

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
)
[REDACTED],) DOCKET NO. 20365
)
) DECISION
Petitioners.)
)
)
)
_____)

On June 7, 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 and 2004 in the total amount of \$17,591.

On July 9, 2007, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers requested a hearing which was scheduled for August 7, 2008; however, since the taxpayers could not be present at the hearing, the taxpayers' representative and the Tax Commission decided the submission of affidavits and additional information would suffice. The Tax Commission, having reviewed the file, hereby issues its decision.

The Tax Discovery Bureau's (Bureau) automated taxpayer filing tracking system identified the taxpayers as individuals that failed to file Idaho income tax returns for the tax years 2003 and 2004. The Bureau reviewed the Tax Commission's records and found that the taxpayers filed Idaho income tax returns for 1999 through 2002 and 2005 but did not file income tax returns for 2003 and 2004. The Bureau sent the taxpayers a letter asking them about their requirement to file Idaho individual income tax returns. The taxpayers did not respond. The Bureau obtained additional information [Redacted] and determined the taxpayers were required to file Idaho income tax returns for 2003 and 2004. The Bureau prepared returns for the

taxpayers and sent them a Notice of Deficiency Determination. The taxpayers protested the Bureau's determination stating that they were not residents of Idaho in 2003 and 2004.

[Redacted]. The taxpayers stated they moved [Redacted] with the intent of staying there indefinitely. They acquired [Redacted] driver's licenses, their children attended private schools [Redacted], their medical needs were attended to [Redacted], they had [Redacted] health care plans, and they attended and contributed to their church [Redacted]. The Bureau reviewed the information the taxpayers provided and asked them to provide some specific information. The taxpayers provided the requested information which the Bureau included in its review of the taxpayer's situation. The Bureau also obtained additional information [Redacted].

The Bureau, not convinced the taxpayers abandoned Idaho as their domicile, asked the taxpayers to complete a domicile/residency questionnaire. The taxpayers completed and returned the questionnaire. After reviewing the questionnaire, the Bureau's opinion did not change, so the matter was referred for administrative review.

The Tax Commission reviewed the case and sent the taxpayers a letter that discussed the available methods for redetermining a protested Notice of Deficiency Determination. The taxpayers responded with additional information and a request for a hearing. The taxpayers stated [Redacted] employment [Redacted] was a full-time position. They stated his employer was processing the necessary paperwork for them to immigrate [Redacted]. [Redacted]. The taxpayers stated the United States government recognized them as foreign residents.

In other correspondence between the taxpayers and the Tax Commission, the doctrine of domicile was touched upon. The Tax Commission told the taxpayers that the issue in question was their domicile rather than where they were living or their residence. Domicile is the place where one intends to stay for an indefinite time. A place where one has the ability to stay

indefinitely. The taxpayers stated it was their intent to remain [Redacted] for an indefinite period. They stated it is evidenced by the information reported on their federal income tax returns of 2000 through 2005. The taxpayers stated their temporary work visa was for a period of four years and was renewable. They stated they were following the legally prescribed protocol for immigrating [Redacted]. The taxpayers stated they left [Redacted] employment [Redacted] to care for an adult daughter that was hospitalized in the United States. They stated the reason they returned to Idaho rather than some other state was that they still owned a house in Idaho and [Redacted] was a part owner of an Idaho LLC.

The taxpayers did request a hearing, but since [Redacted] was once again working out of country, the taxpayers' representative and the Tax Commission decided the submission of affidavits and discussing the matter via the telephone would be the best way to obtain any needed information. The taxpayers' representative believed that this case was fairly straightforward and that there was ample evidence to show [Redacted] intent to change their domicile [Redacted]. In the alternative, the representative stated that because of the time the taxpayers were present [Redacted], they met the safe harbor provision of Idaho Code section 63-3013 and therefore would not be required to file Idaho income tax returns.

The affidavits provided by the taxpayers stated that in November 1999, [Redacted] accepted employment [Redacted]. The taxpayers moved [Redacted] and remained there until March 2002. The taxpayers were forced to return to Idaho at that time because [Redacted] visa became invalid due to the [Redacted] company going bankrupt and it could no longer sponsor him. [Redacted] accepted another permanent full-time position with another [Redacted] company [Redacted] on April 8, 2002. This employment began June 27, 2002, and prompted the taxpayers return [Redacted]. The taxpayers stated when they returned [Redacted] it was always

their intent to stay there indefinitely. They remained [Redacted] until January 2005 when they came back to Idaho to care for a seriously ill daughter. The taxpayers stayed in Idaho for several months before they moved [Redacted] in August 2005.

While in [Redacted], the taxpayers were in the process of applying for permanent [Redacted] visas. Their house in Idaho was for sale and listed with a licensed realtor. The taxpayers obtained [Redacted] driver's licenses, paid [Redacted] income taxes, started two [Redacted] companies, [Redacted] was a managing director of an [Redacted] company, their children attended [Redacted] schools, their church records were transferred to the [Redacted] church, they banked [Redacted], their insurance coverage was [Redacted] health insurance, surgery and care was performed [Redacted], and retirement accounts were maintained [Redacted].

The taxpayers stated when they moved [Redacted] the second time, they were away from Idaho for about two and a half years. They did come back to Idaho during that time for vacations and family occasions but not for more than a temporary or seasonal visit. The taxpayers stated that even though they had a house in Idaho, it was not maintained as a permanent place of abode [Redacted] or their minor children.

The taxpayers' principle argument is that they changed their domicile from Idaho to [Redacted]. However, if the Tax Commission finds the evidence does not support a change of domicile, the taxpayers' secondary argument was that they met the safe harbor provision of Idaho Code section 63-3013. The taxpayers stated they were outside of Idaho for more than 445 days during the first 15 months they were outside Idaho and that they were not in Idaho more than 60 days in any calendar year after the 15 month period.

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 of whether a domicile has changed is one of fact rather than of law, and the burden of proof rests upon the party who alleges the 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.*

In determining an individual's domicile, the Tax Commission looks at five primary factors that tend to show where an individual is domiciled. The first factor is the individual's primary home. In this case, the taxpayers had a home in [Redacted], Idaho, that they maintained throughout the years in question. The home was occupied by the taxpayers' adult son and [Redacted] mother while the taxpayers were in [Redacted]. The taxpayers also received the homeowner's exemption on the property while they were in [Redacted].

The taxpayers stated their house [Redacted] was for sale the entire time they were in [Redacted]. They stated they rented property [Redacted] and that the property in Idaho was not maintained as a permanent place of abode [Redacted] or their minor children. As for the homeowner's exemption, the information obtained [Redacted] indicated that the county knew the taxpayers were not using the house as their primary residence, but by the time the county got

around to correcting the homeowner's exemption the taxpayers were back in the house and sold it.

The fact the taxpayers owned property in Idaho does not necessarily equate to being domiciled in Idaho. Since the property was up for sale, this factor tends to show the intent of the taxpayers to abandon their Idaho domicile.

The second factor is the individual's business involvement. There is no doubt the taxpayers were in [Redacted] for business or work related purposes. It is also clear that the taxpayers' primary source of income came from [Redacted] sources. The taxpayers did have a business in Idaho which [Redacted] was involved in; however, there is nothing to show [Redacted] involvement with the company was more than a passive owner. The taxpayers did not derive any income from the Idaho LLC while living [Redacted]. This factor does not favor an Idaho domicile.

The third factor is where the individual spent their time. The taxpayers, in this case, spent almost all their time [Redacted]. The taxpayers provided a timeline beginning with the date [Redacted] returned to [Redacted] in June 2002. From June 2002 to January 2005, [Redacted] was in Idaho a total of 44 days. [Redacted] spent more time in Idaho than [Redacted]. She was in Idaho longer because of the birth their first grandchild. Even though the taxpayers occasionally spent time in Idaho, this factor clearly shows more time spent in [Redacted].

The fourth factor is the family connections of the individual. The known family connections of the taxpayers were in Idaho. The information available shows that the taxpayers had adult children in Idaho and at least one parent in Idaho. The information also showed that the taxpayers had minor children with them [Redacted]. One might suggest that family

connections should not carry much weight in a domicile determination. However, in this case, because a family member was having health issues, it caused the taxpayers to relocate back to Idaho. Yet as to the determination of domicile here, the Tax Commission finds this factor neutral.

The fifth factor is the location of the individual's near and dear items. In this case, neither the taxpayers nor the Bureau identified where the taxpayers maintained their near and dear items. Since the record is silent on this factor, the Tax Commission will not consider it in its decision.

Other minor factors considered by the Tax Commission include voter's registration, driver's licenses, vehicle registrations, hunting and fishing licenses, banking institutions, medical needs, and civic and social functions. Of these minor factors, only one sticks out as being significant for an Idaho domicile during the years in question, the voter's registration. [Redacted] registered to vote in [Redacted] on September 5, 2004. He stated on the registration that he had been an Idaho resident for five years. When confronted with this, the taxpayers stated [Redacted] vaguely remembers receiving a voter's registration card while [Redacted], and the five years was to convey his ownership of the house. [Redacted] stated that neither he nor [Redacted] voted in any Idaho elections.

Reviewing the voter's registration card, the Tax Commission found that [Redacted] signed the card on September 5, 2004, a date [Redacted] stated he was not in Idaho. The other date of importance is the date the voter's registration card was received by the deputy clerk [Redacted], October 5, 2004. It seems unusual that the county would send a voter's registration card to any potential voter, let alone someone living in [Redacted]et, the difference between the

date signed by [Redacted] and the date received by the County suggests this is indeed what had happened.

The factors considered all help to point to the taxpayers' intent in abandoning and acquiring a domicile. In addition to these factors, the taxpayers provided a letter from [Redacted] employer. [Redacted] employer stated that [Redacted] was employed in a full-time position. His employer stated they were sponsoring [Redacted] so that he could obtain the legal right to live in [Redacted] indefinitely. The employer also stated it was processing the necessary documentation for the taxpayers' immigration [Redacted].

Considering all the information available, the Tax Commission is of the opinion that the taxpayers moved [Redacted] and established themselves a permanent home with all the sentiment, feeling, and permanent association that goes with identifying that place as a domicile. (See Matter of Starer v. Gallman, 50 A.D.2d 28, 377 N.Y.S.2d 645 (1975).) Therefore, the Tax Commission finds that the taxpayers were not required to report their income from sources outside of Idaho to Idaho.

In addition to the finding that the taxpayers were not domiciled in Idaho, the taxpayers provided sufficient evidence to show they met the safe harbor provision of Idaho Code section 63-3013 on two separate occasions. The move [Redacted] in 1999 was the first, and the second was in 2002 when [Redacted] was re-employed and the taxpayers returned [Redacted]. The safe harbor would have considered the taxpayers nonresidents even if their domicile remained in Idaho.

WHEREFORE, the Notice of Deficiency Determination dated June 7, 2007, is hereby CANCELLED.

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

DATED this _____ day of _____, 2009.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2009, 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.
