

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 18608
[Redacted],)	
)	DECISION
Petitioners.)	
_____)	

On December 7, 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 and interest for the taxable years 2000 through 2002 in the total amount of \$12,070.

On February 5, 2005, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers' representative's first choice was to have a hearing before a Commissioner in Northern Idaho; however, since that is not normally done and a Commissioner was not going to be in Northern Idaho within a reasonable time, the representative chose to submit additional information in writing. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayers timely filed their 2000, 2001, and 2002 Idaho income tax returns on a part-year resident, nonresident form. The taxpayers reported Ms. [Redacted] as a full year resident and Mr. [Redacted] as a nonresident. On their 2000 and 2001 returns the taxpayers reported their total income, as reported on their federal returns, but then they made a subtraction for what they called "Community Income Allocation." The community income allocation subtracted half of the income earned by Mr. [Redacted]. On their 2002 return, the taxpayers reported half of their interest and dividend income and added other income called Community Income Allocation.

The Income Tax Audit Bureau (Bureau) selected the taxpayers' returns for examination. Specifically, the Bureau was to verify the resident status of the taxpayers and determine the validity of the subtraction and addition of the community income allocation. The Bureau

contacted the taxpayers and meetings were scheduled with the taxpayers' representative to review their returns and records. The Bureau reviewed the information provided by the taxpayers as well as other information obtained by the Bureau. The Bureau determined that both Mr. [Redacted] and Ms. [Redacted] were domiciled in Idaho during the years and, therefore, all their income was reportable to Idaho. The Bureau adjusted the taxpayers' returns and sent them a Notice of Deficiency Determination.

The taxpayers protested the Bureau's determination and provided the following facts and observations:

- Mr. [Redacted] is an engineer and has been out of the country working on oil rigs for almost 25 years.
- Mr. [Redacted] permanent home is in a foreign country where he works; it had been [Redacted] and is currently [Redacted].
- Mr. [Redacted] life is on the oil rig and whenever he is on furlough or vacation, usually 96 to 107 days per year, he returns to his permanent home, the oil rig.
- When Mr. [Redacted] is on vacation, he spends his time at the taxpayers' condo in [Redacted], with his wife at their Idaho residence, or with other family members all over the country.
- Even though Ms. [Redacted] could not spend time or live on the oil rig, she did spend time at the offshore locations in [Redacted] with Mr. [Redacted]. The taxpayers stated this is not unlike someone being in a foreign location in an employer camp where a spouse is not likely to be safe or comfortable, but it does not preclude a taxpayer from being a resident or domiciled in that country.
- The homeowner's exemption signed by Mr. [Redacted] on the house purchase in Idaho was done while Mr. [Redacted] was on furlough. He was in Idaho; he helped his wife get settled. Owning property in a state does not make an individual a resident of the state.
- It is not a requirement that an individual own or rent a dwelling unit to be residing permanently in a location. It is no different than a person living with his parents and not paying household costs.
- With only 96 to 107 days vacation per year, the concept of sharing a residence with his wife is hard to imagine.
- Mr. [Redacted] was not allowed to drive in [Redacted]; however, he did feel the need to have a license somewhere. He also needed a license to be able to drive while in the states or [Redacted]. The vehicles registered in Idaho were joint assets.
- Regarding Mr. [Redacted] and voting, Mr. [Redacted] takes his right to vote seriously and never thought he was violating any rules or laws by being registered to vote in Idaho.
- Mr. [Redacted]'s use of an Idaho address was because the mail was not very reliable or timely at the locations where he resided.

The taxpayers stated Mr. [Redacted] was a dedicated employee that chose to develop his base of operation in the foreign countries where he worked. They allocated the community income Ms. [Redacted] used while she resided in Idaho to Idaho but Idaho was never more than a place to get away from Mr. [Redacted]'s area of work and domicile. They stated that the fact that Ms. [Redacted] resided in an area that created security and convenience, a place where she feels comfortable, does not create the same for Mr. [Redacted]. Mr. [Redacted]'s domicile was not in Idaho.

The Bureau acknowledged the taxpayers' protest and referred the matter for administrative review. The Tax Commission sent the taxpayers a letter giving them two options for having the Notice of Deficiency Determination redetermined. Because of logistics and timing, the taxpayers decided to provide additional information for the Tax Commission to consider. On October 14, 2005, the Tax Commission received the additional information.

The taxpayers stated that the general definition of domicile is that it is the true, fixed, permanent home, and the location one has the intention of returning to whenever absent. The taxpayers stated that they believe the fact that Mr. [Redacted] spent 25 years in foreign locations is evidence that the foreign locations are his fixed and permanent home. He always returns to the foreign location whenever he is absent, away on furlough or vacation. This has always been the case whether Ms. [Redacted] was living in [Redacted].

The taxpayers said there has to be a specific intent to abandon the old domicile, the intent to acquire a new domicile, and physical presence in the new domicile. Mr. [Redacted] has had no specific intent to abandon his domicile in [Redacted] or, as in the later years, [Redacted]. Citing Pratt v. State Tax Commission, the taxpayers stated that Mr. [Redacted] never had the intent to establish Idaho as his domicile. He never proclaimed, "This is my Home." They stated

Mr. [Redacted]'s true, fixed, and permanent home for 25 years was on the oil rig. He slept, breathed, and lived on these oil rigs for the entire period.

The taxpayers provided information on the five factors Idaho looks at in determining domicile. They stated for the home factor that Mr. [Redacted]'s home was in [Redacted] and later in Indonesia. For the business factor, they stated Mr. [Redacted] conducted his business on the oil rig between 258 and 269 days a year. He spent considerable time getting passports, visas, permits, government approval, and engineering certification. The taxpayers asked who would go through those hurdles if his intent was not to be domiciled in those places. For the time factor, the taxpayers pointed to the number of days Mr. [Redacted] was on the oil rig. Regarding near and dear items, the taxpayers stated Mr. [Redacted] had them on the oil rig as well as with his wife in Idaho. Family connections the taxpayers said would possibly be a major consideration when Mr. [Redacted] leaves the work environment, but for now and the past 25 years his home is on the oil rig.

Finally, the taxpayers stated that Mr. [Redacted]'s home and domicile for 25 years has been somewhere other than where his wife has chosen to reside. Mr. [Redacted] did not have the intent or physical presence required in order to change his domicile. Mr. [Redacted]'s home and domicile is the offshore oil rig located in coastal waters of [Redacted].

IDAPA 35.01.01.030, Income Tax Administrative Rules, states that the term “domicile” means 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 an old domicile, an intent to acquire a specific new domicile, and the actual physical presence in a new domicile (Rule 030.02.a).

The taxpayers argued that Mr. [Redacted]'s domicile is in a foreign country on an offshore oil rig and that the offshore oil rig has been his domicile for the past 25 years. In Starer v. Gallman, 50 A.D.2d 28, 377 N.Y.S.2d 645 (1975), the court determined the domicile of an individual who lived aboard a ship for the entire year even when the ship was in port. Regarding his living on the ship, the court stated, "Petitioner's stateroom on the SS Export Ambassador[Redacted]can hardly, either in law or in logic, be considered a residence in Hoboken, nor do we consider the other evidence offered by petitioner as to a change of domicile sufficient to change his last previous domicile, which in this instance is [Redacted]." In that case, the petitioner graduated from the [Redacted], began employment with [Redacted], and shipped out of the port of [Redacted]. He never lived anywhere other than on the ship, even while in port. He acquired a post office box in [Redacted], opened a bank account, and joined a union in [Redacted]. Petitioner also testified that when he accepted work with the [Redacted] based employer he intended to make his home in [Redacted] and not in [Redacted]. In the court's decision, it stated the question was not whether the petitioner intended to leave [Redacted] forever, but whether he intended to make [Redacted] his permanent home with all the sentiment, feeling, and permanent association that goes with it. The court found that living on a ship, even while in port, was not sufficient to effect a change in domicile. Starer v. Gallman, supra.

The Tax Commission sees the Starer case as analogous to the case at hand. Here Mr. [Redacted] was employed on an offshore drilling rig, similar to a ship being in port. He resided/lived on the oil rig in accommodations provided by his employer. It is unknown how often Mr. [Redacted] left the oil rig during his work rotation, but it is presumed the majority of his time was spent on the oil rig since the company he worked for had a policy that no employees

are allowed to drive in foreign locations. Living on a deep-water oil rig, miles offshore, does not bring to mind a sense of sentiment, feeling, and permanent association that goes with being domiciled in some place. As in the Starer case, living on the oil rig does not constitute a residence in a foreign country.

Nevertheless, the taxpayers do claim that Mr. [Redacted] had a foreign domicile in the locations where the oil rig was positioned. For this to occur, Mr. [Redacted] would have to establish himself in the country controlling the waters where the oil rig was located. However, the presumption against a foreign domicile is stronger than the general presumption against a change of domicile. Bodfish v. Gallman, 50 A.D.2d 457, 378 N.Y.S.2d 138. In Suglove v. Oklahoma Tax Commission, 605 P.2d 1315 (1979), the court discussed domestic moves and foreign moves. The court stated,

Moves from one state to another are a common occurrence today. They are commonly considered to be permanent, or at least for an indefinite time and without intention of returning to the previous domicile. A move from one state to another is an ordinary event. The person remains within the same culture and among people who speak the same language. A person who moves from one state to another is not a foreigner anywhere in the United States. One's friends and family are still within a reasonable distance. In the absence of countervailing factors, it is not unreasonable to infer that such a move is permanent and constitutes a change of domicile.

On the other hand, a move to a foreign country entails a drastic change in one's life, thus making the intention to stay permanently in a foreign country less likely. Moving to a foreign country means leaving one's own culture, one's family, and friends in a way which most people would be reluctant to do. It is hence not unreasonable to infer that when an individual moves abroad on a foreign-situs job assignment he is not necessarily adopting it as a new domicile.

Although the question of domicile remains one of fact in each case, there still remains a strong presumption against a change of domicile in a situation where a person leaves his own

country to live or carry on business in another for the "ties of country, of manners and of language might be so strong that one could with difficulty break them altogether." Suglove v. Oklahoma Tax Commission, supra., citing In re Hoff's Estate, 178 Misc. 515, 35 N.Y.S.2d 60, 63 (NY 1942). There is nothing in the record to suggest that Mr. [Redacted] established himself in the foreign countries. It would seem that one who intends to make a domicile in a foreign country ordinarily would obtain an immigration visa. Bodfish v. Gallman, supra. In this case, the taxpayers provided copies of Mr. [Redacted]'s passport which showed he was only allowed to stay in any one country anywhere between several days to 12 months. Nothing was provided to show that Mr.[Redacted] was going through the immigration process to become a permanent resident of either [Redacted].

On the contrary, Mr. [Redacted] had an Idaho driver's license, he was registered to vote in Idaho and did vote in Idaho, he had vehicles in Idaho, he owned a house in Idaho, and he maintained domestic bank accounts. Each of these factors individually is not determinative; however, when combined or added together, they show a pattern of intent. When all the evidence is considered in its totality, there is eloquent support in the record for the presence of *Animus revertendi*, the intention of returning to one's established domicile (See Black's Law Dictionary, Fourth Edition, p. 114). Suglove v. Oklahoma Tax Commission, supra.

In addition to the above, the taxpayers stated and provided information showing the time Mr. [Redacted] spent on the oil rigs in [Redacted] in 2000, 2001, and 2002. The taxpayers stated that the time off from the oil rigs was throughout the year, not one extended absence. The information provided showing the time spent on the oil rigs bears out that statement. For the three years, Mr. [Redacted] was off the oil rigs 152 days in 2000, 155 days in 2001, and 144 days

in 2002. The taxpayers also stated that most of this time Mr. [Redacted] spent with his wife, Ms. [Redacted], mostly in Idaho but also in other places.

From the record, it is apparent to the Tax Commission that Mr. [Redacted]'s stay or living arrangements on the oil rigs is purely a matter of employment. There is nothing in the record to show that the oil rig had anything one would commonly find in a domicile. Access to and from the rig was probably limited and only employer provided. Living on the rig was probably also totally controlled by Mr. [Redacted]'s employer. The accommodations, circumstances, and location are all controlled by Mr. [Redacted]'s employer. It is not a location where one would choose to establish a residence or domicile. As previously stated, there is no sense of permanence, feeling, or sentiment toward living on the job site in the middle of the ocean. Starer v. Gallman, supra.

Based upon the foregoing discussion and the fact that it appears Mr. [Redacted] wholly endorsed and followed the moves made by his wife, the Tax Commission finds that Mr. [Redacted]'s domicile was Idaho in 2000, 2001, and 2002. Therefore, the Tax Commission upholds the Bureau's determination.

WHEREFORE, the Notice of Deficiency Determination dated December 7, 2004, is hereby APPROVED, AFFIRMED, and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2000	\$3,320	\$1,085	\$4,405
2001	3,158	789	3,947
2002	3,844	713	<u>4,557</u>
		TOTAL DUE	<u>\$12,909</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 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]

Receipt No.
