

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21035
[Redacted],)	
)	DECISION
Petitioners.)	
_____)	

On November 15, 2007, 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 tax year 2005 in the total amount of \$4,682.

On January 18, 2008, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not respond to the Tax Commission's hearing rights letter and have provided nothing further for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayers' 2005 Idaho income tax return was selected by the Income Tax Audit Bureau (Bureau) for examination because the taxpayers' federal adjusted gross income did not agree with the amount reported on their resident Idaho income tax return. Idaho Code section 63-3002 requires that Idaho residents' adjusted gross income be the same as federal adjusted gross income subject to certain modifications provided for in the Idaho law. The Bureau sent the taxpayers a letter asking them to explain the difference between their federal adjusted gross income and their Idaho adjusted gross income. The taxpayers did not respond. Several follow-up letters were sent, but still the taxpayers failed to respond directly to the Bureau. The only response the taxpayers made was to send a copy of their [Redacted] income tax return to the Tax Commission's Taxpayer Accounting section. Taxpayer Accounting forwarded the [Redacted] return to the Bureau who reviewed it and determined that the taxpayers were

residents of or domiciled in Idaho. The Bureau adjusted the taxpayers' Idaho income tax return and sent the taxpayers a Notice of Deficiency Determination.

The taxpayers protested the Bureau's determination stating that the earnings in dispute were earned while [Redacted] was domiciled in [Redacted]. The taxpayers stated that [Redacted] accepted a permanent position [Redacted] in 2004. She established residency and domicile in [Redacted] and planned to live there indefinitely. The taxpayers stated that Idaho has no right to tax the income since [Redacted] was not domiciled in Idaho nor did she receive any services from the state of Idaho.

The taxpayers stated the house [Redacted] owned in Boise was put on the market for several months and then pulled off the market on the advice of their realtor. The house was put back on the market in the spring of 2005. The taxpayers stated [Redacted] rented the Boise house [Redacted] while she was in [Redacted]. This was prior to when the taxpayers were married [Redacted]. The taxpayers stated the house did not sell because they did not receive an acceptable offer for the house.

The taxpayers stated that when [Redacted] she used public transportation and had no need for a [Redacted] driver's license. They stated for identification purposes she used her [Redacted] employee badge.

[Redacted]. They stated his job skills did not match well with the area, so it was decided that he would continue his search, and [Redacted] would begin looking for work back in Idaho. Whoever landed an acceptable position would make the move to where the other one was living. It so happened, [Redacted] found acceptable employment before [Redacted] and moved back to Idaho in August 2005. The taxpayers stated [Redacted] domicile then changed to Idaho.

The Bureau reviewed the taxpayers' statements but was not convinced [Redacted]domicile changed [Redacted]. Therefore, the Bureau referred the matter for administrative review. The Tax Commission sent the taxpayers a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. The taxpayers did not respond. The Tax Commission sent a follow-up letter to the taxpayers, but still they failed to respond. Therefore, the Tax Commission reviewed the matter and issued its decision based upon the information available.

Domicile is defined as the place where an individual has his true, fixed, and permanent home. The place he intends to return to whenever he is absent. (Idaho Income Tax Administrative Rule 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. Pratt v. State Tax Commission, 128 Idaho 883, 885 n.2, 920 P.2d 400, 402 n.2 (1996). Domicile, once established, persists until a new domicile is legally acquired. In re Cooke's Estate, 96 Idaho 48, 524 P.2d 176 (1973). The question whether a domicile has been changed is one of fact rather than of law. Newcomb v. Dixon, 192 N.Y. 238 (1908). 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).

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, 583 P.2d 613, 614 (Utah 1978). 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, supra.

From the information available, the Tax Commission did not find that [Redacted] made a total and complete separation from Idaho when she left to pursue employment [Redacted]. [Redacted] retained her Idaho driver's license throughout the time [Redacted]. She kept her voter's registration in Idaho and voted in the Idaho general election in November 2004 when she should have voted in [Redacted]. [Redacted] always maintained the homeowner's exemption on her [Redacted] house stating that it was her primary residence, even while she was in [Redacted]. [Redacted] also kept a vehicle titled and registered in Idaho the entire time [Redacted]. Other than leasing property and having utilities billed in her name, the taxpayers have not shown that [Redacted] considered [Redacted] to be her permanent home with all the sentiment, feeling and permanent association that goes with calling a place a home. See Starer v. Gallman, 50 A.D.2d 28, 377 N.Y.S.2d 645 (1975).

In fulfilling the requirements for changing ones domicile, the Tax Commission can see that [Redacted] may have had the intent to abandon Idaho, the intent to acquire [Redacted] as her domicile, and physical presence in the new place. However, her ties to Idaho were never totally

severed. Her newly married spouse was in Idaho, she had a house in Idaho that was not selling, she had a vehicle in Idaho, her driver's license was with Idaho, her voter's registration was in Idaho, and she kept the homeowner's exemption on her house in Idaho. If [Redacted] truly planned on staying [Redacted] indefinitely, she would have totally abandoned Idaho by obtaining those things that would identify her with [Redacted]. Based upon the information available, the Tax Commission finds that [Redacted] did not fully abandon Idaho nor did she fully acquire [Redacted] as her domicile. As a result, [Redacted] was required to report her income from all sources to Idaho. Therefore, the Tax Commission upholds the Bureau's determination of the taxpayers' Idaho taxable income.

WHEREFORE, the Notice of Deficiency Determination dated November 15, 2007, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following tax and interest (computed to December 31, 2008):

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2005	\$4,196	\$ 767	\$4,963

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

An explanation of the petitioners' 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.
