

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 1-036-374-016
[Redacted] ,)	
)	
Petitioner.)	DECISION
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On October 1, 2015, the staff of the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to **[Redacted]** (petitioner) proposing income taxes, penalties, and interest for taxable years 2008 through 2012 in the total amount of \$5,753.

On November 16, 2015, the petitioner filed a timely appeal and petition for redetermination. The petitioner subsequently submitted Idaho resident individual income tax returns for taxable years 2008 and 2009. Those returns were accepted by the Bureau and the NODD cancelled for those years. Taxable year 2008 and 2009 will not be mentioned further in this decision. The petitioner did not submit Idaho individual tax returns, or any additional information for taxable years 2010 through 2012, and did not respond to the Commission's hearing rights letter. The Commission, having reviewed the file, hereby issues its decision.

The Bureau received information that the petitioner may have a filing requirement with the state of Idaho. The Bureau researched the Commission's records and could not locate Idaho income tax returns for the petitioner for taxable years 2010 through 2012. The Bureau sent the petitioner a letter asking about his requirement to file Idaho income tax returns, but he did not respond. Based on information available to the Commission and that obtained from the Internal Revenue Service, the Bureau determined the petitioner was domiciled in Idaho under Idaho Code section 63-3013 and, as such, had a tax liability in Idaho for taxable years 2010 through 2012.

The petitioner protested the Bureau's determination stating that for the years in question, he was living and working in the state of Alaska, and therefore not required to file a tax return in Idaho. The Bureau acknowledged the petitioner's appeal and requested he complete a residence/domicile questionnaire to assist them in determining his Idaho filing requirement, which he did. The Bureau reviewed the information contained in the completed questionnaire, but determined the NODD showing petitioner as an Idaho resident was accurate. The Bureau referred the matter for administrative review.

The Commission sent the petitioner a letter giving him two alternative methods for having the NODD redetermined. The petitioner did not respond. Therefore, the Commission decided the matter based upon the information available.

Determining domicile is not always clear or easy, yet the outcome of the decision has far reaching consequences. Often times, the terms "residency" and "domicile" are confused, but Idaho Income Tax Rule 030.02 defines domicile as:

The term domicile means 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. Domicile, once established, is never lost until there is a concurrence of a specific intent to abandon an old domicile, an intent to acquire a specific new domicile, and the actual physical presence in a new domicile.

The key to understanding domicile based upon this rule is the intent of the individual. Determining the intent of an individual is not a bright-line test; rather, the determination is made using the totality of the evidence before the Commission and making a determination based upon the available information. This decision hinges upon where the petitioner was domiciled in taxable years 2010 through 2012. The long-established rule is that "[w]here a change of domicile is alleged, the burden of proof rests upon the party making the allegation." Desmare v.

United States, 93 U.S. 605, 610, (1876), Pratt v. State Tax Commission, 128 Idaho 883, 884, 920 P. 2d 400, 401 (1996). The burden rests with petitioner to prove that he abandoned his domicile in Idaho and established a domicile in Alaska, and until that burden is met, Idaho continues to be his domicile.

The Bureau relied upon numerous factors in the determination that Idaho domicile had not been abandoned; none of which by itself is dispositive of domicile, but rather as a whole, the factors were used to determine that the petitioner had not established Alaska as his new domicile.

The petitioner filed a resident Idaho income tax return in taxable years 2005, 2006, 2008 and 2009, then a resident return again in taxable year 2013. The petitioner did not file Idaho income tax returns for taxable years 2010 through 2012. However, the petitioner continued to take advantage of Idaho privileges during those years.

The petitioner renewed his Idaho driver's license in 2011; obtained Idaho resident fish and game licenses on June 26, 2010, and March 10, 2012. Idaho Fish and Game requires that residency be proved before a license is issued. The petitioner's license indicates that he has been a resident since 1970, and his Idaho driver's license was used to substantiate that. On the actual license is the following statement, "I certify that I have been domiciled continuously with Idaho no less than six months immediately prior to applying for this license/tag."

The petitioner also registered numerous motor vehicles in Idaho between the years 2010 and 2012. Information available to the Commission shows the petitioner registered a vehicle on January 13, 2010, May 23, 2012, and October 24, 2012.

The petitioner bears the burden of showing that he abandoned his domicile in Idaho and established a new domicile in Alaska. Determining domicile is a mixed question of fact and law. Conduct is often more persuasive than expressions since that reflects the intent of the

individuals. The United States Tax Court has determined that “where there is any doubt as to one’s domicile, the domicile of origin prevails.” Webb v. C.I.R., 72 T.C.M. (CCH) 1522 (T.C. 1996).

Individuals frequently move across state lines; abandoning an old domicile and establishing a new one. The burden of proving intent to abandon an old and establish a new domicile is not very great, and there are consequences, sometimes significant tax consequences, when individuals move. Taxpayers give up the benefits of being domiciled in their old state and take advantage of the benefits of the new state; they cannot take advantage of benefits from both states. In this case, the petitioner claims to have relocated to Alaska in 2010 and then returned to Idaho in 2013. However, other than wages from Alaska, there is little to identify the petitioner with the state of Alaska. The petitioner continued to register vehicles in Idaho, purchase Idaho resident fish and game licenses, and renew Idaho driver’s licenses during this time. He obviously considered himself an Idaho resident when performing these acts.

From the information available, the Commission does not see that the petitioner made a permanent and indefinite move to Alaska from Idaho. There is nothing in the record that shows a permanent home in Alaska, 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). Therefore, the Commission finds the petitioner was domiciled in Idaho during the years 2010 through 2012 and, as such, was required to file Idaho income tax returns for those years.

THEREFORE, the NODD dated October 1, 2015, is hereby MODIFIED and as modified, is APPROVED and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2010	\$1,189	\$297	\$248	\$1,734
2011	1,557	389	262	2,208
2012	786	197	103	<u>1,086</u>
			TOTAL DUE	<u>\$5,028</u>

Interest is calculated to October 3, 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.
