

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 25017
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

On March 14, 2012, the staff of the Income Tax Audit 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 years 2007 through 2010 in the total amount of \$51,770.

On May 15, 2012, the taxpayer, through his appointed representative, filed a timely appeal and petition for redetermination. The taxpayer requested an informal hearing which was held on November 30, 2012. Present at the hearing was the taxpayer’s appointed representative, [Redacted]. The Commission, having reviewed the file, hereby issues its decision.

**BACKGROUND**

The taxpayer’s 2007 Idaho individual income tax return was selected for review by the Bureau. Several issues were examined and all were resolved with the exception of the taxpayer’s domicile. In order to get a better perspective of the issue, the Bureau expanded their review of the taxpayer’s domicile to include taxable years 2003 through 2010.

The taxpayer filed Idaho resident income tax returns until taxable year 2002, when he submitted a part-year resident return, claiming to be an Idaho resident for six months. For taxable years 2003 through 2009, the taxpayer filed nonresident returns reporting Idaho source income from wages, sales of Idaho property, and income from partnerships and S corporations within Idaho. For taxable years 2003 through 2009, the taxpayer’s state of residence, as shown on his income tax returns was the U.S. The taxpayer submitted a part-year resident return for taxable

year 2010, reporting eight months of residency, and for taxable year 2011, the taxpayer again filed a full year resident return.

As part of the review, the Bureau asked the taxpayer to complete a residency/domicile questionnaire and to provide additional documentation. The taxpayer completed and returned the questionnaire along with the other information requested. The Bureau reviewed this information, gathered other information, researched the issue, and made its determination. The Bureau determined that the Idaho domicile established by the taxpayer prior to 2003 has remained unchanged; the taxpayer never abandoned his Idaho domicile. However, due to the statute of limitations, the Bureau only adjusted the taxpayer's returns for taxable years 2007 through 2010 to show him as domiciled in Idaho. The Bureau sent the taxpayer an NODD which he protested.

The taxpayer, through his appointed representative, disagreed with the Bureau's determination and submitted a timely protest. The protest letter states the taxpayer changed his domicile to [Redacted] in taxable year 2002 and then, due to economic circumstances, re-established his Idaho domicile in taxable year 2010. The appeal letter also states that the issue of the taxpayer's domicile was previously reviewed by the Commission for taxable years 2003, 2004, 2005, 2006, and a determination was made that the taxpayer was not domiciled in Idaho. According to the letter, the taxpayer's residency status was approved by the Commission as evidenced by the fact no adjustments were made to the taxpayer's 2003 and 2004 non-resident returns after a cursory review, and because the taxpayer's 2005 and 2006 non-resident returns were not audited.

The Bureau acknowledged the appeal and referred the matter for administrative review. The Commission sent the taxpayer a letter giving him two alternative methods for having the

NODD redetermined. The taxpayer chose to provide additional information through his appointed representative who appeared on his behalf at an informal hearing.

The Commission having considered all the information provided, hereby issues its decision.

### **ANALYSIS**

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 (2001). 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. Idaho 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) (The Tax Commission's regulation defining domicile is consistent with prior holdings of the Idaho Supreme Court, "with the element of intent divided into two parts.") 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). 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 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).

### **FINDINGS**

A person may have only one domicile at a time, and once fixed a domicile is presumed to continue until a new one is established. To effect a change of domicile there must be an abandonment of the first domicile, coupled with intent to acquire a new domicile and physical presence in the new domicile. Indications of a changed domicile are found in the habits of the person, his business and domestic relations, declarations, exercise of political rights, community activities and other objective facts ordinarily demonstrating the presence of required intent.

In the present case, the taxpayer, since taxable year 2002, has always owned at least one home in [Redacted] and one home in [Redacted] that could potentially be his primary home and domicile. The taxpayer pays taxes in both locations, has doctors in both locations and banks

both in Idaho and [Redacted]. It is difficult to know for certain which of the homes is the taxpayer's primary home and domicile. However, when all facts and circumstance are considered the Commission finds that the taxpayer's Idaho domicile established prior to 2003 remains unchanged.

Factors that lead to this conclusion include the following:

- Time

The taxpayer completed a domicile questionnaire related to taxable year 2003 and 2004, and a second questionnaire related to taxable years 2007 through 2009, each time providing dates of days in Idaho and in other locations. Based on this information, for taxable years 2003 and 2004, the taxpayer was present in Idaho 391 days, in [Redacted] 293 days and spent 46 days traveling. For taxable years 2007 through 2009, the taxpayer was present in Idaho 515 days; 466 days were spent in [Redacted] and 114 days traveling. When traveling, the taxpayer departed from Idaho, not [Redacted]. In addition, the taxpayer had a fairly consistent pattern of staying in [Redacted] during the winter months, leaving in late November and returning in March.

- Visa

There are two types of Immigrant Permits in [Redacted], Non-immigrant and Immigrant.

The FM3 NonImmigrant Visa is the document you need if you plan to stay in [Redacted] for anything longer than 6 months. This is a document that is renewable indefinitely annually. For most foreigners living in [Redacted], this is the only visa they need. It gives them the right to live in [Redacted] under the conditions stipulated by the visa. This visa does not lead to permanent residency status or [Redacted] citizenship. The FM3 is renewable for four additional years after the first year it is granted (for a total of five years). This procedure may be repeated to obtain an additional 5 years thereafter, but the FM3 visa cannot be converted into an FM2 Immigrant Visa. The FM2 has to be applied for separately.

The FM2 visa, renamed now the Immigrate Visa, is the document you require if you are seeking permanent residence status in [Redacted] or if you eventually wish to obtain [Redacted] Citizenship. After holding an FM2 for five years, you may apply for residency or citizenship. There is no requirement for you to eventually become a [Redacted] citizen if you do not wish. You may simply choose to remain on an FM2 Visa, enjoying full residency status indefinitely. There is also no requirement to have held an FM3 Non Immigrant Visa before applying for an FM2.

In taxable year 2003, the taxpayer applied for, and received, his first FM3 visa. The taxpayer's representative makes the argument that there was a desire on the taxpayer's part to make [Redacted] his primary residence based on the fact that he recorded a will in [Redacted] and filed it in [Redacted], and his precious belongings were with him [Redacted]. However, if it was the taxpayer's intent to acquire [Redacted] as his domicile, why did he continue to renew a visa each year that did not lead to, and could not be converted to, permanent residency?

- Vehicles and Boats

Throughout the review period the taxpayer registered four different cars and two boats in Idaho.

- Family connections

The taxpayer is not married and does not have any children at home. He does have, in his words, a "domestic partner" who resides and works in Idaho. This appears to be his strongest family connection.

- Community involvement

The taxpayer has made several contributions to the arts in [Redacted] during the review period, and with just one exception, all of the taxpayer's non-cash contributions are to Idaho charities.

- Other secondary factors

The taxpayer uses an Idaho address for his financial documents, his credit card statement; he maintains an Idaho bank account, and utilizes an Idaho income tax preparer.

Based on the factors listed above, the Commission finds that the taxpayer has not established the necessary intent to acquire a new domicile in [Redacted]. While the taxpayer spends time each year in [Redacted], mostly during the winter months, his presence there was as a seasonal visitor or vacationer, not as an immigrant. A person holding an FM3 visa is not considered a resident of [Redacted]. The taxpayer has always owned a residence in Idaho, and during the time period under review, spent the majority of his time in Idaho. The taxpayer does

have ties to [Redacted], but the record before the Commission does not support the taxpayer's contention that he intended to make his [Redacted] home his true domicile. The taxpayer's domicile was and continues to be Idaho.

THEREFORE, the Notice of Deficiency Determination dated March 14, 2012, and directed to [Redacted], is hereby AFFIRMED AND MADE FINAL.

IT IS ORDERED that the taxpayer pays the following taxes, penalty and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2007	\$10,907	\$545	\$2,687	\$14,139
2008	14,274	714	2,601	17,589
2009	15,769	788	2,085	18,642
2010	2,769	138	235	<u>3,142</u>
			TOTAL DUE	<u>\$53,512</u>

Interest is calculated through July 19, 2013.

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 \_\_\_\_\_ 2013.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2013, 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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