

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 39054
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

[Redacted] (Petitioner) protested the Notice of Deficiency Determination issued by the Income Tax Audit Bureau (Bureau) of the Idaho State Tax Commission asserting additional income tax, penalty, and interest for taxable years 2009, 2010, and 2011 in the total amount of \$22,586. Petitioner disagreed that he had Idaho source income and that he was a resident of Idaho. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

Petitioner filed Idaho part-year resident individual income tax returns for taxable years 2009, 2010, and 2011. Petitioner claimed from zero to seven months residence in Idaho on his income tax returns. On Petitioner’s 2011 income tax return, Petitioner reported negative income of over \$92,000, which was the foreign earned income exclusion from gross income. The Bureau selected Petitioner’s returns to verify Petitioner’s residency status, unreimbursed employee business expenses, and the 2011 foreign earned income exclusion.

The Bureau requested specific information from Petitioner; however, Petitioner provided only limited information. Petitioner sparingly completed the Bureau’s questionnaire regarding residency and domicile, and he failed to provide any information or documentation for the employee business expenses or the foreign earned income exclusion. As a result, the Bureau disallowed Petitioner’s employee business expenses and the foreign earned income exclusion, and determined Petitioner’s domicile was in Idaho, thereby requiring him to report his income

from all sources to Idaho. The Bureau corrected Petitioner's Idaho individual income tax returns and sent him a Notice of Deficiency Determination.

Petitioner protested the Bureau's determination. Petitioner stated he was not a resident of Idaho and he had no income from Idaho sources for the years in question. Petitioner stated he moved to Idaho from Utah in 2009. Petitioner stated he was in Idaho for only a short time when he hired on with [Redacted] and began working in [Redacted]. Petitioner stated that while he was employed by [Redacted] he was constantly traveling, so he lived in hotels and motels near the jobs he was assigned to. Petitioner stated when he went to work for [Redacted] he moved from Idaho to [Redacted]. Petitioner stated he never worked in Idaho nor did he receive any Idaho source income.

Petitioner stated that he continued working for [Redacted] into 2010. In May 2010, Petitioner obtained a [Redacted] work permit and he went to work for [Redacted] in [Redacted], [Redacted]. Petitioner stated he worked in [Redacted] until May 2011. After completing the job in [Redacted], Petitioner returned to [Redacted] to visit his brother. Petitioner stated he then obtained a work permit for [Redacted] where [Redacted] sent him to work for the remainder of the year.

Petitioner stated he worked in [Redacted] until the summer of 2012. Petitioner stated he visited his brother in [Redacted] in January 2012, looking for a house to buy. Petitioner stated when he returned to [Redacted] in July 2012, he purchased a house in [Redacted].

Petitioner stated he was only in Idaho for a few days from the time he left in 2009 through July 2012, and at no time did he have income from Idaho sources. In support of his statements, Petitioner provided copies of his [Redacted] resident hunting license, a more detailed answered copy of the Bureau's questionnaire, his [Redacted] work permits, his passport, copies

of his W-2s or equivalent from the foreign countries, and a copy of his [Redacted] tax return.

The Bureau acknowledged Petitioner's protest and referred the matter for administrative review. The Tax Commission reviewed Petitioner's case and sent him a letter giving him the options available for redetermining a protested Notice of Deficiency Determination. Petitioner requested a telephone hearing, which was held on June 17, 2015. During the hearing, Petitioner provided the following additional information.

Prior to moving to Idaho Petitioner lived in [Redacted]. Petitioner owned a home in [Redacted] which he sold when he moved to Idaho in 2009. Petitioner moved to a friend's sister's house in [Redacted] where he stayed for about three weeks before he was employed by [Redacted]. When Petitioner started with [Redacted] he was living in Idaho and gave them an Idaho address on his application. This address was never changed while Petitioner worked for [Redacted] even though Petitioner never lived in Idaho after he started his employment. Petitioner was also never assigned to work in Idaho. However, as a result of Petitioner's Idaho address, [Redacted] withheld Idaho tax from Petitioner's wages.

While Petitioner was in Idaho, he obtained an Idaho driver's license and registered his vehicle and RV in Idaho. Petitioner maintained his license and registrations, since he was always traveling. Petitioner did try to get a [Redacted] driver's license after he purchased his house in [Redacted] in 2012, but was unable to due to [Redacted] computer system being down. Petitioner stated he was told that if he had an Idaho driver's license, he was required to file Idaho income tax returns regardless of where he was living or earning income. Petitioner also stated he needed to file Idaho income tax returns to claim the refunds he was entitled because of the withholdings [Redacted] did on his wages.

Petitioner stated he visited Idaho for four to five days when he returned to [Redacted] after completing his work in [Redacted]. Petitioner stated during that time he purchased a non-resident Idaho fishing license because he did not consider himself a resident of Idaho. It was shortly after his visit to Idaho and [Redacted] that Petitioner left for [Redacted].

In addition to Petitioner's statements, Petitioner provided additional documentation showing where he lived, worked, and spent his time. Petitioner also forwarded the argument that he met the provision of Idaho Code section 63-3013(2), Idaho's safe harbor provision for residents, because he did not live in Idaho and had no Idaho source income.

LAW AND ANALYSIS

The Bureau asserted Petitioner's domicile was Idaho based upon the facts that Petitioner obtained an Idaho driver's license, he registered vehicles in Idaho, and he maintained an Idaho address. The Bureau's position is that Petitioner acquired an Idaho domicile when he moved to Idaho and acquired the Idaho licenses. The Bureau stated Petitioner did not abandon Idaho and acquire another state as his domicile.

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).

It is clear from the information provided, Petitioner's domicile prior to moving to Idaho in 2009, was [Redacted]. It is also clear Petitioner had the intent to abandon [Redacted] when he sold his [Redacted] house, moved to Idaho, and obtained Idaho privilege licenses. It is likewise just as clear that Petitioner did not acquire another state as his domicile after he left Idaho in 2009 to pursue employment opportunities. Therefore, because Petitioner held himself out to be an Idaho resident by virtue of his Idaho driver's license and vehicle registrations, the Tax Commission agrees that Petitioner's domicile was Idaho beginning in 2009 and through 2011.

However, shortly after becoming domiciled in Idaho, Petitioner left Idaho. Based upon the facts available, Petitioner left Idaho in May 2009, returned to Idaho for four to five days in June 2011, and did not come back to Idaho until sometime in 2012, after the purchase of his house in [Redacted]. Idaho Code section 63-3013(2) provides a safe harbor for resident individuals that meet certain criteria. It states that a resident individual who is absent from Idaho for 445 days in the first fifteen consecutive months and then is not present in Idaho for more than 60 days in a calendar year will be considered a nonresident for Idaho income tax purposes. Since Petitioner left Idaho in May 2009 and has not returned to Idaho, except for visits of a couple of days, Petitioner's absence from Idaho far exceeded the required 445 days and the subsequent 60 days in a calendar year. Petitioner met Idaho's safe harbor provision for filing Idaho income tax returns.

Since Petitioner is considered a nonresident, Petitioner is only required to report his Idaho source income to Idaho. Petitioner's W-2 Wage and Tax Statements from [Redacted] would lead

one to believe Petitioner had Idaho source income. However, based upon the facts presented, Petitioner did not work in Idaho for [Redacted] and, therefore, had no Idaho source income. But, since [Redacted] withheld Idaho tax from Petitioner's wages, Petitioner needed to file Idaho income tax returns for 2009 and 2010 to get a refund of the tax withheld.

The returns Petitioner filed for tax years 2009 and 2010 were not filed as a nonresident with no Idaho source income. Petitioner filed his returns as a part-year resident with Idaho source income as reported on his [Redacted] W-2 forms. However, because Petitioner is considered a nonresident and he had no Idaho source income, Petitioner was not required to file Idaho income tax returns for taxable years 2009, 2010, and 2011. Therefore, since Petitioner was not required to file Idaho income tax returns, the Tax Commission finds the other issues of unreimbursed employee business expenses and the foreign earned income exclusion are non-issues for Idaho income tax purposes and need not be addressed.

CONCLUSION

Petitioner acquired an Idaho domicile during the three or so weeks he lived in Idaho in 2009. However, when Petitioner left Idaho in 2009 to work for [Redacted], he left and did not return to Idaho, nor was he present in Idaho for more days than what would disqualify him for Idaho's safe harbor. In fact, when Petitioner returned from his overseas employment in [Redacted] in 2012, Petitioner effectively abandoned Idaho and acquired [Redacted] as his state of domicile.

Because Petitioner met the safe harbor requirements of Idaho Code section 63-3013(2), Petitioner was a nonresident for Idaho income tax purposes. And, since Petitioner had no Idaho source income, the Tax Commission finds Petitioner was not required to file Idaho individual

income tax returns for the years in question. Therefore, the Bureau's determination is reversed and Petitioner is entitled to a refund of the tax paid.

THEREFORE, the Notice of Deficiency Determination dated March 21, 2014, and directed to [Redacted] is AFFIRMED as MODIFIED by this decision.

IT IS ORDERED that Petitioner receive the following REFUND of tax plus interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2009	(\$3,583)	(\$784)	(\$4,367)
2010	(2,716)	(465)	(3,181)
2011	(10)	0	(0)
		TOTAL REFUND	<u>(\$7,548)</u>

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.
