

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21324
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On August 5, 2008, 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 year 2005 in the total amount of \$656.

On July 21, 2008, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not request a hearing but rather chose to provide additional information to support their position. The Tax Commission, having reviewed the file, hereby issues its decision.

The Tax Discovery Bureau (Bureau) received information [Redacted] that the taxpayers omitted pension or annuity income on their [Redacted] filing for 2005. The Bureau reviewed the information and determined the taxpayers omitted the same income from their Idaho income tax return. The Bureau corrected the taxpayers' 2005 Idaho individual income tax return and sent them a Notice of Deficiency Determination. The taxpayers protested the Bureau's determination. The taxpayers stated the additional tax was incorrect because they did not live in Idaho the full year of 2005. The taxpayers provided a copy of their mortgage interest statement to show the payoff of their Idaho home mortgage as evidence of their leaving Idaho.

The Bureau reviewed the information and did not disagree that the taxpayers left Idaho sometime in 2005. However, the Bureau continued with its determination on the premise that the taxpayers did not acquire a domicile in another state before the end of 2005. The Bureau

based its determination on the taxpayers' statement that they lived in their travel trailer while they looked for a house. The Bureau sent the taxpayers a letter stating that they did not fulfill the requirements of changing a domicile and asked them if they still wanted to continue with their protest. The taxpayers responded with additional information and a statement to forward the matter for administrative review.

The Bureau referred the matter, and the Tax Commission sent the taxpayers a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. The taxpayers contacted the Tax Commission and stated that they would provide additional documentation to show that they purchased property [Redacted] in 2005 and established residency there. The taxpayers stated they were wintering [Redacted] and had limited documentation, but they would send what they had available.

The taxpayers stated that on May 27, 2005, they placed a deposit on a home that was under construction [Redacted]. On August 31, 2005, the taxpayers purchased the home. The taxpayers stated that prior to the completion of the home the utilities were put in their name and paid for by them. The taxpayers provided documentation for their water service and their electrical service. The taxpayers stated all their possessions were in [Redacted] storage or at their new [Redacted] address.

The taxpayers filed an Idaho resident income tax return for 2005 with the state of Idaho. The taxpayers stated they did this because they thought it would be easier than filing two state income tax returns. They now realize it was not the smart thing to do. Nevertheless, their argument is that not all their income is reportable to Idaho.

Idaho Code section 63-3002 states it is the intent of the Idaho legislature to impose a tax on residents measured by their income from all sources and to impose a tax on part-year

residents measured by their income from all sources while Idaho residents and from Idaho sources while non-residents. Idaho Code section 63-3013 defines a resident as an individual who is domiciled in Idaho for the entire year; or who has maintained a place of abode in Idaho for the entire year and spends in the aggregate more than 270 days of the year in Idaho. Idaho Code section 63-3013A defines a part-year resident as any individual who is not a resident and who changed his domicile from or to Idaho during the taxable year; or has been present in Idaho for more than one day during the taxable year.

Domicile is defined as that place where an individual has his true, fixed, and permanent home. The place he intends to return to whenever he is absent. (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.

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 affected. Newcomb, *Ib.*

It is clear that the taxpayers intended to abandon Idaho and intended to acquire a new domicile in California. The question is did they have enough physical presence in California to complete the transition of their Idaho domicile to California. In Re Estate of Cooke, 96 Idaho 48, 524 P.2d 176 (1974), Mr. and Mrs. Cooke were searching for a place to relocate when Mr. Cooke died. In this case, the Court stated:

The Cookes had moved to Idaho in 1965 with the intention of remaining here permanently, thus establishing Idaho as their legal domicile. Finding the Idaho winter too harsh, the Cookes were searching for a new place to live along the Colorado River in either Arizona or California, when Mr. Cooke died. It is well established that once a domicile of choice is established, it persists until another is legally acquired. McMillion v. McMillion, 497 P.2d 331 (Colo.Ct.App.1972); In re Estate of Moore, 68 Wash.2d 792, 415 P.2d 653 (1966); In re Sherrill's Estate, 92 Ariz. 39, 373 P.2d 353 (1962); Restatement (Second), Conflict of Laws s 19 (1971). Mr. Cooke, having acquired no new domicile, was still domiciled in Idaho at the time of his death.

This case is distinguishable from the case at hand because the taxpayers here found a place to relocate to, acquired the property, and moved all their belongings to or in the vicinity of the property. In Schillerstorm v. Schillerstorm, 75 N.D. 667, 32 N.W.2d 106 (1948), the court in discussing domicile stated:

Any person not under a disability may at any time change his (or her) existing domicil and acquire for himself (or herself) a domicil of choice by residing in a state other than that of his (or her) previous domicil, if this physical fact is accompanied by the required state of mind, or animus manendi. 'The residence can be changed only by the union of act and intent' (and) 'a residence cannot be lost until another is gained . . .

Any act, event, or circumstance in the life of an individual may be evidence from which the state of mind, or animus manendi, may be inferred with more or less precision; and it is impossible to formulate any general rule by which the weight due to any particular point of evidence may be determined. 28 C.J.S., Domicile, § 18. Not only does the strength of the evidence from which the intention may be inferred vary according to the inherent

probability or improbability (Burke County v. Oakland, 1927, 56 N.D. 343, 217 N.W. 643) of an alleged change of domicil, but the importance of similar facts may differ absolutely in different cases. The age, character, religion, occupation, business or profession, financial condition, and general circumstances of the person, and the climate and customs of the state in which his or her domicil is alleged to have been acquired, are considerations which may cause the value of a particular fact to vary almost indefinitely . . .

Residence itself raises a presumption of intention to reside in the same place, which is increased when the residence is continued for a long period, and may even be conclusive in the absence of explanatory circumstances. 28 C.J.S., Domicile, §§ 16 & 18(2); 17 Am.Jur., Domicil, section 82; Summers v. Summers, 1946, 74 N.D. 741, 24 N.W.2d 688; McEwen v. McEwen [1924, 50 N.D. 662, 197 N.W. 862]. But though a long residence, except in certain special cases, is always material as evidence, it is never essential, and very rarely decisive, for slight circumstances may serve to show the absence of a settled intention. Summers v. Summers. No particular length of residence is required to establish domicil. Any period of residence, however short, will suffice when coupled with intent . . .

‘In order to acquire a domicil, both the fact and the intent must concur. The length of the residence is immaterial provided the other elements are present and are found to exist. A day or an hour, it has been said, will suffice for the acquisition of a domicil. Jacobs, Domicil, § 134, note.’ Winans v. Winans, 1910, 205 Mass. 388, 91 N.E. 394, 396, 28 L.R.A., N.S., 992, 995.

Accordingly, from the information available and provided by the taxpayers, it is apparent that the taxpayers established a domicile [Redacted] sometime near the end of August 2005 when the property was acquired and the utilities were put in their names. It is apparent that at that time, the taxpayers had the physical presence [Redacted], had the intent to acquire, and had the actions of making [Redacted] their domicile.

Therefore, since the taxpayers domicile changed in 2005, they should have been properly classified as part-year residents of Idaho. As part-year residents, only the income received while Idaho residents is reportable to Idaho. The income the taxpayers received in 2005 was mostly

from pensions or other retirement income; income received evenly throughout the year. Therefore, in changing the taxpayers from full-year residents to part-year residents, the Tax Commission included only the income the taxpayers received from January to September. The taxpayers were also only allowed the portion of their personal exemptions and standard deduction as provided in Idaho Code section 63-3026A, computation of part-year residents Idaho taxable income.

WHEREFORE, the Notice of Deficiency Determination dated August 5, 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:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2005	\$ 360	\$ 18	\$ 75	\$ 453

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

An explanation of the petitioner's 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.