

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 2-078-226-432
)	
)	
Petitioner.)	DECISION
_____)	

This case arises from a timely protest of a Notice of Deficiency Determination (Notice) issued to (Petitioner) for taxable years 2013 through 2015. The Idaho State Tax Commission (Commission) after a thorough review of the matter upholds the Notice issued to Petitioner.

THEREFORE, the Notice dated August 24, 2021, and directed to Petitioner, is AFFIRMED.

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>
2013	\$15,369	\$3,842	\$4,813	\$24,024
2014	14,679	3,670	4,010	22,359
2015	1,371	343	320	<u>2,034</u>
				<u>\$48,417</u>

Interest is computed through October 27, 2022.

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

The Commission upholds the Notice for the reasons discussed below.

BACKGROUND

During a review of taxpayer data, the Tax Discovery Bureau (Bureau) found Petitioner did not file his Idaho individual income tax returns for taxable years 2013 through 2015. The Bureau determined Petitioner had income in the identified years in excess of Idaho’s filing requirement as stated in Idaho Code. The Bureau sent Petitioner a Forgot to File Questionnaire and a Residence/Domicile Questionnaire, but Petitioner did not respond. The Bureau using both

Commission and third-party information determined Petitioner was required to file Idaho individual income tax returns for taxable years 2013 through 2015. The Bureau prepared returns for Petitioner and sent him a Notice when actual returns were not filed. Petitioner protested the Notice claiming he did not reside or conduct any business in the state of Idaho during the period in question. Petitioner also stated that his business was registered and operated in another state. Lastly, Petitioner stated that only the distributor that issued a 1099-Misc was located in Idaho. The Bureau acknowledged Petitioner's protest and transferred the matter for administrative review.

The Commission reviewed the matter and sent Petitioner a letter informing him of two alternative methods available for redetermining a protested Notice. Petitioner did not respond to the letter, nor provide any new information. The Commission decided the matter based upon the information currently on hand.

LAW AND ANALYSIS

Idaho Code section 63-3068(d) states that in the case of a failure to file a return, for any reason, a notice of deficiency may be issued, the tax imposed in this chapter may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

Idaho Code section 63-3002 states in part that it is the intent of the legislature by the adoption of this act, insofar as possible to make the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income, to the end that the taxable income reported each taxable year by a taxpayer to the Internal Revenue Service shall be the identical sum reported to this state, subject only to modifications contained in the Idaho law.

Internal Revenue Code section 6012 states in part that every individual having gross income that equals or exceeds the exemption amount in a taxable year shall file an income tax return.

Idaho Code section 63-3030 states in part that every resident individual required to file a federal return under section 6012(a)(1) of the Internal Revenue Code is required to file an Idaho income tax return.

IDAPA 35.01.01.030.02 says in part that 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.

- 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.
- 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 actually resided outside Idaho during all or part of the taxable year, except as provided in section 63-3013(2), Idaho Code.

Domicile forms the constitutional basis for the imposition of state income taxes on an individual. *See New York, ex rel, Cohn v. Graves*, 300 U.S. 308, 313 (1937); *Lawrence v. State Tax Commission of Mississippi*, 286, U.S. 276, 279 (1932). The question whether a domicile has been changed is one of fact rather than of law. *See Newcomb v. Dixon*, 192 N.Y. 238 (1908). In determining where an individual is domiciled, the factfinder must look at all the surrounding facts and circumstances. No one fact or circumstance is, by itself, determinative. Rather, the decision-maker must analyze all the relevant facts and determine whether, taken as a whole, those facts

point in favor of some particular place as the person's domicile. Since a person's domicile, once established, is presumed to continue until legally changed, the burden of proof is always on the party asserting a change in domicile to show that a new domicile was, in fact, created. *See State of Texas v. State of Florida*, 306 U.S. 398, 427, 59 S. Ct. 563, 577 (1939).

Whether an individual has the specific intent to create a new domicile is evidenced by that individual's actions and declarations. In domicile cases, an individual's actions are accorded more weight than his declarations since declarations can tend to be deceptive and self-serving. *See Allen v. Greyhound Lines*, 583 P.12d 613, 614 (Utah 1978). The motives triggering a change of domicile are immaterial, except as they indicate intention. A change of domicile may be made through caprice, whim, or fancy, for business, health, or pleasure, to secure a change of climate, or a change of law, or from any reason whatever, provided there is an absolute and fixed intention to abandon one and acquire another, and the acts of the person affected confirm the intention. *Newcomb*, supra.

In determining an individual's domicile, the Commission looks at five primary factors. The primary factors are: (a) the individual's primary home, (b) where the individual is actively involved in business, (c) where the individual spends his time, (d) where the individual keeps his near, and dear items, and (e) the individual's family connections.

In this case, _____ County Assessor's office indicates that Petitioner owned the property located at _____ in Shelley, ID 83274 and claimed the homeowner's exemption during the tax years in question. Petitioner used the _____ Shelley, ID 83274 address for his Forms 1099-Misc for the tax years in question. Petitioner was employed by _____ located in Idaho Falls during the first and second quarters of 2015. Petitioner has also maintained his Idaho driving license from 2009 to present which includes the taxable years in question. Petitioner titled a 1989 Chevrolet Astro in Idaho 2013. Numerous opportunities have been given to Petitioner to

substantiate his position of not being domiciled in Idaho, but he has not responded nor provided any information. Petitioner has not provided any information to the Commission that he has changed his permanent home with all the sentiment, feeling and permanent association that goes with calling a place a home. *See Starer v. Gallman*, 50 A.D.2d 28, 377 N.Y.S.2d 645 (1975).

Lastly, Petitioner must file an actual Idaho income tax return to claim the grocery credit.

CONCLUSION

On appeal, a deficiency determination issued by the Commission “is presumed to be correct, and the burden is on the taxpayer to show that the Commission’s decision is erroneous.” *See Parker v. Idaho State Tax Comm’n*, 148 Idaho 842, 845, 230 P.3d 734, 737 (2010) (citing *Albertson’s Inc. v. State Dep’t of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984)). The Commission requires Petitioner to provide adequate evidence to establish that the amount asserted in the Notice is incorrect. Here, Petitioner did not provide adequate evidence.

Petitioner had income during taxable years 2013 through 2015 in excess of the filing requirement of Idaho Code. Petitioner was domiciled in Idaho and required to file Idaho individual income tax returns. The Idaho individual income tax returns the Bureau prepared for Petitioner included all of Petitioner’s known income and allowable deductions.

The Bureau added interest and penalty to Petitioner’s income tax liability. The Commission reviewed those additions and found them appropriate and in accordance with Idaho Code sections 63-3045 and 63-3046.

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

DATED this _____ day of _____ 2022.

IDAHO STATE TAX COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2022,
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.
