

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
[Redacted])	DOCKET NO. 0-707-241-984
)	
Petitioner.)	DECISION
_____)	

The Idaho State Tax Commission (Commission) reviewed your case and this is our final decision. We modify the Notice of Deficiency Determination (Notice) dated December 1, 2017. This means **you need to pay \$31,147** of tax, penalty, and interest for taxable years 2012 through 2015. The Commission now DEMANDS immediate payment of this amount.

Based on information in Commission records, the Tax Discovery Bureau (Bureau) had reason to believe [Redacted] (Petitioner) may be required to file Idaho resident individual income tax returns for taxable years 2012 through 2015. The Bureau sent Petitioner a letter asking him about his requirement to file Idaho resident individual income tax returns. Petitioner did not respond. Therefore, the Bureau prepared resident returns on his behalf and sent him a Notice.

In response to the Notice, Petitioner, through his appointed representative, sent a prompt protest disagreeing with the Bureau’s determination that he was required to file Idaho resident individual income tax returns for the previously mentioned years. Petitioner’s protest letter included copies of his W-2 statements which according to his preparer, “clearly showed the wages were earned in North Dakota and not Idaho. [Redacted] works in the [Redacted] in North Dakota and lives in a 5th wheel without a current address.”

The Bureau acknowledged Petitioner’s protest and requested he complete a residency and domicile questionnaire to help determine his residency status. Petitioner completed the questionnaire, giving the following information:

- His principal residence during 2012-2016 was in company supplied housing in [Redacted] North Dakota
- He renewed his Idaho driver's license in 2012
- He registered vehicles in Idaho during 2012-2015
- He stored photographs, sports equipment, firearms, etc. at his parents' home in Idaho
- He was required to and did file income tax returns in North Dakota for tax years 2011-2016
- He spent two weeks of November in Idaho, for non-work purposes each year between 2012 and 2015

The Bureau reviewed Petitioner's responses, but the information provided did not change their determination that Petitioner was an Idaho resident required to file Idaho resident income tax returns. Petitioner did not submit the missing returns; therefore, the Bureau referred the matter for administrative review.

The Commission sent Petitioner a letter discussing the methods available for redetermining the Notice. Petitioner did contact the Commission for an explanation of the Notice, but did not request an informal hearing, and to date has not filed the missing returns. The Commission reviewed all information and now decides this matter.

Petitioner's past filing history with the State of Idaho shows he began filing resident income tax returns as early as 2001, clearly establishing an Idaho domicile. 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." See *Desmare v. United States*, 93 U.S. 605, 610, (1876), *Pratt v. State Tax Comm'n*, 128 Idaho 883, 884, 920 P.2d 400, 401 (1996). In the present case, the burden rests with

Petitioner to prove that he abandoned his domicile in Idaho and established a domicile in another state; until that burden is met, Idaho continues to be his domicile.

The Commission relied upon many factors in the determination that Petitioner's 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 decide that Petitioner had not established any other state as his new domicile. These factors are as follows:

- Petitioner renewed his Idaho driver's license in 2012
- Petitioner registered vehicles in Idaho in 2014 and 2015
- Petitioner bought Idaho resident Fish and Game licenses in 2012, 2013 and 2014, each time reporting Idaho residency since 1976
- Petitioner is a registered voter in [Redacted] Idaho

Individuals often 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 the present case, other than wages, there is little to identify Petitioner with the state of North Dakota. He has not given sufficient documentation to show he has acquired North Dakota as his new domicile. Petitioner is an Idaho resident according to Idaho Code § 63-3013 and as such, is required to file an Idaho income tax return. *See* Idaho Code § 63-3030(a)(1).

However, Petitioner did work in North Dakota and did file returns there. Idaho Code § 63-3029 provides for a credit for income tax paid to another state or territory. Petitioner's appointed representative sent copies of Petitioner's North Dakota tax returns for taxable years 2013 and 2015

and enough information for the Commission to determine the amount of tax Petitioner paid to North Dakota in taxable year 2014. The Commission requested and received a copy of Petitioner's 2012 North Dakota tax return through an exchange agreement between the two states. Therefore, the Commission modifies the Notice to allow Petitioner a credit for taxes paid to North Dakota.

In Idaho, it is well established that a Commission Notice is presumed to be correct, and the taxpayer bears the burden of showing the deficiency is erroneous. *See Parsons v. Idaho State Tax Commission*, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986); *Albertson's, Inc. v. State, Dept. of Revenue*, 106 Idaho 810, 683 P.2d 846, (1984). Petitioner has not met his burden. Therefore, the Commission upholds the Bureau's calculation of Petitioner's Idaho income tax liability for taxable years 2012 through 2015, after modification.

The Bureau added interest and penalty to Petitioner's tax deficiency. The Commission reviewed the additions and found them proper per Idaho Code §§ 63-3045 and 63-3046, respectively.

Therefore, the Notice dated December 1, 2017, directed to [Redacted] is hereby MODIFIED and as modified, is APPROVED and MADE FINAL.

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>
2012	\$4,322	\$1,081	\$1,036	\$6,439
2013	5,631	1,408	1,165	8,204
2014	5,751	1,438	960	8,149
2015	6,068	1,517	770	<u>8,355</u>
			TOTAL DUE	<u>\$31,147</u>

Interest is computed to July 26, 2019.

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.
