

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 0-890-482-688
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

This case arises from a timely protest of a Notice of Deficiency Determination (Notice) issued by the Tax Discovery Bureau (Bureau) to [Redacted] (Petitioner) for taxable year 2010, 2013, and 2014, in the amount of \$22,954. The Idaho State Tax Commission (Commission) after a thorough review of the matter upholds the Notice issued to Petitioner.

THEREFORE, the Notice dated October 13, 2016, and directed to Petitioner, is AFFIRMED.

IT IS ORDERED that Petitioner pay the following tax, penalty, and interest.

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2010	\$4,837	\$1,209	\$1,282	\$7,328
2013	5,903	1,476	915	8,294
2014	5,965	1,491	686	8,142
			TOTAL DUE	<u>\$23,764</u>

Interest computed through May 30, 2018.

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

The Commission upheld the decision made by the Bureau for the reasons discussed below.

## BACKGROUND

During a review of taxpayer data, the Bureau found Petitioner did not file his Idaho individual income tax returns for taxable years 2010, 2013, and 2014. The Bureau determined Petitioner had income in the identified years in excess of Idaho's filing requirement<sup>1</sup> as stated in Idaho Code. The Bureau sent Petitioner a Forgot to File Questionnaire and a Residence/Domicile Questionnaire. The Bureau reviewed Petitioner's responses, and using Commission and third party information determined Petitioner was required to file Idaho individual income tax returns for taxable years 2010, 2013, and 2014. The Bureau prepared returns for Petitioner and sent him a Notice. Petitioner protested the Notice claiming he did not consider himself a resident of Idaho. The Bureau acknowledged Petitioner's protest and transferred the matter for administrative review.

The Commission reviewed the matter and sent Petitioner a letter giving him two alternative methods available for redetermining a protested Notice. Petitioner did not request a hearing nor did he provide any new information. The Commission decided the matter based upon the information available.

## LAW AND ANALYSIS

Internal Revenue Code (I.R.C.) § 6012 states in part that every individual having gross income that equals or exceeds the exemption amount in a taxable year shall file an

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<sup>1</sup> **Idaho Code § 63-3030. Persons required to make returns of income.** (a) Returns with respect to taxes measured by income in this chapter shall be made by the following: (1) Every resident individual required to file a federal return under section 6012(a)(1) of the Internal Revenue Code. (2) Any nonresident individual having for the current taxable year a gross income from Idaho sources in excess of two thousand five hundred dollars (\$2,500), or any part-year resident individual having for the current taxable year a gross income from all sources while domiciled in or residing in Idaho, and from Idaho sources while not domiciled in and not residing in Idaho, which in total are in excess of two thousand five hundred dollars (\$2,500);

income tax return. Idaho Code provides the income thresholds<sup>2</sup> for filing Idaho individual income tax returns and states that every resident individual that is required to file a federal return under I.R.C. § 6012(a)(1) is required to file an Idaho individual income tax return. The information gathered by the Bureau clearly shows Petitioner received income in taxable years 2010, 2013, and 2014, that exceeded the threshold amount for filing Idaho individual income tax returns.

Domicile<sup>3</sup> forms the constitutional basis for the imposition of state income taxes on an individual. See *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). The question whether a domicile has been changed is one of fact rather than of law. See *Newcomb v. Dixon*, 192 N.Y. 238 (1908). 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. See *State of Texas v. State of Florida*, 306 U.S. 398, 427, 59 S. Ct. 563, 577 (1939).

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<sup>2</sup> See Footnote 1.

<sup>3</sup> IDAPA 35.01.01.030.02 says in part: **Domicile**. 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. a. 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. b. All individuals who have been domiciled in Idaho for the entire taxable year are residents for Idaho income tax purposes, even though they have actually resided outside Idaho during all or part of the taxable year, except as provided in Section 63-3013(2), Idaho Code.

Whether an individual has the specific intent to create a new domicile is evidenced 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. See *Allen v. Greyhound Lines*, 583 P.12d 613, 614 (Utah 1978). The motives triggering 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 law, or from 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 determining an individual's domicile, the Commission looks at five primary factors. The primary factors are: (a) the individual's primary home, (b) where the individual is actively involved in business, (c) where the individual spends his time, (d) where the individual keeps his near and dear items, and (e) the individual's family connections.

In this case, Petitioner's home for many years has been Idaho. Other than staying in employer provided quarters, Petitioner has not shown that he considered Wyoming, North Dakota, or Montana to be his permanent home 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). For all practical purposes, the appearance is that Petitioner was temporarily residing outside of Idaho for employment purposes. Petitioner did not present anything to show that he went to Wyoming, North Dakota, or Montana to make it his permanent home and based only on the following: (a) during Petitioner's time

in Wyoming, North Dakota, and Montana, he had numerous transactions with Idaho Transportation Department maintaining his Idaho driver's license; (b) Petitioner continued to register his vehicles in Idaho; (c) Petitioner continued to purchase Idaho Fish and Game licenses claiming to be a resident of Idaho; (d) Petitioner continued to use an Idaho address on a number of his informational returns; and (e) Petitioner claimed the Idaho's homeowner's exemption on his [Redacted] Idaho home for taxable years 2013 and 2014 signifying he is domiciled in Idaho. It is apparent that Petitioner was in Wyoming, North Dakota, and Montana for employment by his return to Idaho at the termination his employment.

### **CONCLUSION**

On appeal, a deficiency determination issued by the Commission "is presumed to be correct, and the burden is on the taxpayer to show that the Commission's decision is erroneous." See *Parker v. Idaho State Tax Comm'n*, 148 Idaho 842, 845, 230 P.3d 734, 737 (2010) (citing *Albertson's Inc. v. State Dep't of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984)). The Commission requires Petitioner to provide adequate evidence to establish that the amount asserted in the Notice is incorrect. Here, Petitioner did not provide adequate evidence.

Petitioner had income during taxable years 2010, 2013, and 2014, in excess of the filing requirement of Idaho Code. Petitioner was domiciled in Idaho and required to file Idaho individual income tax returns. The Idaho individual income tax returns the Bureau prepared for Petitioner included all of Petitioner's known income and allowable deductions.

The Bureau added interest and penalty to Petitioner's income tax liability. The Commission reviewed those additions and found them appropriate and in accordance with Idaho Code §§ 63-3045 and 63-3046.

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2018.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

## CERTIFICATE OF SERVICE

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2018,  
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.

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