

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20713
[Redacted],)	
)	DECISION
Petitioners.)	
_____)	

On August 17, 2007, 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 years 2003, 2004, and 2005 in the total amount of \$18,306.

On October 18, 2007, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers requested a telephone hearing which was held on March 25, 2008. The Tax Commission, having reviewed the file, hereby issues its decision.

The Tax Discovery Bureau (Bureau) received information that showed the taxpayers may have had a requirement to file Idaho individual income tax returns for the taxable years 2003, 2004, and 2005. The Bureau researched the Tax Commission's records and found that the taxpayers did not file returns for those years. The Bureau sent the taxpayers a letter asking them about their requirement to file Idaho income tax returns. The taxpayers did not respond to the Bureau's letter, so the Bureau obtained additional information [Redacted] and determined the taxpayers were required to file Idaho income tax returns. The Bureau prepared income tax returns for the taxpayers and sent them a Notice of Deficiency Determination.

The taxpayers protested the Bureau's determination. The taxpayers stated they were not required to file an Idaho individual income tax return for 2003 because they were residents of [Redacted] during that year. The taxpayers stated that [Redacted] separated from his ex-wife in

2001 and took up residence in [Redacted]. He began living with [Redacted] in 2002 in some rental property [Redacted]. They stated it was not until the latter part of 2003 that they purchased a house in [Redacted] Idaho, and moved to Idaho. The taxpayers stated they did need to file a return for 2004; they just got caught up in a move to [Redacted] during the filing season and never got it done. The taxpayers stated they filed a part-year return for [Redacted] for 2005 and provided a copy of that [Redacted] return for the Bureau's consideration.

The Bureau reviewed the information the taxpayers provided and determined that [Redacted] did not break his domicile with Idaho, but more importantly, [Redacted] had income from Idaho sources. Therefore, the Bureau referred the matter for administrative review.

The Tax Commission reviewed the matter and sent the taxpayers a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. The taxpayers requested, and were granted, a telephone hearing in which the following information was provided.

Prior to 2002, [Redacted] lived in [Redacted]Idaho. In late 2001, [Redacted] and his ex-wife separated. [Redacted] left Idaho and began living in [Redacted] [Redacted]. At first [Redacted] lived with friends [Redacted]. He later moved in with his now wife, [Redacted]. The taxpayers lived in [Redacted] until December 2003 when they purchased a house in [Redacted], Idaho.

The taxpayers stated [Redacted] employment was always outside of Idaho. He was the branch manager of an office [Redacted]. When [Redacted] lived in Idaho, his employer withheld Idaho income tax, and when he moved to [Redacted], his employer continued withholding for Idaho tax.

The taxpayers stated [Redacted] kept his Idaho driver's license in 2002. They stated that he had recently purchased an eight-year license, so he was reluctant to get a [Redacted] license when he moved to [Redacted]. The taxpayers stated [Redacted] had a mail drop box in [Redacted] Idaho, that he used during his divorce and custody hearings, but he also maintained a [Redacted] address at the same time. It was not until they purchased a house in [Redacted] that [Redacted] actually regained an Idaho address.

The taxpayers stated [Redacted] children lived [Redacted] with their mother. They stated [Redacted] time in Idaho, after the separation, could be measured in hours. The taxpayers stated the only time [Redacted] was in Idaho after the separation was to pick up his children to take them back to his home in [Redacted] or to attend one of his children's extra-curricular events. [Redacted] had no other family ties in Idaho.

The taxpayers stated [Redacted] divorce was not amicable, in fact, seven years later there are still hostilities. The taxpayers stated the separation and divorce left bitter feelings among [Redacted] and his ex-wife's once common friends. They stated [Redacted] move [Redacted] removed him from the animosity he felt from the community. Since there was little to keep [Redacted] in [Redacted] Idaho and his employment had always been in [Redacted], it was an easy decision to move [Redacted]. When [Redacted] left Idaho in 2001, he felt that all his ties to Idaho were severed, except for the fact that his children lived in Idaho. The taxpayers stated [Redacted] had always planned to return to Idaho, but that plan had to be tempered with [Redacted] wishes to stay in [Redacted] once they were married.

The taxpayers later provided a statement from their landlord verifying that they rented and occupied property [Redacted] from January 2002 to November 2003. They also provided a copy of a credit report dated August 14, 2002, showing [Redacted] address as [Redacted],

Washington, and a copy of his 2002 W-2 wage statement showing his address as [Redacted], Washington.

The Bureau asserted that [Redacted] never fully abandoned his Idaho domicile and that he had income from Idaho sources. However, the taxpayers stated that [Redacted] did not work in Idaho; he worked in a branch office [Redacted]. They stated [Redacted] employer withheld Idaho withholdings from his wages when he lived in Idaho. This being the case, [Redacted] income was Washington source income not Idaho source income. As such, Idaho can only tax the taxpayers' income if they were residents of or domiciled in Idaho.

From the evidence available, it is clear the taxpayers were not residing in Idaho during 2002 through most of 2003. It is also fairly evident that [Redacted] had not been domiciled in Idaho prior to when the taxpayers purchased the house [Redacted]. Therefore, the question becomes, did [Redacted] abandon Idaho and acquire Washington as his state of domicile for 2002 and 2003?

Domicile is that place where an individual has his true, fixed, and permanent home. The place he intends to return to whenever he is absent. (IDAPA 35.01.01.030.02.) Domicile, once established, is never lost until there is a concurrence of a specific intent to abandon the old domicile, intent to acquire a specific new domicile, and the actual physical presence in the new domicile.

The question whether a domicile has been changed is one of fact rather than of law, and the burden of proof rests upon the party who alleges a change. Newcomb v. Dixon, 192 N.Y. 238 (1908). The motives actuating a change of domicile are immaterial, except as they indicate intention. A change of domicile may be made through caprice, whim or fancy, for business, health or pleasure, to secure a change of climate, or a change of laws, or for any reason whatever,

provided there is an absolute and fixed intention to abandon one and acquire another, and the acts of the person affected confirm the intention. Newcomb, Ib. When a new domicile has been actually acquired it does not necessarily revert, even if not followed by continuous residence. There may be many absences from the new place and protracted sojournings in the old, unless intention and residence unite again, when still another change of domicile is effected. Newcomb, Ib.

In this case, [Redacted] left his place of residence and home because of a divorce and the animosity he felt from the small community he considered home. [Redacted] only remaining relationships in Idaho were with his children. When [Redacted] left Idaho he did not return except as a temporary or transitory visitor to get or be with his children. Other than his children being in Idaho, [Redacted] felt that he severed his ties with Idaho even though at some point in time he wanted to return.

[Redacted] did keep his Idaho driver's license, and he did have a mail drop box in [Redacted], Idaho. Both of these could identify him with Idaho, but considering the circumstances, neither is determinative of [Redacted] domicile. The mail drop box was used to give the impression of his stability and he could not see wasting the money he spent on an eight-year Idaho driver's license and pay even more money for a Washington driver's license.

Looking at the tests for a change of domicile, the Tax Commission can see that [Redacted] intended to walk away or abandon the situation he was in and relocate to a place that was friendly and welcoming. That place just happened to be [Redacted], Washington. [Redacted] did set up residence in [Redacted] and had physical presence in the state of Washington. The Tax Commission can also see that [Redacted] intended to establish himself in the new place and not return to the old. Even though [Redacted] may not have totally severed

his connection with Idaho, namely his Idaho driver's license, the Tax Commission finds, considering the circumstances, [Redacted] did abandon Idaho and acquire Washington as his state of domicile.

However, the situation changed late in 2003 when the taxpayers purchased a house [Redacted]. When the taxpayers moved into their [Redacted] house, they both became Idaho residents and presumably became domiciled in Idaho. Therefore, for 2003, the taxpayers were required to file a part-year resident Idaho income tax return for the time they were residents in Idaho.

The 2003 return the Bureau prepared for the taxpayers was based upon a full-year resident status for the taxpayers. Since the taxpayers were not domiciled in Idaho the entire year or residents the entire year, the Tax Commission modified the 2003 return to reflect a part-year resident status. Assuming the taxpayers' income was earned evenly throughout 2003, the Tax Commission prorated the taxpayers' income for the two months the taxpayers were residents of Idaho. The resulting tax for 2003 was offset by withholdings and netted a refund to the taxpayers. However, since the taxpayers did not make a claim for refund within the statutory time period given in Idaho Code section 63-3072, no credit or refund of the excess withholdings is available.

The taxpayers did not contest that they were required to file an Idaho income tax return for 2004. The taxpayers also have not contested the Bureau's determination of their Idaho tax liability for 2004. Therefore, the Tax Commission finds that the Idaho income tax return prepared by the Bureau for the taxpayers for taxable year 2004 is an accurate representation of the taxpayers' Idaho taxable income.

For 2005, the taxpayers stated they filed a part-year return with the state of California. The taxpayers provided a copy of their 2005 California return. The taxpayers stated [Redacted] was promoted [Redacted] and was transferred to California [Redacted]. The taxpayers moved to California and stayed there until March 21, 2008. The taxpayers stated [Redacted] contract with his employer was for a minimum of three years and a maximum of five years. The taxpayers stated as soon as the three years were up [Redacted] resigned his position. The taxpayers decided that they were too far away from family and it was getting more difficult to be involved with [Redacted] children.

When the taxpayers moved to California, they kept their house in Idaho. In fact, the taxpayers stated that they had their California utility bills sent to the Idaho address. The taxpayers knew they were only going to be in California temporarily.

It is evident from the taxpayers' statements and actions that they did not abandon Idaho as their domicile when they moved to California. Further proof of this is the California return the taxpayers filed with California. The taxpayers stated on the return that they were nonresidents of California with their state of residence being Idaho. They even claimed that [Redacted] spent no time in California. The taxpayers also stated that [Redacted] returned to Idaho frequently to be with his children. Essentially, the taxpayers were in California for employment purposes only. Other than renting an apartment in [Redacted], California, the taxpayers have not shown that they did anything that would identify themselves with California or show that they intended to stay in California indefinitely.

Therefore, the Tax Commission finds that the taxpayers' domicile remained in Idaho in 2005, and as such, they were required to file an Idaho income tax return reporting their income from all sources. However, since the taxpayers lived and worked in California and were required

to file a California income tax return, they are allowed a credit for taxes paid to California on the income reported to California. The return the Bureau prepared for 2005 did not include the credit for taxes paid to California; therefore, the Tax Commission modifies the return to allow for the credit.

The Bureau added interest and penalty to the taxpayers' Idaho tax. The Tax Commission reviewed those additions and found them appropriate and in accordance with Idaho Code sections 63-3045 and 63-3046.

WHEREFORE, the Notice of Deficiency Determination dated August 17, 2007, is hereby MODIFIED, in accordance with the provisions of 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 tax, penalty, and interest (computed to December 15, 2008):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2003	\$ 0	\$ 0	\$ 0	\$ 0
2004	3,726	932	894	5,552
2005	3,837	959	690	<u>5,486</u>
			TOTAL DUE	<u>\$11,038</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.

DATED this _____ day of _____, 2008.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2008, 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.
