

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 0-646-448-128
)	
)	
Petitioner.)	DECISION
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The Tax Discovery Bureau (Bureau) at the Idaho State Tax Commission (Tax Commission) issued a Notice of Deficiency Determination (Notice) to (Petitioner) for failure to file Idaho individual income tax returns for tax years 2015 and 2016. Petitioner filed a timely appeal and petition for redetermination of the Notice. The issues in this case are whether Petitioner was a resident or nonresident of Idaho, and whether Petitioner can claim credit for taxes paid to another state. The Tax Commission has reviewed the file and hereby issues its decision to affirm the Notice.

BACKGROUND

According to Idaho Department of Fish and Game records, Petitioner has been a resident of Idaho since 1995 and according to Idaho Department of Labor records, Petitioner has been a County police officer since 2017. Petitioner filed Idaho individual income tax returns as a resident of Idaho prior to and after the tax years in question. Petitioner did not file Idaho tax returns for tax years 2015 and 2016. Income information reported to the Tax Commission by the Internal Revenue Service (IRS) showed Petitioner had gross income of \$39,689 and \$46,856 for tax years 2015 and 2016, respectively.

In August 2015 and August 2016, Petitioner applied for and received Idaho resident adult combination hunting and fishing licenses. In May 2015 and August 2016, Petitioner renewed his Idaho driver's license. Petitioner also registered to vote in Idaho in 2016. Additionally, he

purchased and registered a vehicle in Idaho in 2016. Petitioner listed an Idaho address on his fish and game licenses, driver's licenses, federal tax returns, and various other financial and legal documents.

The Bureau requested Petitioner file Idaho income tax returns for the tax years at issue but did not receive a response. Therefore, the Bureau determined income, residency status, filing status, deductions and credits based on the information available and issued a Notice.

LAW

Idaho Code section 63-3013 defines the term "resident" as any individual who: (a) Is domiciled in the state of Idaho for the entire taxable years, 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.

Income Tax Administrative Rule 030.02 defines domiciles as "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." 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.

Income Tax Administrative Rule 40.02 provides an individual is not residing in Idaho if he is present in Idaho only for a temporary or transitory purpose. Likewise, an individual is not residing outside Idaho merely by his temporary or transitory absence from Idaho. The length of time in Idaho is only one factor in determining whether an individual is present for other than a

temporary or transitory purpose. Other factors to be considered include business activity or employment conducted in Idaho, banking and other financial dealings taking place in Idaho, and family and social ties in Idaho. In general, an individual is present for other than a temporary or transitory purpose if his stay is related to a significant business, employment or financial purpose or the individual maintains significant family or social ties in Idaho.

Income Tax Administrative Rule 40.02 further provides an individual is present in Idaho only for a temporary or transitory purpose if he does not engage in any activity or conduct in Idaho other than that of a vacationer, seasonal visitor, tourist, or guest. Presence in Idaho for ninety (90) days or more during a taxable year is presumed to be for other than a temporary or transitory purpose. To overcome the presumption, the individual must show that his presence was consistent with that of a vacationer, seasonal visitor, tourist, or guest.

Idaho Code section 63-3030 provides the general requirements for filing Idaho tax returns. In short, residents of Idaho are required to file when their gross income exceeds the sum of (1) their standard deduction (including the amounts for age but not for blindness), and (2) their allowable personal (not dependency) exemptions.

Idaho Code section 63-3042 provides if a taxpayer fails to file Idaho individual income tax returns when required to so, the Tax Commission may prepare a return and issue a notice based on the information available.

Idaho Code section 63-3029 allows a credit for taxes paid to another state and explains the requirements to claim the credit. In pertinent part, to substantiate the credit the Tax Commission may require a copy of any receipt showing payment of income taxes to the other state or a copy of any return or returns filed with such other state, or both.

PETITIONER'S POSITION

Petitioner responded to the Notice stating he had contacted H&R Block to retrieve his tax returns for these tax years. Petitioner indicated he was not required to file Idaho tax returns for these tax years because he spent most of his time living and working in Oregon in 2015, and California in 2016.

The Tax Appeals Unit notified Petitioner of his appeal options. Petitioner contacted the Tax Appeals Unit to discuss his options and the issues. Petitioner stated he was a nonresident of Idaho for the tax years at issue and he was still working on getting copies of his Oregon and California tax returns.

The Tax Appeals Unit explained to Petitioner that he could request a hearing with a Tax Commissioner to discuss his case. However, because he continued to claim Idaho residency on fish and game licenses, driver's licenses, voting, etc. he would need to provide clear and convincing evidence supporting a change of domicile. Otherwise, the Tax Commissioners would most likely determine he was a resident of Idaho and required to file Idaho tax returns.

Additionally, the Tax Appeals Unit explained that if he paid income taxes to Oregon and California, he may qualify for credit for taxes paid to other states under Idaho Code section 63-3029, which would likely reduce his Idaho taxes. However, he would need to provide copies of the other states' returns to substantiate the credit. Petitioner indicated he would concede the residency issue.

Petitioner requested additional time to provide copies of his Oregon and California returns, which the Tax Appeals Unit granted. After several months, Petitioner indicated he was having difficulty getting the returns from H&R Block and the other states. The Tax Appeals Unit notified Petitioner to keep trying, and that the Tax Commission would attempt to get copies of the returns

from the other states through its government liaison. The Tax Commission never received copies of the other states returns from Petitioner or from the other states.

ANALYSIS

Based on the information available, the Tax Commission finds Petitioner was domiciled in Idaho for the tax years at issue and was a resident for Idaho income tax purposes, even though he actually resided outside Idaho during all or part of the taxable year. Petitioner did not intend to abandon his Idaho domicile and did not intend to acquire a new domicile in another state. In addition to maintaining significant family and social ties in Idaho, Petitioner's activity or conduct was more than that of a vacationer, seasonal visitor, tourist, or guest; Petitioner continued to claim Idaho residency for purposes of driver's licenses, vehicle registration, insurance, fish and game, voting and so forth.

Petitioner did not satisfy his burden of proof. The Tax Commission and the courts have consistently held 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". Thus, a taxpayer historically domiciled in Idaho who is claiming to have changed his domicile must be able to support his intentions with unequivocal acts. Additionally, in domicile cases, actions speak louder than words. See *Reubelmann v. Reubelmann*, 38 Idaho 159, 202 P.2d 404(1923); *Willis v. Willis*, 93 Idaho 261, 460 P.2d 396 (1969); *In re Estate of Cooke*, 96 Idaho 48, 524 P.2d 176 (1973); *Ramsey v. Ramsey*, 96 Idaho 672, 535 P.2d 53 (1975); *Kirkpatrick v. Transtector Systems*, 114 Idaho 559, 759 P.2d 65 (1988); *Pratt v. State Tax Commission*, 128 Idaho 883, 920 P.2d 400 (1996).

Petitioner may qualify for a credit for taxes paid to another state. However, in order to claim this credit, the Tax Commission requires Petitioner to provide a copy of the returns filed

with Oregon and California. Currently, the Tax Commission is unable to calculate Petitioner's credit.

CONCLUSION

It is well established that a Notice of Deficiency Determination issued by the Tax Commission is presumed to be accurate. *Parsons v. Idaho State Tax Commission*, 110 Idaho 572, 574-575 m.2, 716 P.2d 1344, 1346-1347 n.2, (Ct. App. 1986). The burden is on Petitioner to show the deficiency is erroneous. *Albertson's Inc. v. State Dep't of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984). Petitioner has not proven a change of domicile or provided a copy of his other states tax returns.

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 October 16, 2023, 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 10, 2021, is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED 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>
2015	\$1,934	\$484	\$537	\$2,955
2016	2,461	615	593	3,669
				<u>\$6,624</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 _____ 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.
