not contain a lot of information about the taxpayer's family connections. However, all the information available points the taxpayer's family connections to Idaho; there is nothing in the record that shows the taxpayer had any family [Redacted]. Therefore, the Tax Commission finds this factor favoring an Idaho domicile.

Reviewing the primary factors gave the edge to Idaho as being the taxpayer's domicile. However, adding the minor factors can give a clearer picture and, therefore, swing the determination one way or the other. Some of the minor factors have already been mentioned within the primary factors; nevertheless, they bear repeating here.

During the years in question, the taxpayer maintained an Idaho driver's license. In 2004, the taxpayer's Idaho driver's license was up for renewal. He renewed it on April 15, 2004. If the taxpayer considered [Redacted] his home state and his intent was to remain there indefinitely, why didn't he get an [Redacted] driver's license when his Idaho license expired? In addition, Idaho driver's licenses are not available to nonresidents of Idaho. Therefore, the taxpayer had to affirm [Redacted] that he was a resident of Idaho.

The taxpayer also purchased Idaho resident fish and game licenses for these years. The 2003 license was purchased at the end of 2002, well before the taxpayer probably even considered going to [Redacted]. However, the 2004 license was purchased in March 2004 after the taxpayer stated he moved to [Redacted]. On this license the taxpayer stated he had been an Idaho resident for the past 41 years.

Idaho Income Tax Administrative Rule 030.02.a. states for a domicile to change there must be a concurrence of specific events. The taxpayer must have the intent to abandon Idaho as his domicile, the intent to acquire a new domicile, and physical presence in the new domicile. The factors discussed above do not evidence the intent to abandon Idaho. The factors also do not evidence the intent to acquire a new domicile. Of the specific events required, only the taxpayer's physical presence [Redacted] was clearly accomplished.

Since the taxpayer's domicile was Idaho prior to August 19, 2003, the presumption is the Idaho domicile continues until the taxpayer establishes a new domicile. In re Estate of Cooke, supra. The taxpayer did not show he established a new domicile after he left Idaho. The facts show that the taxpayer maintained ties, albeit limited, to Idaho throughout the years he was employed [Redacted]. He did not do the things one would expect of an individual if he was abandoning one place and acquiring another. The taxpayer did not show that, to him, [Redacted] was a place of permanence 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). Therefore, the Tax Commission found the taxpayer's domicile remained with Idaho.

The Tax Commission also examined the facts to ascertain whether the taxpayer qualified for the safe harbor provision of Idaho Code section 63-3013. Idaho Code section 63-3013(2) states in pertinent part:

> (2) An individual shall not be considered a resident, but may be considered a part-year resident, during a period of absence from this state described as follows:
> (a) The period begins with an individual leaving this state if the individual is absent from this state for at least four hundred forty-five (445) days in the first fifteen (15) months.

> (b) During such period, but excluding the first fifteen (15) months, the individual was not present in this state for more than sixty (60) days in any calendar year.
> (c) During such period, the individual did not maintain a permanent place of abode in this state at which his spouse (unless he and his spouse are legally separated) or minor or dependent children are present for more than sixty (60) days during any calendar year. . .
> (g) The period ends with an individual returning to this state if such individual remains or resides in the state for more than sixty (60) days.

The taxpayer stated he left Idaho [Redacted] on August 19, 2003. He also stated he did not come back to Idaho until March or April 2004 and stayed for a week to ten days before returning [Redacted] for another six to eight months. If the taxpayer's time away from Idaho extended to the second eight months, he would likely qualify for the safe harbor. However, the information available indicates the taxpayer was in Idaho for more days than what is allowed for the safe harbor provision.

In February, the taxpayer was cited for a violation of the motor vehicle code which, according to court records, took most of February to clear up. In March, the taxpayer purchased a resident fish and game license on March 14, and in April, the taxpayer renewed his Idaho driver's license on the April 15. If, as the taxpayer stated, he was in Idaho for a week to ten days in March or April, only one of the licensing events could have taken place.

Based on these facts, the taxpayer could not have met the absence period of 445 days in the first 15 months after leaving Idaho. Therefore, the taxpayer could not have met the safe harbor provision, and the taxpayer was required to file an Idaho individual income tax return.

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. <u>Parsons v. Idaho State Tax Commission</u>, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986). Other than stating he was not required to file Idaho income tax returns, the taxpayer has not shown that the Bureau's determination of his taxable income was incorrect. He did not meet his burden. Upon review of the returns prepared by the Bureau and the information used to prepare those returns, the Tax Commission finds them to be a reasonable representation of the taxpayer's Idaho taxable income.

Therefore, for the reasons cited above, the Tax Commission upholds the Bureau's determination that the taxpayer was required to file Idaho individual income tax returns for taxable years 2003 and 2004 and its determination of the taxpayer Idaho taxable income.

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

WHEREFORE, the Notice of Deficiency Determination dated December 5, 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:

YEAR	TAX	PENALTY	INTEREST	TOTAL
2003	$1,676	$ 419	$ 623	$2,718
2004	3,288	822	1,025	5,135
			TOTAL DUE	$7,853

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 ___________________ 2010.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ________ day of ___________________ 2010, 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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