

Rule 030 stated, in part:

RESIDENT (RULE 030).
Section 63-3013, Idaho Code.

The term resident applies to individuals, estates, and trusts. (3-20-97)

a. An individual is a resident if he meets either of the tests set forth in Section 63-3013, Idaho Code. For the rules relating to the residency status of aliens, see Rule 031 of these rules. For the rules relating to the residency status of servicemembers and their spouses, see Rule 032 of these rules. For the rules relating to Native Americans, see Rule 033 of these rules.

(2-27-12)

b. For the rules relating to the residency status of estates, see Rule 034 of these rules. (3-20-97)

c. For the rules relating to the residency status of trusts, see Rule 035 of these rules. (3-20-97)

01. Domicile. The term domicile means the place where an individual has his true, fixed, permanent home and principal establishment, and to which place he has the intention of returning whenever he is absent. An individual can have several residences or dwelling places, but he legally can have but one domicile at a time. (3-20-97)

a. Domicile, once established, is never lost until there is a concurrence of a specific intent to abandon an old domicile, an intent to acquire a specific new domicile, and the actual physical presence in a new domicile.

(3-20-97)

b. All individuals who have been domiciled in Idaho for the entire taxable year are residents for Idaho income tax purposes, even though they have actually resided outside Idaho during all or part of the taxable year, except as provided in Section 63-3013(2), Idaho Code. (7-1-98)

Every person has a domicile at all times, but no person has more than one domicile at a time.

Restatement 2d, *Conflict of Laws*, § 11(2). Even though a person has no home, he must nevertheless have a domicile. Restatement 2d, *Conflict of Laws*, § 11(m).

Domicile forms a constitutional basis for the imposition of state income taxes on an individual.

New York, ex rel. Cohn v. Graves, 300 U.S. 308 (1937); *Lawrence v. State Tax Commission*, 286 U.S. 276 (1932).

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

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

A person may have several places of abode or dwelling, but he can have only one domicile at a time. Domicile has been defined as a place with which an individual has a settled connection for legal purpose and the place where a person has his true, fixed, permanent home, habitation and principle establishment, without any present intention of removing therefrom, and to which place he has whenever he is absent, the intention of returning. The controlling factor in determining a person's domicile is his intent. One's domicile, generally, is that place where he intends to be. The determination of his intent, however, is not dependent upon what he says at a particular time, since his intent may be more satisfactorily shown by what is done than by what is said. Once a domicile is determined or established a person retains his domicile at such place unless evidence affirmatively shows an abandonment of that domicile. In deciding whether a person has abandoned his previously established domicile and acquired a new one, courts will examine and weigh the factors relating to each place. This court has never deemed any single circumstance conclusive. *Toll v. Moreno*, 397 A.2d 1009, 1016 (Maryland 1979).

In determining whether a person has abandoned a previous domicile and acquired a new one, the courts will examine and weigh the factors relating to each place. The two most important factors that the courts have determined in establishing domicile is where a person actually lives and where

he votes. These factors will probably establish domicile. Where these factors are not so clear, the courts will look to the special circumstances explaining a particular place of abode or place of voting. If those factors are not clear, the court will weigh a number of other factors. *Toll v. Moreno*, 397 A.2d, *supra* at 1016. The list of other factors considered in determining a person's domicile are:

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

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

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

The court in *Toll, supra*, at 1017, held the taxpayer's purpose for wanting to ascertain a new domicile is generally irrelevant in establishing domicile. Rather, the differences arise because of the facts in the particular cases. These facts relating to different jurisdictions are to be examined and weighed in establishing domicile. *Toll, supra*, at 1018.

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

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

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

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

Finally, '(t)he existing domicile, whether of origin or selection, continues until a new one is acquired, and the burden of proof rests upon the party who alleges a change' *Matter of Newcomb*, 192 N.Y. 238, 250 (1908); *Matter of Campaniello v. New York State Div. of Tax Appeals Trib.*, 161 A.D.3d 1320, 1324 (2018), lv denied 32 N.Y.3d 913, (2019).

██████████ worked in other states while keeping his home in Idaho. ██████████ held Idaho driver's licenses from April 30, 2013 to the present. ██████████ registered to vote in Idaho on

July 2, 2012, indicating that she had been a resident of Idaho for one month. She voted in 2012 and 2016. [REDACTED] registered to vote on March 8, 2016 indicating that he had been a resident of Idaho for three years and ten months. Petitioners filed Idaho resident income tax returns for 2013 and 2015. The income tax returns filed have been filed using an Idaho mailing address.

Petitioners have been asked for additional information which might establish that they were domiciled outside Idaho. However, little information has been provided toward this goal. Accordingly, the Commission finds that Petitioners have failed to carry their burden of proving that they have established a domicile outside Idaho.

THEREFORE, the Notice of Deficiency Determination dated November 13, 2019, is hereby MODIFIED to reflect the credit for taxes paid to California, and as so modified, is APPROVED, AFFIRMED, AND MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2014	\$814	\$204	\$187	\$1,205

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

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

DATED this _____ day of _____ 2020.

IDAHO STATE TAX COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2020,
a copy of the within and foregoing DECISION was served by sending the same by United States
mail, postage prepaid, in an envelope addressed to:



Receipt No.
