



Arizona income tax returns for tax years 2021, 2022, and 2023. Audit did not receive a completed questionnaire, nor any documentation for business expenses claimed on Schedule C or itemized deductions claimed on Schedule A.

On September 24, 2024, Audit issued the original Notice. Audit presented an analysis of five primary factors and a few secondary factors and determined that both spouses – not only Petitioner-wife – were domiciled in Idaho and therefore residents during 2021, 2022, and 2023. Audit increased Petitioners' Idaho taxable income based on the changed residency status and included income that was not previously reported. Due to lack of documentation, Audit denied all deductions for business expenses claimed on Schedule C. The Notice allowed Petitioners until November 26, to file a written request for redetermination (protest).

On November 26, Petitioner-husband mailed a letter requesting a redetermination of assessed taxes and provided copies of the same Arizona tax returns already provided, a spreadsheet showing monthly payments for telephone services, and documentation of expenditures for professional insurance and registration. On December 9, Audit issued a modified Notice, in which a deduction for business expenses was allowed on Petitioner-wife's 2023 Schedule C.

Audit requested that Petitioners respond by either withdrawing their protest or providing additional explanation of each item they still disagreed with, including the factual or legal reasons for disagreeing, by December 30, 2024. When no further response was received, Audit transferred the matter to the Tax Commission's Appeals unit (Appeals) to continue the redetermination process.

On March 17, 2025, Appeals sent Petitioners a letter explaining the options available for redetermining a protested Notice. Petitioner-husband requested an informal hearing, which was held on April 30, 2025. During the hearing, Petitioner-husband provided historical background for

his and his wife's living situation. He said he had not abandoned Arizona as his domicile and it was actually the 2019 and 2020 Idaho returns that were filed with an incorrect residency status. Petitioner-husband discussed recordkeeping for the Schedule C activities. He also said he planned to amend the 2021, 2022, and 2023 returns to split income between Arizona and Idaho, and he requested guidance on what would be acceptable. Appeals told him that he would receive a response within a week.

After the hearing, Appeals researched the appropriate tax laws and sent Petitioner-husband an email on May 6. Appeals provided information about Arizona and Idaho taxation of community income. Appeals also reminded Petitioner-husband that business expenses claimed on Schedule C would require substantiation if they were to be allowed. Petitioner-husband requested additional time to discuss options with his wife and potential advisor.

Later in May 2025, Petitioner-husband sent Appeals an email indicating that they would amend their returns with the help of a CPA. Appeals and Petitioner-husband exchanged several emails over the next few months. In September 2025, Petitioner-husband provided a preliminary copy of an amended return for 2021. Appeals told Petitioner-husband that the return would not be accepted as it did not address the issues in the Notice. No amended returns have been provided for 2022 or 2023. As no acceptable amended returns have been received, the Tax Commission hereby renders its decision based on an analysis of the information currently available and applicable tax laws.

### **Law & Analysis**

Audit's Notice changed Petitioner-husband's Idaho residency status from nonresident to resident for 2021, 2022, and 2023. This change is based heavily on the fact that Petitioners filed resident returns for 2019 and 2020. The first paragraph in the Explanation of Adjustments reads,

“On your 2021, 2022, and 2023 Idaho income tax returns, [Petitioner-husband] filed as a nonresident of Idaho while [Petitioner-wife] filed as a resident. [Petitioner-husband] claimed Idaho residency on the 2019 and 2020 [Idaho tax returns] and established his domicile in Idaho.” Audit’s analysis of five primary factors (home, time, family connections, business activity, near and dear items) concluded that Petitioner-husband had not changed his domicile from Idaho to Arizona during 2021, 2022, or 2023. The explanation of the residency adjustment concludes, “We have determined that the Idaho domicile [Petitioner-husband] claimed in 2019 remains in effect.” Idaho Code section 63-3013(1)(a) states that any individual domiciled in Idaho for the entire year is an Idaho resident for tax purposes.

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.<sup>1</sup> It is the place one considers “home” for the indefinite future.<sup>2</sup> 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.<sup>3</sup> A change of domicile is a question of fact rather than one of 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> 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,

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

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

<sup>3</sup> *Idaho Income Tax Administrative Rule 030.02.a*

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

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

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 action are required elements of a domicile change, and the intention and the action must coincide. Neither intention without action nor action without intention can create a change of domicile.

According to Petitioner-husband's testimony during the informal hearing, they moved from Idaho to Arizona in 2010, and they both established residency there. The Tax Commission found no information to contradict that claim. During the informal hearing, Petitioner-husband stated that Petitioner-wife moved back to Idaho with their daughter in 2018 to be closer to the wife's family while Petitioner-husband remained in Arizona. They sold the Arizona house they had purchased and lived in, and Petitioner-husband began renting in Arizona while Petitioner-wife rented in Idaho. Petitioner-husband said they built a house in [REDACTED] Idaho, in 2019 and that Petitioner-wife's name is not on the financial documents because his credit was better. Petitioner-wife and the dependent child occupy the house in [REDACTED] Petitioner-husband said he works a schedule whereby in one week, he works three days and is off four, and the next week he works four days and is off three, and that he often travels to Idaho to spend time with his wife and child on his "off" days.

Petitioner-husband explained that he relied on tax preparation software to file returns properly. When Petitioners filed their 2018 Idaho income tax return, they reported Petitioner-husband as a nonresident and Petitioner-wife as a part-year resident. This is consistent with the testimony that Petitioner-husband did not at that time intend to change his residency from Arizona

to Idaho even though Petitioner-wife did. When the 2019 and 2020 returns were filed claiming everyone as Idaho residents, Petitioners did not question it at the time, assuming that the software accurately reflected their intentions.

After reviewing available information and relevant tax law and receiving Petitioner-husband's testimony, the Tax Commission determined for tax years 2021, 2022, and 2023 that Petitioner-husband was domiciled in Arizona while Petitioner-wife and their dependent child were domiciled in Idaho.

In the modified Notice, Audit disallowed all deductions claimed for business expenses reported on Schedule C, except for a select handful. The ones allowed were for Petitioner-wife's 2023 Schedule C and consisted of professional fees and memberships related to her business activity. Audit allowed them because there was sufficient documentation to show that the amount allowed had been paid and the business purpose of the expense was evident. Petitioner-husband did provide Audit with bank information showing payments for cellular service, but these are not allowed as there has been no effort to document the business portion of the charges. Similarly, Audit denied all other expenses reported on Schedule C due to lack of documentation. The Tax Commission agrees with Audit's actions regarding Schedule C expenses, as Petitioner-husband has stated that they did not retain receipts and has not provided documentation to support the allowance of any additional deductions.

Audit also included income that Petitioners had not reported on their federal returns. This consisted of income from stock sales, retirement distributions, and wages. After reviewing available information, the Tax Commission agrees that the unreported income in the Notice should be included in total income, except for one retirement distribution from a Roth IRA. While

Petitioner-wife's unreported wages must be included in Idaho taxable income, credit must also be given for Idaho income tax withheld from those wages.

Arizona and Idaho, the two states in which Petitioner-husband and Petitioner-wife are domiciled, are both community property states. In both states, each spouse has a 50% stake in the other's community income. Community income generally means all income received during a marriage that is not separate income. Community income includes income derived from community assets (assets acquired during a marriage). Separate income includes income derived from assets acquired prior to the marriage and retirement income.<sup>6</sup>

The two states have similar laws regarding the taxation of residents and nonresidents. Residents are taxed on all their income from whatever the source (including income from other states), while nonresidents are taxed on income from sources within the state. This means that for each source of income (except retirement income), one state will tax all of it and the other state will tax half. For example, Petitioner-wife earned wages in Idaho. Because she was a resident of Idaho, her 50% stake will be taxed in Idaho (because residents are taxed on all their income). Because the wages were earned in Idaho, Petitioner-husband's 50% stake will also be taxed in Idaho (because nonresidents are taxed on income from sources within the state). However, because Petitioner-husband was a resident of Arizona and Arizona taxes residents on all their income, Petitioner-husband's 50% stake in Petitioner-wife's wages will also be taxed in Arizona. The same allocation system applies for Petitioner-husband's wages earned in Arizona. All his wages will be taxed in Arizona, while 50% is taxed in Idaho. Retirement income is only reported on the state

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<sup>6</sup> Under Public Law 104-95, only an individual's state of domicile has the right to tax income from qualified retirement plans, including 401(k)s, IRAs, pensions, and annuities.

return in which the recipient is domiciled. Using this information, the Tax Commission calculated the taxable income and income tax liability to be reported on each state's return for each year.

Obviously, there is significant overlap in the income being taxed by both Idaho and Arizona. To mitigate the effects of that overlap, Idaho allows residents to claim a credit for income tax paid to other states when income is taxed by more than one state. The credit is calculated based on the amount of income taxed in Idaho, the amount of income taxed in the other state, and the amount of income taxed in both states. The credit cannot be more than the income tax actually paid to the other state. The Tax Commission calculated the credit Petitioner-wife is entitled to and included it in the calculation of the additional tax Petitioners owe to Idaho.

In addition to allowing the credit for income tax paid to Arizona, Idaho Code also provides residents with a food tax credit<sup>7</sup> (commonly called the grocery credit) and a child tax credit.<sup>8</sup> The grocery credit for tax years 2021 and 2022 was \$100 per qualifying resident individual, and the grocery credit for 2023 was \$120 per qualifying resident individual. The child tax credit was \$205 per eligible dependent. The Tax Commission determined that Petitioners' Idaho returns should be adjusted to allow a total of \$200 in grocery credit for 2021 and 2022, \$240 in grocery credit for 2023, and \$205 in child tax credit for all three years. These credits are taken into consideration in determining the additional tax Petitioners owe to Idaho.

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.

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<sup>7</sup> *Idaho Code section 63-3024A*

<sup>8</sup> *Idaho Code section 63-3029L*

**Conclusion**

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. As both states where Petitioners are separately domiciled are community property states with similar taxing structures for resident and nonresident individuals, the Tax Commission allocated income between the two states and determined that Petitioners had underreported the amount of income taxable to Idaho on their original returns.

THEREFORE, the modified Notice dated December 9, 2024, and directed to [REDACTED] is hereby FURTHER MODIFIED and MADE FINAL.

IT IS ORDERED that Petitioners pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2021	\$2,284	\$114	\$200	\$2,598
2022	2,435	122	137	2,694
2023	2,897	145	0	<u>3,042</u>
				<u>\$8,334</u>

The Tax Commission DEMANDS immediate payment of this amount. Interest is calculated in accordance with Idaho Code section 63-3045.

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2025.

IDAHO STATE TAX COMMISSION

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2025,  
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]

[REDACTED]

Receipt No.

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