

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 25991
Petitioner.)
DECISION
_____)

[Redacted] (Petitioner) protested the Notice of Deficiency Determination dated September 25, 2013, asserting Idaho income tax, penalty, and interest, for taxable years 2005, 2006, 2008, and 2011, in the total amount of \$24,451. Petitioner disagreed with the Income Tax Audit Bureau’s (ITA) determination that he was domiciled in Idaho during those years and required to file Idaho resident individual income tax returns. The Tax Commission, having reviewed the file, issues its decision.

BACKGROUND

The Petitioner was first contacted through an inquiry by the Tax Discovery Bureau (Bureau) as to his non-filed Idaho income tax returns for taxable years 2005 through 2010. The Petitioner subsequently submitted returns for each of the aforementioned years. Petitioner filed resident income tax returns for taxable years 2007, 2009, and 2010, part-year resident returns for taxable years 2005, 2006, and 2011, and a nonresident return for taxable year 2008. The Bureau accepted the returns as filed, with the exception of the inclusion of \$1,625 in income for taxable year 2005, and the allowance of \$2 of withholding in taxable year 2009, and closed their inquiry. ITA then selected the Petitioner’s returns for taxable years 2005, 2006, 2008 and 2011 for review, specifically requesting information concerning the Petitioner’s residency status and a detailed schedule of all unreimbursed employee business expenses. Petitioner did not respond to the request for information. Two subsequent requests were made by ITA, also receiving no

response from Petitioner. Therefore, based on the information in Tax Commission records and lack of documentation from Petitioner to support his claims, ITA issued Petitioner an NODD that adjusted Petitioner's returns for each year to reflect his status as a full year resident, and adjusted his Schedule A for taxable years 2005, 2006, and 2008, disallowing the Form 2106-Unreimbursed Employee Business expenses.

Petitioner, through a letter submitted by his tax preparer, protested the ITA determination. ITA acknowledged Petitioner's appeal and referred the matter for administrative review.

The Tax Commission reviewed the matter and sent Petitioner a letter explaining the methods available for redetermining a protested Notice of Deficiency Determination. Petitioner did not respond.

The only information related to Petitioner's residency status was provided in the appeal letter, which outlined where Petitioner lived and worked in taxable years 2005 through 2011. In 2005, Petitioner resided in Idaho through May 20, working in [Redacted], [Redacted]. On May 21, 2005, Petitioner moved to [Redacted] and worked on the [Redacted] until his return to Idaho in September 2006. Petitioner was unemployed the remainder of taxable year 2006. In January 2007, Petitioner found employment in [Redacted] and later worked in [Redacted] and [Redacted], but continued to reside in Idaho. It was in 2008, according to the appeal letter, that Petitioner moved his residence and domicile to [Redacted], [Redacted], having no ties to Idaho and no taxable wages in Idaho. In early 2009, Petitioner once again moved back to Idaho, working in neighboring [Redacted]. In 2010, Petitioner was unemployed throughout the year and resided in Idaho. In taxable year 2011, Petitioner was employed in [Redacted] for seven months.

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).

ITA's position is that Petitioner has maintained his Idaho domicile through at least taxable year 2011, and as an Idaho resident, is required to submit Idaho resident income tax returns for each year in question. While it is true Petitioner submitted resident income tax returns for some of the years under review and maintained his Idaho ties, there were also periods when Petitioner had very limited Idaho connections and/or was absent from the state. Petitioner moved in and out of Idaho numerous times between 2005 and 2011, some absences were only for a few months, the longest, 16 months. Because Petitioner was a resident of, and domiciled in, Idaho, and filed resident Idaho income tax returns for taxable years 1998 through 2004, the question is did Petitioner abandon Idaho and acquire a new domicile, or was he temporarily absent from Idaho?

Looking at the three elements necessary to change a domicile, it is doubtful Petitioner had them in mind when he accepted employment. Petitioner is an [Redacted] who appears to live where he can obtain employment. Petitioner resided in [Redacted] and different cities in [Redacted] state, but based on the information provided, Petitioner did not change his domicile to either one of these states.

The next question is did Petitioner meet the safe harbor provisions of Idaho Code section 63-3013 when Petitioner was living and working in [Redacted] or [Redacted]. Petitioner's appeal letter stated that from May 21, 2005 through the end of September, 2006, he lived with a significant other in [Redacted] and worked on the [Redacted]. After September, 2006 Petitioner stated he returned to Idaho where he lived the rest of 2006 through April 2007.

Petitioner's time outside of Idaho meets the fifteen month requirement, and without any evidence to the contrary, Petitioner does qualify for the safe harbor provision of Idaho Code section 63-3013. This being the case, Petitioner is considered a part-year resident for taxable year 2005 and taxable year 2006, and is not required to file resident income tax returns with Idaho for those years. However, while Petitioner did meet the fifteen month period in regards to his time in [Redacted], he did not qualify for the safe harbor provisions with his time spent in [Redacted] in taxable year 2008, or taxable year 2011 and, therefore, is required to file a resident Idaho return for both of those years.

In addition to Petitioner's residency status, ITA examined the amounts claimed as unreimbursed employee business expenses on Petitioner's schedule A for taxable years 2005, 2006, and 2008. ITA requested documentation to substantiate these deductions on two separate occasions, but Petitioner did not respond to the inquiries or provide any documentation for consideration.

Deductions are a matter of legislative grace and the taxpayer bears the burden of showing that each deduction is allowable by statute. New Colonial Ice Co. v. Helvering, 292 U.S. 435, 54 S.Ct. 788 (1934); Higgins v. C.I.R., T.C. Memo. 1984-330, (1984). Petitioner did not provide any documentation or support for his deductions for unreimbursed employee business expenses. He has not met his burden of record keeping or showing that the deductions were permitted. Therefore, absent any information to substantiate the deductions disallowed by ITA, the Commission must uphold ITA's determination.

CONCLUSION

In the present case, Petitioner's Idaho domicile began at least as early as taxable year 1998. Petitioner moved in and out of Idaho several times between 2005 and 2011 for employment, returning to Idaho when he was either unemployed or simply between jobs. From the facts presented, Petitioner may have resided in other states, but he did not abandon Idaho. Petitioner provided nothing to show he acquired a new domicile in either [Redacted] or [Redacted]. Consequently, Petitioner's domicile remained with the state he was previously domiciled, Idaho.

However, because Petitioner was absent from Idaho for over fifteen months that encompassed part of taxable year 2005 and taxable year 2006, Petitioner met the safe harbor provision of Idaho Code section 63-3013. This being the case, Petitioner is considered a part-year resident for those years, but because Petitioner did not meet the safe harbor provision for the other absences from Idaho, Petitioner was required to file a resident Idaho income tax return for taxable year 2008 and 2011.

THEREFORE, the Notice of Deficiency Determination dated July 24, 2013, and directed to [Redacted], is modified in accordance with this decision to reflect the Petitioner as a part-year resident for taxable years 2005 and 2006 and as MODIFIED, AFFIRMED and MADE FINAL.

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>
2005	\$ 430	\$108	\$174	\$ 712
2008	2,787	697	577	4,061
2011	2,339	585	163	<u>3,087</u>
			TOTAL DUE	<u>\$7,860</u>

Interest is calculated through April 14, 2014.

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.
