

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 2-039-547-904
██████████,	)	
	)	
Petitioner.	)	DECISION
_____	)	

██████████ (petitioner) protests the Notice of Deficiency Determination (NODD) issued by the auditor for the Idaho State Tax Commission (Commission) dated December 13, 2018, asserting additional liability for Idaho income tax, penalty, and interest in the total amount of \$5,446 for 2016.

Petitioner did not file an Idaho income tax return for 2016. He also did not file a federal return for 2016.

The petitioner filed an Idaho resident income tax return for 2015. “Resident,” for Idaho income tax purposes, is defined in Idaho Code § 63-3013 which stated [2016], in part:

- RESIDENT. (1) 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. Presence within the state for any part of a calendar day shall constitute a day spent in the state unless the individual can show that his presence in the state for that day was for a temporary or transitory purpose.

The petitioner’s letter of protest stated that he lived in Idaho for only the first four months of 2016, after which he lived in Pennsylvania with his daughter. He contends that he filed a Pennsylvania return, but did not provide a copy of that return to the auditor or during this administrative appeal.

The question to be determined is whether the petitioner’s domicile remained in Idaho during the time that he resided in Pennsylvania. The record before us is devoid of evidence that

the petitioner's domicile changed from Idaho. There is no record of his disposing of his home in Idaho. There is no record of his renouncing his homeowner's exemption. There is no record of the petitioner moving his banking activities or the registration of his vehicles to another domicile.

Administrative Income Tax Rule 030.02 stated, [2016] in part:

02. Domicile. The term domicile means 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. An individual can have several residences or dwelling places, but he legally can have but one domicile at a time. (3-20-97)

(a) 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. (3-20-97)

(b) All individuals who have been domiciled in Idaho for the entire taxable year are residents for Idaho income tax purposes, even though they have resided outside Idaho during all or part of the taxable year, except as provided in § 63-3013(2), Idaho Code. (7-01-98)

Every person has a domicile at all times, but no person has more than one domicile at a time. Restatement 2d, Conflict of Laws, § 11(2). Even though a person has no home, he must nevertheless have a domicile. Restatement 2d, Conflict of Laws, § 11(m).

Domicile forms a constitutional basis for the imposition of state income taxes on an individual. *New York, ex rel. Cohn v. Graves*, 300 U.S. 308 (1937); *Lawrence v. State Tax Commission*, 286 U.S. 276 (1932).

The relevant issue is the location of petitioner's domicile to determine tax liability in this case. Domicile requires an intent to make one's place of residency a home without the intention of returning to the former domicile. Residency does not require such intent. *Hamlin v. Holland*, 256 F.Supp. 25 (1966). It is well established that once a domicile of choice is established, it persists until another is legally acquired. *McMillon v. McMillon*, 497 P.2d 331 (Colo. App. 1972); *In re Estate of Cooke*, 96 Idaho 48, 58-59, 524 P.2d 176 (1973).

Domicile is one location with which, for legal purposes, a person is considered to have the most settled and permanent connection, where he intends to remain and to return. Domicile is distinct from residence because domicile denotes any factual place of abode with permanency. *Kirk v. Board of Regents of University of California*, 78 Cal. Rptr. 260 (Cal. App. 1969).

“Domicile has two components, residency and the intent to remain. When these concur, there is domicile. A person can have more than one residence, but only one domicile.” *Margani v. Sanders*, 453 A.2d 501, 503 (Maine 1982). See also *Rogers v. Commonwealth Unemployment Compensation Board of Review*, 40 Penn. Com. 552, 397 A.2d 1286, 1287 (1979).

It is a fundamental rule that in order to effect the change of domicile, there must be an actual removal to another habitation, coupled with an intention of remaining there permanently or at least for an unlimited time. *Bainum v. Kalen*, 325 A.2d 392, 397 (Maryland 1974).

A person may have several places of abode or dwelling, but he can have only one domicile at a time. Domicile has been defined as a place with which an individual has a settled connection for legal purposes and the place where a person has his true, fixed, permanent home, habitation and principle establishment, without any present intention of removing therefrom, and to which place he has whenever he is absent, the intention of returning. The controlling factor in determining a person’s domicile is his intent. One’s domicile, generally, is that place where he intends to be. The determination of his intent, however, is not dependent upon what he says at a particular time, since his intent may be more satisfactorily shown by what is done than by what is said. Once a domicile is determined or established a person retains his domicile at such place unless evidence affirmatively shows an abandonment of that domicile. In deciding whether a person has abandoned his previously established domicile and acquired a new one, courts will

examine and weigh the factors relating to each place. Courts seldom, if ever have deemed any single circumstance conclusive. *Toll v. Moreno*, 397 A.2d 1009,1016 (Maryland 1979).

The burden of proof rests with the person asserting a change of domicile *Margani v. Sanders*, 453 A.2d, supra, at 503; *See generally*, Restatement 2nd, Conflict of Laws, § 19 (1971); R. Leflar, American Conflicts of Law, § 15, 3rd Ed. 1977. The presumption of continued domicile survives even if a person is absent from his home. *Mitchell v. United States*, 88 U.S. (21 Wall) 350, 353 (1875). “Mere absence from a fixed home, however long continued, cannot work the change. This absence can even reach the level of abandonment.” *Margani v. Sanders*, 453 A.2d, supra at 503; *Inhabitants of Exeter v. Inhabitants of Brighton*, 15 Maine 58, 60, 61 (1838).

The court in *Gilbert v. David*, 235 U.S. 561, 569 (1915), held the establishment of residence and intent to remain in the new abode indicate domicile. The court opined:

If the person has actually removed to another place, with an intention of remaining there for an indefinite time, and as a place of fixed present domicile, it is to be deemed his place of domicile, notwithstanding, he may entertain a floating intention to return at some future period.

The key factor to establish domicile is the present intention to permanently or indefinitely establish residence in a place.

Determining whether a person has abandoned a previous domicile and acquired a new one, the courts will examine and weigh the factors relating to each place. The two most important factors that the courts have determined in establishing domicile is where a person actually lives and where he votes. These factors will probably establish domicile. Where these factors are not so clear, the courts will look to the special circumstances explaining a particular place of abode or place of voting. If those factors are not clear, the court will weigh a number of other factors. *Toll v. Moreno*, 397 A.2d, supra at 1016. The list of other factors considered in determining a person’s domicile are: the paying of taxes and statements on tax returns; the ownership of property; where

the person's children attend schools; the address at which one receives mail; statements as to residency as contained in contracts or other documents; statements on licenses or governmental documents; where furniture or other personal belongings are kept; and the jurisdiction in which banks are utilized; membership and professional, fraternal, religious or social organizations; where one's regular physician and dentists are located; where one maintains charge accounts; and other facts revealing contact with one or the other jurisdiction.

Residence in a new domicile and an intention to remain indefinitely are the criteria establishing domicile. A "floating intention" to return to a former domicile does not prevent the acquisition of a new domicile. However, this question is a mixed determination of fact and law. *Crowley v. Glaze*, 710 F.2d 676, 678 (10th Cir. 1983).

In *Crowley* the plaintiff had expressed his desire to return to Colorado when his condition permitted. The plaintiff had an accident in Colorado which left him severely disabled. Plaintiff had in fact moved from Colorado back to his childhood state of Minnesota and had resided there for over one year and had clearly intended to indefinitely reside in Minnesota. *Crowley*, supra, at 678.

The court in *Toll*, supra, at 1018, held the taxpayer's purpose for wanting to ascertain a new domicile is generally irrelevant in establishing domicile. Rather, the differences arise because of the facts in the cases. These facts relating to different jurisdictions are to be examined and weighed in establishing domicile.

The court in *Hawes v. Club Ecuestre El Comandante*, 598 F.2d 698, 699 (1st Cir. 1979) held that in domicile cases there is generally no dispute as to the facts, it is their interpretation that seems to give rise to the problem. In *Hawes v. Club Ecuestre El Comandante*, supra, the plaintiff had moved from Utah to the State of Colorado. Plaintiff had moved to Colorado for health reasons.

The court found that the plaintiff's children were enrolled in Colorado schools, the plaintiff's belongings were in Colorado, the plaintiff's wife entered the community church activities, and their Utah home was leased upon a yearly basis. The home was not sold because of continuing need for income. The court held the roots of the family were in Utah and the plaintiffs had entertained the hope that they could one day return to their home, but they had a present intent of remaining and establishing a Colorado residence.

In the case of *Mercer v. State Tax Commission*, 459 N.Y.S.2d 938, 939, 92 A.D.2d 636 (1983) the court held the taxpayer's employment in England was not necessarily to be of an extended duration, but it was subject to change. It was further established that the taxpayer had a year to year contract with his employer. The taxpayer's apparent willingness to accept transfers in accordance with the wishes of his employer was also established. Therefore, the taxpayer was not domiciled in England.

The court held in *Bainum v. Kalen*, 272 Maryland 490, 494, 325 A.2d 392, 395 (1974), where a person is registered to vote, treats a state as his domicile for tax purposes, obtains a driver's license in that state, and registers his automobile in the state, those factors together would indicate that the taxpayer was domiciled in that state.

The Notice of Deficiency issued by the Commission is presumed to be correct. *Parsons v. Idaho State Tax Commission*, 110 Idaho 572, 574 (Ct.App.1986). The Petitioner has not carried his burden of proof to establish that the petitioner's domicile changed or that NODD is incorrect.

THEREFORE, the Notice of Deficiency Determination dated December 13, 2018, is hereby APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following tax, penalty, and interest (computed to December 15, 2019):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2015	\$4,134	\$1,034	\$451	\$5,619

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

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

DATED this \_\_\_\_ day of \_\_\_\_\_, 2019.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2019, 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.

\_\_\_\_\_  
\_\_\_\_\_

[REDACTED]