

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 24091
Petitioner.)
DECISION
_____)

[Redacted] (Petitioner) protested the Notice of Deficiency Determination dated March 17, 2011, asserting Idaho income tax, penalty, and interest for taxable years 2004 through 2008, in the total amount of \$77,174. Petitioner disagreed with the Tax Discovery Bureau’s determination that he was required to file Idaho individual income tax returns for those taxable years. The Tax Commission, having reviewed the file, issues its decision.

BACKGROUND

The Tax Discovery Bureau (Bureau) received information that Petitioner may have had a requirement to file Idaho individual income tax returns for taxable years 2004 through 2008. The Bureau sent Petitioner a letter asking him about his requirement to file Idaho individual income tax returns for taxable years 2004 through 2008. Petitioner did not respond. The Bureau obtained additional information from the [Redacted] and other third party sources. The Bureau determined, from the information gathered, that Petitioner was required to file Idaho individual income tax returns for taxable years 2004 through 2008. The Bureau prepared Idaho income tax returns for Petitioner and sent him a Notice of Deficiency Determination.

Petitioner protested the Bureau’s determination, stating he was not domiciled in, or a resident of, Idaho during 2004 through 2008. Petitioner stated that in August 2001 he divorced his wife and she was awarded most of their real property and improvements that were located in Idaho. Petitioner stated he moved to [Redacted] in 2004, after the formation of his business,

[Redacted]. Petitioner stated he was traveling back and forth between Idaho and [Redacted] working on establishing the business in [Redacted]. It was around Thanksgiving 2004 when Petitioner moved to [Redacted] and began his residence in [Redacted]. Petitioner stated he obtained a [Redacted] driver's license, insured two vehicles in [Redacted], purchased a horse trailer with living quarters, worked with [Redacted] banks personally and for business, purchased 22 acres for building a house, and he developed professional and personal relationships with [Redacted] and general friends. Petitioner stated he was physically present in Idaho for less than 60 days between 2005 and 2007.

Petitioner stated it was late in the summer of 2007 that an unexpected offer was made to purchase his business in [Redacted]. Petitioner sold the business, but stayed on as a consultant until November 2007. Petitioner returned to Idaho where his children were, and found that his relationship with his ex-wife was improving. Petitioner stated his visit to Idaho turned into an extended visit and he ultimately decided to stay in Idaho in 2008.

The Bureau reviewed the information Petitioner provided and acknowledged Petitioner's protest. Along with the Bureau's acknowledgement letter, the Bureau stated that the information presented did not totally resolve Petitioner's failure to file Idaho individual income tax returns. The Bureau stated the information presented still indicated Petitioner needed to file Idaho income tax returns for taxable years 2004 and 2008. The Bureau stated it was clear from Petitioner's statements that Petitioner did not leave Idaho until the end of 2004 and that he returned to Idaho near the end of 2007. The Bureau stated Petitioner did not do the necessary things to change his domicile until the end of 2004, when he moved to [Redacted]. The Bureau asked Petitioner to file Idaho income tax returns for taxable years 2004 and 2008.

Petitioner did prepare a 2008 Idaho income tax return and submitted it to the Bureau. The Bureau reviewed Petitioner's 2008 return and accepted it in lieu of the 2008 return it prepared. The Bureau acknowledged Petitioner's 2008 return and cancelled the 2008 deficiency amount.

The Bureau allowed Petitioner additional time to prepare and submit a 2004 income tax return, however, a return was never received. Therefore, the Bureau referred the matter for administrative review.

The Tax Commission reviewed the matter and sent Petitioner a letter discussing the methods available for redetermining a protested Notice of Deficiency Determination. Petitioner contacted the Tax Commission and asked what was needed to prove his position. The Tax Commission provided Petitioner with a list of items and information for the redetermination. Petitioner did not respond within a reasonable amount of time, so the Tax Commission followed up on its request, but still received no response from Petitioner. 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 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 initially asserted Petitioner's domicile was Idaho for all the taxable years 2004 through 2008. However, after receiving additional information from Petitioner, in the form of his protest letter, the Bureau seemed to change its original position. In its letter to Petitioner dated May 31, 2011, the Bureau appears to have acknowledged Petitioner "took the steps necessary to assert a change of domicile" at the end of 2004. In this letter, the Bureau did not continue to ask Petitioner to file income tax returns for all years, 2004 through 2008, it only asked Petitioner to file returns for taxable years 2004 and 2008. The Bureau seemed to agree Petitioner abandoned Idaho and acquired [Redacted] as his domicile for taxable years 2005, 2006, and 2007. Without more information, the Tax Commission also agrees with this position.

Petitioner provided an income tax return for taxable year 2008. The Bureau accepted that return, subject to the Tax Commission's normal review process. Petitioner did not, however, provide an income tax return for 2004. In Idaho, a State Tax Commission deficiency determination is presumed to be correct and the burden is on the taxpayer to show that the deficiency is erroneous. Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986). Petitioner met his burden for taxable years 2005 through 2008, but he did not meet his burden for taxable year 2004. Seeing that the Bureau changed its position with regard to Petitioner's 2005 through 2007 taxable years and accepted Petitioner's 2008 Idaho income tax return, the Tax Commission is only left to decide taxable

year 2004. Since Petitioner, by his own statements, did not leave Idaho until late November 2004, the Tax Commission upholds the Bureau's determination for taxable year 2004.

CONCLUSION

Domicile is the basis that gives a state the right to tax an individual. A domicile persists until another domicile is legally acquired. Petitioner's domicile prior to 2004 was Idaho. The Bureau determined Petitioner's domicile changed late in 2004. The Bureau also determined Petitioner later reacquired Idaho as his domicile late in 2007. Petitioner agreed with the latter and submitted a 2008 income tax return, which the Bureau accepted. Petitioner provided no information arguing his domicile changed prior to taxable year 2004. Since the information available points to an Idaho domicile in 2004, Petitioner was required to file an Idaho individual income tax return reporting his income from all sources. *See* Idaho Code section 63-3002. The Tax Commission reviewed the return the Bureau prepared for Petitioner for taxable year 2004 and found it appropriate. Therefore, the Tax Commission upholds the Bureau's determination for taxable year 2004, but cancels the Notice of Deficiency Determination for taxable years 2005 through 2008.

THEREFORE, the Notice of Deficiency Determination dated March 17, 2011, 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>
2004	\$6,045	\$1,511	\$3,006	\$10,562

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 _____ 2014.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2014, 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.