

did not protest the Notice of Deficiency Determination for taxable year 2009. The Bureau prepared returns for Petitioner and sent him a Notice of Deficiency Determination.

Petitioner protested, stating he has lived in [Redacted] since 2009. Petitioner stated he separated from his wife in 2009 and moved into a house he owned just across the state line in [Redacted]. Petitioner stated he had hopes of reconciling with his wife during that time, so he kept his Idaho ties. Petitioner stated he also shared a vehicle with his son who lived with his ex-wife from a previous marriage. Petitioner believed having an Idaho license and registration made the vehicle sharing simpler. Petitioner stated he purchased and financed his vehicle in Idaho in 2008 and he believed it was better to keep it registered in Idaho until he received title to the vehicle. Petitioner sent copies of his utility billings to document that he was living in [Redacted] for the years in question.

The Bureau reviewed the information and referred the matter for administrative review. The Tax Commission sent Petitioner a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. Petitioner requested a telephone hearing, which was held November 18, 2014. During the hearing, Petitioner provided the following information.

Petitioner filed Idaho resident individual income tax returns for a number of years. For taxable year 2006, Petitioner filed a part-year resident return claiming his state of residence was [Redacted]. Petitioner did not file a 2007 Idaho individual income tax return; his next filing was a 2008 part-year Idaho resident return. Petitioner remarried in 2008 and began living in his wife's house in [Redacted], Idaho. In 2009, Petitioner and his wife separated. Petitioner stated he moved all his belongings out of the [Redacted] house and back into the [Redacted] house that he owned prior to the marriage. Petitioner stated he never lived in the [Redacted] house again.

Petitioner stated he tried to reconcile with his wife two to three times, but had no success. Petitioner stated he filed for divorce in February 2010, but has yet to finalize the divorce. Petitioner stated it was clear to him that a divorce was not right, so he and his wife have stayed married, but live totally separate.

Petitioner has children from a previous marriage. Petitioner stated his son lived with his ex-wife in Idaho in order to complete high school in Idaho. Petitioner's son enjoyed hunting and fishing, which is why Petitioner purchased Idaho fish and game licenses. Petitioner stated he did not believe he ever used the licenses.

Petitioner stated he has been employed with [Redacted]) in [Redacted] for over ten years. Petitioner stated his interest is [Redacted] [Redacted]. Petitioner stated he [Redacted] in [Redacted]. Petitioner stated all the work done on his [Redacted] is done at his home in [Redacted]. Petitioner stated his estranged wife was never involved in his [Redacted] activities.

Petitioner stated when he separated from his wife and moved to [Redacted] he notified [Redacted], the union, his bank, and his children's school of his address change. Petitioner stated he stopped going to the [Redacted] church he and his wife attended, but has not found another church to attend. Petitioner stated he and his wife have not co-mingled their incomes since the separation. Petitioner stated he has relinquished his Idaho driver's license and obtained a [Redacted] license.

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).

From the information presented, it is evident Petitioner did not reside in Idaho after the separation from his wife. Therefore, the question becomes did Petitioner abandon Idaho and acquire [Redacted] as his state of domicile? The question whether a domicile has been changed is one of fact rather than of law, and the burden of proof rests upon the party who alleges a change. Newcomb v. Dixon, 192 N.Y. 238 (1908). The motives actuating a change of domicile are immaterial, except as they indicate intention. A change of domicile may be made through caprice, whim or fancy, for business, health or pleasure, to secure a change of climate, or a change of laws, or for any reason whatever, provided there is an absolute and fixed intention to abandon one and acquire another and the acts of the person affected confirm the intention. Newcomb, supra.

In this case, Petitioner left Idaho due to the infidelity of his wife. Petitioner attempted reconciliation, but found that he and his wife living together was not doable. Petitioner still had a relationship with his children in Idaho, but they lived with their mother, not his estranged wife. Petitioner moved from Idaho to [Redacted] where he had been domiciled prior to the marriage. Petitioner had a house in [Redacted], his employment was in [Redacted], his hobby or interest

was based in [Redacted], and most of his time was spent in [Redacted]. Petitioner was only in Idaho to visit his children and be involved in their lives through their sports and other activities; he would also come to Idaho for the occasional race.

The Bureau's determination was based primarily on Petitioner's Idaho resident privilege licenses. Petitioner stated these licenses were purposefully maintained because he initially thought he could reconcile with his wife and he would be living in Idaho again. However, when it became apparent there was going to be no reconciliation, Petitioner maintained the licenses for what he perceived to be helping and providing for his children. Although the Idaho privilege licenses identified Petitioner with Idaho, they did not fully reflect Petitioner intent or actions.

Looking at the tests for a change of domicile, it is apparent Petitioner had physical presence in [Redacted] and his presence in Idaho was limited to visits based on hours rather than days. As for Petitioner's intent to abandon Idaho and intent to acquire a new domicile, Petitioner separated from his wife and moved back to [Redacted]. Petitioner's intent and actions were solidified when Petitioner found there was no reconciling with his wife. Even though Petitioner maintained Idaho connections, those connections did not align with Petitioner's full intent and actions.

CONCLUSION

For most of 2009, Petitioner was married and living in Idaho. In the fall of 2009, Petitioner separated from his wife and filed for divorce in February 2010. Petitioner moved back to [Redacted] and began to re-establish himself there. Petitioner's ties and connections to Idaho were limited with the thought that he might return to Idaho, however, as time passed it became evident Petitioner would not be returning to Idaho to live.

Considering Petitioner's circumstances, the Tax Commission finds Petitioner did abandon Idaho and acquire [Redacted] as his state of domicile. Therefore, Petitioner was not required to file Idaho income tax returns for taxable years 2010 through 2012.

THEREFORE, the Notice of Deficiency Determination dated June 21, 2013, and directed to [Redacted] is CANCELLED.

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

DATED this _____ day of _____ 2015.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2015, 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.
