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

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|---|---|---|
| In the Matter of the Protest of | ) | |
| | ) | DOCKET NO. 25369 |
| [Redacted], | ) | |
| | ) | |
| Petitioner. | ) | DECISION |
| | ) | |

On September 5, 2012, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing income taxes, penalties, and interest for the taxable years 2002 through 2005, and taxable years 2007 through 2010, in the total amount of $116,427.

On October 25, 2012, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer, through his appointed representative, responded to the Commission's hearing rights letter, but did not request an informal hearing or provide anything further for the Commission to consider. The Commission, having reviewed the file, hereby issues its decision.

The Tax Discovery Bureau (Bureau) received information that the taxpayer may be required to file Idaho individual income tax returns. The Bureau researched the Commission's records and found that the taxpayer had not filed Idaho income tax returns for the aforementioned years. The Bureau sent the taxpayer a letter asking about his requirement to file Idaho individual income tax returns. The taxpayer responded that he was not required to file returns in Idaho for years mentioned above because, "it is not my place of residents due to my work in various states and spending little time in Idaho."

The Bureau obtained additional information from [Redacted], the [Redacted] County Assessor and the Idaho Department of Motor Vehicles. The Bureau determined the taxpayer did have a filing requirement for taxable years 2002 through 2005, and taxable years 2007 through

2010. The Bureau prepared individual income tax returns for the taxpayer and sent him a Notice of Deficiency Determination (NODD).

A timely petition for redetermination of the NODD was filed on the taxpayer's behalf by his appointed representative. The appeal letter stated that during the time period in review, the taxpayer was not in Idaho. According to the letter, the taxpayer was a resident of and domiciled in [Redacted] in taxable year 2002, and part of taxable year 2003; a resident of and domiciled in [Redacted] for the latter half of taxable year 2003 through taxable year 2004, and part of taxable year 2005. In taxable year 2005, the letter stated the taxpayer moved to and became a resident of [Redacted]. In taxable year 2007, the taxpayer moved to [Redacted] where residency remained through taxable year 2009, then in taxable year 2010, the taxpayer moved to [Redacted]. The representative stated the taxpayer had a house in Idaho and was allowing a related party to live there. Included with the appeal letter were copies of income tax returns filed by the taxpayer in the states of [Redacted].

The Bureau referred the matter for administrative review. The Commission sent the taxpayer's appointed representative a letter discussing the methods available for redetermining the NODD. The representative responded stating that the matter had been discussed with the taxpayer and they both agreed all relevant information had previously been provided, and that an informal hearing was not necessary. Therefore, the Commission decided the matter based upon the information available.

The Bureau had information that indicated the taxpayer may need to file Idaho individual income tax returns for taxable years 2002 through 2005, and for taxable years 2007 through 2010. The Bureau found that there was no record of the taxpayer filing Idaho income tax returns for the previously mentioned years. The taxpayer stated he was not required to file Idaho returns

for these years because he was working in other states and was domiciled in, and filed income tax returns in the states where he was working.

Determining domicile is not always clear or easy, yet the outcome of the decision has far reaching consequences. Often times, the terms "residency" and "domicile" are confused, but Idaho Income Tax Rule 030.02 defines domicile as:

> The term domicile means 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. Domicile, once established, is never lost until there is a concurrence of a specific intent to abandon an old domicile, an intent to acquire a specific new domicile, and the actual physical presence in a new domicile.

The key to understanding domicile based upon this rule is the intent of the individual. Determining the intent of an individual is not a bright-line test; rather, the determination is made using the totality of the evidence before the Commission and making a determination based upon the available information. This decision hinges upon where the taxpayer was domiciled in taxable years 2002 through 2005, and taxable years 2007 through 2009. The long-established rule is that "[w]here a change of domicile is alleged, the burden of proof rests upon the party making the allegation." Desmare v. United States, 93 U.S. 605, 610, (1876), Pratt v. State Tax Comm'n, 128 Idaho 883, 884, 920 P.2d 400, 401 (1996). The burden rests with taxpayer to prove that he abandoned his domicile in Idaho and established a domicile in [Redacted], and until that burden is met, Idaho continues to be his domicile.

The Bureau relied upon numerous factors in the determination that Idaho domicile had not been abandoned; none of which by itself is dispositive of domicile, but rather as a whole, the factors were used to determine that the taxpayer had not established any other state as his new domicile.

The Bureau found that the taxpayer owned property in Idaho and that he claimed the homeowner's exemption beginning in 1997. The taxpayer acquired Idaho driver's licenses in 2000 and 2009. The taxpayer also purchased resident Idaho fish and game licenses in 2006 and in 2010, both times stating that he had been a resident of Idaho since January 1997. The taxpayer completed a voter's registration card on November 2, 2010, and voted in the general election. According to the information provided by the taxpayer on the voter's registration form, he has been a resident of Idaho for 12 years. Additional research by the Bureau showed the taxpayer registered vehicles in Idaho on December 20, 2002, December 20, 2004, January 20, 2005, July 27, 2010, and October 26, 2010.

The taxpayer bears the burden of showing that he abandoned his domicile in Idaho and established a new domicile in another state. Determining domicile is a mixed question of fact and law. Conduct is often more persuasive than expressions since that reflects the intent of the individuals. The United States Tax Court has determined that "where there is any doubt as to one's domicile, the domicile of origin prevails." Webb v. C.I.R., 72 T.C.M. (CCH) 1522 (T.C. 1996).

Individuals frequently move across state lines; abandoning an old domicile and establishing a new one. The burden of proving intent to abandon an old and establish a new domicile is not very great, and there are consequences, sometimes significant tax consequences, when individuals move. Taxpayers give up the benefits of being domiciled in their old state and take advantage of the benefits of the new state; they cannot take advantage of benefits from both states. In this case, the taxpayer claims to have relocated to, and been domiciled in each one of the states in which he worked. However, other than wages from each of these other states, there is little to identify the taxpayer with the state of [Redacted]. According to a statement made by

the taxpayer's appointed representative, at no time did the taxpayer construe that he was an Idaho resident. Yet the taxpayer continued to register vehicles in Idaho, maintained an Idaho driver's license, purchased Idaho resident fish and game licenses, used an Idaho address on his income tax returns, and had his tax refunds deposited into an Idaho credit union.

The information available to the Commission points to the taxpayer being a resident of and domiciled in Idaho. Yet from the taxpayer's statements, there is a period in which he could possibly qualify for the safe harbor provisions of Idaho Code § 63-3013. However, the taxpayer did not provide any information to make that determination. Nevertheless, the information available supports the conclusion that the taxpayer was likely domiciled in Idaho and therefore required to file Idaho income tax returns. As a result, the Commission upholds the Bureau's determination that the taxpayer was required to file Idaho income tax returns but herby modifies the NODD.

The Bureau determined, and the Commission agrees, that based on the information contained in the file the taxpayer was domiciled in Idaho and, therefore, was required to file Idaho individual income tax returns. The Idaho individual income tax returns the Bureau prepared on behalf of the taxpayer were based on income information gleaned from the taxpayer's [Redacted] income records. However, based on the information provided by the taxpayer it is also apparent that the taxpayer did work in other states besides Idaho and filed returns with those states. Idaho Code § 63-3029 provides for a credit for income tax paid to another state or territory. The credit is available to resident individuals for the amount of any income tax imposed by another state on income from sources within that state that is also subject to tax by Idaho.

The taxpayer provided a copy of a [Redacted] state income tax return for taxable year 2002, and a credit for taxes paid was allowed for that year. For taxable year 2003, the taxpayer provided a copy of a [Redacted] state income tax return and a [Redacted] state income tax return and a credit for taxes paid was allowed for that year. A credit for taxes paid was also allowed in taxable years 2004, 2005, 2007, 2008, and 2009, as the taxpayer provided state income tax returns from [Redacted].

The Bureau added interest and penalty to the taxpayer's Idaho tax. The Commission reviewed those additions and found them appropriate and in accordance with Idaho Code §§ 63-3045 and 63-3046, respectively.

THEREFORE, the Notice of Deficiency Determination dated September 5, 2012, and directed to [Redacted], is hereby MODIFIED, and as modified, APPROVED, and MADE FINAL.

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

| YEAR | TAX | PENALTY | INTEREST | TOTAL |
|---|---|---|---|---|
| 2002 | $2,004 | $501 | $1,105 | $ 3,610 |
| 2003 | 1,471 | 368 | 733 | 2,572 |
| 2004 | 495 | 124 | 217 | 836 |
| 2005 | 1,786 | 447 | 675 | 2,908 |
| 2007 | 3,902 | 976 | 958 | 5,836 |
| 2008 | 6,404 | 1,601 | 1,160 | 9,165 |
| 2009 | 6,611 | 1,653 | 868 | 9,132 |
| 2010 | 8,122 | 2,031 | 683 | 10,836 |
| | | | TOTAL DUE | $44,895 |

Interest is computed to July 8, 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

_____
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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