

both Commission and third-party information determined Petitioner had income in the identified years in excess of Idaho's filing requirement¹ as stated in Idaho Code. The Bureau sent Petitioner a Forgot to File Questionnaire. The Bureau with no response from Petitioner prepared returns for taxable years 2012 through 2015 and sent Petitioner a Notice. The Bureau received an unperfected protest from Petitioner, which the Bureau did not accept. The Bureau sent Petitioner a Residence/Domicile Questionnaire and a 28-Day letter requesting him to perfect his protest. Petitioner responded to the 28-Day letter perfecting his protest but did not provide any documentation that proved he had abandoned his Idaho domicile and had established a new domicile in another state. The Bureau upon receipt of the perfected protest from Petitioner transferred the matter for administrative review.

The Commission reviewed the matter and sent Petitioner a letter giving him two alternative methods for redetermining a protested Notice. A telephonic hearing was held, but no new information was provided. 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 income tax return. Idaho Code provides the income thresholds² for filing Idaho individual

¹ **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);

² See Footnote 1.

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 show Petitioner received income in taxable years 2012 through 2015 that exceeded the threshold amount for filing Idaho individual income tax returns.

Domicile³ 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).

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. See *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). 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

³ 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.

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).

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, (e) and the individual's family connections.

The Bureau position is that Petitioner's home continued to be Idaho for the taxable years in question. Petitioner has not provided any evidence to substantiate his claim of residing in Wyoming or any state outside of Idaho 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).

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 2012 through 2015 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 _____ 2019.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2019, 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.

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2019,
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.
