

received the completed questionnaire and a response form indicating Petitioners believed they filed correctly for tax years 2021, 2022, and 2023.

On March 5, 2025, after reviewing Petitioners' response, Audit issued the Notice. In the Notice, Audit presented an analysis of five primary factors and a few secondary factors and determined that both spouses were domiciled in Idaho and therefore residents for tax purposes. Audit increased Petitioners' Idaho taxable income based on the changed residency status.

On May 1, Petitioners' attorney-in-fact (AIF) sent a letter protesting Audit's determination that Petitioner-husband was domiciled in Idaho. AIF stated that Tennessee was his true domicile during the years in the Notice. Audit sent a letter acknowledging the protest and requesting additional documentation to support the claim that Petitioner-husband was domiciled in Tennessee. AIF provided additional documents on May 13. Audit sent emails asking for some additional information, which was provided.

Audit did not change the determination in the Notice after receiving the protest. Therefore, the matter was referred to the Tax Commission's Appeals unit (Appeals) to continue the redetermination process. On July 11, 2025, Appeals sent Petitioners and AIF letters outlining the options available for redetermining a protested Notice. AIF requested an informal hearing, which was held on September 3, 2025. Petitioner-husband and AIF attended the hearing, but Petitioner-wife did not. During the hearing, Petitioner-husband provided historical background for his and his wife's relationship and living situation. Appeals did not request any additional documentation. The Tax Commission hereby renders its decision based on an analysis of the information available and applicable tax laws.

Law & Analysis

The primary issue at hand in this case is Audit's reclassification of Petitioner-husband as a resident for 2021, 2022, and 2023. All of the income adjustments are a direct result of that change. There is no dispute over Petitioner-wife's residency status.

Idaho Code section 63-3013 begins, "The term 'resident,' for income tax purposes, means any individual who: (a) is domiciled in the state of Idaho for the entire taxable year; or (b) maintains a place of abode in this state for the entire taxable year and spends in the aggregate more than two hundred seventy (270) days of the taxable year in this state." Idaho Code section 63-3014 states that a part-year resident is an individual who either changes domicile to or from Idaho or has resided in Idaho for more than one day.¹ A nonresident is an individual who is not a resident or a part-year resident.²

The term domicile refers to a person's true, fixed, permanent home, and the place to which that person has the intent to return whenever away.³ It is the place one considers "home" for the indefinite future.⁴ Domicile implies an intention or attitude toward a place as being the center of one's domestic, social, and civil affairs. Every person has a domicile, and once established it is never lost until there is a concurrence of these three things: 1) an intent to abandon the current domicile; 2) an intent to establish a specific new domicile; and 3) physical presence in the new domicile.⁵ A change of domicile is a question of fact rather than one of law, and the person alleging

¹ "An individual shall be deemed to reside within Idaho for any calendar day in which that individual has a place of abode in this state and is present in this state for more than a temporary or transitory purpose." *Idaho Code section 63-3013B*

² *Idaho Code section 63-3014*

³ *Idaho Income Tax Administrative Rule 030.02*

⁴ *Allen v. Greyhound Lines*, 583 P.2nd 613, 614 (Utah 1978)

⁵ *Idaho Income Tax Administrative Rule 030.02.a*

a change bears the burden to prove that the change occurred.⁶ Domicile is not lost simply because a person is away for an extended period when the intention to return remains.⁷ A person may have multiple residences at the same time but legally has only one domicile at any time. In *Matter of Newcomb*, the judge wrote,

In order to acquire a new domicile there must be a union of residence and intention. Residence without intention, or intention without residence is of no avail. Mere change of residence although continued for a long time does not effect a change of domicile, while a change of residence even for a short time with the intention in good faith to change the domicile, has that effect . . . Residence is necessary, for there can be no domicile without it, and important as evidence, for it bears strongly upon intention, but not controlling, for unless combined with intention it cannot effect a change of domicile.

In other words, both intention and presence are required elements of a domicile change, and the intention and the presence must coincide. Neither intention without presence nor presence without intention can create a change of domicile.

Petitioners filed their 2021 and 2023 Idaho returns using Form 43, which is prescribed for use when at least one spouse is not a resident of Idaho (i.e., one spouse is a part-year resident or nonresident, or both are). Petitioners originally filed their 2022 Idaho return using Form 40, which is used when both spouses are Idaho residents. They later amended this return using Form 43. In the completed questionnaire Petitioners provided to Audit, Petitioner-husband wrote, “I switched accountants in 2022. My accountant made an error and that is why we filed the amended return. I should have never paid [Idaho] taxes on my income because I am not a resident.” Audit adjusted the amended return for 2022 (not the original return) in the Notice, essentially “reverting” the

⁶ *Matter of Newcomb*, 192 N.Y. 238 (1908)

⁷ *Wilson v. Pickens*, 444 F.Supp. 53 (W.D. Okl. 1977)

information in the amended return to that in the original return. In this decision, when referring to Petitioners' 2022 return, it is the amended return being referenced unless otherwise specified.

For tax years 2021, 2022, and 2023, the returns indicated that both spouses were part-year residents.⁸ Petitioner-husband was reported as having spent zero full months in Idaho each year. For tax year 2021, Petitioner-wife was reported as having spent eight months in Idaho. For tax years 2022 and 2023, she was reported as having spent twelve months in Idaho. The "current state" listed for Petitioner-husband was Tennessee, while Petitioner-wife's was Idaho.

In the Notice's Explanation of Adjustments, Audit wrote, "We have determined that you were domiciled in Idaho throughout 2021, 2022 and 2023. . . Your residency has been changed to an Idaho part-year (2021) and Idaho resident (2022 and 2023)." Audit also wrote, "By filing the 2022 amended Idaho return, you changed [REDACTED] from a resident of Idaho to a nonresident. The burden of proof is yours to provide sufficient evidence that [REDACTED] has changed his residency and domicile from Idaho to another state." Based on information provided to Audit and the informal hearing with Petitioner-husband, the intent was that Petitioner-husband should have been marked as a nonresident for all three years and Petitioner-wife as a part-year resident for 2021 and as a resident for 2022 and 2023. They were not trying to indicate that either or both moved into or out of Idaho except for Petitioner-wife's move to Idaho during 2021.

Domicile Analysis

To support the conclusion that Petitioner-husband was an Idaho resident,⁹ Audit presented an analysis of primary factors (home; active business involvement, time, near & dear items, family

⁸ The options for residency status on Form 43 are: resident; Idaho resident on active military duty; nonresident; part-year resident; and military nonresident.

⁹ The focus here is on Petitioner-husband's domicile, because there is no dispute over Petitioner-wife's status as a part-year resident for 2021 and a resident for 2022 and 2023.

connections) along with other supporting factors. In reviewing the home factor, Audit compared the sizes and values of the Idaho rental residence, the newly constructed Boise house, and Petitioner-husband's mother's house in [REDACTED] Tennessee. Audit also compared the nature of the use of the newly constructed Boise house and Petitioner-husband's mother's house. Audit stated that the Boise house was the main home for the month of September 2021, after which it was used by Petitioner-wife, and Petitioner-husband stayed there after his return and on his various visits in his time off. Audit pointed out that Petitioners signed the application for Idaho's Homeowner's Exemption, declaring that they were residents of Idaho and occupy the house as their primary dwelling place. In addition, Audit pointed out that Petitioners filed federal and Idaho tax returns using an Idaho address. For each item reviewed, Audit concluded, "Clearly, the more permanent residence is the one located in Idaho." The Tax Commission disagrees with Audit's statement that the conclusion is clear that the residence in Idaho is the more permanent one. What is clear is that the Idaho location is larger and more valuable. However, the nature of Petitioner-husband's use of each residence favors Tennessee.

Audit's conclusion regarding the active business involvement, time, and near & dear items factors were neutral, favoring neither Idaho nor Tennessee as Petitioner-husband's domicile. However, Audit pointed out that Petitioner-husband's work was clearly located outside Idaho, and that his LLC was based in Tennessee. Concerning the time factor, Audit wrote that Petitioner-husband spends substantial time in Tennessee for work and caring for family, but that he travels regularly to Idaho. Regarding the near & dear items factor, Audit indicated that Petitioner-husband had provided documentation showing that his significant items were in Tennessee. Based on the information available, the Tax Commission disagrees with Audit's conclusion and determined that these factors favor Tennessee as Petitioner-husband's domicile.

According to Audit’s analysis, the final primary factor, family connections, favored Idaho as Petitioner-husband’s domicile because Petitioner-wife was living in Idaho and the Tennessee home belonged to his mother. During the informal hearing, Petitioner-husband explained that he and Petitioner-wife often lived in separate states and provided more information about their relationship. Petitioners have no children. Based on this information, the Tax Commission concluded that the family connections factor is neutral, favoring neither Tennessee nor Idaho as Petitioner-husband’s domicile.

Supporting factors Audit cited as favoring Idaho as Petitioner-husband’s domicile include the address on income tax returns and financial documents, an Idaho driver’s license and vehicle registrations, voter registrations, and a court case in which both spouses claim to be citizens and residents of Idaho. Audit did not include any supporting factors that did not favor Idaho as Petitioners’ domicile. The Tax Commission is disregarding the voter registration and court case as these events happened in 2024 and do not speak to Petitioner-husband’s intentions during tax years 2021, 2022, and 2023. Petitioners filing tax returns using an Idaho address is a matter of convenience rather than a fact pointing to domicile. Petitioner-husband did not claim Idaho as his tax home, as Audit asserted in the Explanation of Adjustments, as he did not claim any “away from home” business expenses on his returns.

Informal Hearing

According to Petitioner-husband’s testimony during the informal hearing, he and Petitioner-wife were living in Seattle, Washington, in 2018 when he accepted a job with a new company based in Washington, D.C. He was able to work remotely from Seattle, so he remained in Washington state. One of his parents became ill, so he moved from Seattle to Tennessee in October 2019 to help them while still working remotely. Petitioner-husband stated he has been

living there in his mother's home ever since. Petitioner-wife accepted a position with a new company in early 2021, so she relocated from Seattle to Boise in May. Petitioners sold the home they owned in Seattle and purchased property in Boise. They began construction of a new home while Petitioner-wife rented. She rented until construction was completed in September, then moved into the new home.

Petitioner-husband stated that he has never lived or worked in Boise; he kept no personal items – including clothing – in the Boise house. Petitioners have no children. They are married, but the relationship is not what most would typically have in a marriage. Petitioners have always owned a home wherever Petitioner-wife was located, because Petitioner-husband wanted her to have a nice place to live, and it was common for them to live in different states.

Petitioner-husband admits that he obtained an Idaho driver's license but stated it was a matter of convenience instead of an action to establish residency. His Washington license was expiring, and he needed to have a license in order to drive. He also wanted to register a vehicle in Idaho so he would have something to drive when he came to visit, and the vehicle would be available for friends and family if they were using the house when Petitioners were away. His work provided him with a vehicle in Tennessee.

An allegation of a change of domicile must be supported by clear and convincing evidence.¹⁰ This level of evidentiary support falls between “beyond a reasonable doubt” and “preponderance of the evidence.” “Beyond a reasonable doubt” is the level of proof required for a conviction in a criminal case.¹¹ It means that there can be no other reasonable explanation based on the evidence given during a trial or that nearly 100% of the evidence points to a single

¹⁰ *Matter of Newcomb*, 192 N.Y. 238 (1908)

¹¹ From https://www.law.cornell.edu/wex/beyond_a_reasonable_doubt.

conclusion. “Preponderance of the evidence” is the standard used in many civil trials and is met when the party bearing the burden of proof convinces the fact finder that the claim is more than 50% likely to be true.¹² The “clear and convincing evidence” standard does not carry with it a specific numerical value. Instead, it is more nebulous. The Supreme Court determined in *Colorado v. New Mexico*, 467 U.S. 310 (1984), that “clear and convincing” means the evidence is highly and substantially more likely to be true than untrue.¹³ In the referenced case, the standard would be met “only if the material [the party bearing the burden of proof] offered instantly tilted the evidentiary scales in the affirmative when weighed against the evidence [the other party] offered in opposition.”

In this case, the evidence that Petitioner-husband established Idaho as his domicile is not clear and convincing. Based on the information and verbal testimony he provided, Petitioner-husband would spend time off work with Petitioner-wife in Idaho or in some “neutral” location. When Petitioner-husband was away from his normal work location on a temporary assignment, he would return to Tennessee, not Idaho. Therefore, in contrast to Audit’s conclusion, the Tax Commission determined that Petitioner-husband was not domiciled in Idaho during 2021, 2022, and 2023, although Petitioner-wife was.

Conclusion

Petitioner-husband’s presence in Idaho did not coincide with an intent to abandon his current domicile and intent to establish a new one here.

¹² From https://www.law.cornell.edu/wex/preponderance_of_the_evidence.

¹³ From https://www.law.cornell.edu/wex/clear_and_convincing_evidence.

THEREFORE, the adjustments in the Notice dated March 5, 2025, and directed to [REDACTED] [REDACTED] [REDACTED] [REDACTED] are not warranted. There are no changes to Petitioners' 2021 and 2023 Idaho tax returns, and their amended Idaho tax return for 2022 is accepted as filed.

No DEMAND for payment is made.

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

DATED this _____ day of _____ 2026.

IDAHO STATE TAX COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2026,
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:

Receipt No.

[REDACTED]

[REDACTED]