

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

In the Matter of the Protest of )  
[Redacted], ) DOCKET NO. 25783  
Petitioner. )  
DECISION  
\_\_\_\_\_ )

[Redacted] (Petitioner) protested the Notice of Deficiency Determination dated May 3, 2013, asserting income tax and interest for taxable years 2009 through 2011, in the total amount of \$52,476. Petitioner disagreed that he was an Idaho resident and that he could not claim the exclusion on his foreign earned income. The Tax Commission, having reviewed the file, hereby issues its decision.

**BACKGROUND**

Petitioner timely filed his Idaho individual income tax returns for taxable years 2009, 2010, and 2011. Petitioner claimed he was a nonresident, and he claimed the foreign earned income exclusion on each of those returns. As part of the Income Tax Audit Bureau's (Bureau) project to determine the validity of the foreign earned income exclusion, Petitioner's 2009, 2010, and 2011 Idaho individual income tax returns were selected for examination. The Bureau notified Petitioner of its intent to examine his returns and requested specific information from Petitioner to support his filing status and the foreign earned income exclusion. Petitioner provided some of the information the Bureau requested, but refused to provide all the information because he felt it was irrelevant due to him being a nonresident of Idaho. The Bureau reviewed the documentation and information provided and determined Petitioner was domiciled in Idaho and he did not meet the requirements of a qualified individual; based upon the fact that Petitioner did not provide complete information for an accurate determination of the

foreign income exclusion. The Bureau corrected Petitioner's 2009, 2010, and 2011 Idaho income tax returns and sent him a Notice of Deficiency determination.

Petitioner protested the Bureau's determination, stating that he was not an Idaho resident in 2009 through 2011. Petitioner stated he is excluded from Idaho residency by Idaho Code section 63-3013. Petitioner provided a schedule of the days he was out of the country and out of Idaho for the years in question. Petitioner stated he met the requirements of Idaho Code section 63-3013(2), Idaho's safe harbor provision. Petitioner stated that since he was not a resident, as provided in Idaho Code section 63-3013(2), the adjustments the Bureau made were irrelevant. Petitioner provided copies of his travel itineraries and his current passport to support his position.

The Bureau acknowledged Petitioner's protest and 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 requested a hearing, which was held on December 17, 2013. During the hearing, Petitioner's representative (representative) presented Petitioner's argument for not being an Idaho resident. Representative stated Petitioner was outside of Idaho for 445 days and was not present in Idaho for more than 60 days during that period. Representative cited Idaho Code section 63-3013(2) and declared Petitioner met the requirements for not being considered a resident.

Idaho's safe harbor provision (Idaho Code section 63-3013(2)) was discussed and the provision explained to representative. Based upon the information provided by representative and Petitioner, Petitioner did not meet the safe harbor provisions for taxable year 2009. Petitioner did not meet the 445 days in fifteen consecutive months rule.

As a secondary argument, representative stated Petitioner was not a resident of Idaho because he changed his domicile to [Redacted] when he left Idaho. Representative stated Petitioner purchased a condo in [Redacted] around the same time he began working overseas. Representative stated Petitioner changed his domiciled to [Redacted] because his children and grandchild were in [Redacted] and because [Redacted] had more to offer retired military service members. Representative stated he would like additional time to develop the domicile argument, since their primary argument of Idaho's safe harbor was looking doubtful. The Tax Commission allowed Petitioner time to send in additional information on his change of domicile, which representative provided a few weeks later. Petitioner's change of domicile argument consisted of Petitioner purchasing the condo in [Redacted], Petitioner's intent to retire in [Redacted], Petitioner's daughters and grandchild living in [Redacted], and the military services available to him as a retired member of the military. Petitioner also argued his Idaho connections were errors on the part of either a vendor or his advisors, and that having property and aging parents in Idaho does not constitute having a domicile in Idaho.

### **LAW AND ANALYSIS**

There are two issues in this case, Petitioner's residency status and the foreign earned income exclusion for the taxable years 2009 through 2011. The Bureau determined Petitioner was domiciled in Idaho during these years and that Petitioner did not prove he was a qualifying individual for the foreign income exclusion.

Petitioner filed Idaho individual income tax returns for taxable years 2009, 2010, and 2011, as a nonresident of Idaho. Petitioner argued he changed his domicile from Idaho to [Redacted] for those years. 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). 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).

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 2008 to work in the country, [Redacted]. Petitioner stated he abandoned Idaho and acquired [Redacted] as his domicile at that time. Petitioner bases his acquisition of [Redacted] as his domicile on the fact that he purchased a condo in [Redacted] where he intended to retire in five to six years. Petitioner rented this condo while he was overseas and the record shows Petitioner was in [Redacted] for only two days from April 2008 through December 2011. Petitioner had two daughters and a grandchild in [Redacted], and other than the condo, Petitioner had no other connections to [Redacted].

Petitioner argued his Idaho driver's license, vehicle registration, mailing address, and Idaho fish and game license during these years were out of convenience or was an error on the part of the vendor. Nevertheless, Petitioner was identifying himself with Idaho by retaining these Idaho resident privileges. There is nothing in the record that identifies Petitioner with [Redacted]. Petitioner may have intended to abandon Idaho and he may have intended to acquire [Redacted], but he did not have physical presence in [Redacted] nor did he do the things one would expect to acquire a [Redacted] domicile. Petitioner has not proved or shown his domicile changed to [Redacted]. State of Texas v. State of Florida, supra. Therefore, the Tax Commission found Petitioner's domicile remained with Idaho for taxable years 2009, 2010, and 2011.

Idaho Code section 63-3013 defines a resident for Idaho income tax purposes. Subsection (2) provides a safe harbor out for resident individuals that meet certain requirements. As previously mentioned, during the hearing it was determined Petitioner did not meet those requirements to be considered a part-year resident for all of taxable year 2009. However, after further review of the information Petitioner provided, the Tax Commission found that Petitioner did meet the requirements of Idaho Code section 63-3013(2) starting July 31, 2009. According to Petitioner's flight itineraries, Petitioner left Idaho July 30, 2009, returned to Idaho on April 12, 2010, left Idaho again on April 22, 2010, and did not return to Idaho again until February 10, 2011. Petitioner met the 445 day requirement in the first fifteen months (July 31, 2009 to October 31, 2010) and then was not present in Idaho for more than 60 days in a calendar year until calendar year 2012. Therefore, for the taxable years in question, Petitioner was a part-year resident for 2009, and for 2010 and 2011, Petitioner was a nonresident of Idaho. See Income Tax Administrative Rule 030.02.c.

Since Petitioner was a part-year resident for 2009, Petitioner was required to report to Idaho his Idaho source income for the time he was considered a nonresident and all his income for the time he was a resident. This resident time for Petitioner is where the second part of the Bureau's determination comes into play, the foreign earned income exclusion.

IRC section 911 provides for the exclusion from taxable income an amount of income earned from sources within a foreign country or countries which constitutes earned income attributable to services performed by a qualified individual. IRC section 911(d)(1) defines a qualified individual as,

**(1) Qualified individual.**

The term "qualified individual" means an individual whose tax home is in a foreign country and who is-

- (A) a citizen of the United States and establishes to the satisfaction of the Secretary that he has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, or
- (B) a citizen or resident of the United States and who, during any period of 12 consecutive months, is present in a foreign country or countries during at least 330 full days in such period.

The Bureau's adjustment did not question Petitioner's tax home in the foreign country. The Bureau's foreign income exclusion adjustment was because Petitioner did not substantiate being a bona fide resident of either [Redacted] or [Redacted] nor did he show he was physically present in a foreign country or countries for 330 days in a period of twelve consecutive months. Petitioner's income tax returns for taxable years 2009, 2010, and 2011, claimed the bona fide resident test in 2009 and 2011, and the physical presence test for 2010. Since Petitioner met Idaho's safe harbor for taxable years 2010 and 2011, the Tax Commission need not address the foreign income exclusion for those years. Petitioner was considered a nonresident and is only required to report his income/loss from Idaho sources. However, for taxable year 2009,

Petitioner was considered a part-year resident of Idaho and the determination of the foreign income exclusion must be made.

Petitioner provided copies of his flight itineraries and his available passports encompassing the years in question. The information shows, for the twelve month period beginning January 1, 2009 and ending December 31, 2009, Petitioner was outside the United States for 336 days. This being the case, Petitioner met the physical presence test for the foreign income exclusion for taxable year 2009. Even though Petitioner may have claimed to be a bona fide resident of [Redacted] for taxable year 2009, he clearly passed the physical presence test, which is all Petitioner needs, to be considered a qualified individual for the foreign income exclusion.

### **CONCLUSION**

Petitioner was employed outside the United States during taxable years 2008 through 2011. Petitioner was a long-time resident of Idaho prior to his employment that took him overseas. Petitioner claimed he abandoned Idaho and acquired [Redacted] as his state of domicile, however, Petitioner did not make the connections with [Redacted] that one would expect when changing a domicile. Since Petitioner did not fully abandon Idaho, nor fully acquire [Redacted], the Tax Commission found Petitioner's domicile remained with Idaho. Nevertheless, Petitioner's employment outside the United States qualified him for Idaho's safe harbor provision for taxable years 2010 and 2011, resulting in his treatment as a nonresident for Idaho income tax purposes. For taxable year 2009, Petitioner only partially met the requirements of Idaho's safe harbor. Therefore, since Petitioner was domiciled in Idaho, the part of 2009 that Petitioner was considered an Idaho resident, he was required to report all his income to Idaho. However, Petitioner was also a qualified individual for the federal foreign earned income

exclusion in 2009. Consequently, Petitioner is entitled to exclude a portion of his foreign income he earned while he was considered a resident of Idaho.

THEREFORE, the Notice of Deficiency Determination dated May 3, 2013, and directed to [Redacted] is AFFIRMED as MODIFIED by this decision.

IT IS ORDERED that Petitioner pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2009	\$7,144	\$1,246	\$8,390
2010	0	0	0
2011	0	0	0
		<b>TOTAL DUE</b>	<b><u>\$8,390</u></b>

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.  
  
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