



The record is devoid of any indication of any place resembling a residence or dwelling of any permanence in any state other than Idaho. Further, Petitioner has provided no documentation showing that he had abandoned his domicile in Idaho.

Idaho Code § 63-3030(a)(1)(A) requires Idaho residents who make income in excess of certain amounts to file a state income tax return. Idaho Code § 63-3013 defines resident:

The term "resident," for income tax purposes, means any individual who:

- (a) Has resided in this state for the entire taxable year; or
- (b) Is domiciled in the state of Idaho . . .

It is clear that the Petitioner did not reside in Idaho during the entire year of 2014. Thus, whether or not the Petitioner was required to file resident Idaho state income tax returns and pay taxes on his income depends on whether or not he was domiciled in Idaho.

Domicile is the place where an individual has his true, fixed, permanent home and to which place he has the intention of returning whenever he is absent. A person can have several residences, but only one domicile. Idaho Income Tax Regulation 13.a. states:

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

All individuals who have been domiciled in Idaho for the entire taxable year, within the meaning of the foregoing definition of domicile, are residents for Idaho income tax purposes, even though they have actually resided outside this state during the whole or part of the taxable year.

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

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

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

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

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

It is a fundamental rule that in order to effect the change of domicile, there must be an actual removal to another habitation, coupled with an intention of remaining there permanently or at least for an unlimited time.

*Bainum v. Kalen*, 325 A.2d 392, 397 (Maryland 1974).

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.

It appears that the Petitioner was raised in Idaho. The record indicates the Petitioner returned to Idaho whenever he was not employed. There is no mention of any place other than in Idaho with which the Petitioner appears to have established a residence with the permanence inherent in domicile. Therefore, the Commission finds that the Petitioner was domiciled in Idaho during the time here in question. Accordingly, the deficiency must be affirmed.

THEREFORE, the Notice of Deficiency Determination dated March 18, 2020, is hereby MODIFIED, and as so modified, is APPROVED, AFFIRMED, AND MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2014	\$4,693	\$1,173	\$1,103	\$6,969

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

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2021.

IDAHO STATE TAX COMMISSION

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2021,  
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.

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