

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 15600 & 15619
[REDACTED],)	
)	DECISION
Petitioners.)	
_____)	

On February 6, 2001 and April 11, 2001, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission issued Notices of Deficiency Determination to [Redacted] (taxpayers), proposing income tax, penalty, and interest for the taxable years 1997 through 1999 and 1990 through 1994, respectively in the total amount of \$45,971.

On March 30, 2001 and June 12, 2001, the taxpayers filed timely appeals and petitions for redetermination. The taxpayers requested a telephone conference, which was held on August 14, 2001. The Tax Commission, having reviewed the file, hereby issues its decision.

The Tax Discovery Bureau (Bureau) reviewed the returns of the taxpayers' S-corporation and found that the taxpayers had not filed individual income tax returns for the taxable years 1990 through 1994. The Bureau sent the taxpayers a letter asking about their filing requirement with Idaho. The Bureau did not receive a response from the taxpayers, so it began gathering additional information on the taxpayers.

From the information gathered, the Bureau determined the taxpayers were required to file Idaho income tax returns. The Bureau prepared returns for the taxpayers [Redacted]. The Bureau sent the taxpayers a Notice of Deficiency Determination, which the taxpayers appealed.

The taxpayers stated they disagreed with the Bureau's findings that they were residents of Idaho and that they were required to report income to Idaho that was earned in Alaska and

Washington. They stated further that the returns for the years in question were timely filed and are now outside the statute of limitations for correction or adjustment.

The taxpayers chose to have their position heard through a telephone conference. During the telephone conference the taxpayers provided historical information on their whereabouts and where they earned their income. Most of the information pertained to Mr. [Redacted]. It was determined during the conference that Mrs. [Redacted] remained domiciled in Idaho even though she and the children would occasionally spend extended amounts of time with Mr. [Redacted] in either Alaska or Hawaii.

In 1981, when Mr. [Redacted] was single, he moved to Alaska and began fishing. By 1983, Mr. [Redacted] owned his own fishing operation in Alaska. He also began logging on the [Redacted] during the off-season. Occasionally, Mr. [Redacted] would return to Idaho for visits and to acquire investment and other business property. However, he always went back to Alaska to continue fishing and logging.

In 1985, Mr. [Redacted] purchased a house in [Redacted], Idaho near [Redacted]. In 1987, Mr. [Redacted] applied for and received the homeowner's exemption on the house he purchased in [Redacted]. Sometime prior to 1989, Mr. [Redacted] also acquired some commercial property in [Redacted], Idaho.

Mr. [Redacted] met Mrs. [Redacted] in 1990 and they were married in December 1990 in Idaho. Three days later, Mr. [Redacted] returned to Alaska for the snow crab season. Mrs. [Redacted] joined her new husband in Alaska in February 1991. She stayed in Alaska until their children completed the second semester of elementary school. Mrs. [Redacted] then returned to Idaho and stayed in Idaho until January 1992 when she went to Hawaii to be with Mr. [Redacted].

In 1991, Mr. [Redacted] went to Hawaii. He purchased a boat there and fished in the Hawaiian waters. When Mrs. [Redacted] joined Mr. [Redacted] in Hawaii, they rented a house for about six months until the rent became too expensive. Mrs. [Redacted] returned to Idaho and lived in the [Redacted] house. Mr. [Redacted] remained in Hawaii. He lived on his boat and continued to fish. Mr. [Redacted] stayed in Hawaii through 1993 and possibly into 1994.

In 1994, Mr. [Redacted] came to Idaho and worked for approximately 20 days. Presumably Mr. [Redacted] stayed with the family at the [Redacted] house. Mr. [Redacted] registered an old farm truck in Idaho in 1994. Mr. [Redacted] stated the truck was used to haul firewood, a horse, hay, etc. He stated it was seldom used.

In 1995, Mr. [Redacted] formed an Idaho S-corporation and started logging in Washington, Montana, and Idaho. In 1995, Mr. [Redacted] also had Idaho wages; he took the boat he purchased in Hawaii to Alaska and fished; he registered vehicles and a utility trailer in Idaho; and a daughter was born to him in Idaho. The Hatches filed a nonresident Idaho income tax return for 1995. On that return, the Hatches reported as Idaho source income, wages, business income/loss, and rental income from the commercial property Mr. [Redacted] purchased in the 1980's.

For the years 1996 through 1999, Mr. [Redacted] had the logging operation of his Idaho S-corporation and his Alaska fishing income. Beginning in 1996, but more clearly in 1998, the [Redacted]' income was shifting from fishing to logging. For each of these years, the [Redacted] filed nonresident Idaho income tax returns. In these years, Mr. [Redacted] registered a car, a pickup, a suburban, and a snowmobile in Idaho.

It is well-established law that a person's domicile gives the state of domicile the right to tax that individual. People of State of New York ex rel. Cohn v. Graves, 300 U.S. 308, 313

(1937); Lawrence v. State Tax Commission of Mississippi, 286 U.S. 276, 279 (1932). It is equally established that everyone has a domicile and that no one can have more than one domicile at a time. Taylor v. Milam, 89 F.Supp. 880, 881 (W.D.Ark. 1950); Ex parte Phillips, 275 Ala. 80, 152 So.2d 144, 146 (1963); Smith v. Smith, 45 Cal.2d 235, 288 P.2d 497, 499 (1955). From the information presented by Mr. [Redacted], the Tax Commission agreed with the taxpayers that Mr. [Redacted] was domiciled in Alaska beginning in the early 1980's. However, the Tax Commission believes the information and evidence gathered supports the argument that Mr. [Redacted] domicile changed from Alaska to Idaho late in the 1990's. More specifically, the Tax Commission found the evidence supports an assertion that Mr. [Redacted] domicile changed to Idaho in 1998.

Beginning in 1998, the taxpayers' S-corporation return listed Mr. [Redacted] as an Idaho resident. The Alaskan preparer who prepared the S-corporation return was the same preparer that prepared the [Redacted]' individual income tax returns. The Tax Commission believes this shows the taxpayers and their preparer knew that there was a change in the time Mr. [Redacted] spent in Alaska; a change in the business involvement Mr. [Redacted] had in Alaska; a change in where Mr. [Redacted] family connections were located; a change in what Mr. [Redacted] considered his near and dear items; and a change in where Mr. [Redacted] considered home.

The evidence shows Mr. [Redacted] derived most of his income from his S-corporation in 1998. This continued into 1999. Mr. [Redacted] also stated the fishing in Alaska dropped off in the later years of the 1990s. Besides the flow-through income of the S-corporation, the [Redacted] received significant amounts as wages from the corporation, all reported to be from Idaho sources. This is a good indication of where Mr. [Redacted] was putting his efforts and consequently spending his time.

After Mrs. [Redacted] returned to Idaho from Hawaii, the record does not show that Mrs. [Redacted] lived anywhere other than in Idaho. She apparently did not, as in prior years, spend an extended amount of time with Mr. [Redacted] in Alaska. Although Mr. [Redacted] did have his father living in [Redacted], Alaska, that does not overcome Mr. [Redacted] primary family connections in Idaho beginning in 1994.

Since Mr. [Redacted] family was in Idaho, one can assume that Mr. [Redacted] had most, if not all, of his near and dear items in Idaho. The record shows Mr. [Redacted] had vehicles registered in Idaho. He also registered a utility trailer and a snowmobile. When asked about the utility trailer, Mr. [Redacted] stated he used it to haul around his four-wheel ATVs. Therefore, with Mr. [Redacted] family and recreational pursuits located in Idaho, it is logical to assume he kept his near and dear items in Idaho. Alaska was becoming just a place where he derived income.

As to where Mr. [Redacted] considered home, the record is silent. Mr. [Redacted] did not specifically state that his home was in Alaska in all the years. He stated that he lived in a 32-foot travel trailer while in Alaska. The address Mr. [Redacted] used in Alaska was his father's and this is where he parked the trailer. Mr. [Redacted] stated that, even during the time when Mrs. [Redacted] and the children were in Alaska with him, they all lived in the trailer. When Mr. [Redacted] was fishing, he lived on his boat.

The Tax Commission is of the impression that when Mr. [Redacted] family stopped traveling to where Mr. [Redacted] was working that his idea of home began to change. With his family in Idaho, Mr. [Redacted] returned to Idaho more often to be with his family. It appears from the record that Mr. [Redacted] began transitioning from a home in Alaska, to Alaska being a place where he earned his income and his home was with his family in Idaho.

The Bureau determined, based upon the available information, the taxpayers were domiciled in Idaho from 1990 through 1999. The Tax Commission does not agree with this determination. Based upon the new information obtained from the taxpayers, the Tax Commission finds the taxpayers had separate domiciles until 1998 when both their domiciles were Idaho. As previously stated, Mrs. [Redacted] domicile was Idaho during all the years. The taxpayers presented no information that would suggest otherwise. However, the Tax Commission found that the information provided by the taxpayers showed that Mr. [Redacted] was domiciled in Alaska in 1990 through 1997. It was not until 1998 that the information and evidence showed that Mr. [Redacted] was more attached to Idaho than to Alaska. Therefore, the Tax Commission finds that Mr. [Redacted] domicile changed to Idaho in 1998.

With the finding that Mr. [Redacted] was domiciled in Idaho in 1998, the taxpayers are required to file Idaho income tax returns reporting their income from all sources to Idaho. (Idaho Code sections 63-3002 and 63-3013) The adjustments the Bureau made to the nonresident returns the taxpayers filed for 1998 and 1999 reflect the taxpayers' status as Idaho domiciliaries. Therefore, the Tax Commission upholds the Bureau's determination for 1998 and 1999.

However, Mr. [Redacted] domicile did not change in 1997. The return the taxpayers filed for 1997 was correct as to sourcing income to Idaho. However, the taxpayers' reported their status as both nonresidents of Idaho. Nonresidents receive no grocery credit on their returns. Mrs. [Redacted] and the children were residents of Idaho and entitled to the grocery credit. Therefore, the Tax Commission allowed a grocery credit for Mrs. [Redacted] and the children for 1997.

Mr. [Redacted] stated that a daughter was born in 1995. However, on the returns the taxpayers filed for 1995 through 1999 the taxpayers claimed only two dependent exemptions for

Mrs. [Redacted] sons. Seeing that the taxpayers were entitled to an additional dependent exemption beginning in 1995, the Tax Commission allowed an additional exemption for the taxable years 1997 through 1999.

As for the taxable years 1990 through 1994, the Tax Commission found that Mrs. [Redacted] was domiciled in Idaho and that Mr. [Redacted] was domiciled in Alaska. The taxpayers did not file returns with Idaho for any of those years. The taxpayers thought they were not required to file. However, the information available shows and suggests the taxpayers did have sufficient Idaho source income to require them to file Idaho returns.

In 1990 and 1994, the taxpayers received wages from Idaho employers. In 1994, the taxpayers received nonemployee compensation from an Idaho source. In all the years, 1990 through 1994, Mr. [Redacted] owned commercial property in [Redacted], Idaho, that presumably was rented as shown on later years' returns. Therefore, the Tax Commission found that the taxpayers had Idaho source income in excess of Idaho's filing requirements thus requiring them to file income tax returns for 1990 through 1994. Since the taxpayers did not provide any information on the rental income of the commercial property in Idaho, the Tax Commission estimated the taxpayers' rental income based upon the information provided on the subsequent years' returns.

The Bureau added interest and penalty to the taxpayers' Idaho tax liability in accordance with Idaho Code sections 63-3045 and 63-3046. The Tax Commission reviewed these additions and found them to be correctly applied as provided in the Idaho statutes.

WHEREFORE, the Notices of Deficiency Determination dated February 6, 2001 and April 11, 2001, are hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, are APPROVED, AFFIRMED, and MADE FINAL.

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

<u>YEAR</u>	<u>TAX(REFUND)</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1990	\$1,251	\$313	\$1,233	\$ 2,797
1991	449	112	386	947
1992	558	140	416	1,114
1993	745	186	477	1,408
1994	1,346	337	758	2,441
1997	(275)	0	0	(275)
1998	1,599	400	367	2,366
1999	3,002	716	488	<u>4,206</u>
			TOTAL DUE	<u>\$15004</u>

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 _____, 2002.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that I have on this _____ day of _____, 2002, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted] [REDACTED][REDACTED][REDACTED]

ADMINISTRATIVE ASSISTANT 1