



Petitioner stated he returned to [Redacted] where his newly born daughter and girlfriend lived. Petitioner stated he lived in [Redacted] until he was released for work late in the summer of 2007. Petitioner stated he took a job in [Redacted] that lasted into November 2007, when he went back to [Redacted]. In January 2008, Petitioner stated he hired on with [Redacted] for a job in [Redacted]. Petitioner stated that when the job ended in April 2008, he went back to [Redacted]. In June 2008, Petitioner stated he went back to work for [Redacted] in [Redacted]. Petitioner stated when the [Redacted] job ended, he went and saw his girls for a while and then was off to [Redacted] for another job with [Redacted]. Petitioner stated the [Redacted] job ended in August and that is when he came to Idaho to work for [Redacted]. Petitioner stated he finished the [Redacted] job in November and went back to work for [Redacted] in [Redacted].

Petitioner stated he used the address of [Redacted] until he got notice from the U. S. Postal Service that he could no longer use that address because there was no house or dwelling at that address. Petitioner stated it was at that time he began using the postal address of his girlfriend and daughter in [Redacted]. Petitioner stated the [Redacted] address was used until November 2009, when he moved to [Redacted], Idaho, at [Redacted]. Petitioner stated that because he spent all his free time in [Redacted] and did not live in Idaho, he did not file Idaho income tax returns for 2007 and 2008.

The Bureau reviewed the information Petitioner provided and sent Petitioner a letter acknowledging Petitioner's protest and asked him to complete a domicile questionnaire to help clarify other information gathered by the Bureau. Petitioner completed and returned the questionnaire, as well as provided copies of his [Redacted] income tax returns for taxable years 2007 and 2008. The Bureau reviewed the questionnaire and Petitioner's [Redacted] returns, however, the Bureau was not persuaded to change its position. The Bureau's response to

Petitioner's additional information was that it believed Petitioner established an Idaho domicile in 2005 and did not show that he abandoned Idaho and acquired another state as his domicile. Petitioner did not withdraw his protest, so the matter was referred for administrative review.

The Tax Commission reviewed the matter and sent Petitioner a letter that discussed the methods available for re-determining a protested Notice of Deficiency Determination. Petitioner requested a telephone hearing, however, when the time came for the hearing, Petitioner was unavailable. Petitioner did not reschedule the telephone hearing and has made no further contact with the Tax Commission. Therefore, the Tax Commission reviewed the information available and issued its decision.

#### **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). Domicile is defined in the Idaho Administrative Income Tax Rules 35.01.01.030 as the place where an individual has his true, fixed, and permanent home. The place he intends to return to whenever he is absent. An individual can have several residences or dwelling places, but can legally have only one domicile at a time. Domicile is the place where an individual has the intention to remain permanently or for an indefinite time. *Id.*

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, 920 P.2d 400, 402 (Idaho 1996). Domicile, once established, persists until a new domicile is legally acquired. In re Cooke's Estate, 524 P.2d 176 (Idaho 1973). 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 created. State of Texas v. State of Florida, 306 U.S. 398, 427 (1939). Whether an individual has the specific intent to create a new domicile is evidenced by that individual's actions and declarations. In domicile cases, an individual's actions are accorded more weight than his declarations, since declarations can tend to be deceptive and self-serving. Allen v. Greyhound Lines, 583 P.2d 613, 614 (Utah 1978). Moreover, mere length of time cannot convert physical presence or residence into domicile. Taylor v. Milam, 89 F. Supp. 880, 883 (W.D. Ark. 1950). Domicile is not necessarily lost by protracted absence from the home where the intention to return remains. Wilson v. Pickens, 444 F. Supp. 53, 55 (W.D. Okl. 1977).

To determine domicile, the Tax Commission evaluates five primary factors. These factors include the location of the individual's primary residence, where the individual is actively involved in business, where the individual spends their time, where the individual keeps his near and dear items, and the individual's family connections. While no single factor is determinative and secondary factors should also be taken into consideration, these five factors are to be weighted more heavily to determine domicile.

As the primary factors are applied to this case, it is fairly evident Petitioner's domicile was probably not Idaho. Petitioner did not have a home in Idaho. Petitioner purchased property in Idaho in 2006, but that property was a vacant lot or a building lot with a foundation. There was no inhabitable building on the lot. When Petitioner was in Idaho he stayed in a hotel or

possibly had a short-term lease on a house. The record does not list any other place where Petitioner owned or rented. What the record does show is that Petitioner kept going back to [Redacted] to live with his baby daughter and girlfriend. One can assume from this Petitioner paid for his living expenses and possibly that of his daughter and girlfriend when he was in [Redacted] and also when he was away from [Redacted].

Petitioner did work in Idaho, but only for short periods of time. Petitioner was employed in Idaho in 2005, 2006, and 2008. Generally, Petitioner worked for an [Redacted] when in Idaho and usually towards the end of the season. Petitioner's primary employment was as a [Redacted]. Petitioner traveled across the country and into [Redacted] for jobs that lasted a few weeks to several months. Petitioner claimed away from home employee business expenses in 2007, but those expenses were disallowed by the [Redacted] on Petitioner's 2007 [Redacted] income tax return. It is not known why the employee business expenses were disallowed, but based upon Petitioner's movements and living arrangements, the Tax Commission believes the [Redacted] determined Petitioner was an itinerant that had no tax home to be away from.

Petitioner's time was scattered across the United States. Petitioner spent his time in which ever state he was currently working. Petitioner was in Idaho, albeit for only a couple of months, during the [Redacted] and usually towards the end of the season. Petitioner also spent time in [Redacted] where his daughter and girlfriend lived. Petitioner seemed to be in Idaho for employment purposes only. For the years in question, the record shows Petitioner was in [Redacted], [Redacted], Idaho, [Redacted], [Redacted], [Redacted], and [Redacted].

Petitioner's only known family in 2007 and 2008 was in [Redacted]; a daughter born in October 2006. Petitioner stated when his work or job ended, he would go to [Redacted] to be with family or his girls.

As for Petitioner's near and dear items, the record is silent. The Tax Commission has no information about Petitioner's hobbies or recreational interests. However, due to the fact Petitioner regularly returned to Idaho to work for [Redacted], one could assume Petitioner enjoyed [Redacted]. And, there is the obvious, Petitioner's daughter in [Redacted].

Other minor factors the Tax Commission reviewed included Petitioner's driver's license – he had none, where Petitioner was registered to vote – [Redacted], where Petitioner registered his vehicles – [Redacted], Idaho homeowner's exemption – none, and any other resident privilege licenses – Petitioner had Idaho fish and game licenses. The Tax Commission also looked at Petitioner's past income tax returns. Petitioner filed an Idaho nonresident return for taxable year 2004 and Idaho part-year resident returns for taxable years 2005 and 2006. For taxable year 2008, Petitioner filed nonresident income tax returns with [Redacted] and [Redacted]. Petitioner's Idaho returns for 2004 and 2006 had W-2 wage statements addressed to Petitioner in [Redacted]. Petitioner's 2004 Idaho income tax return was filed with an [Redacted] address. Beginning in 2006, Petitioner started using the address of the vacant lot in Idaho as his mailing address. Petitioner did this for a couple of years until the Post Office told him they would no longer deliver mail to a vacant lot. Petitioner stated it was not until November 2009 that he moved to Idaho and rented a house on [Redacted] in [Redacted].

## **CONCLUSION**

All individuals are domiciled somewhere at all times. A change of domicile requires a specific intent to abandon the old domicile, a specific intent to acquire a new domicile, and physical presence in the new domicile. A domicile persists until a new domicile is legally

acquired. In re Cooke's Estate, supra. From the information available, the Tax Commission believes Petitioner's domicile in 2004, 2005, and 2006 was the state of [Redacted]. The Tax Commission also believes Petitioner never fully abandoned [Redacted] nor fully acquired another domicile, until Petitioner moved to Idaho in 2009, rented a house in [Redacted], Idaho, and acquired more resident privilege licenses than he previously had in [Redacted]. Petitioner may have also begun building a house on the vacant lot he owned in [Redacted] when he moved to Idaho.

The Bureau's examination of Petitioner's Idaho income tax filing began with the receipt of a [Redacted] audit of Petitioner's 2007 [Redacted] income tax return. The Bureau received this information because Petitioner used an Idaho address on his [Redacted] income tax return (the vacant lot). The [Redacted] audit disallowed Petitioner's employee business expenses for being away from home. The [Redacted] apparently determined Petitioner was not away from his tax home because he was an itinerant. The position the [Redacted] took strengthens the Tax Commission's decision on Petitioner's domicile. The [Redacted] essentially stated Petitioner could not claim away from home expenses because he was never away from his tax home. Since Petitioner did not have a permanent home or residence, Petitioner's tax home followed him from job to job. Likewise, because Petitioner was mobile, Petitioner did not do all the things one would do to fully acquire a new domicile.

Therefore, the Tax Commission finds Petitioner did not acquire a domicile in Idaho until November 2009, when he moved to Idaho and began acquiring more connections that identified him with Idaho. However, because Petitioner was employed in Idaho in 2008, Petitioner was required to file a 2008 nonresident Idaho income tax return reporting his Idaho source income to Idaho.

THEREFORE, the Notice of Deficiency Determination dated October 11, 2011, and directed to [Redacted] is hereby 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>
2007	\$ 0	\$ 0	\$ 0	\$ 0
2008	166	42	41	<u>249</u>
			TOTAL DUE	<u>\$249</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 \_\_\_\_\_ 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.  
  
\_\_\_\_\_