

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 23413
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

On August 5, 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 additional income tax, penalty, and interest for taxable year 2006 in the total amount of \$240.

On October 5, 2010, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing. The Commission, having reviewed the file, hereby issues its decision.

This case began as a non-filer inquiry. The taxpayer failed to file his 2004 through 2006 Idaho individual income tax returns. After being notified by the Bureau of the missing returns, the taxpayer subsequently submitted returns for all years in question. For taxable years 2004 and 2005 (as well as 2007 to present), the taxpayer filed Form 40, full-year resident returns. These returns were reviewed and accepted as filed. For taxable year 2006, the taxpayer filed as a part-year resident of Idaho. The Bureau reviewed the taxpayer's filing and determined the taxpayer's part-year resident filing status needed further examination. The Bureau contacted the taxpayer and requested additional information to help determine his domicile. The taxpayer did not provide any of the requested information. The Bureau determined, based on the information available, that the taxpayer was domiciled in Idaho. The Bureau adjusted the taxpayer's 2006 Idaho return and sent the taxpayer an NODD, which the taxpayer protested.

The taxpayer stated in his appeal letter that he was not domiciled in Idaho in taxable year 2006 but was rather domiciled in Oregon. He stated he moved to Oregon in February 2006, with the intent of living there permanently, and even though the taxpayer moved back to Idaho six months later, he does not believe this changes his period of residence in Oregon.

The matter was referred for administrative review, and the Commission sent the taxpayer a letter giving him two alternatives for having the NODD redetermined. The taxpayer did not respond. A follow-up letter sent to the taxpayer also went unanswered. Therefore, the Commission issues its decision based upon the information presently contained in the file.

Idaho Code section 63-3002 states that a resident of this state is required to report and pay a tax on all his or her taxable income regardless of the source. Idaho Code section 63-3013 defines the term “resident” as 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 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 35.01.01.030.2 (2000)). 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). A concurrence of three factors must occur to

change an individual's domicile. The factors are (1) the intent to abandon the present domicile, (2) the intent to acquire a new domicile, and (3) physical presence in the new domicile. Income Tax Administrative Rule 030.02.a (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. Allan v. Greyhound Lines, 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. 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).

The taxpayer filed Idaho resident income tax returns in taxable years 2001, 2004, 2005, and 2007 through 2009. For taxable years 2002 and 2003 the taxpayer earned wages in Idaho

but did not meet the filing requirement. The taxpayer's vehicle was registered in Idaho. Information from the Idaho Department of Labor shows the taxpayer earned wages in Idaho for the first, third, and fourth quarters of taxable year 2006, and he had an Idaho driver's license. The taxpayer's actions clearly show that, as early as taxable year 2001, Idaho was his domicile of choice.

Since Idaho was the taxpayer's domicile as early as taxable year 2001, the taxpayer has the burden of showing that he abandoned Idaho and acquired another state as his domicile. The taxpayer argued that his domicile changed to Oregon in 2006 when he moved to [Redacted], Oregon. The taxpayer did not purchase a home or rent/lease living quarters in Oregon. According to the taxpayer, he stayed with a friend and paid rent each month. The taxpayer joined a gym after arriving in Oregon, opened a bank account, and possessed an Oregon driver's license issued in taxable year 2005.

However, the taxpayer did nothing to establish himself as a permanent or indefinite fixture. From the information available, the Commission does not see that the taxpayer made a permanent and indefinite move to Oregon. The taxpayer provided no documentation or information to show a change of domicile. There is nothing in the record that shows a permanent home in Oregon 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).

Since the taxpayer was domiciled in Idaho and he is asserting his domicile changed, the taxpayer bears the burden of showing that his domicile changed. State of Texas v. State of Florida, *supra*. The taxpayer has not met that burden. Therefore, the Commission upholds the Bureau's determination that the taxpayer's domicile remained in Idaho for taxable year 2006.

THEREFORE, the NODD dated August 5, 2010, is hereby AFFIRMED and MADE FINAL.

IT IS ORDERED 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	\$191	\$110	\$53	\$354

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 \_\_\_\_\_ 2012.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2012, 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.  
  
\_\_\_\_\_