BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NO. 15108
[REDACTED],	)	
	)	DECISION
Petitioners.	)	
	)	

On February 8, 2000, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers), proposing income tax, penalty, and interest for the taxable year 1998 in the total amount of $1,833.

On March 30, 2000, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not request a hearing but rather submitted additional information for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The Tax Discovery Bureau (Bureau) obtained information that showed the taxpayers may have had a filing requirement with the state of Idaho for the taxable years 1997 and 1998. The Bureau researched the Tax Commission's records and found the taxpayers did not file Idaho income tax returns for either year. The Bureau sent the taxpayers a letter inquiring into their Idaho filing requirements. The taxpayers did not respond.

The Bureau reviewed the available information and determined the taxpayers were required to file Idaho returns. The Bureau prepared returns for the taxpayers and sent the taxpayers a Notice of Deficiency Determination. The taxpayers protested the Bureau's determination stating that they would provide actual income tax returns for each year.

On June 2, 2000, the Bureau received the taxpayers' 1997 Idaho return. The Bureau reviewed the return and decided to accept it in lieu of the return the Bureau prepared for 1997. The Bureau sent the taxpayers a letter acknowledging receipt of the taxpayers' 1997 return. The letter also stated the Bureau had cancelled the Notice of Deficiency Determination as it applied to the taxable year 1997.

On September 6, 2000, the Bureau received the taxpayers' 1998 Idaho return. The Bureau reviewed the return and decided the taxpayers did not report all the income that should have been reported to Idaho. The taxpayers' 1998 return showed a nonresident status for Mr. [Redacted] and a part-year resident status for Mrs. [Redacted]. From its review of the available information, the Bureau determined that the taxpayers did not abandon Idaho as their domicile. Therefore, the Bureau did not accept the taxpayers' 1998 return as submitted but rather adjusted the return to reflect Idaho as the taxpayers' domicile and sent them a modified Notice of Deficiency Determination.

The taxpayers responded to the Bureau's modified determination stating they disagreed with the adjustment to their 1998 return. The taxpayers stated that during 1997 the [Redacted] area was financially depressed. As a result, Mr. [Redacted] had to look outside the area for an income stream. He found employment in [Redacted], Nevada and began working there in 1997. In January 1998, Mrs. [Redacted] joined Mr. [Redacted] in Nevada leaving their Idaho business and rentals for their children to operate and manage.

The taxpayers stated that when they left Idaho they had no intention of returning. As evidence of their intent to abandon Idaho, the taxpayers stated their residential rental property was listed for sale in late 1997. Some of the properties sold in 1998 and some sold in 1999. The taxpayers' personal residence was not listed, but the realtor who listed the rental properties was made aware that their personal residence was also for sale. The taxpayers sold their personal residence in 1999.

The taxpayers stated that Mrs. [Redacted] found employment in [Redacted] shortly after she moved. Mrs. [Redacted] remained in [Redacted] until the end of September 1998 when she accepted a promotional intercompany transfer to a Boise store. Mr. [Redacted] did not move to [Redacted] with Mrs. [Redacted]. He moved to [Redacted] later in January 1999.

The taxpayers argued that Mr. [Redacted] was not a resident of Idaho in 1998 because he did not spend 270 days in Idaho. They argued Mrs. [Redacted] was also not in Idaho for 270 days in 1998 but she did qualify as a part-year resident. Therefore, their residency status of nonresident and part-year resident on their 1998 Idaho return was correct.

The taxpayers did concede that an adjustment needed to be made to their 1998 return for community income that was not reported properly. The taxpayers reported only the Idaho source wages to Idaho. They agree that a portion of Mr. [Redacted] wages during the time when Mrs. [Redacted] was living in Idaho was attributed to her through the community property laws.

The Tax Commission began its review of this case by looking at the Idaho Code sections and rules that address residency and domicile. Idaho Code section 63-3013 defines a resident for income tax purposes. The Code states that a resident is an individual who is domiciled in Idaho or is an individual that maintains a place of abode in Idaho for the entire taxable year and spends in the aggregate more than 270 days of the taxable year in Idaho. This same code section provides that an individual will not be considered a resident during a period of absence if the individual is absent from the state for at least 445 days in the first 15 months of the period. During the period, but excluding the first 15 months, the individual cannot be present in the state for more than 60 days in any calendar year. During the period, the individual cannot maintain a permanent place of abode in Idaho for his spouse or minor or dependent children at which they were present for more than 60 days during any calendar year.

Idaho Code section 63-3013A defines a part-year resident as any individual who is not a resident and who has changed his domicile from Idaho or to Idaho during the taxable year, or who has resided in Idaho for more than one day during the taxable year.

Idaho Code section 63-3014 defines a nonresident as any individual who is not a resident or a part-year resident.

Idaho State Tax Commission Rule IDAPA 35.01.01.030.02 defines the term domicile 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. Domicile once established is never lost until there is a concurrence of a specific intent to abandon the old domicile, an intent to acquire a specific new domicile, and physical presence in the new domicile.

The Bureau asserted that the taxpayers' domicile did not change from Idaho in 1998. The Bureau relied on the facts that the taxpayers had a business in Idaho; the taxpayers' principal residence was in Idaho; the taxpayers had rental property in Idaho; the taxpayers returned to Idaho; the taxpayers had family ties in Idaho; the taxpayers rented accommodations in Nevada; Mr. [Redacted] employment was construction and temporary; and that the taxpayers filed a resident return for 1997 when Mr. [Redacted] was working outside of Idaho.

In 1997, Mr. [Redacted] found gainful employment in [Redacted], Nevada. His employer manufactured cabinets for distribution to companies in [Redacted]. The record does not show this position was a temporary position. On the contrary, the record suggests the employment was for an indefinite period due to the fact that Mrs. [Redacted] moved to [Redacted] in 1998.

The record does not state when Mr. [Redacted] first found employment in [Redacted]. However, comparing the wages earned by Mr. [Redacted] in 1997 and 1998, it appears Mr. [Redacted] was in [Redacted] for most of 1997. If this is the case, Mr. [Redacted] could qualify for the safe harbor provisions of Idaho Code section 63-3013 and thereby be considered a nonresident for filing purposes.

The taxpayers stated they rented a room from their daughter who lived in Nevada. They did this to accumulate a cash flow. This statement shows that the taxpayers had family ties in the state of Nevada, not only in Idaho. This reduces the importance of the family ties factor relied upon by the Bureau.

The taxpayers listed their rental properties for sale in 1997. Some of those properties sold in 1998 and others sold in 1999. The taxpayers stated their personal residence was also for sale; however, they did not list it with a realtor. The taxpayers sold their personal residence in 1999. The fact the taxpayers listed and sold their rental properties and their personal residence even after they returned to Idaho suggests the taxpayers had the intention of abandoning Idaho.

When the taxpayers returned to Idaho, the reason for returning was a promotional transfer for Mrs. [Redacted] within the company she began working for in [Redacted]. Mrs. [Redacted] returned to Idaho a few months before Mr. [Redacted]. Mrs. [Redacted] return was not to the area where the taxpayers were long-time residents, [Redacted], a small agricultural community, but rather to [Redacted], the largest city in Idaho. The assumption was that, if the taxpayers did not abandon their Idaho domicile, they would have returned to the place where they were established. The record shows the taxpayers were eliminating their ties to the [Redacted] area.

The taxpayers did have a business in Idaho during this time and presumably still own the business. The business is an S-corporation capable of being operated by someone other than the taxpayers. The business did not require any special talents of the taxpayers. Therefore, the taxpayers could continue to own the business but have it managed and operated by family members living in [Redacted].

The Tax Commission can only speculate why the taxpayers filed a resident return for 1997. The record shows Mrs. [Redacted] was in Idaho for the entire year of 1997. The taxpayers may have decided to leave Idaho sometime in 1997 but the culmination of the move did not happen until 1998. If this were the case, the taxpayers' domicile would have remained in Idaho until the taxpayers began to make the physical move. Therefore, the resident return for 1997 was the proper return.

In addition to the foregoing, the taxpayers were physically present in Nevada and the taxpayers had the stated intent of not returning to Idaho. Therefore, considering all the available information, the Tax Commission found the evidence indicated the taxpayers probably did abandon Idaho.

Therefore, the Tax Commission agrees with the taxpayers' resident status on the 1998 return they submitted. The Tax Commission also agrees with the taxpayers' that their 1998 return did not properly reflect their community income. Therefore, the Tax Commission adjusted the taxpayers' 1998 return to include the amount of community income as computed by the taxpayers.

WHEREFORE, the Notice of Deficiency Determination dated February 8, 2000, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIEMED, AND MADE FINAL.

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

YEAR	TAX	INTEREST	PENALTY	TOTAL
1998	$120	$30	$21	$171

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

An explanation of the taxpayers’ right to appeal this decision is included 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][REDACTED]

ADMINISTRATIVE ASSISTANT 1