

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 22682
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

On January 13, 2010, the staff of the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) proposing income tax, penalty, and interest for taxable years 2006 and 2007 in the total amount of \$24,277.

On March 12, 2010, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer responded to the Commission’s hearing rights letter but did not request a hearing. He did not provide any additional information for consideration but did provide a fully-executed power of attorney. A follow-up letter was sent by the Commission to both the taxpayer and his representative giving them another opportunity to submit additional documentation. The representative responded with a Petitioner’s Appeal Brief. The Commission, having reviewed the file, hereby issues its decision.

The Bureau received information that the taxpayer may have a filing requirement with the state of Idaho. The Bureau researched the Commission’s records and found that the taxpayer stopped filing Idaho income tax returns in taxable year 2005. The Bureau sent the taxpayer letters asking about his requirement to file Idaho income tax returns. The taxpayer did not respond to the Bureau’s letters. The Bureau obtained additional information [Redacted] and determined the taxpayer was required to file Idaho individual income tax returns. The Bureau prepared returns for the taxpayer and sent him a Notice of Deficiency Determination.

The taxpayer protested the Bureau's determination. He stated he was not domiciled in Idaho after taxable year 2003 and travels the country in his recreational vehicle and is not domiciled in any state. The taxpayer also stated he has a [Redacted] Washington, and also uses an address in Montana.

The Commission sent the taxpayer a letter giving him two options for having the Notice of Deficiency Determination redetermined. The taxpayer did not request a hearing but rather chose to submit a brief prepared by his representative. The Commission decided the matter based upon all the information available.

The taxpayer filed resident Idaho income tax returns for taxable years 1995 through 2005. The taxpayer did not file income tax returns for taxable years 2006 and 2007. The information the Bureau gathered during its research of the taxpayer included that the taxpayer maintained an Idaho driver's license from 1992 through 2008. The taxpayer purchased Idaho resident fish and game licenses in 2000 through 2008, all stating he was a resident since 1967. The taxpayer also registered to vote in Idaho, kept his voters registration current, and voted in county elections from 1992 through May 2006.

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 Idaho Income Tax Administrative Rules IDAPA 35.01.01.030.02.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. Generally speaking, 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, Inc., 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. Milam, 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).

The taxpayer stated he did not live in Idaho during taxable years 2006 and 2007. However, his purchasing of Idaho fish and game licenses, Idaho driver's licenses, his voting in Idaho elections and filing federal income tax returns with an Idaho address show the taxpayer considered himself an Idaho resident. Therefore, the Commission found that the taxpayer established a domicile in Idaho as early as 1995.

The information available showed the taxpayer had definite ties with Idaho. The taxpayer did not provide anything to show he severed his ties with Idaho. The burden of proof rests with the person asserting a change of domicile. Margani v. Sanders, 453 A.2d, supra, at 503; see generally, Restatement (Second) of Conflicts, § 19 (1971); R. Leflar, American Conflicts of Law, § 15, 3rd Ed. 1977. The taxpayer provided no information to show his domicile changed.

Since the taxpayer has not shown he abandoned Idaho and acquired another domicile, the Commission finds the taxpayer was required to file a 2006 and 2007 Idaho income tax return. The taxpayer also provided nothing to show that the return prepared by the Bureau was in error or incorrect. He has not met his burden of proof. (See Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984).) Therefore, the Commission upholds the Bureau's computation of the taxpayer's Idaho income tax.

The Bureau added interest and penalty to the taxpayer's Idaho tax liability. The 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 January 13, 2010, is hereby 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>
2006	\$11,240	\$2,810	\$2,668	\$16,718
2007	6,029	1,507	1,008	<u>8,544</u>
			TOTAL DUE	<u>\$25,262</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 \_\_\_\_\_ 2011.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2011, 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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