

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 0-567-550-976
	)	
Petitioner.	)	DECISION
<hr style="width: 45%; margin-left: 0;"/>	)	

(Petitioner) protested the Notice of Deficiency Determination (Notice) dated March 10, 2023. The Tax Commission reviewed the matter and hereby issues its final decision to uphold the Notice.

**Background**

Petitioner filed individual income tax returns for tax years 2019, 2020, and 2021, reporting himself as an Idaho resident all three years and claiming a large “other subtraction” on Form 39R (\$80,410, \$94,312, and \$96,955 respectively). The description provided with the electronically filed returns stated “Wages not earned in Idaho” for the 2019 return and “Other subtraction” for 2020 and 2021. For all three years, the amounts subtracted match wages reported on W-2s issued to Petitioner by \_\_\_\_\_ and \_\_\_\_\_ The Tax Commission’s Audit Division (Audit) reviewed these returns and disallowed the subtractions in the Notice issued March 10, 2023.

Audit received a letter dated May 12, 2023, from a third party who would in July 2023 be named as Petitioner’s appointed representative, \_\_\_\_\_ (Representative). He disagreed with Audit’s determination that the wages are taxable in Idaho. In his protest letter, he wrote:

[T]he taxpayer had no nexus in the State of Idaho other than he owned residential real property. For the years in question, he earned no income while being present in the State of Idaho and he earned no income from any sources that originated in the State of Idaho or that had any nexus unto themselves in the State of Idaho.

Representative went on to discuss the concept of tax home, ending with:

In the current instance of [Petitioner], his tax home would be the merchant ships or the oil rigs where he worked and lived. It is based on this discussion that the taxpayer has taken the position that no income from his employment in the years under review was based in or attributed to or sourced from or allocable to the State of Idaho.

On May 17, 2023, Audit sent Petitioner and \_\_\_\_\_ (who was Petitioner's current representative) letters acknowledging the protest and explaining that the case was being forwarded to the Tax Commission's Appeals unit (Appeals) to continue the redetermination process. On May 26, 2023, Representative provided an additional item of information for consideration. He wrote:

46 U.S. Code section 11108 says that wages due or accruing to a master or seaman on a vessel in the foreign, coastwise, intercoastal, interstate, or noncontiguous trade or an individual employed on a fishing vessel or any fish processing vessel may not be withheld under the laws of a State or a political subdivision of a State.

Appeals sent Petitioner and \_\_\_\_\_ letters explaining the options available for redetermining a protested Notice. Mr. \_\_\_\_\_ sent an email removing himself as Petitioner's representative. Appeals then received notification that Mr. \_\_\_\_\_ had been named Representative. Mr. \_\_\_\_\_ requested a hearing, which he attended via telephone on August 10, 2023. Petitioner did not attend the hearing.

On September 7, 2023, Representative provided additional information which included a timeline of Petitioner's whereabouts during the years under audit. Representative explained that Petitioner was trained as a merchant seaman so his work on ships and oil rigs was not haphazard and that he supplemented his employment by working as a long-range truck driver when not at sea. Representative pointed out that over 90% of Petitioner's wages came from his merchant marine employers.

### **Law & Analysis**

The issue in this case is whether Petitioner's wages earned outside Idaho must be included in Idaho taxable income for tax years 2019, 2020, and 2021. Representative stated that Petitioner

did not earn income while present in Idaho during these years, did not earn any income from Idaho sources, and had no nexus in Idaho other than owning residential property. Representative cited *Commissioner v. Soliman 506 US 168 (1993)* and *46 US Code section 11108* to support his position.

Idaho Code section 63-3002 imposes a tax on residents measured by their Idaho taxable income wherever derived and a tax on nonresidents measured by their Idaho taxable income resulting from activity within or derived from sources within Idaho. This means that Idaho taxes residents on all their income, no matter where they earn it, unless a portion of that income is specifically exempted from Idaho tax by some other law. Nonresidents are taxed only on Idaho-sourced income.

Petitioner filed as a resident for the years under audit. Idaho Code section 63-3013 defines a resident, for income tax purposes, as an individual who: 1) maintains a place of abode in Idaho for the entire tax year and spends more than 270 days in the state; or 2) is domiciled in Idaho for the entire tax year. According to the information available to the Tax Commission, Petitioner owned a home in Idaho, between 2015 and 2023. Petitioner did not declare any rental income or expenses during this period, which indicates that the home was available for him to occupy at any time. The Tax Commission finds that Petitioner maintained an abode in Idaho for the entirety of tax years 2019, 2020, and 2021. The timeline Representative provided shows that Petitioner spent at least 231 days in 2019, 244 days in 2020, and 274 days in 2021 outside Idaho. Clearly, Petitioner did not spend more than 270 days in Idaho during any of the years in question. Therefore, the Tax Commission finds that Petitioner does not meet the first definition of a resident as shown above.

The question of Petitioner’s residency hinges then on his domicile. Domicile is one’s true, fixed, permanent home, and the place to which one has the intent to return whenever he is away.<sup>1</sup> A person may have multiple residences at the same time, but legally he has only one domicile at any time.<sup>1</sup> Once established, domicile is never lost until there is a concurrence of: 1) a specific intent to abandon the current domicile; 2) an intent to establish a specific new domicile; and 3) physical presence in the new domicile.<sup>2</sup> Domicile implies an intention or attitude toward a place as being the center of one’s domestic, social, and civil affairs. It is the place one considers “home” for the indefinite future.<sup>3</sup> A change of domicile is a question of fact rather than law, and the person alleging a change bears the burden to prove that the change occurred.<sup>4</sup> Domicile is not necessarily lost simply because a person is away for an extended period when the intention to return remains.<sup>5</sup>

Determination of one’s domicile depends on an objective analysis of facts. There are five primary factors to examine (home, active business involvement, time, near and dear items, and family connections) and an unlimited number of supporting factors. The question of domicile was raised during Audit’s examination of Petitioner’s returns. Audit requested that Petitioner complete a questionnaire designed to assist in determining his domicile. Audit determined that Petitioner was domiciled in Idaho during 2019, 2020, and 2021. Based on an independent analysis of the facts and circumstances, summarized below, the Tax Commission agrees.

The home factor looks at one’s maintenance and use of an Idaho residence and compares it to the nature and use of a non-Idaho residence. Petitioner stayed in a home which he owned in

Idaho, while he was in Idaho during the years in question. Petitioner had a mortgage

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<sup>1</sup> *Idaho Income Tax Administrative Rule 030.02*

<sup>2</sup> *Idaho Income Tax Administrative Rule 030.02.a*

<sup>3</sup> *Allen v. Greyhound Lines*, 583 P.2<sup>nd</sup> 613, 614 (Utah 1978)

<sup>4</sup> *Newcomb v. Dixon*, 192 N.Y. 238 (1908)

<sup>5</sup> *Wilson v. Pickens*, 444 F.Supp. 53 (W.D. Okl. 1977)

secured by the Idaho property, originated in October 2015. He claimed the homeowner's exemption to reduce the assessed value and subsequent property tax owed on said property, which requires that one must declare that the home is the owner's principal place of residence.<sup>6</sup> Representative stated that Petitioner lived onboard a ship or oil rig when he was working offshore. It is unknown where Petitioner stayed when he was engaged in his long-range trucking, but presumably he would sleep in the cab of whatever truck he was driving. Neither ships, oil rigs, nor trucks constitute a fixed permanent home. The Tax Commission did not receive any information indicating that Petitioner maintained a residence in any other state during tax years 2019, 2020, and 2021. The home factor points toward Idaho being Petitioner's state of domicile.

The active business involvement factor looks mainly at a person's pattern of employment. Petitioner's employment was mostly outside of Idaho. According to the timeline provided by Representative, Petitioner's ship- and oil-rig-based activities were conducted in Washington, Alaska, Louisiana, Florida, Canada, and the Gulf. His trucking activities did include Idaho, but also included 19 other states. According to the response to the questionnaire, Petitioner spent 2 days during 2019, 37 days during 2020, and 18 days during 2021 in Idaho for work purposes. The active business involvement factor points away from Idaho being Petitioner's state of domicile.

The time factor looks at where a person spends time during the year. Petitioner spent more than half of each year working offshore. According to the provided timeline, this encompassed 206 days during 2019, 205 days during 2020, and 237 days during 2021. This does not include the days spent involved in long-distance trucking, which also took Petitioner away from Idaho. The same timeline indicates Petitioner spent 134 days during 2019, 122 days during 2020, and 91 days

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<sup>6</sup> Idaho Code section 63-602G(2)

during 2021 in Idaho for non-work purposes. Clearly, Petitioner spent more time away from Idaho than in Idaho. This points away from Idaho being his state of domicile.

Near and dear items are those things that hold significant sentimental value or enhance quality of life such as collections, photo albums, artwork, valuables, and family heirlooms. There is no evidence of where Petitioner kept any such items. However, it is logical to presume that he would not keep them with him on a ship, on an oil rig, or in a truck. Rather, he would most likely keep them safe in a location to which he intended to return. This factor points toward Idaho being his state of domicile.

The final primary factor is where one has familial connections. Petitioner claimed a dependent son on his 2019 and 2021 tax returns. It is unknown where he lived, but it is unlikely that he would have lived with Petitioner on a ship or oil rig or in a truck. Petitioner was not married, and it is unknown what other family connections he might have with Idaho or any other place. This factor is neutral in the determination of domicile.

While there are factors that point away from Idaho being Petitioner's domicile, there is no evidence pointing to his domicile being established anywhere else, which is again a requirement of proving a change in domicile. Therefore, the Tax Commission determined that Petitioner was domiciled in Idaho for all of tax years 2019, 2020, and 2021 and should be taxed as a resident.

As a resident, Petitioner would be taxed on all his income, including the wages earned by working outside Idaho. There is no provision in Idaho law that allows a taxpayer to exempt income from taxation because it was earned outside Idaho.

Representative cited *Commissioner v Soliman* as support for his protest. In his letter from May 12, 2023, he mentions the concept of tax home and how "physical presence has a great deal of weight in determining a tax home" and "the inference is that the tax home follows the taxpayer."

While this may be true, one's tax home does not determine in which state that person's income is taxable. Rather, tax home describes the location from which, when one is traveling for business, one may claim certain business deductions such as meals and lodging expenses under Internal Revenue Code section 162. From Revenue Ruling 75-432:

It is . . . the long-established position of the Internal Revenue Service that the 'home' referred to in section 162(a)(2) of the Code as the place away from which traveling expenses must be incurred to be deductible is, as a general rule, the place at which the taxpayer conducts the trade or business.

Representative also cited 46 US Code section 11108 as support for his protest, stating that this section prevents employers from withholding wages due or accruing to certain employees on certain vessels. This statement is partly true, in that it prohibits the mandatory withholding of state or local taxes from crewmembers on certain vessels. However, it does not provide the full scope of the code section. The full text of the law, as in effect during the years in the audit period, reads:

§11108. Taxes

- (a) Withholding.-Wages due or accruing to a master or seaman on a vessel in the foreign, coastwise, intercoastal, interstate, or noncontiguous trade or an individual employed on a fishing vessel or any fish processing vessel may not be withheld under the tax laws of a State or a political subdivision of a State. However, this section does not prohibit withholding wages of a seaman on a vessel in the coastwise trade between ports in the same State if the withholding is under a voluntary agreement between the seaman and the employer of the seaman.
- (b) Liability.-
  - (1) Limitation on jurisdiction to tax.-An individual to whom this subsection applies is not subject to the income tax laws of a State or political subdivision of a State, other than the State and political subdivision in which the individual resides, with respect to compensation for the performance of duties described in paragraph (2).
  - (2) Application.-This subsection applies to an individual-
    - (A) engaged on a vessel to perform assigned duties in more than one State as a pilot licensed under section 7101 of this title or licensed or authorized under the laws of a State; or
    - (B) who performs regularly assigned duties while engaged as a master, officer, or crewman on a vessel operating on navigable waters in 2 or more States.

What Representative cited is subsection (a) of US Code section 11108. However, in this case, subsection (b) is more relevant. Subsection (b) was added to section 11108 in 2000 through passage of Public Law 106-489. Prior to this, there was no limitation on the jurisdiction to tax the income of qualifying individuals who worked on vessels. Senate Report 106-421 indicates the purpose of the bill is to amend section *46 US Code section 11108* to prevent merchant mariners being taxed in multiple states. Paragraph 1 clearly says that no state or political subdivision “other than the State and political subdivision in which the individual resides” can tax this type of income.

The Tax Commission agrees that Petitioner is a qualifying individual under *46 US Code section 11108(b)(2)*. This means that, because Petitioner was a resident of Idaho for the years in question, the compensation mentioned in Paragraph 1 is subject to taxation in Idaho and that no other state would have jurisdiction to tax said income.

In Idaho, it is well established that a Tax 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 (Ct. App. 1986) (citing *Albertson’s Inc. v. State, Dept. of Revenue*, 106 Idaho 810, 814 (1984)). The Tax Commission requires Petitioner to provide adequate evidence to establish that the amount asserted in the Notice is incorrect. Petitioner has failed to do so.

The Bureau added interest and penalty to Petitioner’s tax deficiency. The Tax Commission reviewed those additions and finds them to be appropriate and in accordance with Idaho Code sections 63-3045 and 63-3046, respectively.

### **Conclusion**

Petitioner was domiciled in Idaho for all of calendar years 2019, 2020, and 2021. Therefore, he was a resident of Idaho for tax purposes. All his income, including his wages earned

outside Idaho, is subject to Idaho income tax, and there is no provision that would allow any of his income to be exempt.

THEREFORE, the Notice dated March 10, 2023, and directed to \_\_\_\_\_ is hereby UPHeld 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>
2019	\$4,838	\$242	\$607	\$5,687
2020	6,107	305	587	6,999
2021	6,064	303	455	<u>6,822</u>
			TOTAL	19,508
			PAYM'T (4/30/2023)	<u>(17,009)</u>
			BALANCE DUE	<u>\$2,499</u>

The Tax Commission DEMANDS immediate payment of this amount.

Interest is calculated through January 22, 2024.

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2023.

IDAHO STATE TAX COMMISSION

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2023,  
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.

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