BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NO. 23611
[Redacted],	)	
	)	
Petitioner.	)	DECISION
	)	

[Redacted] (Petitioner) protested the Notice of Deficiency Determination issued by the Tax Discovery Bureau of the Idaho State Tax Commission dated May 5, 2010, asserting additional Idaho income tax, penalty, and interest for taxable year 2008 in the total amount of $8,908.

Petitioner disagreed with the Bureau's determination that he was domiciled in Idaho during the year in question. Petitioner did not request a hearing but did provide additional information. The Tax Commission, having reviewed the file, issues its decision.

BACKGROUND

Petitioner failed to file Idaho individual income tax returns for taxable years 2006 and 2008. The Tax Discovery Bureau (Bureau) sent Petitioner a letter asking about the missing returns. Petitioner contacted the Bureau and submitted income tax returns for the missing years. The Bureau reviewed the returns and accepted the 2006 return but questioned Petitioner's 2008 return. Petitioner's 2008 return did not report any income to Idaho and stated that he was not required to file. Petitioner provided documentation with his 2008 return showing that he started a full-time permanent job [Redacted] on November 12, 2007.

The Bureau looked further into Petitioner's connections with Idaho and found Petitioner had a house in Idaho on which the homeowner's exemption was claimed, Petitioner had an Idaho driver's license, Petitioner registered vehicles in Idaho, and Petitioner had a son living in Idaho.

The Bureau determined Petitioner did not fully sever his ties to Idaho and, therefore, his domicile remained with Idaho. The Bureau corrected Petitioner's 2008 return and sent him a Notice of Deficiency Determination.

Petitioner protested stating again that he relocated [Redacted]. He stated his ex-wife and son still lived in Idaho and he visited his son as often as he could. Petitioner stated he did not live or stay in the house in Idaho when visiting his son because the house was on the market for sale. Petitioner stated the house was for sale immediately upon his departure from Idaho; however, it did not sell until January 2009.

Petitioner stated he purchased a boat [Redacted] and registered it there. He also registered another vehicle [Redacted] and obtained a [Redacted] driver's license. Petitioner stated he made a conscious effort to cut his ties with Idaho.

Petitioner stated his employment [Redacted] was permanent; he was never on a temporary work transfer or away from Idaho on a temporary basis. Petitioner stated his only reason for being in Idaho during this time was to spend time with his son.

The Bureau reviewed the information and referred the matter for administrative review. The Tax Commission sent Petitioner a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. Petitioner contacted the Tax Commission and asked what information the Tax Commission needed to redetermine the matter. The Tax Commission told Petitioner he needed to show he abandoned Idaho and acquired [Redacted] as his state of domicile. Petitioner said he would gather information and submit it to the Tax Commission.

Months passed without any contact or information being submitted. The Tax Commission attempted contact via telephone and mail but found Petitioner's phone was

disconnected and that he had moved with no forwarding address. The Tax Commission found another address for Petitioner in Idaho and sent him a letter giving him a final date to submit any information he wanted considered. Petitioner contacted the Tax Commission and stated he misunderstood that the Tax Commission was waiting on him to provide information. Petitioner stated he provided about everything he had. The Tax Commission further discussed the matter with Petitioner and obtained the following information.

Petitioner moved to [Redacted] in November 2007 to work [Redacted]. He was employed full time with the same employer and the position was a permanent position. Petitioner left employment with his employer in October 2010 and returned to Idaho because his son was not handling the divorce very well. When Petitioner returned to Idaho, he had no job and was out of work for six months until he started his own business. During Petitioner's time in [Redacted] he would come back to Idaho every other weekend to be with his son.

Again, Petitioner stated he obtained a Washington driver's license and registered a vehicle and a boat [Redacted]. Petitioner stated he did not do much within the community other than join a local [Redacted] team.

Petitioner stated that when he left Idaho the only thing he left behind was his son and an empty house. The house was part of the divorce, which was less than amicable, and was listed for sale when he left Idaho. The house was continuously held for sale and not rented or held for rent. Petitioner stated when the house finally sold in January 2009, it sold at a large loss. Petitioner stated he was unaware of the requirement to remove the homeowner's exemption on the house when he left Idaho.

Petitioner did purchase another house in Idaho, but not until June 2010 when he decided to come back for his son's well-being. Even though Petitioner owned a house in Idaho in June,

he did not move into the house until October when he left his job in [Redacted]. Petitioner stated he only came back to Idaho because of his son.

LAW AND ANALYSIS

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 IDAPA 35.01.01.030 Idaho Administrative Income Tax 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. 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).

From the evidence available, it is clear Petitioner was not residing in Idaho in 2008. Therefore, the question becomes did Petitioner abandon Idaho and acquire [Redacted] as his state of 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). 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. When a new domicile has been actually acquired, it does not necessarily revert, even if not followed by continuous residence. There may be many absences from the new place and protracted sojournings in the old, unless intention and residence unite again, when still another change of domicile is affected. Newcomb, supra.

In this case, Petitioner left Idaho for employment, preceded by an unfriendly divorce. Petitioner's only remaining relationship in Idaho was his son. When Petitioner left Idaho, he only returned as a visitor to see his son. Other than Petitioner's son in Idaho, Petitioner felt that he severed his ties with Idaho.

The Bureau places weight on an Idaho driver's license Petitioner acquired in 2006 that did not expire until 2013. Petitioner stated he obtained a Washington driver's license when he moved [Redacted], which appears to be borne out by the fact that Petitioner was issued another Idaho driver's license in 2010. The Bureau also emphasizes Petitioner getting the homeowner's exemption on his Idaho house. Petitioner stated the house was for sale, the sale took longer than expected, and he was unaware the exemption needed to be removed. Both the Idaho driver's license and the homeowner's exemption are factors that identify someone with Idaho; however, in this case, it appears Petitioner relinquished his Idaho driver's license, and the homeowner's exemption on a house for sale is not very persuasive.

Looking at the tests for a change of domicile, it is apparent Petitioner had physical presence in [Redacted] and his presence in Idaho was limited to alternating weekend visits. As for Petitioner's intent to abandon and intent to acquire, the record is limited, but there is the appearance Petitioner was severing his controllable Idaho ties and acquiring similar ties to [Redacted]. Even though Petitioner may have had some Idaho connections such as a house with

a homeowner's exemption and vehicles registered in Idaho, those actions or lack of action are overshadowed by Petitioner's physical presence in [Redacted], his single marital status, and his permanent job position.

CONCLUSION

Prior to November 2007, Petitioner was married, had a family, and was domiciled in Idaho. When Petitioner left Idaho in November 2007, he had an empty house and a son in Idaho. Petitioner's only substantial Idaho tie was his son. Petitioner moved to [Redacted], identified himself with [Redacted], and participated in local sports activities. Petitioner did what he enjoyed in [Redacted] and established himself as a part of the [Redacted] community.

Considering Petitioner's circumstances, the Tax Commission finds Petitioner did abandon Idaho and acquire [Redacted] as his state of domicile. Therefore, Petitioner was not required to file an Idaho income tax return for taxable year 2008.

THEREFORE, the Notice of Deficiency Determination dated May 5, 2010, and directed to [Redacted] is CANCELLED.

An explanation of Petitioner'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.

_____