BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NO. 20029
[Redacted]	)	
	)	DECISION
Petitioners.	)	
	)	

This is an Idaho individual income tax case. In 2006, the Tax Discovery Bureau (TDB) sent a "Forgot-to-File" letter for tax year 2001 [Redacted]. [Redacted] returned the questionnaire attached to the letter indicating that he did not live or work in Idaho during that year. The TDB reviewed the [Redacted] income tax filing history which showed that they filed Idaho resident returns for tax years 1995 through 1999, a part-year resident return for tax year 2003, a resident return for 2004, and a part-year resident return (both spouses) for 2005 when they moved [Redacted].

The TDB discovered [Redacted] returns and the W-2s reported [Redacted] by his employers for tax years 2000 through 2003 were all filed [Redacted]. The Tax Enforcement Specialist (TES) sent a second letter to the taxpayers on July 28, 2006, requesting that they complete the Commission's residency and domicile questionnaire regarding tax years 2000 through 2002 and provide copies of returns filed in the other state during that time period. The Commission also provided [Redacted]the booklet entitled "Residency Status and Idaho Source Income."

The TDB also discovered that [Redacted] maintained an Idaho resident driver's license. He renewed that license on July 6, 2001. He continued to register his vehicles in Idaho. He was registered to vote in Idaho and voted in the general election on November 7, 2000. [Redacted] applied for the Homeowner's Exemption from property tax and received the exemption during

the years 2000 through 2003.

[Redacted].

On August 16, 2006, the TES contacted [Redacted] Franchise Tax Board. He verified that the [Redacted] returns filed [Redacted] for tax years 2000 through 2003 were [Redacted] nonresident returns. The TES and Mr. [Redacted] discussed domicile issues, and he assured the TES that unlike Idaho, [Redacted] has no provision for "statutory residency" in their tax code. [Redacted] opinion was that [Redacted] remained a domiciliary of Idaho during the time that he worked [Redacted]. [Redacted]. The TES sent an e-mail [Redacted] advising him of the information obtained [Redacted].

Later that day, [Redacted] responded by e-mail stating, "After doing my own research, it appears I may be stuck. So at this time I will fill out the returns requested and continue to research the matter. I would still like the authority I requested from you. Any such returns will be filled out and filled [sic] under protest and will not amount to an admission of residency. Likewise, this letter is not an admission of residency for the periods in question." [Redacted] was provided with references to Idaho Code regarding the definition of a resident.

In an e-mail dated August 31, 2006, [Redacted] wrote: "Based on my research, and the clear nature of the law in this area, it is clear that from January 1, 2000 until late October 2003, I was a domiciliary of the State [Redacted] and not Idaho. This is based on both [Redacted] law and Idaho law. In support of my conclusion, I have attached a brief. Based on this conclusion, I will not be filing Idaho tax returns for the years you have requested. . . . Absent some strong and clear legal citations to the contrary, I am viewing the matter as closed."

The TES replied by e-mail on September 1, 2006, stating in part: "Under the provisions of our exchange agreement with [Redacted], I have obtained copies of your 2000-2003 [Redacted] nonresident returns upon which you declared that you were an Idaho resident for the entire tax year."

On September 6, 2006, [Redacted] responded by e-mail: "I must admit that your last e-mail certainly motivated me to finally pull out my old returns and look them over. While I was surprised at what I found there, (as you might guess it has been quite some time since I have looked at them and I obviously did not look very carefully at the returns that I had prepared.) it is, nonetheless, there and justifies you in your pursuit. I still disagree with the ultimate conclusion but I can not fault with [sic] you for that. . . . Considering out [sic] current positions, I will, as previously promised, provide you with tax forms for the years 2000, 2001, 2002 and 2003. . . ."

On September 26, 2006, the TES received a letter and partially completed 2000 through 2003 returns [Redacted]. He wanted to claim his residence [Redacted]as his "office," put the wages earned [Redacted] on a Schedule C, and attempt to take travel expenses against that income. He stated in his letter, in part, that "I am still of the opinion that, [Redacted], that [Redacted] was my legal domicile for the period in question. The dilemma is that with this

position, I can not sign an amended return (state or federal) under oath stating I was an Idaho domiciliary." He then offered a compromise settlement of $3,300.00 to settle the inquiry without actually filing returns.

After reviewing the case with the TDB Bureau Chief, the TES sent [Redacted] an e-mail on September 29, 2006, declining his offer. The TDB allowed him additional time to file Idaho returns that correctly reflected the information shown on his federal returns for the tax years in question. [Redacted] responded on October 2, 2006, and requested that the Commission make a counter-offer. He also posed the possibility of filing amended returns for all of the tax years in question and stated, in part, "As I am sure you understand, I am just trying to weigh the costs so that I can make an informed decision."

On October 27, 2006, the TES advised [Redacted] that the Notice of Deficiency Determination (NODD) was completed and would be mailed to him and his wife by certified mail along with information on protest rights.

The NODD was issued on October 30, 2006. The assessments for tax years 2000-2003 were based on full-year residency for both spouses and included credit for taxes paid [Redacted] per the information shown on the [Redacted] nonresident returns. The adjusting assessment for tax year 2003 reflected the change of [Redacted] residency status from part-year to full-year resident. Because of a correction error made by Taxpayer Accounting on the original return, the adjustment was calculated as closely as possible to the tax that would have been due had the return been correct in 2004.

On November 27, 2006, [Redacted] e-mailed that he had reviewed the documentation and again asked for direction as to amending his federal returns. When the TES informed Mr. [Redacted] that he was beyond the statute of limitations to amend his returns, he again

requested that the Commission make a counteroffer. The TES advised him that the NODD was our counteroffer. [Redacted]responded as follows: "...as I have never cared to bid against myself I will not be making another offer. Instead I will go ahead and file the protest in accordance with previous instructions."

On December 26, 2006, the TDB received a timely protest [Redacted] that included a request for copies of all documents in his file. Because the TES was on extended medical leave, the 14-day letter was issued by the Nonfiler Unit Supervisor on December 29, 2006, and a complete copy of the file contents was sent with a cover letter on January 2, 2007. Due to the complexity of this case, the supervisor determined that the referral for legal review could be postponed until the TES returned to work.

On March 21, 2007, the file was sent to the legal department for review and the taxpayers were notified of that action by letter.

The legal department reviewed the matter, and the taxpayers were sent a letter dated April 24, 2007, giving them two options for having the NODD redetermined. The options were to have a hearing or for the taxpayers to produce additional information for consideration by the Tax Commission. Until October 18, 2007, the taxpayers and legal staff exchanged letters and information relating to the case. During that time, Mr. [Redacted] chose to not have an informal hearing but to submit additional information and argument which he did submit.

[Redacted]submitted the following as his version of the facts, in part:

> 1. From the time Taxpayer [Redacted] (hereinafter "Taxpayer" or "[Redacted]") moved [Redacted] to Idaho[Redacted], he did not earn the income he required. He continued to struggle and he kept plugging away.
>
> 2. In the late 1990's [Redacted] was forced to conclude he was unable to earn the income he required so long as he lived in the State of Idaho.
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> 3. In 1999, [Redacted] started looking for jobs and doing some contract work

[Redacted]. He did not look for any jobs in the State of Idaho. [Redacted].

4. In November 1999[Redacted] accepted a full-time position with a firm [Redacted]. [Redacted].

5. In December 1999 [Redacted] moved [Redacted] and started his new job [Redacted]. In making this move, he brought all of his personal possessions with him.

6. On the first business day of the year 2000, [Redacted] officially became a full-time employee [Redacted]that hired him. This included all benefits and obligations of employment, including tax deductions.

7. At this time it was [Redacted] full intention to permanently leave the State of Idaho and to live and work in [Redacted] indefinitely.

8. [Redacted] immediately started looking for a house to buy and spent numerous weekends looking at prospective houses [Redacted]. Pictures, floor plans and descriptions of these houses were sent back to his family.

9. Not being completely satisfied with the employment situation [Redacted], he started applying for other positions. During the next three plus years he applied for over 100 different positions [Redacted]. [Redacted] He never applied for a single position in Idaho.

10. From December 1999 through October 2003, [Redacted] never spent more than 10 days at any one time in the State of Idaho.

11. Whenever [Redacted] left the State [Redacted], it was always with the intent to return to the State [Redacted]. This included taking vacations [Redacted]. (In both cases his travels took him directly [Redacted]to these locations and directly back[Redacted].) He also visited relatives in other states by traveling directly [Redacted] to the other state and then returning directly to the State [Redacted]. None of these departures from the state [Redacted] lasted more than 10 days.

12. During the years 2000, 2001, 2002 and 2003 [Redacted] was physically in the State [Redacted] for 270 or more days each year. During this same period of time he was never in the State of Idaho for more than a total of 45 days each year. The stays in Idaho usually consisted of one to two days at a time and were solely as a visitor.

13. In September 2003, [Redacted] decided that he was unable to continue with his then current employer and he turned in his resignation. He left that employment situation in late October 2003. At that time he packed up all of his personal belongings and moved back to the State of Idaho.

14. During the remainder of the year of 2003 and during the year of 2004, [Redacted] continued to apply for positions [Redacted]. [Redacted]. However, his efforts continued to be fruitless.

15. In September 2004, [Redacted] received an invitation to interview for his current position. That interview took place in early October 2004. In February 2005 he was offered his current position, accepted that offer, and moved out of the State of Idaho in June 2005. As was his intention in the year 1999, he has no plans to return to the State of Idaho as a domiciliary. However, in his current situation, he has no questions about the nature and/or durations of his position.

16. From 1984 through 1999 [Redacted] worked in Idaho but never earned the salary he required. Hence, during that time he continually applied for positions in other states. It was not until late 1999 that he was offered such a position.

17. [Redacted] joined and participated in local clubs and organizations.

18. During the years 2001, 2002 and 2003, [Redacted] did not vote in the State of Idaho.

Mr. [Redacted] asked a friend of his in [Redacted] to submit a letter on his behalf in this matter. The letter was received October 9, 2007, by the Tax Commission and was from [Redacted]. Mr. [Redacted] wrote:

> I was a professional colleague of Mr. [Redacted] when he resided in [Redacted], from 2000 to 2003. We worked together for a law firm in [Redacted], and thereafter we both sought jobs in the Bay Area. At one point, after I left the firm that Mr. [Redacted] was with, we both sought positions in another law firm in [Redacted].

I have personal knowledge of his continued job searches with firms in [Redacted] and his house hunting in [Redacted]. He expressed to me his intent to remain in the State of [Redacted] on a permanent basis and move his family here.

DISCUSSION

Domicile

Mr. asserts that during the time period January 1, 2000, through approximately November 1, 2003, he was a resident [Redacted]. He argues that [Redacted] law provides that he is a resident of [Redacted] for that time period. In Cohn v. Graves, 300 U.S. 308, 57 S.Ct. 466 (1937), the United States Supreme Court reiterated the States' taxing authority and states, in part:

> That the receipt of income by a resident of the territory of a taxing sovereignty is a taxable event is universally recognized. Domicile itself affords a basis for such taxation. Enjoyment of the privileges of residence in the state and the attendant right to invoke the protection of its laws are inseparable from responsibility for sharing the costs of government. 'Taxes are what we pay for civilized society,' see Compania General de Tabacos v. Collector, 275 U.S. 87, 100, 48 S.Ct. 100, 105, 72 L.Ed. 177. A tax measured by the net income of residents is an equitable method of distributing the burdens of government among those who are privileged to enjoy its benefits.

Further, in Lawrence v. State Tax Commission Mississippi, 286 U.S. 276, 279 -280, 52 S.Ct. 556, 557, (1932), the United States Supreme Court wrote:

> The obligation of one domiciled within a state to pay taxes there, arises from the unilateral action of the state government in the exercise of the most plenary of sovereign powers, that to raise revenue to defray the expenses of government and to distribute its burdens equably among those who enjoy its benefits. Hence, domicile in itself establishes a basis for taxation. Enjoyment of the privileges of residence within the state, and the attendant right to invoke the protection of its laws, are inseparable from the responsibility for sharing the costs of government. See Fidelity & Columbia Trust Co. v. Louisville, 245 U. S. 54, 58, 38 S. Ct. 40, 62 L. Ed. 145, L. R. A. 1918C, 124;Maguire v. Trefry, 253 U. S. 12, 14, 17, 40 S. Ct. 417, 64 L. Ed. 739;Kirtland v. Hotchkiss, 100 U. S. 491, 498, 25 L. Ed. 558;Shaffer v. Carter, 252 U. S. 37, 50, 40 S. Ct. 221, 64 L. Ed. 445. The Federal Constitution imposes on

> the states no particular modes of taxation, and apart from the specific grant to the federal government of the exclusive power to levy certain limited classes of taxes and to regulate interstate and foreign commerce, it leaves the states unrestricted in their power to tax those domiciled within them, so long as the tax imposed is upon property within the state or on privileges enjoyed there, and is not so palpably arbitrary or unreasonable as to infringe the Fourteenth Amendment.Kirtland v. Hotchkiss, supra.

The state of Idaho has the right to impose a tax on the income of an Idaho resident. Idaho law controls this case and not [Redacted] law. (Although Idaho law controls, it is notable that the person from [Redacted] gave an opinion that [Redacted] domicile was in Idaho).

It is not disputed that[Redacted]were residents of Idaho for income tax purposes from 1995 through 1999, the latter end of 2003, 2004, and the first part of 2005 before the family moved [Redacted]. It is not disputed that [Redacted] was a resident of Idaho during the tax years 2000, 2001, 2002, 2003, 2004, and part of 2005. The dispute centers around whether [Redacted] was a resident of Idaho during the tax years of 2000, 2001, 2002, and part of 2003.

Idaho's income tax law states that a resident of this state is required to report and pay a tax on all of his or her taxable income regardless of the source. Idaho Code section 63-3002. Idaho Code section 63-3013 defines the term "resident":

> **Resident. –** (1) The term “resident,” for income tax purposes, means any individual who:
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> (a) Is domiciled in the state of Idaho for the entire taxable year; or
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> (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.
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> Idaho Code § 63-3013 (1996 & Supp. 1999).

Domicile is defined in the Tax Commission's Administrative Rules 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. An individual can have several residences or dwelling places, but he legally can have but one domicile at a time." Income Tax Administrative Rule 030.02, IDAPA 35.01.01.030.02 (1997). The essential distinction between residence and domicile is that domicile requires intent to remain at one place for an indeterminate or indefinite period. Reubelmann v. Reubelmann 38 Idaho 159, 164, 220 P.404, 405 (1923). Domicile, once established, persists until a new domicile is legally acquired. In re Cooke's Estate, 96 Idaho 48, 524 P.2d 176 (1973). A concurrence of three factors must occur to change an individual's domicile. The factors are (1) the intent to abandon the present domicile, (2) the intent to acquire a new domicile, and (3) physical presence in the new domicile. Idaho Income Tax Administrative Rule 030.02.a. (IDAPA 35.01.01.030.02.a.) See also, Pratt v. State Tax Commission, 128 Idaho 883, 885 n.2, 920 P.2d 400, 402 n.2 (1996). (The Tax Commission's regulation defining domicile is consistent with prior holdings of the Idaho Supreme Court, "with the element of intent divided into two parts.") Whether an individual has the specific intent to create a new domicile is evidenced by that individual's actions and declarations. Generally speaking, in domicile cases an individual's actions are accorded more weight than his declarations since declarations can tend to be deceptive and self-serving. Allen v. Greyhound Lines, Inc., 583 P.2d 613, 614 (Utah 1978).

In determining where an individual is domiciled, the fact-finder 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. State of Texas v. State of Florida, 306 U.S. 398, 427, 59 S.Ct. 563, 577 (1939). See generally, Restatement, Second, Conflict of Laws § 19 comment c (1971). Although not entirely clear, it appears that under Idaho law a change in domicile must be established by a preponderance of the evidence. See Ramsey v. Ramsey, 96 Idaho 672, 535 P.2d 53 (1975).

A person's domicile will normally be that place where they have their true, fixed, and permanent home. The term "home" as used in the Restatement, Conflict of Law 2d, means "the place where a person dwells and which is the center of his domestic, social and civil life." Rest., Conflict of Laws 2d, § 12. The Restatement goes on to provide that "[d]omicil is a place, usually a person's home, to which the rules of Conflict of Laws sometimes accord determinative significance because of the person's identification with that place." Rest., Conflict of Laws 2d, § 11(1). The comments to this section of the Restatement emphasizes that a person's domicile is usually that person's home.

> A person's domicil is usually the place where he has his home. But some persons have no home in the ordinary sense while others have two or more. Certain persons also lack capacity to acquire a domicil of choice, and in such instances the law may assign them as their domicil a place where their home is not located. (See §§ 22-23.) The rule applicable to a person who has two or more dwelling places is stated in § 20.

Rest., Conflict of Laws 2d, § 11(1), comment 1a. Those comments go on to provide that "[w]hen a person has one home and only one home, his domicil is in the place where his home is, except as stated in § 16, Comment c and §§ 22-23, relating to domicil in a vehicle and to persons who lack legal capacity to acquire a domicil of choice." Rest., Conflict of Laws 2d, §

11(1), comment 1h. Thus, with only a few exceptions, a person who only has one home will be domiciled at that place where his home is.

It is not uncommon for the person whose domicile is at issue to have two or more homes or residences, any of which might be considered his principal home or domicile. The Restatement, Conflict of Laws 2d, provides a very useful discussion of domicile of choice where an individual has more than one residence. Section 20 of the Restatement provides, in part, as follows:

> When a person with capacity to acquire a domicil of choice has more than one dwelling place, his domicil is in the earlier dwelling place unless the second dwelling place is his principal home.

The comments to that section of the Restatement also provide some helpful guidance in those cases where the person has two dwelling places, either one of which could conceivably be his principal home. For instance, comment b provides, in part, as follows:

> b. If a person has two dwelling places, any one of the following situations may arise:
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> 1. One dwelling place may be a home in the sense used in this Restatement (see § 12), and the other merely a residence. This is the most common situation of all. It is likely to exist whenever a person has one dwelling place where he lives during the major portion of each year and another which he uses only for weekend and vacation purposes. Here his domicil will be at the dwelling place which is his home.
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> 2. Both dwelling places may be homes in the sense used in this Restatement, but one may be the person's principal home. In this case his domicil is at the principal home. As between two homes, a person's principal home is that to which he is more closely related or, stated in other words, that which is more nearly the center of his domestic, social and civil life. This will normally be the home where he and his family spend the greater part of their time. Also significant are such factors as which home is the more spacious, which contains the bulk of the household furnishings, in which has he shown more interest, which home has a way of life, (country life, for example, as opposed to city life) more conducive

> to the person's tastes, and from which home does he engage more actively in social and civic affairs, as by voting, holding public office, attending church, belonging to local clubs and the like. The person's own feelings towards the dwelling place are of great importance. His statements in this connection cannot be deemed conclusive, however, since they may have been made to attain some ulterior objective and may not represent his real state of mind (see Special Note following this Section).
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> . . . .
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> 3. Both dwelling places may have some of the aspects of a home in the sense used in this Restatement and both in more or less equal degree. In this unusual situation, the domicil remains at that one of the two dwelling places which was first established. This is because a domicil, once established, continues until superseded (see § 19), and here there is no basis for preferring the later dwelling place over the earlier one.
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> Rest., Conflict of Laws 2d, § 20, comment b.

If an individual has more than one home or dwelling that could be considered his or her primary home, factors that may be considered in determining which dwelling is the individual's true domicile include the following:

> 1. The nature and use of the home, such as whether it is used as a "vacation home," "second home," or "summer home."
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> 2. Whether the home is owned, rented, or provided free of charge.
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> 3. The size of the home. Generally, as between two or more homes, the larger home is more likely to be considered the individual's principal or primary home.
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> 4. Value of the home. Generally, as between two or more homes, the more valuable home is more likely to be considered the individual's principal or primary home.
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> 5. How much time is spent at each home. Generally, as between two or more homes, the home where the individual spends the greater amount of time is more likely to be considered that individual's principal or primary home.

> 6. Which home the individual's spouse or minor children view as their primary home. Generally, as between two or more homes, the home that the individual's spouse or minor children regard as their primary home is more likely to be considered that individual's principal or primary home.
>
> 7. Which home the individual keeps his pets, valuable artwork, photo albums, hobby equipment, collectibles, and other "near-and-dear" items. Generally, as between two or more homes, the home where the individual maintains most of his "near-and-dear" items is more likely to be considered that individual's principal or primary home.

[Redacted] domicile during January 1, 2000, through November 1, 2003, is a question of fact. [Redacted] question of domicile is best answered by Restatement (Second) of Conflict of Laws § 18 cmt. B (1971), "One must be able to say, 'This is now my home,' and not, 'This is to be my home.'"

It is undisputed that prior to January 1, 2000, [Redacted] was domiciled in Idaho. [Redacted]never abandoned his Idaho domicile. His family remained in Idaho. He returned to Idaho once or twice each month during the time period in question to be with his family. He maintained a homeowner's exemption in Idaho. In Idaho, the person applying for the exemption must, according to Idaho Code § 63-602G, certify "to the county assessor . . . that . . . the homestead is his primary dwelling place. . . ." Mr. [Redacted] maintained his driver's license in Idaho and his ability to practice law in Idaho. He voted in Idaho and no facts are presented that he ever voted[Redacted]. He also continued to register his vehicles in Idaho. [Redacted] filed nonresident 2000 through 2003 [Redacted] individual income tax returns. Mr. [Redacted] maintained his attorney license in Idaho and designated his Idaho residence as the address to receive all notices and mailings from the Idaho State Bar.

[Redacted] activities [Redacted] were undertaken with an intent to move [Redacted]. However, it appears from the facts that [Redacted] could not, at any time, say that [Redacted]

was his home, but only that at some time [Redacted] would be his home. Restatement (Second) of Conflict of Laws §18 cmt. B (1971).

The Commission finds as a matter of fact and law that [Redacted] domicile was in Idaho for tax years 2000 through 2003.

Business Deductions

> [Redacted] that:
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> Had Mr. [Redacted] and his family known and conceded that the State of Idaho would have declared him an Idaho resident, for income tax purposes, they could have taken advantage of travel expenses as additional deductions on their Federal Tax Returns and would have reduced their taxable income to a level below the State of Idaho tax rates. The factual basis for such deduction is as follows:
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> a) Taxpayer, [Redacted], maintained his Idaho and [Redacted] licenses to actively practice law during the entire period in question.
>
> b) Taxpayer, [Redacted], maintained an Idaho address to receive all[Redacted]notices, etc.
>
> c) If, and only if, Taxpayer, [Redacted], is considered an Idaho resident for income tax purposes during the subject years, the address in Idaho is his principle office and all travels to meet with clients and/or attend [Redacted] sessions in the state [Redacted], are deductible.

Internal Revenue Code (I.R.C.) § 162 provides a category of deductible business expenses which reflects "a fundamental principle of taxation: that a person's taxable income should not include the cost of producing that income." Hantzis v. Commissioner, 638 F.2d 248, 249 (1st Cir.), *cert. denied*, 452 U.S. 962 (1981). A specific example of a deductible cost of producing income is I.R.C. § 162(a)(2), travel expenses. The Supreme Court first construed the meaning of the travel expense deduction provision in Commissioner v. Flowers, 326 U.S. 465 (1946). In Flowers, the Supreme Court set forth the statutory requirements for a traveling

expense deduction--"(1) the expense is a reasonable and necessary traveling expense, (2) the expense is incurred 'while away from home,' and (3) the expense is an ordinary and necessary expense incurred in pursuit of a trade or business." *Id*. at 470. In order to determine if the travel costs were "incurred while away from home," the Tax Commission will need to identify [Redacted] 'tax home.'

The purpose of the "away from home" deduction is to mitigate the burden of the taxpayer who, because of the exigencies of his trade or business, must maintain two places of abode and thereby incur additional and duplicate living expenses. Kroll v. Commissioner, 49 T.C. 557, 561-562 (1968). Generally, for federal tax purposes a taxpayer's home under section 162(a)(2) is his principal place of business. Mitchell v. Commissioner, 74 T.C. 578, 581 (1980); Daly v. Commissioner, 72 T.C. 190, 195 (1979), *aff'd*. 662 F.2d 253 (4th Cir.1981); Kroll, 49 T.C. at 561-562. A narrow exception to that rule exists where the taxpayer's employment in a particular location is temporary, as opposed to indefinite or indeterminate. Norwood v. Commissioner, 66 T.C. 467, 469 (1976); Hanna v. Commissioner, T.C. Memo 1992-256. A place of business is considered temporary when it is expected that employment at the location will last for only a short period of time. Norwood, *66 T.C.* at 469. If a taxpayer maintains two businesses, the Court has determined the taxpayer's home from three objective factors: (1) The place where he spends more of his time; (2) the place where he engages in greater business activity; and (3) the place where he derives a greater proportion of his income. *Markey v. Commissioner*, 490 F.2d 1249, 1255 (6th Cir. 1974); see also, Ziporyn v. Commissioner, T.C. Memo 1997-151; Hoeppner v. Commissioner, T.C. Memo 1992-703. In Hoeppner, the Tax Court has apparently abandoned the "two tax homes" approach it took in Andrews v. Commissioner, T. C. Memo 1990-391, *vac'd* and *rem'd* 931 F.2d 132 (1st Cir. 1991). The Tax Court's "two tax home" approach was

overturned by the First Circuit. The Appellant Court stated that "the Tax Court's conclusion – that Andrews had 'two tax homes' – is inconsistent with the well settled policy underlying I.R.C. § 162 (a)(2); that duplicated living expenses necessitated by business are deductible." The First Circuit decided that one of the two states must be the principal place of business and sent the case back to the Tax Court to decide which one was the major post of duty.

As previously mentioned, when determining a taxpayer's tax home, the courts often apply an objective test in which they consider (1) the length of time spent at each location; (2) the degree of activity in each place; and (3) the relative proportion of the taxpayer's income derived from each place. Although no single factor is controlling, particular emphasis sometimes is placed on the amount of time spent by a taxpayer at a given location. Markey, 490 F.2d at 1252. In general, a taxpayer is required to establish his 'tax home' at his major duty post so as to minimize the amount of business travel away from home that must be undertaken. Wills v. Commissioner, 411 F.2d 537, 540 (9th Cir.1969), *aff'g*. 48 T.C. 308 (1967).

From the facts, [Redacted]'tax home' was [Redacted] for purposes of I.R.C. §162 (a)(2). No business deductions are available [Redacted] for his travel from [Redacted] to Idaho as all of his trips to Idaho were for personal reasons.

In Personam Jurisdiction, Statute of Limitations and Due Process Violations

[Redacted] assert the following:

> To obtain in Personam jurisdiction, the State of Idaho must show that their claims fall within the statute of limitations. It is unclear how the State of Idaho is justifying claiming taxes owed from as far back as six years ago. The State of Idaho does not appear to have Personam jurisdiction, as Taxpayers are currently residents of the State of [Redacted] and have been so for approximately 2 years. (Taxpayers no longer own any property, real or personal, in the State of Idaho. This makes the question of In Rem jurisdiction moot.)

> Based on this lack of understanding, Taxpayers object to jurisdiction in this matter as it relates to In Personam jurisdiction. Without waiving said objection, Taxpayers make the following arguments Any guidance on this point would be appreciated.

Next[Redacted] assert the following:

> In the process of negotiations regarding this matter, Taxpayers filled out "Informational" Federal tax returns for the sole purpose of showing what deductions were available to them under the scenario of residency alleged by the State of Idaho. In response to those "informational" returns, Taxpayers were informed of the three year statute of limitations one has to amend a Federal tax return. Taxpayers were also informed that the only way to amend Idaho returns is with the use of Federal returns; amended or otherwise.
>
> As noted above, the State of Idaho made no contacts [sic] with Taxpayers regarding these matters until AFTER Taxpayers could no longer amend their 2000, 2001 and 2002 returns. The State of Idaho then sat back, resting on their own dilatory conduct in failing to timely notify Taxpayers of any dispute, and used this timeframe to deprive Taxpayers of a means of correcting any perceived error or discrepancy, and a means of protecting their own position. Such conduct is unconscionable and a blatant violation of due process. Based on this violation of due process, perpetrated by the State of Idaho, through their authorized agents, the State of Idaho is, and should be, barred from pursuing this action for the above referenced tax years.

Finally, [Redacted] assert that:

> Pursuant to Idaho Code § 63-3065A, the State of Idaho has three (3) years to file a Deficiency Notice. This date starts on the day the tax is due. Pursuant to the statements and activities of the State of Idaho, through their authorized agents, the three (3) year statute for each year of tax in question, started to run on April 15th of the year following the year to be taxed.
>
> In the present matter, the years the State of Idaho is claiming taxes due, are 2000, 2001, 2002, and 2003. The respective statute of limitations for each of these years is: April 15, 2001, April 15, 2002, April 15, 2003 and April 15, 2004. Counting back three (3) years from the date of the Deficiency Notice brings us to a date of October 30, 2003. Based on this date, all taxes allegedly due prior to that date (in this case any taxes for the years 2000, 2001 and

> 2002) are no longer collectable. Therefore, and pursuant to Idaho Code § 63-3065A, the State of Idaho has no jurisdiction over taxes that are or may have been due for the tax years 2000, 2001, and 2002 and must cease any collection actions thereof. This leaves only the tax year of 2003 in question.

The Idaho income tax return filing requirements are set out in Idaho Code § 63-3030. Idaho Code § 63-3030(a)(1) sets forth the filing requirements for individuals who are residents of this state. Residents with a gross income in excess of the threshold amount determined under federal tax law are required to file an Idaho individual income tax return.

The specific Idaho Code section that imposes the Idaho individual income tax is Idaho Code § 63-3024. Individuals required to file an Idaho income tax return must pay Idaho income tax on their taxable income at the rate set forth in Idaho Code § 63-3024.

Pursuant to Idaho Code § 63-3068(d), "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."

Pursuant to Idaho Code § 63-3068(d), the Commission issued a NODD [Redacted]for having failed to file during the years 2000, 2001, and 2002. The Commission is well within its statutory authority to pursue these taxes, as the Commission may pursue the failure to file returns at any time. The [Redacted] concede that the Commission has met the time requirements for issuing the NODD for tax year 2003.

This matter has not proceeded to Court at this time. However, if the [Redacted] were to exhaust all of their administrative remedies with the Commission, they would be subject to jurisdiction of an Idaho Court.

The Idaho Supreme Court in Knutsen v. Cloud, supra, explained that:

> Courts can properly exercise jurisdiction over an individual not subject to general jurisdiction only where there is a legal basis for

> the assertion of extraterritorial jurisdiction. Mann v. Coonrod, 125 Idaho 357, 359, 870 P.2d 1316, 1318 (1994). "For an Idaho court to exercise personal jurisdiction over an out-of-state defendant, 'two criteria must be met; the act giving rise to the cause of action must fall within the scope of our long-arm statute and the constitutional standards of due process must be met.' " McAnally, 137 Idaho at 491, 50 P.3d at 986 (quoting St. Alphonsus Regl. Med. Ctr. v. Wash., 123 Idaho 739, 742, 852 P.2d 491, 494 (1993)).
>
> Idaho Code § 5-514, known as the long-arm statute, provides the legal basis for exercising extraterritorial jurisdiction, St. Alphonsus, 123 Idaho at 743, 852 P.2d at 495, and enumerates the acts which subject a person to the jurisdiction of Idaho.

The Idaho Supreme Court in Knutsen v. Cloud, supra, further explained that:

> "The long-arm statute should be liberally construed." Purco Fleet Servs., Inc., v. Dept. of Fin., 140 Idaho 121, 123, 90 P.3d 346, 348 (2004) (citing McAnally, 137 Idaho at 491, 50 P.3d at 986). Moreover, Idaho's long-arm statute is co-extensive with all of the jurisdiction available to this state under the due process clause of the United States Constitution. Houghland Farms, Inc., 119 Idaho at 75, 803 P.2d at 981. However, "[t]he exercise of personal jurisdiction by the courts of this state over those who do any of the acts enumerated in I.C. § 5-514 extends only 'as to any cause of action arising from the doing of any of said acts.' " Id.

The Idaho State Tax Commission is an agency of the state of Idaho created by art. 7, § 12 of the Idaho Constitution and authorized by statute to assess and collect tax, including income tax. See Idaho Code § 63-105. [Redacted] were persons residing [Redacted] County, Idaho. The issue in this matter is Idaho State individual income tax. An Idaho court would have personal jurisdiction over defendants pursuant to Idaho Code § 5-514.

The accusations of dilatory conduct on the part of the Commission are incorrect. It was, and is, the [Redacted] duty to file their tax returns properly, and they cannot shift that responsibility to the Commission by alleging dilatory conduct. Even if the [Redacted] were allowed to amend and file as Idaho residents and assert the business deductions, it would be of no benefit because the business deductions are not available to them per this decision.

Conclusion

It is well settled in Idaho that a Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be correct. Albertson's Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814 (1984); Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986). The burden is on the taxpayer to show that the tax deficiency is erroneous. Id. Since the taxpayer has failed to meet this burden, the Tax Commission finds that the amount shown due on the Notice of Deficiency Determination is true and correct.

The Bureau also added interest, which will continue to accrue pending payment of the tax liability pursuant to Idaho Code § 63-3045(6), and penalty to the taxpayers' tax deficiency. The Tax Commission finds those additions appropriate as provided for in Idaho Code sections 63-3045 and 63-3046.

WHEREFORE, the Notice of Deficiency Determination dated October 30, 2006, is hereby APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest (interest has been updated to April 30, 2008):

YEAR	TAX	PENALTY	INTEREST	TOTAL
2000	$1,500	$375	$676	$2,551
2001	$1,523	$381	$569	$2,473
2002	$1,662	$416	$514	$2,592
2003	$1,183	$296	$303	$1,782
			TOTAL DUE:	$9,398

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

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

DATED this ____ day of _____, 2008.

IDAHO STATE TAX COMMISSION

_____
COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2008, 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.