

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21239
[Redacted],)	
)	DECISION
Petitioners.)	
_____)	

On January 30, 2008, 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 years 2004 and 2005 in the total amount of \$107,592.

On April 2, 2008, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers requested a hearing which was held on August 26, 2008. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayers were identified as individuals that may have had a requirement to file Idaho income tax returns for the taxable years 2004 and 2005. The Income Tax Audit Bureau (Bureau) reviewed the Tax Commission’s records and found that the taxpayers did not file Idaho income tax returns for either 2004 or 2005. The Bureau sent the taxpayers several letters asking about their Idaho resident status and their requirement to file Idaho individual income tax returns. The taxpayers did not respond to any of the Bureau’s letters. The Bureau continued its investigation and gathered additional information about the taxpayers. The Bureau found that the taxpayers claimed the Idaho homeowner’s exemption on a [Redacted] residence; [Redacted] purchased an Idaho driver’s license [Redacted]; that the taxpayers had vehicles registered in Idaho; that [Redacted] and their children lived [Redacted] during 2004 and 2005; that the

taxpayers owned other Idaho property in the [Redacted] area; and that the taxpayers used the [Redacted] address in the preparation of their federal income tax returns.

The Bureau determined the taxpayers were required to file Idaho income tax returns, so it prepared income tax returns for 2004 and 2005 for the taxpayers and sent them a Notice of Deficiency Determination. The taxpayers protested the Bureau's determination. The taxpayers stated [Redacted] was not a resident of Idaho and he has never established a domicile in Idaho. The taxpayers stated [Redacted] was born and raised [Redacted] and filed [Redacted] income tax returns. They stated [Redacted] has worked overseas since 1990 and he has not spent more than 30 days in Idaho in either of the years in question. The taxpayers stated the Idaho property was purchased as an investment and was used as a vacation home. They stated [Redacted] purchase of an Idaho driver's license was for convenience. [Redacted] license expired [Redacted] and since he was in Idaho [Redacted], he purchased the Idaho license.

The Bureau asked the taxpayers to provide copies of their 2004 and 2005 [Redacted] returns. When the Bureau received the [Redacted] returns, it found that the taxpayers filed those returns as non-residents of the state [Redacted]. Since the taxpayers did not claim [Redacted] as their resident state or state of domicile, the Bureau continued with the assumption that the taxpayers were domiciled in Idaho in 2004 and 2005. The Bureau asked for additional information to show where [Redacted] was domiciled during 2004 and 2005. The Bureau did not receive any further information, so the matter was referred for administrative review.

The Tax Commission reviewed the matter and sent the taxpayers a letter discussing the methods available for redetermining a protested Notice of Deficiency Determination. The taxpayers, in the midst of a divorce, requested a hearing. The Tax Commission scheduled a

hearing and invited both parties. At the hearing were [Redacted] representative and Tax Commission staff. [Redacted] did not attend or send a representative to the hearing.

During the hearing, [Redacted] representative restated [Redacted] position that he was not a resident of Idaho nor was he domiciled or did he ever intend to be domiciled in Idaho. [Redacted] representative stated that when [Redacted] separated, [Redacted] moved into the [Redacted] house. It was at that time that [Redacted] applied for and received the homeowner's exemption on the [Redacted] residence. [Redacted] and the children have lived in the [Redacted] house since the taxpayers' separation.

[Redacted] representative stated that [Redacted] history is one of living and working abroad [Redacted]. He stated the taxpayers spent about a year [Redacted] but then returned [Redacted]. The representative stated that if [Redacted] had a domicile in the United States, it would be [Redacted] because of the year the taxpayers resided there and it was the last place [Redacted] lived in the United States. Other than [Redacted], [Redacted] had all his ancestral and other business ties [Redacted]. [Redacted] only connection to Idaho was vacation property.

As for the Idaho driver's license, the representative stated once again that it was acquired out of convenience. Since [Redacted] and the children were living in Idaho, [Redacted] used that address to obtain the Idaho license. [Redacted] has continuously maintained an [Redacted] driver's license except for the time he had the Idaho license. The Idaho license was purchased because he was in Idaho, [Redacted] and he needed a license before he returned [Redacted]. [Redacted] had no intention of establishing an Idaho domicile when he purchased the Idaho license. He has since acquired an [Redacted] driver's license.

In 2005, the taxpayers jointly purchased another property [Redacted]. When asked why this property was purchased jointly, when the taxpayers were supposedly separated, the

representative stated the purchase was made as an investment and the taxpayers were optimistic that they could salvage their marriage. The property was ultimately foreclosed upon.

[Redacted] representative agreed that the issue to be determined in this case is the domicile [Redacted] in 2004 and 2005. [Redacted] is not contesting, and apparently [Redacted] does not contest that she and their children were domiciled in Idaho during the years in question. This being the case, another question to be decided is the division of income between the taxpayers, community income or separate income.

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 Rules 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. 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 whatsoever, 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.

The determination of [Redacted] domicile is difficult at best. From the information available, [Redacted] domicile of origin was [Redacted]. His [Redacted] domicile likely continued until 2001. In 2001, [Redacted] moved [Redacted] and has remained there to this day. [Redacted] made numerous moves from the first time he left [Redacted] in 1986. Of those moves, none of them were of a duration one would associate with the permanent, indefinite nature of an established domicile. It was not until the final move [Redacted] in 2001 that [Redacted] showed a place of permanence 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).

The facts of this case do not provide much of a connection to Idaho [Redacted]. [Redacted] did own property in Idaho, he did obtain an Idaho driver's license, his estranged wife and children were living in Idaho, but he spent very little time in Idaho, and he was not welcome in the home of his wife and children. In this case, the connections to Idaho are not enough to consider Idaho [Redacted] domicile.

With the determination that [Redacted] was not domiciled in Idaho, the requirement to file Idaho income tax returns is not automatically eliminated. [Redacted] was domiciled in Idaho; therefore, there is still the need to determine what income, if any, should be reported to Idaho.

In cases where two individuals reside and are domiciled in different states, the Tax Commission looks at how each state treats the marital community; whether it is community property or separate property. However, in this case, we have an individual domiciled in Idaho, and the other, for all practical purposes, appears to be domiciled [Redacted]. Since one of the parties is domiciled in a foreign country, the Tax Commission had to determine the character of foreign income and whether it was taxable by Idaho.

The Tax Commission turned to the Internal Revenue Code (IRC) for guidance on foreign income. IRC section 66 provides a definition of community property laws. It states, “the term ‘community property laws’ means the community property laws of a State, a foreign country, or a possession of the United States.” Therefore, since the IRC recognizes the community property laws of a foreign country, the Tax Commission decided this case should be treated in the same manner as when spouses are domiciled in different states.

However, the Tax Commission also needed to determine the character of the income earned [Redacted]; was it community property or separate property? In an article by Dr. Marsha Antokolskaia of the Molengraaff Institute of Private Law, University of Utrecht, Grounds for Divorce and Maintenance Between Former Spouses, September 2002, Dr. Antokolskaia states that [Redacted] legal regime of matrimonial property is one of a limited community of property. She states that [Redacted] Civil Code Article 256(2) and [Redacted] Family Code Articles 33 and 34 provide that property acquired by the spouses during marriage is consider to be a

common asset. She goes on to say that in a division of matrimonial property, each spouse is entitled to half of the total assets irrespective of their contributions and their needs of support. Therefore, it appears the income earned [Redacted] is community property.

Since [Redacted] income is considered a common asset or community income, and the IRC recognizes the community property laws of foreign countries, the Tax Commission finds that half of income earned [Redacted] is attributable [Redacted]. And, since [Redacted] was living and domiciled in Idaho during 2004 and 2005, [Redacted] were required to file and report [Redacted] share of the community income to Idaho.

WHEREFORE, the Notice of Deficiency Determination dated January 30, 2008, 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 May 15, 2009):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2004	\$16,519	\$4,130	\$4,315	\$24,964
2005	19,098	4,775	3,843	<u>27,716</u>
			TOTAL DUE	<u>\$52,680</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 _____, 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]

Registered No.

Receipt No.
