

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NOS. 14477, 14478 & 14905
[Redacted],)	
)	DECISION
Petitioners.)	
_____)	

On November 3, 1999, the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] asserting additional income taxes, penalty and interest in the amount of \$377,290 for the 1988 through 1991 taxable years. Also on November 3, 1999, the Tax Discovery Bureau issued a Notice of Deficiency Determination to [Redacted] asserting additional income taxes, penalty and interest in the amount of \$720,675 for the 1992 through 1997 taxable years. On December 28, 1999, Mr. and Mrs. [Redacted] filed a timely appeal and petition for redetermination with the Idaho State Tax Commission. An informal hearing was requested. However, on May 15, 2000, prior to the date set for the informal hearing, the Tax Discovery Bureau issued another Notice of Deficiency Determination to [Redacted], this one asserting additional income taxes, penalty and interest in the amount of \$203,161 for the 1986 and 1987 taxable years.¹ A timely appeal and petition for redetermination was filed. An informal conference covering all income tax deficiencies that had been issued to [Redacted] was held on October 26, 2000, at the Boise, Idaho offices of the Idaho State Tax Commission. After the conclusion of the hearing, Mr. [Redacted] legal representative submitted some additional documents and information for review. The parties thereafter agreed that the three Notices of Deficiency Determination described above could be combined for purposes of

¹ On May 15, 2000, the Tax Discovery Bureau also issued a Notice of Deficiency Determination to [Redacted] and his former wife, [Redacted], asserting additional income tax, penalty and interest due for the 1981 through 1985 taxable years. That Notice of Deficiency Determination is not address in this Final Decision.

issuing a final decision. The Tax Commission, having reviewed the file, hereby issues its decision upholding the three Notices of Deficiency Determination.

This is a domicile case. During the taxable years at issue in this case [Redacted] was a shareholder and vice president of [Redacted] [Redacted] is a [Redacted] corporation that operates a casino in [Redacted], under the name “[Redacted].” During the 1986 through 1997 taxable years, Mr. [Redacted] was responsible for running much of the day-to-day operations of the casino.

In December 1974 [Redacted] and his former wife, [Redacted], purchased a home in [Redacted]. The home is located at [Redacted], [Redacted]. [Redacted] is located approximately 50 miles north of Mr. [Redacted] business in [Redacted]. [Redacted] were divorced sometime in 1985, and on October 11, 1985, [Redacted] executed a quitclaim deed that transferred her ownership interest in that home to [Redacted] as his sole and separate property. [Redacted] were married on May 31, 1988 in [Redacted]. On December 17, 1990, [Redacted] executed a quitclaim deed that transferred her ownership interest in the [Redacted] home to [Redacted] as his sole and separate property. Mr. [Redacted] continued to own that home until August, 1997 when he sold the home and he and [Redacted] purchased their current home at [Redacted].

The Tax Commission’s audit staff has determined that [Redacted] was residing at, and domiciled at, his [Redacted] home since at least 1981. Mr. [Redacted] contends that from 1981 until 1990 he was actually residing at a manufactured home he owned in [Redacted]. He also asserts that from 1990 until sometime in 1999 he was residing at a suite at [Redacted] in [Redacted], or at a “20' Terry Travel Trailer that he parked across the street from [Redacted] in a pull-through recreational vehicle space.” See March 7, 2001 letter from [Redacted]. During those years that [Redacted] and [Redacted] filed joint federal individual income tax returns (1992

– 1997), Mr. [Redacted] concedes that [Redacted] was domiciled in Idaho. However, he argues that during those years all – or substantially all – of the income earned was directly attributable to his sole and separate interest in [Redacted]. Therefore, according to Mr. [Redacted], there was no community income that [Redacted] was required to report to Idaho as Idaho taxable income.

Under Idaho’s income tax laws, a resident of this state is required to report and pay income tax on all his or her taxable income regardless of source. A nonresident, on the other hand, is required to report and pay Idaho income tax on only his or her taxable income derived from Idaho sources. The term “Resident” is defined in section 13 the Idaho Income Tax Act. During the 1986 through 1995 taxable years the term “Resident” was defined as “any individual who: (a) Has resided in this state for the entire taxable year; or (b) Is domiciled in the state of Idaho.” See Idaho Code § 63-3013 (1989 & Supp. 1995). Effective January 1, 1996, the definition was changed to provide that “[t]he term ‘resident’ . . . means any individual who: (a) Is domiciled in the state of Idaho for the entire taxable year; [or] (b) Maintains a place of abode in this state for the entire taxable year and spends in the aggregate more than two hundred seventy (270) days of the taxable year in this state.” Idaho Code § 63-3013 (1996). Domicile is defined in the Administrative Rules of the Idaho State Tax Commission as “the place where an individual has his true, fixed, permanent home and principal establishment, and to which place he has the intention of returning whenever he is absent.” Idaho Income Tax Administrative Rule 030.02, IDAPA 35.01.01.030.02. This definition is similar to the definition of the word “domicile” found in Black’s Law Dictionary. See Black’s Law Dictionary 501 (7th ed. 1999) (Domicile is “[t]he place at which a person is physically present and that the person regards as home; a person’s true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere.”).

Although the terms “residence” and “domicile” are sometimes used interchangeably, the two words have distinct meanings. The Idaho Supreme Court has long taken note of this difference:

A residence is different from a domicile, although it is a matter of great importance in determining the place of domicile. The essential distinction between residence and domicile is that the first involves the intent to leave when the purpose for which one has taken up his abode ceases. The other has no such intent; the abiding is *animus manendi*. One may seek a place for the purpose of pleasure, of business or of health. If his intent be to remain, it becomes his domicile; if his intent be to leave as soon as his purpose is accomplished, it is his residence.

Reubelmann v. Reubelmann, 38 Idaho 159, 164, 220 P. 404, 405 (1923) (quoting Bouvier’s Law Dictionary). While a person may have several residences, they can only have one domicile at a time. “[O]nce a domicile of choice is established, it persists until another is legally acquired.” In re Estate of Cooke, 96 Idaho 48, 59, 524 P.2d 176, 187 (1973).

A domicile of choice is not lost until there is a concurrence of (1) the specific intent to abandon the old domicile, (2) the specific intent to acquire the new state as one’s domicile, and (3) actual physical presence at the new domicile. Idaho Income Tax Administrative Rule 030.02.a. See also Pratt v. Idaho State Tax Comm’n, 128 Idaho 883, 885 n. 2, 920 P.2d 400, 402 n. 2 (1996) (The Tax Commission’s rule setting out the elements required for a change of domicile is consistent with the Court’s prior holding in Kirkpatrick v. Transtector Systems). Physical presence means a presence at a dwelling place in the new state. Kirkpatrick v. Transtector Systems, 114 Idaho 559, 562, 759 P.2d 65, 68 (1988). Simply being present in a state, without actually having a residence or dwelling place in that state, will not suffice to establish a new domicile.

A change of domicile also requires a specific intent to acquire a new domicile. Intent is inferred from all the surrounding facts and circumstances. In addition, in domicile cases, actions

speak louder than words. See Rest., Conflict of Laws 2d, § 20, Special Note on Evidence for Establishment of a Domicil of Choice. (A person's actions will speak louder than their words, and informal declarations of intent will carry greater weight than formal declarations of intent.) This is particularly true where an individual sets out to create a nominal residence for tax purposes. As held in the United States Supreme Court case of State of Texas v. State of Florida, 306 U.S. 398, 59 S.Ct. 563 (1939):

While one's statements may supply evidence of the intention requisite to establish domicile at a given place of residence, they cannot supply the fact of residence there; and they are of slight weight when they conflict with the fact. This is the more so where, as here, [an individual's] declarations are shown to have been inspired by the desire to establish a nominal residence for tax purposes, different from his actual residence in fact. In such circumstances the actual fact as to the place of residence and [the individual's] real attitude and intention with respect to it as disclosed by his entire course of conduct are the controlling factors in ascertaining his domicile.

Id. at 425, 59 S.Ct. at 576. (Citations omitted).

[Redacted] claims that during the 1986 through 1990 taxable years he was residing in a Gentry manufactured home he owned in [Redacted]. Due to various circumstances, including the number of years that have passed since the tax years at issue in this protest, Mr. [Redacted] has been unable to provide the Tax Commission with a physical address, mailing address, or a phone number for his [Redacted] manufactured home. From 1990 until sometime in 1999, Mr. [Redacted] claims that he was residing either at a suite made available to him at [Redacted], or (when the suite was unavailable) in a fifth-wheel travel trailer that he parked in a recreational vehicle space located across from the [Redacted]. Mr. [Redacted] has not presented any evidence to verify his claim that from 1986 until at least sometime in 1999 he was residing in [Redacted].

As indicated above, [Redacted] is located approximate 50 miles from [Redacted]. As a result, the Tax Commission is not willing to accept the implication set forth in Mr. [Redacted] letters of protest that he resided full-time in [Redacted] and only visited his home and family in [Redacted] on a temporary and transitory basis. See December 27, 1999 letter of protest, p. 2 (“All of the time spent by Mr. [Redacted] in Idaho during 1992 through 1997 was temporary and transitory.”); June 6, 2000 letter of protest, p. 2 (“All of the time spent by Mr. [Redacted] in Idaho during 1986 through 1987 was temporary and transitory.”). However, for purposes of this administrative review, the Tax Commission will accept as true that [Redacted] owned a residence in both [Redacted], and in [Redacted], and that he spent time at both locations. The question remains, however, as between these two residences, which was Mr. [Redacted] “true, fixed and permanent home and principal establishment.”

Restatement, Conflict of Laws Second, sets out some very useful legal principles to help guide the Tax Commission in a situation where an individual resides at more than one dwelling. The key determination is which of the two dwellings is actually the person’s “true, fixed and permanent home and principal establishment.” “Home,” for purposes of determining a person’s true, fixed and permanent home, is defined as “the place where a person dwells and which is the center of his domestic, social and civil life.” Rest., Conflict of Laws 2d, § 12. Factors used to determine if a dwelling is a person’s “home” include (1) the physical characteristics of the dwelling; (2) the time the person spends therein; (3) the things he does therein; (4) whether family members and important personal items are also present at the dwelling; and (5) the person’s mental attitude and intention toward the place. Rest., Conflict of Laws 2d, § 12, comment c. When a person resides at two dwellings, each of which could be considered his true, fixed and permanent home, the dwelling that was acquired earlier in time is generally considered

the person's domicile unless the second dwelling place is his principal home. Rest., Conflict of Laws 2d, § 20. This general rule is explained in greater detail in the comments to Section 20:

b. If a person has two dwelling places, any one of the following situations may arise:

1. One dwelling place may be a home in the sense used in this Restatement (see § 12), and the other merely a residence. This is the most common situation of all. It is likely to exist whenever a person has one dwelling place where he lives during the major portion of each year and another which he uses only for weekend and vacation purposes. Here his domicile will be at the dwelling place which is his home.

2. Both dwelling places may be homes in the sense used in this Restatement, but one may be the person's principal home. In this case his domicile is at the principal home. As between two homes, a person's principal home is that to which he is more closely related or, stated in other words, that which is more nearly the center of his domestic, social and civil life. This will normally be the home where he and his family spend the greater part of their time. Also significant are such factors as which home is the more spacious, which contains the bulk of the household furnishings, in which has he shown more interest, which home has a way of life, (country life, for example, as opposed to city life) more conducive to the person's tastes, and from which home does he engage more actively in social and civic affairs, as by voting, holding public office, attending church, belonging to local clubs and the like. The person's own feelings towards the dwelling place are of great importance. His statements in this connection cannot be deemed conclusive, however, since they may have been made to attain some ulterior objective and may not represent his real state of mind.

....

3. Both dwelling places may have some of the aspects of a home in the sense used in this Restatement and both in more or less equal degree. In this unusual situation, the domicile remains at the one of the two dwelling places which was first established. This is because a domicile, once established, continues until superseded (see § 19), and here there is no basis for preferring the later dwelling place over the earlier one.

Rest., Conflict of Laws 2d, § 20, comment b.

From the record currently before the Tax Commission, it appears that Mr. [Redacted] wife and children were living in [Redacted], not [Redacted], during 1986 through 1997. It also appears likely that Mr. [Redacted] [Redacted] home was larger and more expensive than his [Redacted] manufactured home, his suite at [Redacted], or his fifth-wheel travel trailer. Also, while not entirely clear, Mr. [Redacted] has not provided any information to indicate that he was residing at the [Redacted] manufactured home prior to December 1974 when he bought his home in [Redacted]. In addition, Mr. [Redacted] has been a member of the [Redacted] in [Redacted] since 1982. Finally, it bears noting that [Redacted], unlike Idaho, has no individual income tax. Thus, Mr. [Redacted] has an obvious incentive for stating that the [Redacted] manufactured home, the hotel suite, and the travel trailer are his true, fixed and permanent “home.” Under the principles set out in Section 20 of the Restatement, Conflict of Laws Second, these facts all tend to support a finding that [Redacted] true home was [Redacted], Idaho, not [Redacted], during 1986 through 1997.

Based on the foregoing, the Tax Commission finds that [Redacted] was domiciled in Idaho during the 1986 through 1997 taxable years. This finding is bolstered by that fact that to this day Mr. [Redacted] has continued to reside in [Redacted], Idaho. In fact, in 1997 Mr. [Redacted] sold the home he and his ex-wife purchased in 1974, and he purchased a new home at [Redacted]. Property tax records obtained from [Redacted] County indicate that the home Mr. [Redacted] sold in 1997 was valued at approximately \$256,000, and the home he purchased at [Redacted] was valued at approximately \$269,000. In addition, [Redacted] claimed the Idaho “homeowner’s” property tax exemption on the [Redacted] home from 1992 through 1997, and on the [Redacted] home since 1997. The Idaho homeowner’s exemption is only available if the home is owner-occupied and is the primary dwelling place of the owner. See Idaho Code §

602G(2)(a). For purposes of the exemption, the term “primary dwelling place” means “the single place where a clamant has his true, fixed and permanent home and principal establishment, and to which whenever the individual is absent he has the intention of returning.” See Idaho Code §§ 63-602G(2)(f) and 63-701(9). See also, Von Jones v. Board of County Com’rs, 129 Idaho 683, 687, 931 P.2d 1201, 1205 (1997) (discussing the requirements for the homeowner’s exemption prior to the 1997 recodification of Idaho’s property tax statutes.). Generally speaking, if the home is owned as community property of a married couple, either spouse can claim the full exemption. See Idaho Code §§ 63-602G(2)(d) and 63-701(8). However, as indicted above, in December 1990 [Redacted] quitclaimed her interest in the [Redacted] home to [Redacted] as his sole and separate property. Thus, in 1992 when the Idaho homeowner’s exemption was claimed, it appears that [Redacted] was the only owner of that property who could qualify for the exemption. The homeowner’s exemption claimed for the [Redacted] new home at [Redacted] was signed by both [Redacted], so there is no question that [Redacted] considers his current home in [Redacted] to be his primary dwelling place.

From all outward appearances, [Redacted] has resided in [Redacted], Idaho since at least 1975 but has never in all those twenty-five plus years filed an Idaho income tax return. His claim that during these past twenty-five plus years his true, fixed and permanent home is actually a manufactured home, hotel suite, and travel trailer, in [Redacted] is not particularly credible. See State of Texas v. State of Florida, 306 U.S. 398, 425, 59 S.Ct. 563, 567 (1939) (Where an individual’s statements regarding his domicile are inspired by the desire to avoid paying taxes, those statements are accorded very little weight.).

WHEREFORE, the Notices of Deficiency Determination dated November 3, 1999 and May 15, 2000, are hereby APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following taxes, penalties, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1986	\$50,903	\$12,726	\$70,878	\$ 134,507
1987	29,131	7,283	37,066	73,480
1988	32,572	8,143	37,534	78,249
1989	24,278	6,070	25,062	55,410
1990	78,248	19,562	71,387	169,197
1991	45,865	11,466	36,370	93,701
1992	64,052	16,013	43,044	123,109
1993	56,629	14,157	32,074	102,860
1994	90,465	22,616	44,385	157,466
1995	67,092	16,773	27,071	110,936
1996	94,993	23,748	30,436	149,177
1997	84,822	21,206	19,789	<u>125,817</u>
			TOTAL	<u>\$1,373,909</u>

Interest is calculated through April 30, 2001, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6)(b).

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

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

DATED this _____ day of _____, 2001.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2001, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]Receipt No. [Redacted]
[REDACTED][REDACTED]
[REDACTED][REDACTED]
[REDACTED][REDACTED]

ADMINISTRATIVE ASSISTANT 1