

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 0-078-860-288
<b>[Redacted]</b> ,	)	
	)	
Petitioner.	)	DECISION
_____	)	

**[Redacted]** (petitioner) protested the Notice of Deficiency Determination (NODD) issued by the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) dated March 25, 2015, asserting additional Idaho income tax, interest, and penalty for taxable years 2004 through 2008 and 2010.

The issue here is whether the petitioner both adopted a Washington domicile and abandoned his Idaho domicile during the period he was physically present in Washington from 2004 to 2010.

**BACKGROUND**

Petitioner lived in **[Redacted]** , Washington from October 2004 through December 2010. Until 2004, petitioner was an Idaho resident. From 2004 through 2008 and 2010, petitioner did not file Idaho income tax returns. The Bureau determined that petitioner had not changed his domicile from Idaho, and therefore should have filed returns and paid income tax on the income petitioner earned while working in Washington. Pursuant to Idaho Code § 63-3045, the Bureau issued a NODD on March 25, 2015, in the amount of \$11,195 due to the state of Idaho.

Since 1991, petitioner has maintained an Idaho driver’s license, applications for which require a declaration that the applicant is an Idaho resident. Petitioner completed driver’s license applications in 2003 and 2007. Additionally, petitioner registered to vote in Kootenai County, Idaho on October 13, 1992, stating under penalty of perjury that he had been a resident of Idaho

for 15 years. Up until his move to Washington, petitioner was both a resident of and domiciled in Idaho.

In 2004, petitioner moved to Washington as a result of a medical condition that caused him to have frequent blackouts. In his letter protesting the Bureau's NODD, petitioner stated that when he moved to Washington, he did not intend to move back to Idaho. Despite his alleged intent, petitioner acted in completing Idaho driver's license applications in 2007 and 2011. Additionally, in 2007, petitioner registered **[Redacted]** Corporation of Idaho, Inc. with the Idaho Secretary of State. In 2009, the petitioner filed a Form 40 Idaho individual income tax return for the tax year 2009. And in 2010, petitioner titled two vehicles using an Idaho address.

### ANALYSIS

Idaho Code § 63-3030(a)(1) requires each individual who is a resident of Idaho to file an Idaho income tax return if he or she is required to file a federal return. Idaho Code § 63-3013(1)(a) defines "resident" as an individual who is domiciled in the state of Idaho for the entire taxable year. Domicile is defined in Idaho Administrative Income Tax Rule 35.01.01.030 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." Domicile is one location with which, for legal purposes, a person is considered to have the most settled and permanent connection, where he intends to remain and to return.

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); IDAPA 35.01.01.030; See In re Cooke's Estate, 96 Idaho 48, 524 P. 2d 176 (1973). 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 along with proof of abandonment of the prior domicile. State of Texas v. State of Florida, 306 U.S. 398, 427, 59 S. Ct. 563, 577 (1939). Whether an individual has the specific intent to create a new domicile is evidence by that individual's actions and declarations. In domicile cases, an individual's actions are accorded more weight than his declarations since declarations can tend to be deceptive and self-serving. Allen v. Greyhound Lines, 583 P. 2d 613, 614 (Utah 1987).

The facts of this case suggest that petitioner did not abandon his domicile in Idaho in favor of a domicile in Washington. Although petitioner was physically present in **[Redacted]**, Washington for the period at issue, the specific intent to abandon Idaho as his domicile and the intent to acquire Washington as his new domicile do not appear to have been present.

During the period of time at issue in this audit, petitioner's actions speak louder than his words. After moving to Washington in 2004, petitioner voted in Idaho general and primary elections in 2004, 2006, 2008, and 2010 with an Idaho address listed as his home address. In his letter protesting the NODD, petitioner argued that he voted in Idaho elections because he was unable to receive a Washington driver's license because of "serious questions why [he] had a license from one state and insurance from another" if he was stopped by police. In turn, petitioner applied for and received an Idaho driver's license while living in Washington. Idaho Code § 49-303(10) provides that a person who is not a resident of the state of Idaho does not

qualify for an Idaho driver's license. Petitioner's driver's license was renewed before moving to Washington in May 2003 and again in July 2007, while petitioner physically resided in Washington. On the form petitioner filled out to apply for a renewed driver's license in 2007, petitioner checked a box indicating that he was a resident of Idaho. Petitioner signed the form declaring that he had not made a "false, incomplete, or incorrect statement of any fact" on the application. Because petitioner himself declared that he was an Idaho resident in 2007, the Commission finds a lack of evidence of abandonment of domicile.

In addition to declaring Idaho residency on his Idaho driver's license application, petitioner registered **[Redacted]** Corporation of Idaho, Inc. with the Idaho Secretary of State. Petitioner also filed a timely 2009 Idaho Individual Tax return on an Idaho Form 40, the form used by Idaho residents. Further, in 2010, petitioner titled a 1998 Subaru and a 1998 Toyota with the Idaho Transportation Department. In December of 2010, petitioner ultimately moved back to Idaho.

The Commission finds that petitioner did not abandon Idaho as his domicile, and therefore, is subject to Idaho state income tax on the income he earned while working in Washington. Petitioner may have stated in his letter of petition to the Commission that his move to Washington was permanent, but the facts do not support this. The facts in this case indicate that petitioner was physically present in Washington during 2004 to 2010, but his ties to Idaho continued to run deep, providing evidence that he did not abandon Idaho as his domicile.

### **CONCLUSION**

The Tax Commission finds that the taxpayer did not abandon his domicile in Idaho and is required to file Idaho individual income tax returns for taxable years 2004 through 2008 and 2010.

WHEREFORE, the Notice of Deficiency Determination dated March 25, 2015, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that petitioner pay the following taxes, penalties, and interest:

<u>YEAR</u>	<u>TAX DUE</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2004	\$1,022	\$256	\$572	\$1,850
2005	801	200	400	1,401
2006	1,580	395	690	2,665
2007	1,994	499	732	3,225
2008	760	190	230	1,180
2010	841	210	173	<u>1,224</u>
			TOTAL DUE	<u>\$11,545</u>

Interest is calculated through September 5, 2016.

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 \_\_\_\_\_, 2016.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

### CERTIFICATE OF SERVICE

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2016, 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.  
  
\_\_\_\_\_