

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 24048
[Redacted],)	
)	
Petitioner.)	DECISION
)	
_____)	

[Redacted](Petitioner) protested the Notice of Deficiency Determination dated April 22, 2011, issued by the staff of the Tax Discovery Bureau of the Idaho State Tax Commission asserting Idaho income tax, penalty, and interest for taxable years 2004 and 2005 in the total amount of \$2,098. Petitioner disagreed with the Bureau’s determination that he was required to file Idaho individual income tax returns for taxable years 2004 and 2005. The Tax Commission, having reviewed the file, issues its decision.

BACKGROUND

The Tax Discovery Bureau (Bureau) received information that indicated Petitioner was required to file Idaho individual income tax returns for taxable years 2004 and 2005. The Bureau searched the Tax Commission’s records and found that Petitioner did not file income tax returns for those years. The Bureau sent Petitioner letters asking about his requirement to file Idaho income tax returns for taxable years 2004 and 2005. Petitioner did not respond, so the Bureau reviewed the information available, determined Petitioner was required to file Idaho income tax returns, prepared returns for Petitioner, and sent Petitioner a Notice of Deficiency Determination.

Petitioner protested the Bureau’s determination stating he was living in [Redacted] in 2004 and 2005. Petitioner stated his taxes were done in [Redacted] and he did not believe he owed any taxes to Idaho. The Bureau acknowledged Petitioner’s protest and asked him to

provide documentation/information to show he was a resident of [Redacted]. Petitioner stated he did not have a copy of his income tax return but he would try to get a copy and send it to the Bureau. Petitioner also stated he did not have a [Redacted] driver's license because his truck was stolen and wrecked so he didn't need a license.

The Bureau allowed Petitioner time to submit the information, but when it was apparent nothing was going to be provided, the Bureau referred the matter for administrative review. The Tax Commission reviewed the matter and sent Petitioner a letter discussing the options available for redetermining a protested Notice of Deficiency Determination. Petitioner did not respond so the Tax Commission sent a follow-up letter to Petitioner. Still Petitioner failed to respond. Therefore, the Tax Commission decided the matter based upon the information available.

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 intent 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 Bureau asserts Petitioner was domiciled in Idaho and never fully abandoned or acquired another domicile. The record shows Petitioner obtained an Idaho driver's license in 2003 and 2005. He purchased Idaho resident fish and game licenses in 2001, 2002, and 2005, each stating Petitioner has been a resident of Idaho since 1963. Petitioner also had first and second quarter wages reported to the Idaho Department of Labor in 2005. Petitioner regularly used the same Idaho address over several years including 2004 and 2005. Nothing in the record shows Petitioner acquired anything that would establish him as a resident of [Redacted]. Petitioner's employment history and unemployment payments all show that Petitioner was going wherever he could to find work, but he always returned to Idaho.

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). In this case, the record shows Petitioner was domiciled in Idaho and only left to pursue work opportunities. Therefore, the burden is Petitioner's to show a change of domicile occurred when he left Idaho. Petitioner did not meet that burden.

Looking at the tests for a change of domicile, it is apparent Petitioner had physical presence in [Redacted]; however, nothing was presented that showed Petitioner intended to abandon Idaho and intended to acquire [Redacted] as his domicile. The facts show Petitioner maintained ties, albeit limited, to Idaho during the years he was employed in [Redacted]. Petitioner did not do the things one would expect of an individual if he was abandoning one place and acquiring another. Petitioner 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 Petitioner's domicile remained in Idaho.

CONCLUSION

Petitioner was a resident of Idaho prior to leaving the state to pursue employment. Petitioner maintained his connections with Idaho throughout 2004 and 2005, and he always returned to Idaho when the work ran out. Petitioner did not show that he intended to abandon Idaho or acquire another state as his domicile. The information available shows Petitioner was domiciled in Idaho in both 2004 and 2005. This being the case, Petitioner was required to file Idaho individual income tax returns reporting his income from all sources to Idaho. Therefore, the Tax Commission upholds the Bureau's determination that Petitioner was required to file Idaho income tax returns and its determination of Petitioner's Idaho taxable income.

The Bureau added interest and penalty to Petitioner'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, respectively.

THEREFORE, the Notice of Deficiency Determination dated April 22, 2011, and directed to [Redacted] is AFFIRMED.

IT IS ORDERED that Petitioner pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2004	\$775	\$194	\$296	\$1,245
2005	546	137	181	<u>864</u>
			TOTAL DUE	<u>\$2,109</u>

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the 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.
