

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 25616
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

[Redacted] (Petitioner) protested the Notice of Deficiency Determination dated November 26, 2012, asserting income tax, penalty, and interest in the total amount of \$7,798 for taxable years 2004 through 2007. Petitioner disagreed with the Tax Discovery Bureau’s (Bureau) determination of his Idaho taxable income for taxable years 2004 and 2007. Petitioner also disagreed he was required to file Idaho individual income tax returns for taxable years 2005 and 2006. The Tax Commission, having reviewed the file, hereby issues its decision.

**BACKGROUND**

The Bureau received information that Petitioner may have had a requirement to file Idaho individual income tax returns for taxable years 2004 and 2007. The Bureau searched the Tax Commission’s records and found Petitioner had not filed Idaho income tax returns for taxable years 2004 through 2007. The Bureau sent Petitioner a letter asking about his requirement to file Idaho income tax returns. Petitioner did not respond. The Bureau obtained additional information from the [Redacted] and determined Petitioner was required to file Idaho individual income tax returns for each of the years. The Bureau prepared income tax returns for Petitioner and sent him a Notice of Deficiency Determination.

Petitioner protested the Bureau’s determination, stating he was not a resident of Idaho in 2005, 2006, and part of 2007. Petitioner also stated he had withholdings in 2004 and 2007 that the Bureau did not account for. The Bureau asked Petitioner for additional information, but

Petitioner did not respond. Consequently, the Bureau acknowledged Petitioner's protest and referred the matter for administrative review.

The Tax Commission reviewed the matter and sent Petitioner a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. Petitioner did not respond, so the Tax Commission issued its decision based upon the information available.

### **LAW AND ANALYSIS**

Idaho Code section 63-3030 states the income thresholds for filing Idaho individual income tax returns. The Bureau received information that Petitioner's income exceeded the threshold for resident individuals for taxable years 2004 through 2007. The Bureau obtained additional information from the [Redacted] and prepared resident Idaho individual income tax returns for Petitioner for each year. See Idaho Code section 63-3002. Petitioner argued he was not a resident of Idaho in 2005, 2006, and part of 2007. However, when the Bureau requested information about Petitioner's domicile, Petitioner failed to provide anything.

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 question whether a domicile has been changed is one of fact, rather than of law. Newcomb v. Dixon, 192 N.Y. 238 (1908). 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, in fact, created. State of Texas v. State of Florida, 306 U.S. 398, 427, 59 S. Ct. 563, 577 (1939).

Petitioner stated he did not reside in Idaho in 2005, 2006, and part of 2007. Petitioner stated he lived in [Redacted]. From the information available, it is clear Petitioner did go to [Redacted] and was employed there in taxable years 2005 and 2006. However, there is nothing to show Petitioner had any intention to stay in [Redacted] indefinitely. Petitioner did not show that he intended to abandon his Idaho domicile or that he intended to acquire a [Redacted] domicile. Petitioner did not carry his burden of proof of showing he created a new domicile in [Redacted].

Idaho Code section 63-3002 states that an Idaho resident is taxed on his income from all sources, wherever derived. Idaho Code section 63-3013 defines an Idaho resident as an individual who is domiciled in Idaho. It is clear from the record that Petitioner was domiciled in Idaho in 2004 and prior. Since Petitioner did not show that he abandoned Idaho as his domicile and acquired [Redacted] as his domicile, the presumption is Petitioner's Idaho domicile continues. In re Cooke's Estate, supra. Therefore, if Petitioner was domiciled in Idaho in 2005, 2006, and 2007, he was required to report his income from all sources, wherever derived, to Idaho.

Petitioner argued the Bureau did not account for his withholdings in taxable years 2004 and 2007. Petitioner also stated his Idaho income was less than the amount the Bureau attributed to Idaho. Petitioner is correct regarding the withholdings for taxable year 2004; that information was not available when the Bureau prepared Petitioner's 2004 income tax return. In fact, Petitioner's withholdings for 2004 are still not available. Petitioner stated he had withholdings, but he has not provided documentation establishing those withholdings. As for taxable year 2007, the Bureau did allow Petitioner the withholdings that were documented. However, the Bureau also included all Petitioner's income earned in 2007, since Petitioner was domiciled in Idaho for the entire taxable year.

### CONCLUSION

Petitioner's domicile was Idaho prior to his going to [Redacted]. Petitioner did not show or prove his domicile changed from Idaho to [Redacted] and back to Idaho for the taxable years in question. 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 failed to provide any information contrary to the Bureau's determination. The Tax Commission reviewed the returns the Bureau prepared for Petitioner and, considering the information available, found them to be an accurate representation of Petitioner's Idaho taxable income for the taxable years in question.

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

THEREFORE, the Notice of Deficiency Determination dated November 26, 2012, and directed to [Redacted] is AFFIRMED.

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	\$1,874	\$469	\$935	\$3,278
2005	1,593	398	690	2,681
2006	804	201	301	1,306
2007	564	141	173	878
			TOTAL DUE	<u>\$8,143</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.  
  
\_\_\_\_\_