

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

| | | |
|---------------------------------|---|------------------|
| In the Matter of the Protest of |) | |
| |) | DOCKET NO. 25123 |
| [Redacted], |) | |
| |) | |
| Petitioner. |) | DECISION |
| _____ |) | |

[Redacted] (Petitioner) protested the Notice of Deficiency Determination dated March 2, 2012, asserting Idaho income tax, penalty, and interest for taxable years 2003, 2008, and 2009 in the total amount of \$6,520. Petitioner disagreed with the Tax Discovery Bureau’s determination that he was domiciled in Idaho and required to file Idaho individual income tax returns for those taxable years. The Tax Commission, having reviewed the file, issues its decision.

BACKGROUND

Petitioner filed an Idaho individual income tax return for taxable year 2000. The Tax Discovery Bureau’s (Bureau) discovery program identified certain factors that indicated Petitioner may have had a filing requirement with Idaho for taxable years 2001 through 2009. The Bureau sent Petitioner a letter asking him about his requirement to file Idaho individual income tax returns. Petitioner responded and subsequently submitted income tax returns for taxable years 2001, 2004, and 2007. Petitioner also stated he was not required to file Idaho income tax returns for taxable years 2002, 2003, 2005, 2006, 2008, and 2009. The Bureau accepted the returns Petitioner submitted, but did not agree with Petitioner’s statement about the other taxable years. The Bureau researched the matter further and determined, in addition to the returns filed, Petitioner was required to file Idaho returns for taxable years 2003, 2008, and 2009. The Bureau prepared returns for Petitioner for those years based upon Petitioner’s [Redacted] income tax returns, and sent Petitioner a Notice of Deficiency Determination.

Petitioner protested the Bureau's determination. Petitioner stated he did not live in Idaho in 2003 or 2008. Petitioner stated he did live in Idaho beginning in July 2009 and he would consider himself an Idaho resident as of July 1, 2009. Petitioner stated his reasons for having an Idaho driver's license and a mailing address in Idaho. Petitioner stated he figures he does owe Idaho income tax for taxable year 2009.

The Bureau acknowledged Petitioner's protest. The Bureau also sent Petitioner a letter explaining domicile and requesting additional information and documentation to support Petitioner's statements. Petitioner contacted the Bureau and the Bureau explained the need for the additional information and documentation. The Bureau allowed Petitioner sufficient time to provide the information and even telephoned Petitioner regarding the additional information. Petitioner failed to provide any additional information or return the Bureau's telephone call. Consequently, the Bureau referred the matter for administrative review.

The Tax Commission reviewed the matter and sent Petitioner a letter explaining the methods available for redetermining a protested Notice of Deficiency Determination. Petitioner contacted the Tax Commission and provided the following additional information.

Petitioner lived in Idaho prior to moving to [Redacted] in December 2001 to further his career as a [Redacted]. Petitioner lived and worked in [Redacted] until March 2003, when he left to go to [Redacted] to spend time with his family. Petitioner then went to [Redacted] for his sister's wedding where he found summer employment. Petitioner remained in [Redacted] until April 2004 when he moved to Idaho. At the end of 2004, Petitioner moved back to [Redacted] to advance his career. He stayed in [Redacted] until May or June 2007, when he moved to Idaho and began working in [Redacted]. In October 2007, Petitioner moved to [Redacted] to avoid the

winter commute to [Redacted]. Petitioner remained in [Redacted] until July 2009, when he moved back to Idaho.

Petitioner stated when he left Idaho for [Redacted] in 2001, he obtained a [Redacted] driver's license and registered his vehicle [Redacted]. Petitioner stated the employment he left Idaho for was a career move and the job was permanent full-time. Petitioner stated when he left [Redacted] it was his choice and not that his employment ended; his employment was indefinite if he wanted it to be.

In the spring of 2003, Petitioner was in [Redacted] for his sister's wedding. He found employment with [Redacted] in [Redacted] and worked that summer for [Redacted]. In the fall of 2003, Petitioner became a member of the opening team for the [Redacted] in [Redacted]. Petitioner stated during this time he lived in employer provided housing or at the [Redacted]. Petitioner stated he left [Redacted] in April 2004 and moved to Idaho.

Petitioner stayed in Idaho until December 2004 or January 2005, when he returned to [Redacted] to advance his career. Petitioner remained in [Redacted] until June 2007, when he moved to Idaho and started working again in [Redacted]. Petitioner continued working in [Redacted] and living in Idaho until October 2007, when Petitioner moved to [Redacted] to avoid the winter commute. Petitioner stated he lived with a friend for several months and then moved into the [Redacted]. Petitioner stated when he moved to [Redacted] he attempted to get a [Redacted] driver's license, but because he did not have acceptable identification documentation he could not get one. Petitioner stated that since Idaho's driver's license was easy to get, he just maintained his Idaho driver's license. Petitioner stated it was not until July 2009 that he moved back to Idaho and stayed through the fall of 2012.

Petitioner stated his living accommodations, if they were not employer provided, were always rented when he was not staying with friends. Petitioner stated his employment in [Redacted] was usually 9 to 10 months out of the year with his off time being the gap in the tourist season. Petitioner did purchase Idaho resident fish and game licenses; however, with the exception of 2008, those licenses were only purchased when he lived in Idaho. Petitioner stated he purchased one-day [Redacted] fish and game licenses since he could not establish himself as a [Redacted] resident.

Petitioner's banking was through a national bank. Petitioner's doctor and dentist are in Idaho. Petitioner kept his same doctor and dentist because they had his history and it was only a 20 mile commute from [Redacted]. When Petitioner is not working he enjoys camping and snowboarding. Petitioner is single and has no particular ties to any state.

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).

The Bureau's position is that Petitioner holds himself out to be a resident of Idaho because of his Idaho driver's license, vehicle registration, Idaho resident fish and game licenses, and maintaining an Idaho address. The Bureau asserts Petitioner's ties to Idaho are more than any other state thereby making Petitioner domiciled in Idaho. And since Petitioner is domiciled in Idaho, Petitioner is required to file income tax returns for taxable years 2003, 2008, and 2009.

While it is true Petitioner maintained Idaho connections during taxable years 2003, 2008, and 2009, there were also periods (years) when Petitioner had no Idaho connections other than a parent living in Idaho whose address Petitioner used. From December 2001 through April 2003, Petitioner was in [Redacted] where he obtained connections to [Redacted]. Petitioner stated he did not return to Idaho until April 2004. However, the record shows Petitioner earned wages in 2003 on which Idaho withholdings were made. Petitioner's employer for those wages was [Redacted]. Petitioner stated he worked for [Redacted], so the only reason his employer would make Idaho withholdings is if Petitioner represented himself as a resident of Idaho. Regardless, it appears Petitioner was absent from Idaho for about 26 months; returning to Idaho in April 2004. Petitioner left Idaho again in December 2004 and was absent for 30 months working on his career in [Redacted]. Petitioner came back to Idaho in June 2007, but left again in October 2007 and did not return until July 2009, another 21 months absent from Idaho working and living in [Redacted].

Looking at the three elements necessary to change a domicile, it is doubtful Petitioner had them in mind when he chose his career path. In 2001, Petitioner's goal was to improve his skills and reputation as a [Redacted]. Petitioner moved to [Redacted] in pursuit of that goal.

Petitioner severed his Idaho ties except for a father living in Idaho. Petitioner had physical presence in [Redacted], he abandoned Idaho, and he established himself in [Redacted]. Therefore, Petitioner's domicile was [Redacted] beginning late 2001 through 2003 when he left [Redacted]. Petitioner's acquisition of another domicile likely did not happen until Petitioner moved to Idaho in April 2004, when he began reacquiring his Idaho connections; driver's license, fish and game license, and living in Idaho.

Petitioner abandoned Idaho again in December 2004, when he moved back to [Redacted] and reacquired his [Redacted] connections. Petitioner maintained his [Redacted] domicile until June 2007 when he moved back to Idaho and again reconnected with Idaho. However, when Petitioner moved to [Redacted] in October 2007, the Tax Commission finds Petitioner did not change his domicile. Petitioner did not do the same things he did with Idaho and [Redacted] to identify him as a resident of [Redacted]. Therefore, the Tax Commission finds that Petitioner's domicile changed from Idaho [Redacted] to Idaho back to [Redacted] and then back to Idaho, but Petitioner was never domiciled in [Redacted].

If Petitioner's domicile was Idaho beginning in July 2007 and never changed, the next question is did Petitioner meet the safe harbor provisions of Idaho Code section 63-3013 when Petitioner was living and working in [Redacted] from October 2007 through June 2009. Petitioner stated that from January 1, 2008 through April 1, 2008, he lived with a friend in [Redacted]. After April 1, 2008, Petitioner stated he rented an apartment at the [Redacted] where he lived the rest of 2008 through April 2009. Petitioner also stated he had a mailing address in [Redacted].

Petitioner's time outside of Idaho clearly meets the fifteen month requirement, and without any evidence to the contrary Petitioner does qualify for the safe harbor provision of

Idaho Code section 63-3013. This being the case, Petitioner is considered a nonresident for 2008 and not required to file an income tax return with Idaho.

CONCLUSION

Domicile is primarily determined by an individual's intent which is shown by his actions. There must be intent to abandon an existing domicile, intent to acquire a new domicile, and physical presence in the domicile. From the facts presented, it appears Petitioner's intent was to be domiciled wherever he was living and working at the time. Generally speaking Petitioner accomplished this in his major moves from Idaho to [Redacted] and [Redacted] to Idaho. Petitioner did the things necessary to identify himself with either Idaho or [Redacted]. However, when Petitioner made his moves to [Redacted] he could not or did not make the effort to identify himself with [Redacted]. Consequently, Petitioner's domicile remained with the state he was previously domiciled. In 2003, Petitioner's domicile was [Redacted] and for 2008, Petitioner's domicile was Idaho.

However, because Petitioner was absent from Idaho for over fifteen months, that encompassed taxable year 2008, Petitioner met the safe harbor provision of Idaho Code section 63-3013. This being the case, Petitioner is considered a nonresident for taxable year 2008 and not required to file an Idaho individual income tax return. But because Petitioner moved back to Idaho in July 2009, Petitioner was required to file a part-year resident Idaho income tax return for the time he lived in Idaho.

THEREFORE, the Notice of Deficiency Determination dated March 2, 2012, and directed to [Redacted] is **AFFIRMED AS MODIFIED** by this decision.

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> |
|-------------|------------|----------------|-----------------|----------------|
| 2003 | \$ 0 | \$ 0 | \$ 0 | \$ 0 |
| 2008 | 0 | 0 | 0 | 0 |
| 2009 | 842 | 211 | 121 | <u>1,174</u> |
| | | | TOTAL DUE | <u>\$1,174</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 _____ 2013.

IDAHO STATE TAX COMMISSION

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.
