

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25185
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

[Redacted] (Petitioner) protested the Notice of Deficiency Determination dated January 6, 2012, asserting Idaho income tax, penalty, and interest for taxable years 2004 through 2009 in the total amount of \$6,887. Petitioner disagreed with the Tax Discovery Bureau’s determination that he was domiciled in Idaho during those taxable years. The Tax Commission, having reviewed the file, issues its decision.

BACKGROUND

Petitioner stopped filing resident Idaho individual income tax returns after taxable year 2003. The Tax Discovery Bureau (Bureau) received information that Petitioner received wages in 2004. The Bureau sent Petitioner a letter asking him about his requirement to file Idaho individual income tax returns for taxable years 2004 through 2009. Petitioner contacted the Bureau and stated he worked outside of Idaho. Petitioner stated he did not have a home anywhere, but he returns to his parents’ house in Idaho when the season is over and then begins traveling. The Bureau sent Petitioner a residency/domicile questionnaire, which Petitioner completed and returned to the Bureau. In addition to the questionnaire, Petitioner included a fairly detailed itinerary of where he lived and worked during 2004 through 2009.

The Bureau reviewed the information, obtained additional information from the [Redacted] and other sources, and determined Petitioner did not abandon Idaho as his state of domicile. Accordingly, the Bureau also determined Petitioner was required to file Idaho

individual income tax returns for taxable years 2004 through 2009. The Bureau prepared Idaho income tax returns for Petitioner and sent him a Notice of Deficiency Determination.

Petitioner protested the Bureau's determination, stating his contacts with Idaho were out of convenience because he moved around a lot in those years. Petitioner stated he did not live or work in Idaho during those years and his residence at the time was also where he was domiciled. Petitioner stated his Idaho driver's license, acquired in 2003, was used only for identification purposes, and he maintained his mailing address as his parents' because he moved around a lot.

The Bureau acknowledged Petitioner's protest and referred the matter for administrative review. The Tax Commission reviewed the matter and determined Petitioner met the safe harbor provision of Idaho Code section 63-3013 for most of the years in question. The Tax Commission sent Petitioner a letter offering him a means of settling the matter, but Petitioner did not respond. Since Petitioner did not respond, the Tax Commission sent Petitioner another letter that discussed the options available for redetermining a protested Notice of Deficiency Determination. Petitioner did not respond to that letter either. 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 asserts Petitioner was domiciled in Idaho, because Petitioner never fully abandoned or acquired another domicile. The Tax Commission agrees. Petitioner was domiciled in Idaho prior to leaving Idaho in 2004 for [Redacted]. Petitioner stated he maintained his Idaho driver's license and mailing address in Idaho. Petitioner stated he did not have a vehicle to drive and his driver's license was used for identification purposes. Petitioner stated the Idaho mailing address was his parents' address and he used it because it was a more permanent address where mail could be sent. Petitioner also provided an itinerary of the places he lived and worked, and the time spent in those places. However, Petitioner provided no information to show he established himself or considered those other places his domicile. He did not acquire the things that identified him with a state other than Idaho.

Looking at the three requirements necessary to change a domicile, it is questionable Petitioner intended anything with regard to his domicile. Petitioner's physical presence included [Redacted], and Idaho. Petitioner's most common living and working place was [Redacted]. Petitioner's employment in [Redacted] must have been seasonal since, other than his first trip to [Redacted] which lasted 18 months, Petitioner's usual stay in [Redacted] was six months. Although it is not clear from the record whether Petitioner worked anywhere but [Redacted], Petitioner did state he filed income tax returns for [Redacted] for taxable years 2007 and 2008.

Apparently, Petitioner was employed in [Redacted] for the six months he lived with his girlfriend in [Redacted].

Petitioner's itinerary showed Petitioner did not stay in one place longer than six months and it was usually shorter if he was not working in [Redacted]. Petitioner's lifestyle was not conducive to acquiring a domicile in any particular state. Even though Petitioner spent very little time in Idaho from 2004 through 2008, Petitioner still maintained Idaho ties. Petitioner's Idaho driver's license, his use of an Idaho mailing address, and his parents living in Idaho all identify Petitioner as an Idaho resident. Petitioner had no such other ties to another state. Therefore, the Tax Commission finds Petitioner was domiciled in Idaho in 2004 through 2009.

The remaining question, then, is since Petitioner spent so little time in Idaho from April 2004 to October 2009, did he meet the safe harbor provisions of Idaho Code section 63-3013(2)? Petitioner stated he spent maybe a total of one month in Idaho during the years 2004 through 2008, and that time was spread over the years in two week intervals. Petitioner also stated when he first went to [Redacted] he stayed in [Redacted] for 18 months. That being the case, Petitioner easily met the initial requirement of Idaho Code section 63-3013(2), that being absent from Idaho 445 days during a consecutive fifteen month period. Petitioner also met the subsequent requirements of not being in Idaho for more than 60 days in a calendar year and not having an abode in Idaho where a spouse or dependent child lived. Therefore, regardless of whether Petitioner was domiciled in Idaho, his time outside Idaho qualified him to be treated as a nonresident of Idaho until such time as he established a domicile in another state, or he was present in Idaho for more than 60 days in a calendar year.

In 2009, Petitioner stated his situation changed when he worked part of the year in [Redacted] but resumed his residence in Idaho. Presumably this meant Petitioner spent more than

60 days in Idaho in 2009. If Petitioner was in Idaho 60 or more days in 2009, he was no longer under the protection of Idaho Code section 63-3013(2) for taxable year 2009, and Petitioner was required to file an Idaho individual income tax return.

The returns the Bureau prepared for Petitioner were based upon Petitioner's [Redacted] income tax returns. Petitioner did not provide any information to show the returns the Bureau prepared were incorrect. 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). The Tax Commission reviewed the return the Bureau prepared for taxable year 2009 and found it was an accurate representation of Petitioner's Idaho taxable income based upon the information available. Therefore, the Tax Commission upholds the Bureau's determination for taxable year 2009.

CONCLUSION

In 2004, Petitioner left Idaho, his domicile, to work in [Redacted]. This began Petitioner's somewhat nomadic lifestyle of working six months in [Redacted] and then returning to various places in the lower 48 states for six months. Domicile is primarily determined by an individual's intent. There must be intent to abandon an existing domicile and intent to acquire a new domicile. From the facts presented, Petitioner always identified himself with Idaho. Wherever Petitioner went, in [Redacted], the lower 48 states, or [Redacted], Petitioner held himself out to be a resident of Idaho by virtue of his Idaho driver's license and Idaho mailing address. Even though Petitioner always returned to [Redacted], he only returned to [Redacted] for seasonal work opportunities. There was no indication Petitioner ever intended to make [Redacted] his permanent home.

Since a domicile persists until another domicile is acquired and Petitioner never acquired another domicile, the Tax Commission finds Petitioner was domiciled in Idaho for taxable years 2004 through 2009. However, because Petitioner spent very little time in Idaho from April 2004 to March 2009, the Tax Commission also finds that Petitioner met the safe harbor provision of Idaho Code section 63-3013(2). As such, Petitioner was considered a nonresident and not required to file Idaho individual income tax returns for taxable years 2004 through 2008. But beginning in taxable year 2009, Petitioner spent more time in Idaho, thereby removing himself from the purview of Idaho Code section 63-3013(2) and requiring him to file a 2009 Idaho individual income tax return.

THEREFORE, the Notice of Deficiency Determination dated January 6, 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>
2004	\$ 0	\$ 0	\$ 0	\$ 0
2005	0	0	0	0
2006	0	0	0	0
2007	0	0	0	0
2008	0	0	0	0
2009	1,077	269	175	<u>\$1,521</u>
			TOTAL DUE	<u>\$1,521</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.
