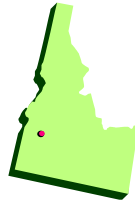


IDAHO STATE TAX COMMISSION



RESIDENCY AUDIT MANUAL INDIVIDUAL INCOME TAX



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RESIDENCY AUDIT MANUAL
INDIVIDUAL INCOME TAX

INDEX

- I. Introduction
- II. Scope of the Resident Audit
- III. Domicile
 - A. Definition
 - B. Continuation and Change
 - C. Intent and Motive
 - D. Burden and Degree of Proof
 - E. Factors to be Considered in Determining Domicile
 - 1. Primary Factors
 - a. Home
 - i. Where One Home is Maintained
 - ii. Where Two or More Homes are Maintained
 - iii. Size of the Residence
 - iv. Value of the Residence
 - v. Homeowner's Exemption
 - vi. Nature of use
 - vii. Other aspects of a Home
 - viii. Conclusion of the Home factor
 - b. Active Business Involvement
 - c. Time
 - d. Items Near & Dear
 - e. Family Connections
 - 2. Evaluation of the Factors
 - 3. Other Factors
 - F. Tax Relief for a Domiciliary
- IV. Statutory Resident
 - A. Definition
 - B. Temporary or Transitory Purpose
- V. Sourcing of Income
 - A. General
 - B. Earnings of Nonresident Employees and Officers
 - C. Earnings of Salespersons
 - D. Allocation of Income from a Business
- VI. The Impact of a Prior Audit

VII. Communicating with the Taxpayer

- A. The Initial Appointment
 - 1. Timeliness of the Appointment
- B. Continuing Communications
- C. Explanation to the Taxpayer

VIII. Audit Techniques

- A. Pre-Audit Analysis
 - 1. General
 - 2. Prior Audits
 - 3. Idaho Address
 - 4. Non-Idaho Address
 - 5. Business Relationships
- B. Computer Information
 - 1. General
 - 2. Federal Data
 - 3. Other Information
- C. Accumulation & Analysis of Data
 - 1. The Questionnaire
 - 2. Personal Interview
 - 3. Analysis of the Federal Return
 - 4. Analysis of Records
 - a. Bank Records
 - b. Business Records
 - c. Personal and Household Records
 - 5. Personal Observations
 - 6. Declarations

IX. Concluding the Audit

- A. General
- B. Making a Determination
- C. Penalty Considerations
- D. Communicating the Results
- E. Concluding Conference
- F. Work Papers
- G. The Audit Report

I. INTRODUCTION

Residency audits are conducted to determine if the taxpayer is a domiciliary of Idaho or another state; if statutory residence is applicable; or if the sourcing of income to a nonresident is correct. Since determining a person's intent is subjective, the auditor is in the difficult position of having to determine whether the taxpayer intended to change domicile and if the taxpayer's actions supported that intent. This type of inquiry is not one that lends itself to a simple Ayes, it's allowed, or "no, it's disallowed." Instead, the relevant aspects of the domicile issue should be looked at without any predisposition.

The proper conduct of the audit requires one to focus equally on Idaho and non-Idaho ties. The primary factors (which are discussed in detail in this guideline) and the other factors, both within and without Idaho, should be evaluated to decide if the tax return correctly reflects the taxpayer's residency status. This may require a substantial amount of personal information and/or documentation. In making requests for information, discretion and common sense need to be exercised.

You should focus on the retention of Idaho ties and on the comparison of the remaining Idaho ties to previously established or newly acquired ties in the various locations. A domicile decision cannot be based merely on the existence of a residence. The pattern of use for the Idaho residence versus the patterns of use for the homes outside Idaho is the focal point. The case should be established with solid evidence of the taxpayer's presence and involvement in Idaho.

During the audit, you should communicate openly with the taxpayer to reduce any anxiety they may feel. You should minimize documentation requests whenever possible, and when possible, meet with the taxpayer or his representative. If it is not possible to meet with the taxpayer, a telephone call is strongly recommended. This opening interview can be used to accomplish many tasks; lifestyle patterns can be discussed; business involvement explored; the scope of the audit can be explained; and any questionable areas can be clarified to further narrow the focus of the audit. Throughout the audit, and especially during this opening interview, listen carefully and evaluate the statements and declarations made by the taxpayer. Credible statements and declarations made by the taxpayer should be weighed with the other evidence examined during the audit when a decision is made.

Although the law, rules, and precedent-setting cases are indisputable in requiring "clear and convincing evidence," we should be practical in evaluating each circumstance. Take, for example, the individual who maintains a permanent place of abode in Idaho and is a domiciliary of Washington. If the individual works two or three days a week in Idaho and spends the rest of the time at home in Washington, what proof should the auditor expect? Think for a minute of the proof that you as an individual may have if you spent a weekend at home watching TV, gardening or some other

activity without a paper trail.

This manual is written for audits of filed returns, however, the same guidelines apply to non-filed returns. In the case of non-filed returns when the taxpayer has failed to respond to our requests for information or has failed to provide requested information, you might have to make a determination with little or no documentation supporting the taxpayer's position. In these cases the information available to the auditor may have to be used to make a determination.

An Idaho resident taxpayer is responsible for reporting and paying Idaho individual income tax on income from all sources regardless of where the income is generated, or the nature of the income.

A nonresident taxpayer reports only income sourced to Idaho as provided by Idaho Code Section 63-3026A.

Applicable Idaho Code Sections and Rules for the year(s) under audit can be found on your network server.

II. SCOPE OF THE AUDIT

There are three separate and distinct areas to be examined during the audit of a nonresident individual. These areas are: The Domicile issue, the Statutory Resident issue and the Idaho source income determination. The specific circumstances of an individual taxpayer's lifestyle will determine the depth and scope of the audit. For example, a non-domiciliary with no permanent place of abode in Idaho but working within the state might only be asked to verify the sourcing of income to Idaho, while individuals who reside at several locations during the year and have a long established pattern of maintaining a "home" in Idaho would be questioned concerning their residency status.

Any returns selected for audit may have other issues such as the Idaho addition and subtraction modifications, and the taxability of nonresident pensions that do not qualify as an annuity.

As mentioned above, the nonresident case encompasses three separate audit issues: Domicile, Statutory Residence and Income Sourcing. The various aspects of a case, however, are intermingled. For example, a similar aspect in either the potential domicile or statutory residence case is to determine if the taxpayer maintains a permanent place of abode in Idaho. After this, however, the approach of the two audits differs dramatically. The domicile audit continues to determine if the taxpayer has demonstrated with clear and convincing evidence that he/she has effected a genuine change of domicile or was never domiciled in Idaho. The statutory resident audit explores the taxpayer's records to determine the total number of days "present" in Idaho.

III. DOMICILE

A. DEFINITION

The word "domicile" is derived from the Latin word "domus" meaning a home or dwelling place. Throughout time domicile has evolved in the legal sense to be the place where the taxpayer has his true, fixed, permanent home. Domicile is the principal establishment to which an individual intends to return whenever absent. The term domicile should not be limited to refer to a specific structure but rather a place/area to which the taxpayer expects to return.

The term "domicile" and "residence" are often used synonymously in our everyday discussion; however, for Idaho Income tax purposes the two terms have distinctly different meanings. Residence in a strict legal sense means merely a "place of abode." An individual may have many residences, or physical dwellings in which he resides, but he can have only one domicile or permanent residence to which he intends to return.

B. CONTINUATION & CHANGE

Once established, a domicile continues until the individual abandons the old and moves to a new location with the bona fide intent of making his fixed and permanent home at the new location. To effect a change of domicile, there should be not only intent to make such change but also actual residence in the new location. No definite period of residence or specified length of time in a particular place is required to establish a domicile, but when coupled with the element of intent, any residence, however short, will be sufficient. On the other hand, residence without the intent to remain does not effect a change of domicile no matter how long the residence is continued.

C. INTENT & MOTIVE

Intent is a decisive factor in the determination of whether any particular residence that a person may occupy is his domicile. Since a domicile continues until superseded by another, a change of residence without the intent of creating a new domicile leaves the last established domicile unaffected. Change of residence may be made on a whim or fancy, for business, health, or pleasure, to secure a change of climate, or for any other reason. However, there should be an absolute and fixed intention to abandon one domicile and acquire another, and the acts of the person should confirm their intentions. The fact that a person is motivated by self-interest does not prevent a change of domicile. Therefore, if an individual intends to acquire a new domicile and his acts confirm his intention; the fact that the change was motivated by the tax advantages gained is of no consequence.

The conclusion as to whether or not one domicile has been replaced by another depends on an appraisal of the circumstances and conditions surrounding the person whose domicile is in question. The determination in each case should be decided upon the particular facts and circumstances of each case. A conclusion should be drawn from all the available facts and circumstances with no single factor controlling.

D. BURDEN AND DEGREE OF PROOF

There are two essential elements to a change of domicile: physical presence at the new location, and an intent to make such new location a domicile. The burden of proof as to a change of domicile is upon the person asserting the change. The evidence to establish both a change of residence and the required intent to effect a change of domicile should be "clear and convincing." The intent to change a domicile should be manifested by unequivocal acts. In some instances, this is a very easy burden to support, while in others it is, in varying degrees, more difficult.

E. FACTORS TO BE CONSIDERED IN DETERMINING DOMICILE

The factors used to determine domicile are divided into two general categories: primary factors and other factors. An analysis of the five primary factors (Home, Active Business Involvement, Time, Items Near & Dear and Family Connections) should provide a basis for Idaho domicile. The other factors should be used to support and develop the primary factors. An analysis of each primary factor should be made for Idaho as it relates to that specific factor in comparison to the other locations. For example, an analysis of the "Home" factor would look at all the residences the taxpayer resides in each year during the years under audit in relation to each other. A decision concerning domicile cannot be made by looking at only one side of the factor; nor can a decision be made by examining only one factor. It is very possible that the decisions reached concerning an individual's domicile in one year will not be the same as the conclusions reached in another.

1. PRIMARY FACTORS

The primary factors are fundamental in developing a case for Idaho domicile. The other factors help determine if the case should be worked as a domicile case and to support the primary factors. In most cases the review of primary factors will result in a decision on domicile. The development of a domicile case involves more than a mere listing of the factors that exist in one location versus those in other locations. The analysis should demonstrate a positive link or bond to Idaho or to the other locations. Remember that a taxpayer's domicile is the place "to which the individual intends to return whenever absent."

Analyze the factors to determine if each factor points toward a decision favoring an Idaho domicile or a domicile in another location. When conducting the analysis, explore the Idaho ties in relationship to the taxpayer's connection to the other locations. It is important to obtain information relating to the primary factors in the other locations. Weigh each primary factor, individually and then collectively.

For example, the fact that a taxpayer maintains a "home" in Idaho is a feature that is present in most domicile cases. The mere fact that the taxpayer maintains an Idaho "home", however, is not sufficient, in itself, to establish a case for domicile or that this particular primary factor points toward an Idaho domicile. You should explore the characteristics of the Idaho residence in comparison to the characteristics of the homes maintained in other locations.

a. HOME

THE INDIVIDUAL'S USE AND MAINTENANCE OF AN IDAHO
"RESIDENCE," COMPARED TO THE NATURE AND USE PATTERNS OF A
NON-IDAHO RESIDENCE.

You will need to review and discuss with the taxpayer the homes maintained and used by the individual during each of the years under audit. What does an individual consider to be his home? Is it the actual dwelling (the building) in which he lives, or is it the area (the community) that he considers home? For the purposes of determining an individual's domicile, home can be either, or both, depending upon the circumstances. It also matters little if the dwelling is owned or rented but should represent a "residence" in the eyes of the taxpayer. Therefore, "home" refers not only to that family residence which, over the years, has been clearly established and accepted by everyone as "home" to the taxpayer and/or his immediate family, but also the community to which the individual has established strong and endearing ties.

It should be emphasized that retention of a residence in Idaho is not, by itself, sufficient evidence to negate a change of domicile. The mere location of a home in Idaho does not establish a case for domicile. The Idaho residence should be compared with the residences located in other areas to determine if the circumstances support a determination of Idaho domicile. The individual needs to use the residence as their home and this use pattern should outweigh the patterns established at other locations.

i. WHERE "ONE HOME" IS MAINTAINED

When an individual has only one home, decisions concerning domicile are more straightforward than when an individual maintains two or more residences at various locations. When a taxpayer sells or ends the lease on their Idaho residence and acquires living space in another state, coincidental with each

other, it is an important indicator that a change in domicile has occurred at the time of actual residence in the new location. The taxpayer, in giving up the only residence which is located in Idaho and acquiring another outside Idaho, is giving an important signal of intent to change domicile.

ii. WHERE "TWO OR MORE HOMES" ARE MAINTAINED

Attempting to sell:

In other cases a taxpayer may claim a change of domicile while attempting to sell his only residence in Idaho. Look at the facts and make a decision on the taxpayer's intent. Give appropriate weight to facts such as whether the taxpayer has sold or moved possessions from the location, contracted with a real estate firm to sell the property, etc. If it is determined that the taxpayer's intent was not to abandon the Idaho domicile and begin a new one outside Idaho, there should be some basis to sustain that determination, e.g. the taxpayer may have listed the property at a price significantly above market value; the taxpayer may not be "actively" trying to sell the property; the taxpayer has not moved family heirlooms, treasured possessions, etc., to the new location.

Acquire another home, or change homes during the audit period:

A much more difficult decision concerning an individual's intent occurs when the circumstances are such that he does not give up his Idaho residence. Such is the case when a taxpayer continues maintaining the Idaho property and acquires a new permanent place of abode outside Idaho, or claims to change domicile to an existing residence outside Idaho. Taxpayers can keep/maintain their original Idaho residence and change their domicile.

iii. SIZE OF THE RESIDENCE.

While size is an important item to be considered, it is not determinative in and of itself. A comparison of the size of the residences at the various locations should be made. This analysis should be as specific as possible, contrasting the size of one residence against another. For example, if an individual owns a residence in Washington and an apartment in Boise, information should be requested which will describe the size of the two dwellings. Once this is done, the information along with other aspects of the "Home" factor can be used to arrive at a determination as to which home reflects the taxpayer's domicile. If all aspects of the "Home" factor are equal in weight, the residence that the taxpayer has historically maintained as their home may be of more importance.

iv. VALUE OF THE RESIDENCE

The value of the various residences owned or leased by the taxpayer during the audit period is as important as the size of

the residences when analyzing information to determine domicile. When comparing the value of the various residences, the dwelling with the greatest value is not, by itself determinative. The information gathered should be weighed with other information concerning the "Home" factor to determine which home reflects the individual's domicile. The value of the various residences is more difficult to determine than the size of the dwellings. The difficulty arises out of the fact that equal size dwellings could have significantly different values based upon the location of the property and the dwelling. In some cases, comparable homes in a retirement community may be substantially different in value than a home located in Idaho. Even within Idaho, the value of a dwelling may differ dramatically depending upon the location. For example, the value of property, including a residence, may be considerably less in a rural community where space is abundant while the value of property located in a resort area would be notably higher. Discuss the value of the residences with the taxpayer or the representative. In evaluating the "Home" factor, the value of the dwellings is one aspect of the decision.

HOMEOWNER'S EXEMPTION

Idaho allows an exemption from property taxes for a portion of the assessed value on a personal residence. In order to qualify for the exemption, the property should be "owner occupied" and used as the "primary dwelling place of the owner" as of January 1, of the taxing year. Idaho Code, Section 63-602G(2). The "primary dwelling place" is defined as "the single place where a claimant has his true, fixed and permanent home and principal establishment, and to which whenever the individual is absent he has the intention of returning." Idaho Code, Section 63-701(8)(a). Further, a claimant shall establish the dwelling as his primary dwelling by clear and convincing evidence and, if the residence is occupied for more than one year, that dwelling is where the claimant resided at least six months during the prior year. "Occupied" is defined as "actual use and possession." Idaho Code, Section 63-701(6).

Idaho Code, Section 63-3077(4) authorizes the Tax Commission to deliver to the county assessor of any county of the state of Idaho information relating to a taxpayer's place of residence or domicile. This information is to be used by the county to determine the validity of any homeowner's exemption. If the auditor determines that a taxpayer is a nonresident, but that taxpayer has claimed the homeowner's exemption, the auditor needs to inform the county assessor in writing of the determination. The auditor also needs to notify the taxpayer that their file may not be closed until restitution has been made to the county.

v. NATURE OF USE

How a taxpayer views a particular dwelling is another aspect of the "Home" factor. Often, as an individual becomes more successful in his or her career, the need to dispose of one residence before acquiring another is diminished. Mere retention

of the residence may be an insignificant incident, especially where the taxpayer owns several properties.

An individual may prefer to use a former principal residence as a seasonal home or hotel substitute after moving from Idaho. Affluent nonresidents may have no economic need to sell a particular residence. Question the individual concerning the use of the residence and weigh this aspect as part of the factors that are used to determine the "Home" factor.

It matters little, when analyzing the "Home" factor, whether the individual owns or rents a particular dwelling. The type of lease, however, could shed light on how an individual views a particular piece of property. For example, a taxpayer that rents a residence on a year-to-year basis may not show the same intent as a taxpayer that purchases or enters into a long-term lease. There are, however, situations in which an individual signs a year-to-year lease because of the rental conditions of the unit in which he resides. When this rental takes place every year over a long period of time, the individual, in effect, is in a long-term leasing situation. Review each residence to determine how the property is held (either rented or owned) as well as the length of time the property has been held.

vi. OTHER ASPECTS OF A HOME

There are other aspects of the "Home" factor that can be analyzed to assist in making a decision concerning domicile. Individuals selected for audit may have various employees associated with their different residences. For example, an individual may employ domestic help, grounds keepers, chauffeurs, etc. to help in the maintenance of the various dwellings or a particular lifestyle. In such instances, question the taxpayer concerning the various employees and compare the number and types of employees at the different locations.

vii. CONCLUSION OF THE "HOME" FACTOR

After gathering the data necessary for the analysis of the "Home" factor, weigh the various aspects of size, value, nature, use, and other aspects concerning each of the residences owned or leased by the individual taxpayer. A determination shall be made concerning this one factor as to whether the elements tend to reflect an Idaho domicile or domicile at another location. Keep in mind that this "Home", factor represents only one of five primary factors. The same process of analyzing the aspects of the remaining factors should be applied in order to arrive at a conclusion.

b. ACTIVE BUSINESS INVOLVEMENT

THE INDIVIDUAL'S PATTERN OF EMPLOYMENT, AS IT RELATES TO COMPENSATION DERIVED BY THE TAXPAYER IN THE PARTICULAR YEAR BEING REVIEWED.

Business involvement also includes active participation in an Idaho trade, business, occupation or profession and/or substantial investment in, and management of, an Idaho closely held business such as a sole proprietorship, partnership, limited liability company, or corporation.

If a taxpayer continues active involvement in Idaho business entities by managing an Idaho corporation or actively participating in Idaho partnerships or sole proprietorships, such actions should be weighed against the individual's involvement in businesses at other locations when determining domicile. The degree of active involvement in Idaho businesses in comparison to involvement in businesses located outside Idaho is an essential element to be determined.

In today's world of electronic gadgetry and instant communications, it matters little if the involvement with Idaho businesses takes place from afar or while physically present in Idaho. The degree and dimension of a taxpayer's involvement in the day-to-day operation, or in a policy-making position, should be analyzed during the audit.

Passive investment in an Idaho business is not indicative of domicile whereas a taxpayer actively participating in the management of a business may be. Activities such as operating a business shall be given greater weight than the mere investment in a business venture. The fact that funds are left on deposit with an Idaho bank is not an issue of domicile.

If the facts clearly show that the business is being run from an out-of-state location, the control that the individual asserts over the business is one factor in favor of an Idaho domicile while the individual's out-of-state presence is a factor in favor of domicile outside Idaho. The actual location of the business is one element to be examined. The degree of involvement by the individual in the day-by-day operation of the business is another. Each element of the "Active Business Involvement" factor should be compared between Idaho involvement and involvement in businesses at other locations.

The adoption of the passive activity loss rules of the Tax Reform Act of 1986 increases the importance of analyzing the individual's business ties. For example, a taxpayer may have provided documentation, with his federal return, to substantiate that he materially participates in an Idaho activity. This material participation may permit the individual to exclude the loss from the passive activity loss limitations. However, this same activity can also be used to show that the taxpayer has significant Idaho business connections.

In a family-owned business, if a parent passes the daily operation of the Idaho business to the children but remains active in the decision-making process, this active involvement could demonstrate the taxpayer's continued connection to Idaho. As persons become older and accumulate wealth, they may choose to

devote less time to the business and bring in younger individuals who will eventually succeed them, ever reducing their status and compensation. This alone does not demonstrate a change of domicile. This diminished involvement in an Idaho business is one element of the "Active Business Involvement" factor that becomes less important as the taxpayer phases out of the operation. In the end, weigh these items against others, such as the individual's involvement in any business ventures located outside Idaho, before reaching a conclusion. Be aware that the "Active Business Involvement" factor, like the home factor, is only one among five factors leading to a decision concerning the individual's domicile.

c. TIME

AN ANALYSIS OF WHERE THE INDIVIDUAL SPENDS TIME DURING THE YEAR.

Another one of the five primary factors is a quantitative analysis of where the individual spends his time during the tax year. Compare the time spent in Idaho in relationship to the time spent at the other locations. A decision concerning domicile cannot be made based only upon the analysis of where the individual spends his time. The results of this comparison should be weighed with the results from the other primary factors to reach a decision.

A diary, appointment log, or calendar maintained by the individual can be used to support this analysis. Some of the individuals who are audited, however, do not keep extensive diaries or logs. It would not be expected that an individual who has retired from active employment would keep a detailed diary or log as to where he was every day of the year. A personal conversation with the taxpayer and the representative can usually help to clarify the situation and provide the auditor with the patterns of travel for the years under audit. Explain the importance of determining where the taxpayer actually spends his time and show the relationship to the audit conclusions.

During this analysis, focus on the overall living pattern of the taxpayer, asking whether the patterns present strong evidence that the new location has become the taxpayer's domicile. For example, if an individual formerly lived and worked in Idaho during the entire year, but has retired and moved south, seasonal visits to Idaho, such as an annual summer visit, should not be viewed negatively. This visit to Idaho is entirely consistent with the taxpayer's new pattern of living and purported change of domicile. By contrast, if the taxpayer merely changes from spending six months per year in the southern home to spending seven months per year, this minimal alteration, by itself, should not constitute strong evidence of a change of domicile.

At this point, if the audit is focused on domicile, you need not account individually for every single day as long as patterns are established. You should seek out credible testimony from the

taxpayer and attempt to recreate the locations where the taxpayer spent time during the audit period. The information that you receive as testimony or declarations from the taxpayer should be weighed with other factors relating to any of the locations where the taxpayer resides during the period.

In order to substantiate the entries in a diary, or if no diary exists, a taxpayer may be asked to provide other information such as: credit card receipts, utility usage patterns, ATM access records, canceled checks or other information to identify where the taxpayer was during a specific period. For example, a taxpayer might be asked to submit expense accounts or credit card receipts to demonstrate a presence IN or OUT of Idaho. In addition, telephone bills may be requested to show the activity at a particular location. This activity could also be used to demonstrate a presence either in or out of Idaho. Testimony should also be sought from the taxpayer that would substantiate the entries in the diary or log. Random sampling and test checking of the entries in a diary and/or other testimony submitted by the taxpayer will reduce the burdens placed upon the taxpayer to produce records and documentation. This information should be brought together by using a calendar to document the activity for each day. The use of a calendar as an analysis tool is objective and puts a large volume of information in one location for ease in discussing with the taxpayer or for use in the appeal process.

Use all of this information to determine the pattern of activity both in and out of Idaho. The information provided by the taxpayer will usually represent time spent at the Idaho location as well as the location of the claimed domicile. Analyze information pertaining to the time-spent factor for the purpose of comparing time spent at the claimed domicile to the time spent in Idaho. Time spent in places other than these is not considered in this analysis. Review this material from both the Idaho perspective and that of the other location. The review of diaries and logs should be handled in an objective manner. Do not concentrate only on conducting an exhaustive review of third party records focusing on non-Idaho days but equally review information submitted by the taxpayer concerning out-of-state documentation of what appears to be an Idaho day.

"False" indicators that can mistakenly turn a non-Idaho day into an Idaho day include credit card purchases in Idaho by children, phone calls by housekeepers, and children or relatives staying at the Idaho address as a guest of the taxpayer when he may not be in Idaho. Carefully examine this type of documentation. When appropriate, an affidavit from a third party individual may clarify the situation. In addition, be alert for the same "false indicators" which might be used to verify a day spent out of the state.

d. ITEMS "NEAR & DEAR"

THE LOCATION OF ITEMS WHICH THE INDIVIDUAL HOLDS "NEAR AND DEAR" TO HIS OR HER HEART, OR THOSE ITEMS WHICH HAVE SIGNIFICANT SENTIMENTAL VALUE, SUCH AS: FAMILY HEIRLOOMS, WORKS OF ART, COLLECTIONS OF BOOKS, STAMPS & COINS, AND THOSE PERSONAL ITEMS WHICH ENHANCE THE QUALITY OF LIFESTYLE.

Another primary factor is the location of pets, personal items or other sentimental possessions which the taxpayer holds "Near & Dear to their heart." These include specific items of value, such as a rare book, art or antique collection, or those of little monetary value such as a family photo album, which enhance and add quality to the individual's lifestyle. In some cases it may be appropriate to review insurance policies which could disclose the actual location of such items, particularly if moved to a new location. As part of the opening interview with the taxpayer, you should discuss the location of the items he places value on. You should also determine if the taxpayer has any hobbies that would require tangible property such as collecting cars, horse racing, boating, etc. These items are generally located where the taxpayer considers his home and where he spends most of his time. This analysis of "Near and Dear" items can help to solidify the intent of the taxpayer concerning the location of his domicile. For example, a collector of rare books could show his intention to change domicile if a new residence is modified to accommodate the large collection and the collection is actually moved to the new location. However, if the same collector does not move the books, this, coupled with the results of the analysis of the other primary factors, may indicate that the taxpayer is not showing intent to give up and abandon the former domicile.

The items "Near & Dear" at all locations should be reviewed and a comparison made. The mere location of items "Near & Dear" is not conclusive in determining the location of one's domicile, but is one factor which helps to give a picture of how the taxpayer views his domicile. Look not only at the items which remain in Idaho but look at all items considered to be "Near & Dear" to the individual. Do not ignore or dismiss the transfer of "Near & Dear" items to a non-Idaho location. Even though the transfer of these possessions to a non-Idaho location could be viewed by some as a mechanical or a self-serving act, consideration should be given for those items located outside Idaho.

If an item is valuable or has significant sentimental value to the individual, we would expect the item to be moved by a first rate carrier. For example, one would not expect an individual to move antique furniture in a U-haul, but rather by a bonded and insured professional carrier. This type of move might be documented with "bills of lading" or insurance statements.

e. FAMILY CONNECTIONS

Another primary factor is an analysis of the taxpayer's family connections both within and without Idaho. The auditor should review with the taxpayer such family connections as where minor children attend school, the frequency of visits to children or grandchildren, etc. Review the connections to family in other locations as well as those to family located in Idaho. The analysis of the individual's family connections at the various locations where he resides should be weighed carefully to determine if the circumstances shed any light toward a decision concerning domicile. Be aware that the family connection is but one factor among five primary factors to be considered.

Many of the individuals who have been audited have expressed difficulty with the personal and invasive questions necessary for an analysis of this area. Minor children's attendance in school should be examined to determine whether a persuasive argument could be made for domicile in one location versus another. For example, if minor children are attending a non-boarding school within reasonable commuting distance from the taxpayer's Washington residence, then it may be concluded that the taxpayer intends this Washington residence to be his domicile. However, if minor children attend a boarding school located near a Washington residence, but rarely return to the Washington residence, and do return to Idaho on the weekends, this could indicate that the individual is domiciled in Idaho.

Even though an individual has retained deep and substantial ties with their children and grandchildren, this in and of itself is not conclusive in regards to establishing or maintaining a domicile. Holidays and vacations take on a greater meaning when surrounded with family. When the family connection, combined with other primary factors, however, encompasses the entire habit of life, then this may indicate one's intentions.

2. EVALUATION OF THE FACTORS

After the primary factors are analyzed, and sufficient information is gathered upon which a conclusion can be based, look at the information and formulate an opinion as to the domicile of the individual. This determination of an individual's domicile can often be facilitated by applying the accounting principle of a "T" account to the factors. By aligning the factors favoring an Idaho domicile on one side of the account and the factors favoring a domicile outside Idaho on the other side, the auditor and the taxpayer are provided with a visual summary of the reasons for a specific determination. Several principles should be kept in mind during this decision-making process. They are as follows:

- **No single primary factor is determinative. A decision should be based upon all the primary factors affecting domicile.**

- **Evaluate the primary factors objectively. Look at the patterns that are established by the individual.**
- **Be open minded and fair in evaluating all factors in a balanced and reasonable manner.**
- **Be cognizant of the fact that individuals go through evolutionary changes during their lifetime.**

Each primary factor should be analyzed and a determination reached upon the conclusion of the analysis. In some instances, the analysis of the primary factors will present "clear and convincing" evidence relating to the individual's domicile. In other cases, the analysis of the primary factors may fail to provide convincing evidence, or point equally to a domicile in more than one location.

A major change in the patterns surrounding the primary factors can signal a change in domicile. Recognize differences in use, including the possible conversion of a full-time principal home into a vacation residence, used only during the summer or during periodic visits to the state. Mere retention of the residence may be an insignificant incident, especially where the taxpayer owns several properties in and out of Idaho.

Ask if the individual's business or work patterns have changed, and whether the individual has significantly altered their work habits by reducing their duties or transferring day-to-day responsibilities to others. Occasional use of the Idaho office and telephone, courier or fax communication with an Idaho business are not appropriately viewed as strong indicators of Idaho domicile if the individual's work pattern and responsibilities have significantly changed.

Concentrate on the overall living pattern; analyze whether the pattern of time spent in various locations presents a body of evidence that supports the new location as the taxpayer's domicile. If the taxpayer formerly lived and worked in Idaho during the entire year, but has retired and moved to Nevada, seasonal visits to Idaho, such as annual summer visits, should not be viewed negatively. They are entirely consistent with the taxpayer's new pattern of living and purported change of domicile. Occasionally, the occurrence of an event forces a drastic change in lifestyle. Retirement, loss of employment, the death of a spouse, a divorce and remarriage, or even the growing up of one's children can trigger a desire to change a lifestyle.

If the taxpayer or representative is not forthcoming with the needed information, request information that would tend to support the change to another state. The taxpayer will be eager to provide information supporting his domicile in another state. Much of the information concerning changes in lifestyle can be determined through careful questioning of the taxpayer and/or the representative; therefore, demonstrating the benefits of an opening interview or conversation with the taxpayer.

3. "OTHER" FACTORS

Other factors are used to support and develop the primary factors. It is very possible that a nonresident could have many "other" factors linking them to Idaho but not have sufficient primary factors to conclude that the taxpayer is a resident. In some cases where the taxpayer has failed to respond to correspondence or has refused to provide information, the other factors may be the only information available in making a determination.

The "Other" factors are:

Active involvement in community, religious, civic, or service clubs or fraternal or other not-for-profit organizations, particularly where physical presence in Idaho is necessary. Active involvement includes actual participation in the organization or club's activities, the holding of office, regular attendance at meetings, and the volunteering of services that demonstrate an actual presence in Idaho.

Passive involvement in such organizations is not a factor used in the determination of domicile. Passive involvement includes such things as membership and attendance at services. Membership is the listing of one's name on a role of membership and may or may not include the payment of a one-time or annual fee.

Membership in a religious organization is not considered active membership, nor is the weekly or regular attendance at services to be considered active participation regardless of whether a service is conducted in Idaho or at another location.

Active involvement is distinguished from mere passive, honorary, lifetime, or casual membership in a club or organization. For example, members of a community, even a vacation community, will become members of the local volunteer fire department by the payment of membership fees. This would be considered as passive involvement in a community service organization. However, if an individual enrolls as a member of the volunteer fire department, attends regular weekly meetings and seminars on fire control techniques, and responds to emergency, the individual would be considered as actively participating.

The address at which bank statements, bills, financial data and correspondence concerning other family business are primarily received.

The physical location of the safe deposit boxes used for family records and valuables.

Location of auto, boat, and airplane registrations as well as the individual's personal driver's or operator's license.

Indication as to where the taxpayer is registered to vote and an analysis of the exercise of said privilege. Don't limit the review to the general elections in November, but also question the taxpayer's participation in primary or other off-season elections, including school board and budget elections.

The frequency and nature of business conducted within Idaho for legal, medical and other professional services in relationship to the services performed at other locations.

An analysis of telephone services at each residence including the nature of the listing, the type of service features, and the activity at the location.

The citation in wills, testaments and other legal documents that a particular location is to be considered the individual's place of domicile.

Reliance on this information in determining domicile should be with the awareness that the individual has the ability to easily control and regulate many of these factors. For example, a taxpayer, because of varying residency rules, may be able to change his voter registration, auto registration, or driver's license to another state for convenience, while never intending to change his domicile. You may still encounter a situation where the individual has taken several secondary steps to demonstrate a change of domicile while doing little to change the primary factors that reflect significant ties to Idaho. All of the factors listed above may not be present in each situation. The existence of a factor when determining the domicile of an individual depends upon the specific circumstances of the situation.

Other aspects of the taxpayer's lifestyle may emerge during the audit. These may include, but are not limited to: the place of interment; charitable contributions; passive interest in partnerships or small corporations; memberships in religious organizations; the mere location of bank accounts; contributions made to political candidates or causes; and the location where the taxpayer's individual income tax returns are prepared and filed. Should the taxpayer or the representative raise these factors during the course of the audit, you should explain that these are not factors used in the determination of domicile.

F. TAX RELIEF FOR A DOMICILIARY - Safe Harbor Provision

Rule 014.02 defines domicile and provides a safe harbor provision as follows:

An individual shall not be considered a resident, but may be considered a part-year resident, during a period of absence from this state described as follows:

(a) The period begins with an individual leaving this state if the individual is absent from this state for at least four

hundred forty five (445) days in the first fifteen (15) months.

(b) During such period, but excluding the first fifteen (15) months, the individual was not present in this state for more than sixty (60) days in any calendar year.

(c) During such period, the individual did not maintain a permanent place of abode in this state at which his spouse (unless he and his spouse are legally separated) or minor or dependent children are present for more than sixty (60) days during any calendar year.

(d) The individual did not, during such period, hold an elective or appointive office of the government of the United States (other than the armed forces of the United States or career appointees in the United States foreign service).

(e) The individual was not, during such period, employed on the staff of an elective officer in the legislative branch of the government of the United States; and

(f) The individual did not, during such period, claim Idaho as his tax home for federal income tax purposes.

(g) The period ends with an individual returning to this state if such individual remains or resides in the state for more than sixty (60) days.

IV. STATUTORY RESIDENT

A. DEFINITION

A statutory resident as defined in Idaho Code Section 63-3013 is an individual who "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."

B. TEMPORARY OR TRANSITORY PURPOSE

Factors used to determine whether a taxpayer was in Idaho for more than a temporary or transitory purpose includes:

- The length of time spent in Idaho
- Any business activity or employment conducted in Idaho,
- Banking and other financial dealings taking place in Idaho, and
- Family and social ties in Idaho.

If the stay is related to a significant business, employment or financial purpose or the taxpayer maintains a significant family or social tie in Idaho, he is present in Idaho for other than a temporary or transitory purpose. However, if the taxpayer is simply a vacationer, seasonal visitor, tourist, or guest, he is considered present in Idaho only for a temporary or transitory purpose.

If a taxpayer is present in Idaho for ninety days or more during a taxable year, he is presumed to be in Idaho for more than a temporary or transitory purpose. To overcome this presumption, he shall show that his presence was consistent with that of a vacationer, seasonal visitor, tourist or guest. Rule 40.02.

V. SOURCING OF INCOME

A. GENERAL

Income from Idaho sources is the gross income, or portion thereof, that is derived from a business, trade, profession, or occupation carried on within Idaho or from any property, trust, estate, or any other source with a situs in Idaho. Income of a nonresident that is derived from property located both within and without Idaho during the taxable year, or from business transactions that occur both within and without Idaho during the taxable year, is attributed to Idaho based on the principles set forth in Rules 261 through 265.

B. EARNINGS OF NONRESIDENT EMPLOYEES AND OFFICERS

The allocation provided for in Rule 262 is the proportion of total compensation for services rendered that the total number of days worked in Idaho bears to the total number of days worked both within and without Idaho. If a nonresident employee or officer performs services for more than one employer, both within and without the state, the taxpayer shall make a separate allocation for each employer.

C. EARNINGS OF SALESPERSONS

A nonresident salesman who works in Idaho is subject to Idaho taxation regardless of the location of his post of duty or starting point.

If an individual is paid on a mileage basis, the gross income from sources within Idaho includes that portion of the total compensation for personal services that the number of miles traveled in Idaho bears to the total number of miles traveled within and without Idaho. If the compensation is based on some other measure, such as hours, the total compensation for personal services should be apportioned between Idaho and other states and foreign countries in a manner that allocates to Idaho the portion of total compensation reasonably attributable to personal services performed in Idaho. See Rule 262.

D. ALLOCATION OF INCOME FROM A BUSINESS

If a nonresident individual, or a partnership, of which a nonresident individual is a member, carries on a business, trade, profession or occupation both within and without Idaho, an allocation to Idaho should be made. This apportionment and allocation shall be determined by the three-factor allocation formula, prescribed by Section 63-3027, Idaho Code, consisting of

a property percentage, payroll percentage and sales percentage.

VI. THE IMPACT OF A PRIOR AUDIT

Workpapers and appeal decisions should be consulted to determine the impact of a prior audit on the current audit. However, situations change constantly and all available information should be considered when a decision is made as to the scope of the audit.

If a previous audit determined that the taxpayers were domiciliaries of Idaho and since a domicile continues until specific actions of the taxpayer demonstrate clearly that the domicile changed, any subsequent audits should focus upon the evidence supporting the change. Rather than requesting information to support a continued domicile in Idaho, the auditor should concentrate on the specific actions the taxpayer has taken to change his domicile.

For statutory residence and the allocation of Idaho income, each year stands on its own, and the auditor should not be unduly influenced by prior audit results. Statutory residence and allocation issues, in particular, change from year to year and the days allocated to Idaho in one year may have little bearing on the allocation of days in a subsequent period. However, if the work pattern and/or lifestyle of the taxpayer are consistent with the results of the previous audit, then the auditor should exercise "good judgment" when determining the scope of the audit. For example, if the day count determined per an analysis of prior years on audit was determined to be substantially below the 270-day count and the work patterns and lifestyle of the individual remain consistent in the re-audit years, the auditor may decide to drop the statutory resident aspect of the audit and proceed with a review of the allocation of income to Idaho.

Even though an individual may have been audited in a prior period for income allocation to Idaho, this, in itself, is not necessarily the acceptance of the non-Idaho domicile by the previous auditor. It may be that the domicile and/or statutory resident issue were not questioned. This is especially true if the previous audit was handled by correspondence.

VII. COMMUNICATING WITH THE TAXPAYER

A. THE INITIAL APPOINTMENT

Initial contact, if at all possible, should be by telephone. This allows the auditor to ask questions to determine if further documentation will be required from the taxpayer and to determine the scope of the examination. The telephone call should be followed up with an appointment letter and one of the questionnaires. The answering of a few general questions may permit the auditor to determine whether an audit is actually necessary and/or to narrow the focus of the audit. The

individual's response to the questionnaire though designed to reduce the burden on the taxpayer, should result in additional effort by the auditor to conduct a comprehensive pre-audit analysis and review of the questionnaire in order to correctly target any audit issues.

Subsequent requests of the individual should be modified and streamlined to fit the specific need of the case at hand. The letter should be molded to the audit issues identified for the particular taxpayer. A personal interview may facilitate the completion of the audit.

1. Timeliness of the appointment

Appointments should be arranged to ensure that the auditor, as well as the taxpayer, has sufficient lead time to adequately address the issues. In most cases, the first communication a taxpayer receives from the Tax Commission is a letter requesting information on domicile and the number of days spent in Idaho.

Review the audit period on new cases in order to be sure to provide the taxpayer and the auditor with a reasonable period of time to conduct the audit. An audit is not to be commenced near the end of a statute of limitation period when an insufficient period of time remains to adequately address the issues of the audit.

B. CONTINUING COMMUNICATIONS

Developing and maintaining a dialogue with the taxpayer and the representative is essential for the successful conclusion of any case. The taxpayer and the representative should be given the opportunity to fully understand, review and discuss the findings developed during the analysis of the records. A successful auditor is one who listens to the taxpayer and/or his representative and evaluates the information presented. After this evaluation, determine if this explanation affects your position, and restate the position in light of the new information submitted by the taxpayer.

If a disagreement exists, or the taxpayer is uncomfortable with your explanation, a closing conference with a supervisor should be offered. At this conference, the auditor should be prepared to explain the findings. This airing of the issues has proven to result in the successful resolution of many cases.

C. EXPLANATION TO THE TAXPAYER

During the concluding phase of the audit, present to the taxpayer and/or his representative copies of workpapers and schedules, and explain the methodology of the audit as well as procedures in plain and simple, nontechnical terms.

There are occasions, however, when the preliminary audit results should be communicated to the taxpayer and the representative as soon as it appears that a case is developing in a particular direction. One important example of this is in regard to credit for taxes paid to another state and the residency issue. If it appears that the taxpayer is a resident of Idaho by virtue of domicile or statutory resident rules, the taxpayer should be advised to file a protective claim with his claimed state of domicile to recover any credits he may be entitled to.

VIII. AUDIT TECHNIQUES

A. PRE-AUDIT ANALYSIS

1. GENERAL

A comprehensive pre-audit analysis is an important aspect of the case. Review the information available and determine the scope of the audit. A thorough pre-audit analysis can provide the auditor with a strong foundation toward either a resolved case at the audit's conclusion or a case sustained through the appeals process.

2. PRIOR AUDITS

Review the file as well as all other available information during the pre-audit analysis to determine if a prior audit was conducted. The focus of the audit can be directly affected by the results of a prior audit. If a prior audit determined that the taxpayers are domiciliaries of Idaho and since domicile continues until specific actions of the taxpayer demonstrate clearly that the domicile changed, subsequent audits should focus upon the evidence supporting a change in domicile.

Conversely, if a prior audit determined a taxpayer was not domiciled in Idaho, then a subsequent audit should start with the fact that the taxpayer is a nondomiciliary. The auditor should then concentrate on the factors supporting a move back to Idaho or the statutory resident issue.

3. IDAHO ADDRESS

Review the entire return paying particular attention to the Idaho addresses identified on the tax return. The envelope attached to a filed return may indicate an Idaho address as the return address. The envelope may also be postmarked from an Idaho location. This can lead to the identification of a permanent place of abode in Idaho, especially if the returns are mailed from Idaho with a postmark different from that of the tax preparers.

The "Wage and Tax Statement" (W-2) may reveal that the information return was sent to the taxpayer's Idaho address. Make note of any Idaho addresses identified during the pre-audit analysis and explore the taxpayer's connection to these addresses during the audit.

4. NON-IDAHO ADDRESS

When reviewing the return, particular attention should be paid to a non-street or an unusual address from a state other than Idaho. The c/o address, a PO box number, or apartment number may indicate a temporary mailing address used by the taxpayer. A comparison of the information on the return should be made to identify discrepancies such as, a non-Idaho address while the envelope bears an Idaho postmark; the W-2 sent to an Idaho address while the address on the return indicates another state; and the return, as well as the information returns, using a c/o address in Idaho while the taxpayer indicates he has no Idaho business connections.

5. BUSINESS RELATIONSHIPS

An analysis of the supporting schedules attached to the Idaho return (Schedule C, Schedule E, and the partnership or S Corporation K-1s) can provide an insight into the taxpayer's business involvement within Idaho. Significant active involvement with Idaho partnerships or other business entities will support a position that the taxpayer is domiciled in Idaho. In addition, the W-2, "Wage and Tax Statement," may reveal a relationship between the employer and the employee. The inclusion of the taxpayer's surname as part of the employer's name implies closely held ownership which may be found to include a degree of active participation which would have to be explored during the audit.

B. COMPUTER INFORMATION

1. GENERAL

The Tax Commission's use of the various computer files available from the Internal Revenue Service, other Idaho agencies, various city departments, and other states, in addition to the Tax Commission's databases, are valuable tools in residency cases.

2. FEDERAL DATA

The IRMF (Information Returns Master File) is made available by the Internal Revenue Service and includes all information returns (1099s, 1098s, K-1s and W-2s) sent by an Idaho payor or sent to a payee's Idaho address. This and other federal information such as large cash transactions, addresses and filing histories can be obtained by completing a federal information request form and giving it to our federal liaison.

3. OTHER INFORMATION

The Tax Commission subscribes to several city directories. These directories are accessed by address or phone number and can provide information about the length of time an individual has resided, or continues to reside, at a given location. Wherever possible, verify the fact that a taxpayer has lived or continues to reside at an Idaho "permanent place of abode."

C. ACCUMULATION & ANALYSIS OF DATA

1. THE QUESTIONNAIRE

Two standard questionnaires have been developed to assist you. The questions and documentation requests should be customized to each taxpayer whenever possible. If pre-audit information is unclear or not available, a standard questionnaire should be used. If you are unsure whether to use a questionnaire, discuss the case with your supervisor or review your procedures.

When the taxpayer telephones to schedule an appointment or discuss the letter, this initial communication with the taxpayer could eventually reduce requests for unnecessary information, help in focusing the scope of the audit, and facilitate the scheduling of an appointment. It is recommended that you ask questions similar to those in the short questionnaire at this time in order to determine the focus of the case.

The use of standard questionnaires should not restrict the auditor's creativity in developing a line of questioning. The questionnaire may be tailored to a case's specific needs by inserting or deleting various questions wherever appropriate. This would provide a basic degree of consistency but not hinder the development of the audit or the auditor's ability to explore an area identified during the pre-audit analysis. The auditor should limit the information requested from the taxpayer to that which is deemed essential to the completion of the audit. This can be accomplished by the judicious use of the long and short versions of the questionnaire as well as the modification of the questionnaire to meet the needs of the specific case.

2. PERSONAL INTERVIEW

Using the pre-audit analysis and the questionnaire as a starting point, explore and develop through personal conversations with the taxpayer or his representative the various elements needed to determine the involvement in Idaho. This personal interview should concentrate on the primary factors of domicile. Where are the homes located? What business contacts does the taxpayer have here in Idaho? Where are the minor children attending school and are they receiving any scholarships that are dependent upon Idaho residency?

Develop your listening skills and nudge the conversation in the direction necessary to provide the information needed to make a decision. In many cases it may be beneficial to physically view the Idaho residences. (This information will be needed when comparing the Idaho location to any out-of-state residences).

By actively listening and asking appropriate questions during the interview process, auditors will prepare themselves for the documentation and positions presented by the taxpayers during the audit. The interview should also involve the taxpayer's typical pattern and general lifestyle, hobbies, how time is spent on weekends, etc.

During the interview and throughout the audit, the auditor should scrutinize the testimony and declarations made by the taxpayer. Credible testimony and declarations should be considered.

Document the responses made by the taxpayer and/or the representative during the personal interview. These notes may be used to refresh your memory at a later date if the case goes through the appeals process. The timely entry of notes and comments lends credibility to discussions which take place between you and the taxpayer and/or the representative. Testimony can be tested by requiring certain limited documentation. Auditors may accept as evidence, with some weight, written and/or oral statements by the taxpayer. Where other evidence does not contradict such testimony, it should be accepted as truthful.

3. ANALYSIS OF THE FEDERAL RETURN

If the taxpayer has not attached the federal return to the state return, the auditor should request a copy of the complete federal return. A close review of the schedules may provide information that will support your position.

Scrutiny of Schedule A (Itemized Deductions) can reveal information concerning the location of an Idaho residence from the real estate taxes claimed, the mortgage interest paid or a casualty loss suffered. Presence in Idaho can be documented by expenditures for medical needs by Idaho medical practitioners. Business & educational involvement in Idaho can be verified by amounts deducted as Miscellaneous deductions. Travel and Entertainment expenses (Form 2106), which are also found as itemized deductions, could be used to confirm days spent outside Idaho while in travel status.

Business involvement is identified on a variety of federal schedules. Schedule C is used to report income from a sole proprietorship, while Schedule E reports an assortment of income items such as partnership income, S Corporation income, rental income and income from trusts and estates.

4. ANALYSIS OF RECORDS

Unlike a substantiation audit, the objective of a residency case is not the verification of each deductible item on the tax return but the establishment of a pattern. An auditor may, however, request verification of items that appear to be excessive or unreasonable.

a. Bank Records.

The information that can be learned about a taxpayer from canceled checks, bank statements, etc. is important in the determination of domicile and may greatly assist the auditor who is pursuing the issue of statutory residence. The physical location of the banking institution and/or place where a signature card is kept on file is not significant. Some importance is to be placed on the address to which bank statements, financial information, or 1099 data is sent, as well as the location or locations of safe deposit boxes used for family records and valuables. Of much more importance and significance are the types of activity that can be disclosed from financial information, such as where that activity occurred and the frequency of such activity. Focus on the activity reflected by bank accounts and the use patterns of such activity rather than the bank's physical location.

Current technology has significantly changed the concept of "neighborhood bank." In the past an individual would visit or mail a deposit to the local bank and would be hard pressed to find a bank in another town that would cash a personal check. Now, wire transfers, ATM machines, credit cards, bankcards, PIN numbers, etc. are a way of life for many taxpayers.

Access to ATM machines should be reviewed because this information will usually disclose an exact location where a taxpayer is on a particular day. The regular or repeated use of an ATM machine located in Idaho places the taxpayer in Idaho at a specific time and place each time it is accessed. This information may be helpful in either verifying an entry in a log or diary or refuting the statements made by the taxpayer.

The auditor should be more interested in dates, locations of payees and the cancellation information on the back of the check than the actual dollar amount of the check. Canceled checks should be reviewed for such personal expenses as groceries, hairdressers, club dues, and entertainment, noting the dates the checks were written. Dates, volume and type of business expenditures are an indication of the time the taxpayer spends in Idaho. Determine the usage patterns for the various locations where the taxpayer resides and eventually make a decision as to their domicile. Active involvement is demonstrated by the usage patterns established by the taxpayer. For example, analysis of credit card receipts may disclose attendance at a sporting event, a theatrical performance or dinner in Idaho that is significant in establishing a day's presence in Idaho.

In some cases, a taxpayer may keep a balance in Idaho banks for convenience on those occasional trips to Idaho. This fact is generally insignificant in deciding the issue of domicile. Employing a financial institution located in Idaho, which provides activities such as handling insurance policies, stock transactions, managing the taxpayer's portfolio, and everyday expenditures, etc. is not, in itself, a controlling factor of domicile, especially if the taxpayer plays a passive role in these activities.

b. Business records.

Business records including corporate board minutes and employment contracts should be examined to determine the degree of involvement in Idaho business entities. Look for evidence of active participation in the decision making process as well as involvement in the day to day operation of the business. Board minutes often establish a specific delegation of authority to the taxpayer and others as well as provide authorization for the use of a corporate apartment, auto or plane. Corporate board minutes and employment contracts often require the individual to represent the company by sitting on the boards of other related or unrelated companies. This information would be useful in determining the allocation of income or the days in or out of Idaho.

c. Personal and Household records.

Don't overlook the traditional nondeductible expenses when reviewing personal records. The utility (electric and water), telephone and cable TV statements are valuable records in determining usage patterns at more than one location. Cable companies often keep records of disconnect and reconnect notices which would give an indication as to when the taxpayer is present at a specific location. Insurance records and policies may also give some insight as to the assets present at the various locations. Works of art, collections of stamps, coins, and rare books are usually covered with separate riders to the policy, and the exact location of the collectible is usually identified. This type of information may be useful in a domicile or statutory residence case where you are attempting to show the relation of the taxpayer's lifestyle to his presence in Idaho. Keep in mind that these requests place a heavy burden on the taxpayer and exercise some degree of common sense when requesting the documentation.

5. PERSONAL OBSERVATIONS

Make every attempt to visit the Idaho place of abode. The location of the neighborhood, the facility itself, and the relationship to the lifestyle of the taxpayer is important to the establishment of residency in Idaho. This personal observation should include checking the names on the mailbox, checking the license numbers of any vehicles on the premises, and interviewing the mailman if necessary.

6. DECLARATIONS

While declarations of the person whose domicile is disputed are useful to prove intent, the weight given is dependent upon the circumstances under which they were made. A declaration made after a controversy arises over domicile, or made at a time when the individual has a specific interest in obtaining evidence, is questionable as self-serving.

The declaration as to residence made in a will carries weight. However, a recitation of residence in a will is not conclusive as to domicile. The true domicile of a decedent is to be determined by his or her acts and conduct.

In determining the intent of an individual necessary to prove domicile, the total effect of numerous acts or declarations, which standing alone may be of slight importance, may create high evidence of intent when grouped together.

Declarations, while not necessarily persuasive, are expressive of intention and may become important when supported by the individual's acts. If the sworn declarations of an individual seeking a change of domicile are consistent with the other evidence and with their conduct, a change of domicile is established.

Intent is not a mere arbitrary declaration on the part of the individual, but is to be gathered from his conduct as evidenced by his daily life. Intent will be determined by the history, manner of life, activities, and interests of the person whose domicile is in question, rather than by his declarations, either written or oral. Where declarations are in conflict with the facts, the declarations are not controlling.

In considering the effect of the declarations of an individual, his motive in making such declarations, the circumstances under which they were made, and their consistency with other declarations, his acts and his general conduct will be scrutinized. The most important evidence of the intent to acquire a domicile is the conduct of a person; and, in the case of a discrepancy between his declarations and acts, his declared intent yields to the conclusion drawn from the acts. Also, mere oral and informal statements of intention are of little weight where they conflict with more formal declarations and the actions of the individual.

IX. CONCLUDING THE AUDIT

A. GENERAL

The conclusion as to whether one domicile has been replaced by another depends on a composite appraisal of the unique circumstances and conditions surrounding the person whose domicile is in question. All the relevant acts, declarations, and conduct of a person, the manner of living, connections,

associations, and interests should be considered and, from the overall picture intent should be ascertained. Each case varies, and what may be of great weight in one may in another be of little importance.

While a person may select a domicile by exercise of intention, the conduct of the person is indicative of the intention to make a particular residence his home. Consideration should be given to the physical characteristics of the dwelling place, the time spent there, the things done there, who lives there with him, what possessions are kept there, his mental attitude toward the place, the intention when absent to return, and the attitude toward other places with which he has contact. Weigh the subtle ingredients that compose a person's relationship to his various dwellings and determine from them which dwelling is his Ahome.

The fact that a person whose domicile is in question has lived a longer period in each of several years in one place more than in the other is without controlling effect. The manner of living and the actual intent and conduct of the person involved are essential elements which lead to a proper conclusion.

B. MAKING A DETERMINATION

After the auditor has accumulated sufficient information to reach a conclusion, he should prepare a summary of the facts developed during the audit. Specifics on the reasoning for the change should be fully explained in the audit report. After reaching a decision, determine if a secondary position exists. For example, if the primary decision holds the taxpayer to be a domiciliary of Idaho, is there sufficient information to hold the taxpayer as a statutory resident or does the income allocation change if both positions are successfully defeated by the taxpayer? Cite not only the primary position, but also any alternative positions on the audit report or proposed report. Failure to do so could prevent these issues from being addressed during the appeals process.

Be as accurate as possible in determining the date of a change in domicile. The taxpayer and the auditor may agree on a date partway through a year, so that the taxpayer would be taxed as a resident for part of that year and as a nonresident for the remainder of the year.

C. PENALTY CONSIDERATIONS

Review the case to determine the appropriateness of penalties. Particular attention should be paid to a negligence penalty and the penalty for substantial understatement. When the taxpayer demonstrates a flagrant and intentional disregard for Idaho tax law, consideration should be made for the imposition of fraud penalties or referral to the Tax Discovery Bureau for possible criminal-prosecution. Keep a watchful eye for cases with fraud indicators. For these cases, referral for criminal action or civil fraud penalties may be appropriate.

D. COMMUNICATING THE RESULTS

Once a decision is made, communicate the results to the taxpayer and/or his representative. It is suggested the audit results be presented to the taxpayer and/or his representative orally, explaining the adjustments and presenting pertinent case law to support the position. During this oral presentation, it is also appropriate for the auditor to explain to the taxpayer his rights to protest and the appeals process available to him.

The taxpayer should be given sufficient time to review the audit results and present additional information, if possible. Listen carefully to any additional explanations offered by the taxpayer and evaluate any new documentation submitted. During these personal conversations with the taxpayer (or at a closing conference), ask the taxpayer to explain the reasons for circumstances which still indicate an Idaho domicile. The taxpayer may have good practical reasons for not having severed some of his Idaho ties.

E. CLOSING CONFERENCE

Developing and maintaining a good dialogue with the taxpayer and the representative is essential for the successful conclusion of the case. The taxpayer and the representative should be given the opportunity to fully understand and refute the findings developed during the audit. A closing conference explaining the findings and prior decisions relative to the present case could result in the successful resolution of the case. This is beneficial to both the taxpayer and the Tax Commission as well, in that collections will be enhanced and litigation costs kept to a minimum. If an issue can be resolved at the audit level, we should strive to do so. Even if the case remains unagreed, the auditor will be in a better position to defend the audit during the appeals process.

F. WORK PAPERS

Work papers that adequately support the conclusions drawn upon the completion of the audit should be prepared throughout the audit. These work papers will become part of the case file and will be used to resolve any questions the taxpayer has. The work papers take on a greater significance in the appeals process.

Your analysis should reflect the factors favorable to an Idaho domicile as well as those factors that endorse a domicile outside Idaho. It is important that you document each of the primary factors considered in arriving at the decision. The audit narrative should always contain an analysis of the primary factors. The comparison of the Idaho factors to those existing in other locations should be clearly outlined with the conclusion evident from the facts presented.

G. THE AUDIT REPORT

The audit explanation should always include the reasons both factually and legally for your decision. If you have had the opportunity to develop the five primary factors, you may need to discuss each of them in your explanation. Citing the law without giving any factual basis for your conclusion is not an acceptable audit explanation.

The auditor can help in the defense of the case during the appeals process if reference is made to decisions and court rulings that resemble or parallel the case at hand. Reference to these decisions should be cited in the audit. Appendix A includes a synopsis of cases involving the residence/domicile issues.

**IDAHO STATE TAX COMMISSION
RESIDENCY / DOMICILE QUESTIONNAIRE**

Taxpayer's Name: _____ Tax Year(s): _____

Spouse's Name: _____ Daytime Telephone: _____

Please provide the following information to help determine your residency/domicile status. It is important that you address all of the questions and provide all of the requested documentation. Please be specific in your answers.

1. Address where residence is currently claimed:

Address: _____

City: _____ State: _____ Zip Code: _____

2. Did you live at the above address at any time during the above tax year(s)? Y/N _____
If no, please indicate the address(es) of your principal residence(s) during the above tax year(s):

<u>Address</u>	<u>Period Occupied</u>	<u>Owned/Rented</u>
a. _____	_____ 19__ to _____ 20__	_____
b. _____	_____ 20__ to _____ 20__	_____
c. _____	_____ 20__ to _____ 20__	_____

3. Last known Idaho address:

Address: _____

City: _____ State: _____ Zip Code: _____

Period Occupied: _____ 19__ to _____ 20__

4. What was the last year that you filed a return with the State of Idaho? _____

5. Please select from among the following choices those that describe your living arrangements when staying in Idaho during the above tax year(s):

	Year(s)
(a) occupied a home, condominium, or co-op owned by myself	_____
(b) occupied a home, condominium, or co-op owned with others	_____
(c) rented or leased a home, apartment, or room	_____
(d) stayed with friends or others	_____
(e) stayed at a hotel	_____

6. What was done to change your status from a resident of Idaho to a nonresident of Idaho? Please provide detailed information relative to your intentions (establishing a home or principle place of residence, obtaining a driver's license, registering vehicles, etc.).

7. For the year(s) indicated, provide your employer's name and address. If self-employed, provide the name and address where you carry out the activities of your profession, business, or trade.

Did your employer provide living quarters for your use in Idaho at any time during the above tax years? Y/N ___ List years: _____

8. Have you disposed of a dwelling located in Idaho? Y/N ___ If yes, when was it disposed of? _____ (Month/Day/Year)
How was it disposed of? _____

If sold, please submit a copy of the sales contract.

9. Were you actively (A) / passively (P) associated with or have material (M) participation in any business activity conducted in Idaho? Y/N ___ If yes, please provide the following information:

	<u>Name</u>	<u>Employer ID No.</u>	<u>Nature of Business</u>	<u>A/P/M</u>
a.	_____	_____	_____	_____
b.	_____	_____	_____	_____
c.	_____	_____	_____	_____

Attach additional information on a separate piece of paper as needed.

10. If you do not maintain living quarters in the state of Idaho, where do you regularly stay while in Idaho? _____
11. For the tax year (s) indicated, how many days or part days were you physically present in Idaho for work purposes? _____
12. For the tax year(s) indicated, how many days or part days were you physically present in Idaho for **non-working** days such as weekends, vacations, holidays, illness, etc. during each year? _____

13. List the dates that you actually stayed **outside** Idaho where residence is claimed during the tax year(s) indicated. Be specific and use the space provided at the end of the questionnaire if necessary. _____

14. In the tax year(s) indicated, where did your spouse and/or children live? _____

15. In the tax year(s) indicated, where did your children attend school? _____

16. In the tax year(s) indicated, where did you actually vote? _____

17. In the tax year(s) indicated, where were your automobiles, boats, or airplanes registered?

	<u>Type</u>	<u>Year (s)</u>	<u>City and State</u>
a.	_____	_____	_____
b.	_____	_____	_____
c.	_____	_____	_____

18. In the tax year(s) indicated, from which state were your driver's licenses issued?

19. Are you required to file a personal income tax return with another state? Y/N _____
If yes, in which state(s)? _____

20. Attach additional information or comments you may wish to provide.

I DECLARE THAT THE ABOVE STATEMENTS AND ENCLOSED ATTACHMENTS ARE TRUE, CORRECT, AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Taxpayer Signature

Date

