



homeowner's property tax exemption. Additionally, Petitioner continued to use her Idaho address on several tax and financial documents.

Petitioner did not file Idaho individual income tax returns for tax years 2008 through 2016. The Bureau conducted a residency audit and determined Petitioner was a resident of Idaho and required to file Idaho individual income tax returns. In making the determination, the Bureau noted: (1) Petitioner did not provide clear and convincing evidence proving a change of domicile to Wyoming. (2) Petitioner maintained a permanent place of abode in Idaho. (3) Petitioner returned to Idaho frequently to be with family and maintained substantial ties to Idaho. (4) Petitioner appeared to be in Wyoming only because of work and was in Idaho during weekends, holidays, and two months during the summers.

For tax years 2015 and 2016, Petitioner did not dispute that she was an Idaho resident and required to file Idaho individual income tax returns. For tax years 2008 through 2013, Petitioner filed an appeal asserting she was a resident of Wyoming and not required to file Idaho tax returns.

### **DISCUSSION**

Under Idaho Code section 63-3013 the term domicile means the place where an individual has his or her true, fixed, permanent home and principal establishment, and to which place they have the intention of returning whenever they are absent. Although the words "residence" and "domicile" are sometimes used interchangeably, these words do have distinct meanings. A residence is simply a place of abode or dwelling where a person may reside from time to time. In today's day and age, it is not at all uncommon for an individual to have two or more residences at one time. Domicile, on the other hand, connotes something more; an intention or attitude towards a particular place as being the center of the individual's domestic, social and civil affairs. It is that one place where an individual makes his or her "home" for the indefinite future.

An individual can have several residences or dwelling places, but they 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.

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.

In determining where an individual is domiciled, the fact finder will generally look at all the surrounding facts and circumstances. No one fact or circumstance is, by itself, determinative. All the relevant facts must be analyzed to 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.

The burden of proving a change of domicile is upon the party asserting the change. The evidence to effect a change of domicile must be "clear and convincing" as noted in *Bodfish v. Gallman*, 50 AD2d 457. Thus, a taxpayer who has been historically domiciled in Idaho who is claiming to have changed their domicile must be able to support their intentions with unequivocal acts. Similarly, the Tax Commission bears the burden of proof to show that an individual who was previously a non-domiciliary of Idaho changed their domicile to Idaho.

In this case, Petitioner was historically domiciled in Idaho and is claiming to have changed her domicile to Wyoming. Therefore, Petitioner has the burden of proving a change of domicile.

The Tax Commission and the courts look at five factors as primary indicators of domicile. The five primary factors are: (1) home, (2) active business involvement, (3) time, (4) location of "near and dear" items, and (5) family connections. Other facts and circumstances may also be considered.

The "home" factor requires a comparison of the size, value, and nature of use of the various residences maintained by the taxpayer in order to determine which residence is considered the taxpayer's primary home. In addition to the size, value and nature of use, another significant consideration is whether the taxpayer has claimed their Idaho home as their "primary dwelling" for purposes of the Idaho homeowner's property tax exemption. This is because in order to qualify for this exemption under Idaho

Code section 63-602G, Idaho law requires that the residence be “owner occupied” and used as the “primary dwelling place” of the owner.

In this case, based on the information available, Petitioner’s Idaho property consisted of 26 acres and two dwelling places. Petitioner continued to claim her Idaho home as her primary dwelling for purposes of the Idaho homeowner’s property tax exemption. In contrast, Petitioner rented two different apartments in Wyoming. The home factor reflects an Idaho domicile.

In her appeal, Petitioner stated she rented her Idaho home to her son. The Bureau reviewed Petitioner’s federal individual income tax return and determined Petitioner did not report any rental income on her returns. During the informal hearing, Petitioner stated that her Idaho property had two dwellings on it. Her son lived in one of the dwellings and she resided in the other dwelling while visiting Idaho. Since Petitioner owned a home in Idaho and had the right to occupy the property, Petitioner is treated as having a home in Idaho.

The business factor seeks to evaluate the extent of the taxpayer’s employment or business involvement at or near their Idaho home versus their employment or business involvement at or near their non-Idaho home.

For tax years 2006 through 2013, Petitioner worked for the [REDACTED] in Wyoming, suggesting a Wyoming domicile. However, for tax years 2006 through 2008, Petitioner returned to Idaho and worked in Idaho during the summer months, supporting an Idaho domicile. When Petitioner’s employment with the [REDACTED] ended, she returned to Idaho.

Another one of the primary factors is a quantitative analysis of where the individual spends his or her time during the tax year. If it can be established that the taxpayer spent more time at one particular home than at their other homes, the home where they spent the most time is likely to be the primary home and domicile.

In this case, Petitioner spent significantly more time in Wyoming. However, according to Petitioner, she returned to Idaho a couple of times per month (weather permitting), during holidays, and during the summer vacations to be with family. Thus, it appears Petitioner spent more time in Wyoming

because she had to for work, but spent weekends, holidays, and summer vacations in Idaho because she wanted to. In this situation Idaho would likely be the place which Petitioner intended to be her permanent home even though more time was spent in Wyoming.

The next factor is the location of items which the individual holds "near and dear" to his or her heart, or those items which have significant sentimental value: such as, family heirlooms, works of art, collections of books, stamps and coins, and those personal items which enhance the quality of lifestyle. All else being equal, one would expect to keep such highly sentimental tangible objects at the place they most customary associate as their true home and principal establishment.

Based on the information available, Petitioner kept some of her near and dear items in her Wyoming apartment and some in her Idaho home. The fact that Petitioner moved some of her near and dear items to Wyoming supports a change of domicile. However, since some items remained in Idaho, it shows a continued emotional tie to Idaho and supports an Idaho domicile.

The final primary factor is family connection. All else being equal, one would expect to make his or her domicile at the place where they have the strongest family connection. The location where an individual's spouse and minor children consider to be their primary home is a particularly relevant indicator of domicile. To the extent it can be shown that a taxpayer maintains his or her family and domestic ties to one particular residence, that residence is likely to be their primary home and domicile.

According to Petitioner, she moved to Wyoming with her spouse, which supports a change of domicile to Wyoming. However, shortly after moving to Wyoming they separated and divorced.

During the informal hearing the Tax Commission asked Petitioner why she didn't stay in Wyoming during the weekends, holidays, and summer vacations. Petitioner responded that she returned home to Idaho to be with her family and there was no reason to stay in Wyoming. The fact that Petitioner frequently returned to Idaho shows Petitioner had stronger family ties in Idaho than Wyoming. The family factor supports an Idaho domicile.

Other factors that the Tax Commission took into consideration is Petitioner did not take several steps to show a change of domicile to Wyoming, such as obtaining a Wyoming driver's license and

registering vehicles in Wyoming. During the informal hearing, Petitioner contended she did have a Wyoming driver's license and registered a vehicle in Wyoming. Petitioner was asked to provide a copy of her driving records from the Wyoming Department of Transportation. Petitioner never provided the requested information. The presumption is that the information not provided is prejudicial to Petitioner's position.

### **CONCLUSION**

On appeal, a deficiency determination issued by the Tax Commission "is presumed to be correct, and the burden is on the taxpayer to show that the Commission's decision is erroneous." *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 Tax Commission requires the Petitioner to provide clear and convincing evidence that she changed her domicile from Idaho to Wyoming. Here, the Petitioner did not provide adequate evidence.

From the information available, the Tax Commission does not see that Petitioner made a permanent and indefinite move from Idaho to Wyoming. There is nothing in the record that shows a permanent home in Wyoming, 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).

The Bureau added interest and penalty to the income tax deficiency. The Tax Commission reviewed those additions, found both to be appropriate per Idaho Code sections 63-3045 and 63-3046, and has updated interest accordingly. Interest is calculated through May 11, 2020 and will continue to accrue at the rate set forth in Idaho Code section 63-3045(6) until paid.

THEREFORE, the Notice of Deficiency Determination dated November 15, 2018, is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2008	\$3,113	\$778	\$1,401	\$5,292
2009	\$3,423	\$856	\$1,370	\$5,649
2010 <sup>1</sup>	\$3,781	\$946	\$1,335	\$6,062
2011	\$4,068	\$1,017	\$1,273	\$6,358
2012	\$3,683	\$921	\$1,016	\$5,620
2013	\$4,036	\$1,009	\$1,244	\$6,289
2014	\$6,127	\$1,532	\$1,190	\$8,849
2015	\$295	\$74	\$48	\$417
2016	\$377	\$94	\$47	\$518
				<u>\$45,054</u>

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

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2020.

IDAHO STATE TAX COMMISSION

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<sup>1</sup> The Bureau's audit calculations included \$216 in wages from Shoot the Moon of Idaho, LLC. A transposed social security number on the Form W-2 resulted in the wages being incorrectly reported to Petitioner. Taxes, penalty, and interest were reduced accordingly.



**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2020,  
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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