

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 22128
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

On June 9, 2009, 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 2004, 2005, and 2006 in the total amount of \$21,519.

On August 10, 2009, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer requested a hearing which was held on June 17, 2010. The Tax Commission, having reviewed the file, hereby issues its decision.

The Tax Discovery Bureau (Bureau) received information that the taxpayer may have had a requirement to file Idaho individual income tax returns for taxable years 2004, 2005, 2006, and 2007. The Bureau researched the Tax Commission's records and found the taxpayer did not file income tax returns for those years. The Bureau sent the taxpayer a letter asking about his requirement to file Idaho individual income tax returns. The taxpayer sent in his 2007 Idaho income tax return but did nothing for taxable years 2004, 2005, and 2006. The Bureau reviewed the taxpayer's 2007 return and forwarded it on for processing. The Bureau determined the taxpayer was required to file Idaho income tax returns for 2004, 2005, and 2006, so it prepared returns for the taxpayer and sent him a Notice of Deficiency Determination.

The taxpayer protested the Bureau's determination and provided non-resident income tax returns for 2004 and 2005 but did not submit a return for 2006. The Bureau reviewed the returns

and, based upon the information it had gathered, determined the taxpayer's resident status may not be correct. The Bureau asked the taxpayer to complete a domicile questionnaire, but rather than completing the questionnaire, the taxpayer asked for a meeting with the auditor.

The auditor and the taxpayer met and soon found that neither was going to persuade the other to see the matter the same way. Therefore, the Bureau referred the case 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 a hearing. During the hearing, the taxpayer restated his argument that he did not have a domicile because he was living on a cruise ship the majority of the time in those years. He stated he did not fit the definition of a resident of Idaho. The taxpayer stated he did not intend to come back to Idaho.

Domicile is defined as the place where an individual has his true, fixed, and permanent home. The place he intends to return to whenever he is absent. (Idaho Income Tax Administrative Rule 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. 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).

It is a fundamental rule of law that all persons have a domicile somewhere. Taylor v. Milam, 89 F. Supp. 880, 881 (P.C. Ark. 1950); ex parte Phillips, 275 Ala. 80, 152 So. 2d 144,

146 (1963). Equally, no person has more than one domicile at a time. Smith v. Smith, 45 Cal. 2d 235, 288 P.2d 497, 499 (1955).

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. Hall v. Wake County Brd. of Elections, 280 N.C. 600, 187 S.E. 2d 52 (1972); Fry v. Fry, 332 Ill. App. 484, 76 NE 2d 225, 229 (1947). 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).

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.

In determining an individual's domicile, the Tax Commission looks at five primary factors that tend to show where an individual is domiciled. 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.

In this case, the taxpayer's primary home moved from place to place. In 1985, the taxpayer moved to Idaho with his parents. His primary home at that time was with his parents [Redacted]. The taxpayer began working in the [Redacted] industry in 1985 [Redacted]. Within a few months, the taxpayer was transferred to three different hotels in Idaho. It was not long after that that the taxpayer transferred [Redacted]. When the taxpayer left Idaho, sometime in 1987, he did not return to Idaho until 2006 when he left the [Redacted] industry and bought an [Redacted] business in Idaho.

During the years in question, the taxpayer spent most of his time [Redacted]. When the taxpayer began working [Redacted], in 1994, he had been living in [Redacted], [Redacted]. By that time, the taxpayer had had no home in Idaho for seven years. In 2000 and 2001, the taxpayer purchased rental property in Idaho. He never lived in either of the houses and [Redacted]. The taxpayer apparently did not own property in any other state; however, property ownership by itself does not constitute residency or domicile in a state.

From the information available, the taxpayer's home was not in Idaho. His home was likely in [Redacted] where he returned on a regular basis. Therefore, the home factor does not support an Idaho domicile.

The taxpayer's business activities have been outside Idaho since 1987. In 2000 and 2001, the taxpayer purchased two rental houses in Idaho as investments, but he did not personally manage the properties. The Idaho properties were sold in 2005 and 2006 to finance the purchase of an Idaho business. The taxpayer did not have an active business role in Idaho until 2006. The taxpayer's income came from his business activities [Redacted]. With little business involvement in Idaho, this factor does not favor Idaho.

The taxpayer did spend some time in Idaho, but it was mostly to visit his parents. The taxpayer stated that during his time off [Redacted] he was with friends [Redacted]. He married a woman who was also in the [Redacted] industry and had family in the [Redacted] area, so they spent a good share of their off time [Redacted]. In 2003, the taxpayer was divorced from his wife; however, there is no indication he changed his off-time practices. The time factor does not favor Idaho.

As for the taxpayer's near and dear items, there is no evidence that the taxpayer kept them at any other place than near him. The information here is sketchy, at best, but there is no indication the taxpayer had any near and dear items in Idaho.

The taxpayer's family connections are limited. His parents live in Idaho, and his wife was generally with him [Redacted] and during his off times. His wife had family [Redacted] and she was a [Redacted] resident prior to their marriage. Because of the nature of the taxpayer's employment, the taxpayer's family connections had little or no affect on his domicile after his divorce. Therefore, if the taxpayer was considered domiciled in [Redacted] prior to his divorce,

he likely retained his [Redacted] domicile after his divorce. Consequently, this factor does not favor Idaho.

The Tax Commission also considered the concurrence of the events stated in IDAPA 35.01.01.030.02.a., Idaho Income Tax Administrative Rules. The first test, did the taxpayer have the intent to abandon his old domicile? Assuming [Redacted] was the taxpayer's domicile, the Tax Commission found nothing to show the taxpayer intended to abandon his old domicile. In fact, the taxpayer stated he never intended to return to Idaho. He never considered Idaho his home.

The second test, did the taxpayer intend to acquire a new domicile? Although the taxpayer did some things that might show intent to acquire Idaho as his domicile, the Tax Commission did not find that overall intent to acquire another place as his domicile. It was not until mid 2006 when the taxpayer changed his employment and lifestyle did he intend to acquire a new domicile.

The third and final test is physical presence in the new domicile. The taxpayer was present in Idaho during the years 2004 and 2005, but that presence was limited and only as a visitor. In 2006, the taxpayer made a change and actually became a resident of Idaho. Therefore, it was not until the middle of May 2006 that the taxpayer became a permanent fixture in Idaho.

Based upon the information presented and available, the Tax Commission found that the taxpayer abandoned Idaho as his domicile in 1987. From 1987 to May 2006, the Tax Commission found that the taxpayer's domicile changed [Redacted]. Since [Redacted] was the taxpayer's domicile prior to 2004, the Tax Commission has the burden of showing that the taxpayer abandoned [Redacted] and acquired Idaho as his domicile. State of Texas v. State of

Florida, supra. The Bureau's position was based on the premise that the taxpayer's domicile was always Idaho. The Tax Commission found that was not the case. The taxpayer was domiciled in Idaho when he moved here with his parents after graduating high school, but it soon changed when the taxpayer began pursuing a career in the [Redacted] industry. The taxpayer did do some things in the early 2000s that tend to show a connection with Idaho; however, nothing rose to the level of abandoning his old domicile and acquiring a new domicile. It was not until May 2006 that the taxpayer established himself as a permanent or indefinite fixture of Idaho. Prior to May 2006, the taxpayer was an occasional visitor of Idaho.

Since the taxpayer was a non-resident of Idaho in 2004, he was required to file an Idaho income tax return if he had gross income from Idaho sources in excess of \$2,500. (See Idaho Code section 63-3030.) The copy of the taxpayer's 2004 federal income tax return that he provided reported [Redacted] receipts in excess of \$2,500. Because the rental property was located in Idaho, the [Redacted] receipts are Idaho source income. Therefore, the taxpayer was required to file an Idaho income tax return for 2004. The Tax Commission used the information on the taxpayer's 2004 federal income tax return and modified the 2004 Idaho return the Bureau prepared.

The taxpayer provided an Idaho income tax return for 2005. That return was prepared as a non-resident. Considering the foregoing, the Tax Commission hereby accepts the taxpayer's claimed status but found problems with the taxpayer's return. The taxpayer reported the gain on the sale of one of his rental properties and claimed the Idaho capital gains deduction on that sale. The Tax Commission reviewed the capital gain deduction claimed and found the taxpayer incorrectly computed the amount of the deduction. The taxpayer computed the capital gain deduction on 40 percent of the gain rather than the total gain. Consequently, the capital gain

deduction claimed was significantly lower than the amount allowed. Therefore, the Tax Commission adjusted the Idaho capital gains deduction on the taxpayer's 2005 income tax return.

The taxpayer also claimed an investment tax credit on his 2005 income tax return that was a carryover from 2004. The Tax Commission reviewed the credit but did not find that the taxpayer acquired any qualified property in 2004. From the information available, the only business property the taxpayer acquired that was located in Idaho was rental property. [Redacted]property, in general, does not qualify for the investment tax credit. Therefore, the Tax Commission removed the investment tax credit from the taxpayer's 2005 Idaho income tax return.

The taxpayer did not provide an income tax return for taxable year 2006. [Redacted]. The Bureau's return was prepared on the premise that the taxpayer was domiciled in Idaho for the entire year. However, as previously stated, the taxpayer was not domiciled in Idaho until May 2006. Therefore, the taxpayer was a part-year resident for 2006 and was required to report his income from all sources while domiciled in Idaho and from Idaho sources before becoming domiciled in Idaho. The Tax Commission adjusted the Bureau prepared return accordingly.

Interest and penalty were added to the taxpayer's tax liability in accordance with Idaho Code sections 63-3045 and 63-3046, respectively.

WHEREFORE, the Notice of Deficiency Determination dated June 9, 2009, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2004	\$ 10	\$ 10	\$ 5	\$ 25
2005	784	196	225	1,205
2006	50	12	9	<u>71</u>
			TOTAL DUE	<u>\$1,301</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 \_\_\_\_\_ 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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