

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 14906
[Redacted],	)	
	)	DECISION
Petitioners.	)	
	)	
	)	
	)	
	)	

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On May 15, 2000, the Tax Discovery Bureau of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (taxpayers), asserting additional income taxes, penalty and interest in the amount of \$561,933 for the 1981 through 1985 taxable years. [Redacted] were divorced in 1985 and they no longer live together. A copy of the May 15, 2000 Notice of Deficiency Determination was mailed to each at their current address. On July 6, 2000, [Redacted] filed a timely appeal and petition for redetermination with the Idaho State Tax Commission. On July 14, 2000, [Redacted] filed a timely appeal and petition for redetermination. Mr. [Redacted], through his legal representative, requested an informal hearing pursuant to Idaho Code § 63-3045(2). Ms. [Redacted] did not request an informal hearing. The informal hearing with Mr. [Redacted] representatives 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] submitted some additional documents and information for review. No additional documentation has been submitted by Ms. [Redacted]. The Tax Commission, having reviewed the file, hereby issues its decision modifying slightly the May 15, 2000 Notice 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 1981 through 1985

taxable years, Mr. [Redacted] was responsible for running much of the day-to-day operations of the casino.

In December 1974 [Redacted] and [Redacted] (now [Redacted]) purchased a home in [Redacted], Idaho. The home is located at [Redacted], Idaho. [Redacted] is located approximately 50 miles north of [Redacted]. 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. The Tax Commission's audit staff has determined that both [Redacted] were residing at, and domiciled at, the [Redacted] location since at least 1981. Mr. [Redacted] contends that during this time he was actually residing at a manufactured home he owned in [Redacted]. Ms. [Redacted] has not provided any evidence whatsoever to contradict the determination made by the audit staff that she was residing at, and domiciled at, the [Redacted] home she and [Redacted] owned.

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. During the years at issue in this administrative protest, the term "Resident" was defined in the Idaho Income Tax Act as "any individual who during the taxable year has been domiciled in Idaho or has resided within the state of Idaho for the entire taxable year." Idaho Code § 63-3013 (1976). 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 domicil, although it is a matter of great importance in determining the place of domicil. The essential distinction between residence and domicil 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 domicil; 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).

Due to the length of time that has passed since [Redacted] purchased their home in [Redacted], the facts and circumstances surrounding their relationship and attitudes regarding that home are sketchy. What is known is that [Redacted] have three children. Information obtained from the [Redacted] School District indicates that the [Redacted] oldest child was attending [Redacted] middle school in [Redacted] and during the 1982-83 and 1983-84 school years, and [Redacted] High for the 1984-85 and 1985-86 school years. The [Redacted] other two children began attending [Redacted] middle school at the beginning of the 1985-86 and 1987-88

school years respectively. From this information it appears that [Redacted], if not both, were living full-time in [Redacted], Idaho, from at least August, 1982 when the [Redacted] oldest child began attending junior high school in [Redacted]. Consistent with this inference that one or both of the [Redacted] were residing full-time at the couple's [Redacted] home, Mr. [Redacted] representative has indicated that the [Redacted] home was used by Mr. [Redacted] wife and children as their personal residences so that his children could attend school in [Redacted]. While Mr. [Redacted] is willing to concede that [Redacted] and the couple's children resided at the [Redacted] home, he maintains that he was actually residing in [Redacted]. [Redacted] has provided no documents or other information to indicate that she resided anywhere other than at the [Redacted] home during 1981 through 1985. As a result, the Tax Commission finds that [Redacted] was domiciled in, and a resident of, the state of Idaho for the 1981 through 1985 taxable years. See Parsons v. Idaho State Tax Com'n, 110 Idaho 572, 574-575 n. 2, 716 P.2d 1344, 1346-1347 n. 2 (Ct.App. 1986) (The taxpayer has the burden to show that a deficiency determination is incorrect.).

[Redacted] claims that during the 1981 through 1985 taxable years he was residing in a [Redacted] 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. 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] letter 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 June 6, 2000 letter of protest, p. 2 ("All of the time spent by Mr. [Redacted]

in Idaho during 1981 through 1985 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], Idaho, 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.

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3. Both dwelling places may have some of the aspects of a home in the sense used in this Restatement and both in more or less equal degree. In this unusual situation, the 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.

Res., 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 1981 through 1985. It also appears likely that Mr. [Redacted] home was larger and more expensive than his [Redacted] manufactured home. Also, while not entirely clear, Mr. [Redacted] has not provided any information to indicate that he was residing at the Jackpot 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 is 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 1981 through 1985.

Based on the foregoing, the Tax Commission finds that [Redacted] was domiciled in Idaho during the 1981 through 1985 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 [Redacted] 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. 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 in Jackpot [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.).

In reviewing the Notice of Deficiency Determination, the Commission notes that there is a slight mathematical error with respect to the tax due for the 1985 taxable year. The tax due for 1985 should be \$38,197 rather than \$38,218 (\$21 overstatement). The tax, penalty and interest due for the 1985 taxable year will be adjusted accordingly.

WHEREFORE, the Notice of Deficiency Determination dated May 15, 2000, is hereby MODIFIED in accordance with this decision and, as so modified, is 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>
1981	\$41,021	\$10,255	\$81,746	\$133,022
1982	30,256	7,564	56,661	94,481
1983	43,376	10,844	76,028	130,248
1984	38,218	9,555	62,387	110,160
1985	38,197	9,549	57,773	<u>105,519</u>
			TOTAL	<u>\$573,430</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

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

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ADMINISTRATIVE ASSISTANT 1