

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

In the Matter of the Protest of )  
[Redacted], ) DOCKET NO. 38922  
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 )  
Petitioner. ) DECISION  
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\_\_\_\_\_ )

On November 20, 2013, the staff of the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer), proposing income tax, penalty, and interest for taxable years 2008, 2010, and 2011 in the total amount of \$2,780.

On January 17, 2014, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing. The Commission, having reviewed the file, hereby issues its decision.

The Bureau received information that the taxpayer may be required to file Idaho individual income tax returns. The Bureau researched the Commission’s records and found that the taxpayer had not filed Idaho income tax returns for the aforementioned years. The Bureau sent the taxpayer a letter asking about his requirement to file Idaho individual income tax returns. The taxpayer did not respond.

The Bureau obtained additional information from the [Redacted], researched records available to the Commission, and determined the taxpayer did have a filing requirement for taxable years 2008, 2010, and 2011. The Bureau prepared individual income tax returns for the taxpayer and sent him an NODD. The taxpayer responded, stating that he has resided in the state of Washington since 2008. The Bureau further investigated the matter and determined that the NODD should be cancelled for taxable years 2010 and 2011. The Bureau informed the taxpayer

of the modification to the NODD and again requested either a 2008 Idaho income tax return be filed or information be provided to show no return was required. No further response was received from the taxpayer.

The matter was referred for administrative review, and the Commission sent the taxpayer a letter giving him two alternatives for having the NODD redetermined. The taxpayer did not respond.

Idaho Code section 63-3002 states that a resident of this state is required to report and pay a tax on all his or her taxable income regardless of the source. Idaho Code section 63-3013 defines the term “resident” as any individual who:

- (a) Is domiciled in the state of Idaho for the entire taxable year; or
- (b) Maintains a place of abode in this state for the entire taxable year and spends in the aggregate more than two hundred seventy (270) days of the taxable year in this state. Presence within the state for any part of a calendar day shall constitute a day spent in the state unless the individual can show that his presence in the state for that day was for a temporary or transitory purpose.

Domicile is defined in the Tax Commission’s Administrative 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. An individual can have several residences or dwelling places, but he legally can have but one domicile at a time.” Income Tax Administrative Rule 030.02 (IDAPA 35.01.01.030.2 (2000)). The essential distinction between residence and domicile is that domicile requires intent to remain at one place for an indeterminate or indefinite period. Reubelmann v. Reubelmann 38 Idaho 159, 164, 220 P 404, 405 (1923). Domicile, once established, persists until a new domicile is legally acquired. In re Cooke’s Estate, 96 Idaho 48, 524 P.2d 176 (1973). A concurrence of three factors must occur to change an individual’s domicile. The factors are (1) the intent to abandon the present domicile, (2) the intent to acquire a new domicile, and (3) physical presence in the new domicile.

Income Tax Administrative Rule 030.02.a (IDAPA 35.01.01.030.02.a). See also, Pratt v. State Tax Commission, 128 Idaho 883, 885 n.2, 920 P.2d 400, 402 n.2 (1996). Whether an individual has the specific intent to create a new domicile is evidenced by that individual's actions and declarations. Generally speaking, in domicile cases, an individual's actions are accorded more weight than his declarations, since declarations can tend to be deceptive and self-serving. Allan v. Greyhound Lines, 583 P.2d 613, 614 (Utah 1978).

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, in fact, created. State of Texas v. State of Florida, 306 U.S. 398, 427, 59 S.Ct. 563, 577 (1939).

It takes no particular period of time to acquire a new domicile, the result being achieved when the person is physically present in the new place with a state of mind regarding the new place as home. Moreover, mere length of time cannot convert physical presence or residence into domicile. Taylor v. Milan, 89 F.Supp. 880 (1950). Domicile is not necessarily lost by protracted absence from home where the intention to return remains. Wilson v. Pickens, 444 F. Supp. 53 (W.D. Okl. 1977).

The taxpayer filed an Idaho resident income tax return for taxable 2007. The taxpayer's vehicle was registered in Idaho; information from the Idaho Department of Labor shows the taxpayer earned wages in Idaho for all four quarters of taxable year 2008, and the first quarter of taxable year 2009. In addition, Commission records show the taxpayer earned wages in Idaho

every year since 2004, but did not exceed the filing requirement until taxable year 2007. The taxpayer has retained an Idaho driver's license since 2006 and has purchased resident Idaho Fish and Game licenses every year beginning in 2003, indicating that he had been a resident since 1991. The taxpayer's actions associate him with the state of Idaho and clearly indicate Idaho was his domicile of choice as early as 2003.

Since Idaho was the taxpayer's domicile, the taxpayer has the burden of showing that he abandoned Idaho and acquired another state as his domicile. The taxpayer argued that his domicile changed to [Redacted] and that he has resided there since 2008. However, the taxpayer did not complete the Residency/Domicile questionnaire to help determine his residency status and did not provide the Commission with any documents to support his claim of establishing a new domicile in [Redacted]. There is nothing in the record that shows a permanent home in [Redacted] with all the sentiment, feeling, and permanent association that goes with calling a place a home. See Starer v. Gallman, 50 A.D.2d 28, 377 N.Y.S.2d 645 (1975).

Since the taxpayer was domiciled in Idaho and he is asserting his domicile changed, the taxpayer bears the burden of showing that his domicile changed. State of Texas v. State of Florida, supra. The taxpayer has not met that burden. Therefore, the Commission upholds the Bureau's determination that the taxpayer was domiciled in Idaho for the taxable year 2008.

THEREFORE, the NODD dated November 20, 2013, is hereby MODIFIED, and as modified, is AFFIRMED and MADE FINAL.

IT IS ORDERED that the taxpayer pay the following tax, penalty and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL DUE</u>
2008	\$356	\$89	\$85	\$530

Interest is calculated through December 1, 2014.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

IDAHO STATE TAX COMMISSION

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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.