

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 18184
)
) DECISION
Petitioners.)
_____)

On May 14, 2004, the staff of the Income Tax Audit 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 2001 in the total amount of \$6,242.

On July 16, 2004, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers requested a hearing which was scheduled, rescheduled, and then they failed to appear. The taxpayers still wished to provide additional information for the Tax Commission to consider, so the Tax Commission allowed the taxpayers additional time to provide their documentation and information. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayers timely filed their 2001 Idaho individual income tax return. Included with the return was a federal Schedule A itemizing their deductions. On Schedule A, the taxpayers claimed unreimbursed employee business expenses in the amount of \$81,857. The Income Tax Audit Bureau (Bureau) selected the taxpayers' return to examine the taxpayers' unreimbursed employee business expenses. The Bureau contacted the taxpayers and requested documentation to support the employee business expenses. The taxpayers began gathering the information for the Bureau but before they provided anything the taxpayers began questioning the State's ability to examine deductions claimed on their federal return. The Bureau addressed the taxpayers' questions citing Idaho Code sections 63-3002 and 63-3042. The taxpayers then began claiming

that [Redacted] was not a resident of Idaho in 2001. They stated that [Redacted] was not required to pay taxes in Idaho and that he would be requesting a refund for all taxes that had been paid.

It was apparent that the taxpayers were not going to provide the Bureau with the needed documentation, so the Bureau adjusted the taxpayers' Schedule A disallowing the unsubstantiated employee business expenses. The Bureau sent the taxpayers a Notice of Deficiency Determination which the taxpayers protested. The taxpayers stated that they had documentation to support the unreimbursed employee business expenses, but unreimbursed employee business expenses was not the issue that needed to be addressed. The taxpayers believed that [Redacted] had not been a resident of Idaho since 1997 and that he was not required to file Idaho income tax returns. Because [Redacted] was not a resident, the taxpayers did not believe they needed to provide substantiation for the deductions claimed. However, if the Tax Commission does not agree with the taxpayers' residency argument, the taxpayers stated they would provide documentation to support the unreimbursed employee business expenses.

The Bureau referred the matter for administrative review. The Tax Commission sent the taxpayers a letter giving them two alternative methods for having the Notice of Deficiency Determination redetermined. The taxpayers did not respond, so the Tax Commission sent a follow-up letter. The taxpayers responded and asked for a hearing. The Tax Commission scheduled a hearing; but, a few days before the hearing, the taxpayers called to cancel and reschedule the hearing. Another hearing date was scheduled; but, when the time arrived for the hearing, the taxpayers failed to appear.

The Tax Commission continued its contact with the taxpayers through their representative to find out when the taxpayers would provide any information. A year and a half

later [Redacted] appeared at the representative's office, and a telephone conference was held. The Tax Commission considered the information provided and sent the taxpayers a letter explaining the problem areas the Tax Commission had with the taxpayers' argument that [Redacted] was not domiciled in Idaho. The Tax Commission waited for several months for a response from the taxpayers but has yet to receive one. Therefore, the Tax Commission decided the matter based upon the information available.

The taxpayers filed their 2001 Idaho income tax return as full-year residents. The Bureau's initial examination questions were directed at substantiation of the claimed unreimbursed employee business expenses. [Redacted] They stated [Redacted] elected to stay in Idaho to raise their children. [Redacted] stated that he and his wife were separated but not legally separated.

[Redacted] [Redacted], the taxpayers agreed that [Redacted] would provide for all the family's needs in Idaho. [Redacted] took care of their children and maintained the household. She did not work outside of the home. The only vehicle the taxpayers owned was located in Idaho for use by [Redacted] and the children. [Redacted] did not need a vehicle; he rode his bicycle and used public transportation wherever he happened to be working and living. [Redacted] had an Idaho driver's license during these years; however, he had little use for it. [Redacted] stated he recently renewed the Idaho driver's license as a nonresident.

[Redacted]. While in Idaho, [Redacted] stayed with his wife and children. This was part of the agreement between the taxpayers for [Redacted] support of the family. [Redacted] provided documentation of a lease agreement where he and another individual leased a loft [Redacted] The lease was for a period of nine months [Redacted] stated that when the lease expired he leased another place on his own.

[Redacted] stated that his typical work week was between 80 to 90 hours. He stated he had memberships to [Redacted] and in some of the other areas where he worked. [Redacted] stated he purchased short-term memberships because his job took him to several different locations. He stated that the memberships [Redacted] were longer, six months to a year. [Redacted] stated that his only other real activity was bicycling. He stated he purchased an expensive mountain bike that stays [Redacted] for him to ride whenever he can. [Redacted] did have a few things in storage in Idaho with his wife and children, but nothing significant.

The taxpayers completed a domicile questionnaire on which [Redacted] stated he did not vote. However, [Redacted] registered to vote in Idaho and voted in the primary and general elections. On [Redacted] registration card, he stated that he had resided in Idaho [Redacted]. He also completed his registration card showing two Idaho addresses--his present residence address and his previously registered address.

Domicile is defined in the Tax Commission's Administrative Rules 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. An individual can have several residences or dwelling places, but he legally can have but one domicile at a time." Income Tax Administrative Rule 030.02 (IDAPA 35.01.01.030.2). The essential distinction between residence and domicile is that domicile requires intent to remain at one place for an indeterminate or indefinite period. Reubelmann v. Reubelmann 38 Idaho 159, 164, 220 P. 404, 405 (1923). Domicile, once established, persists until a new domicile is legally acquired. In re Cooke's Estate, 96 Idaho 48, 524 P.2d 176 (1973). In domicile law three things must happen for a change of domicile to occur: 1) intent to abandon the old domicile; 2) intent to acquire a new domicile; and 3) physical presence in the new domicile. See Idaho Income Tax Administrative

Rules IDAPA 35.01.01.030.02.a. See also, Pratt v. State Tax Commission, 128 Idaho 883, 885 n.2, 920 P.2d 400, 402 n.2 (1996). Whether an individual has the specific intent to create a new domicile is evidenced by that individual's actions and declarations. Generally speaking, in domicile cases an individual's actions are accorded more weight than his declarations, since declarations can tend to be deceptive and self-serving. Allen v. Greyhound Lines, Inc. 583 P.2d 613, 614 (Utah 1978).

In determining where an individual is domiciled, the fact-finder must look at all the surrounding facts and circumstances. No one fact or circumstance is, by itself, determinative. Rather, the decision-maker must analyze all the relevant facts and determine whether, taken as a whole, those facts point in favor of some particular place as the person's domicile. Since a person's domicile, once established, is presumed to continue until legally changed, the burden of proof is always on the party asserting a change in domicile to show that a new domicile was, in fact, created. State of Texas v. State of Florida, 306 U.S. 398, 427, 59 S.Ct. 563, 577 (1939).

It takes no particular period of time to acquire a new domicile; the result being achieved when the person is physically present in the new place with a state of mind regarding the new place as home. Moreover, mere length of time cannot convert physical presence or residence into domicile. Taylor v. Milam, 89 F.Supp. 880 (1950). Domicile is not necessarily lost by protracted absence from home where the intention to return remains. Wilson v. Pickens, 444 F. Supp. 53 (W.D. Okl. 1977).

[Redacted] stated he left Idaho in 1997; however, he has yet to sever all his ties or connections with Idaho. [Redacted] regularly visits his wife and children. Although [Redacted] stated he was separated from his wife, there has been no legal separation or divorce; and the taxpayers hold themselves out to be married on their income tax returns.

[Redacted] had an Idaho driver's license. He stated he checked the box on the application for the license that he was a nonresident. If this is true, then according to the Idaho Department of Transportation [Redacted] is not eligible for an Idaho driver's license. Idaho law requires that an individual be an Idaho resident to receive an Idaho driver's license. If in fact [Redacted] did check the nonresident box, it was an error on the part of the examiner that [Redacted] received an Idaho driver's license. Nevertheless, a driver's license is used as a means of identification. It identifies the individual with a particular state. An individual attempting to acquire a domicile in another state would want that state's identification. An Idaho driver's license identifies [Redacted] with Idaho.

In addition to the driver's license, [Redacted] stated on his voter's registration card that he had resided in Idaho [Redacted]. Even though [Redacted] registered after the year in question, his statement that he was an Idaho resident for the past 17 years encompasses 2001 and does not show intent to abandon Idaho or to acquire another state as his domicile. Once again, [Redacted] has not identified himself with another state.

A further indication of where [Redacted] was domiciled is the incorporation of [Redacted] filed articles of incorporation [Redacted] with the Idaho Secretary of State on May 8, 2001. [Redacted] was listed as the registered agent and incorporator [Redacted] with an address in [Redacted], Idaho. Later filings or registrations with the Secretary of State changed [Redacted] position or capacity within the corporation and also changed his address, but it was always an Idaho address.

The taxpayers stated [Redacted] left Idaho to follow his career. That is exactly how the Tax Commission views [Redacted] actions. He moved to various cities in pursuit of employment opportunities. He did not establish himself in any of those locations enough to

present a picture that he considered any of them to be a permanent home with all the sentiment, feeling, and permanent association that goes with calling a place home. See Starer v. Gallman, 50 A.D.2d 28, 377 N.Y.S.2d 645 (1975).

Idaho was [Redacted] domicile prior to his leaving the state in 1997. The taxpayers bear the burden of showing that [Redacted] abandoned Idaho and acquired another state as his domicile. State of Texas v. State of Florida, supra. They have not done so. [Redacted] where he claimed to be domiciled--he did nothing to establish himself as a permanent or indefinite fixture. He did nothing to identify himself with the state [Redacted]. Even his employment was such that it took him to other states where he stayed for extended periods. For all practical appearances, [Redacted] was only in [Redacted] for employment purposes. His strongest connections were and still remain with Idaho. Therefore, the Tax Commission found that [Redacted] was domiciled in Idaho in 2001 and was required to file an Idaho income tax return.

The taxpayers asked to have the opportunity to substantiate their unreimbursed employee business expenses if the Tax Commission did not agree with their residency/domicile argument. In its last letter to the taxpayers, the Tax Commission told the taxpayers that there were significant questions concerning the residency/domicile argument and suggested that they consider providing documentation to support their employee business expenses. The taxpayers did not respond to that letter and did not respond to any of the follow-up messages left by their representative. Consequently, no documentation has been provided to substantiate the claimed unreimbursed employee business expenses.

Deductions are a matter of legislative grace, and a taxpayer seeking a deduction must be able to show that the deduction is within the terms of the applicable statute. New Colonial Ice Co., Inc. v. Helvering, 292 U.S. 435, 54 S.Ct. 788 (1934). The taxpayers have failed to provide

any documentation to substantiate their employee business expenses. They have not met their burden. If the taxpayers are unable to provide adequate proof of any material fact upon which a deduction depends, no deduction is allowed and the taxpayers must bear their misfortune. Burnet v. Houston, 283 U.S. 223, 51 S.Ct. 413 (1931). Since the taxpayers have not substantiated their deductions, the Tax Commission must uphold the Bureau's adjustment.

WHEREFORE, the Notice of Deficiency Determination dated May 14, 2004, is hereby 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</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2001	\$5,272	\$264	\$1,522	\$7,058

Interest is calculated to February 15, 2007.

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

DATED this _____ day of _____, 2006.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2006, 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]
[Redacted]
[Redacted]

Receipt No.

[Redacted]
[Redacted]
[Redacted]
