BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NO. 21770
[Redacted],	)	
	)	DECISION
Petitioners.	)	
	)	

On December 12, 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 taxable years 2005, 2006, and 2007 in the total amount of $22,169.

On February 6, 2009, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not request a hearing but did state that all their support had been submitted to the auditor. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayers filed nonresident Idaho income tax returns for taxable years 2001 through 2007. Beginning in 2004, the taxpayers reported [Redacted] as a resident of Idaho, and then in 2006 and 2007 they reported her as a nonresident. The Income Tax Audit Bureau selected the taxpayers' 2005, 2006, and 2007, income tax returns for audit to determine if they correctly reported their residency and domicile status.

The auditor began corresponding with the taxpayers and collecting the information necessary to make a determination. The taxpayers conceded that [Redacted] became a resident of Idaho when her employer transferred her to Idaho in 1996; however, they continued to maintain that [Redacted] was not an Idaho resident. Ultimately, the auditor determined both [Redacted] had acquired Idaho as their state of domicile. Therefore, the auditor adjusted the taxpayers' 2005, 2006, and 2007 Idaho income tax returns to reflect Idaho as their domicile.

The auditor sent the taxpayers a Notice of Deficiency Determination, which the taxpayers protested. The taxpayers stated they agreed with the determination for [Redacted], but as for [Redacted], he did not acquire Idaho as his state of domicile. The taxpayers stated it was and still is their intent to return [Redacted] when [Redacted] employment contract ends. They stated they have always maintained an address [Redacted], their physicians, tax preparer, a partnership, and their voting privileges [Redacted], and they take several trips back [Redacted] to see friends and family. The taxpayers stated that [Redacted] spends more time outside of Idaho than in Idaho.

In the alternative to being a nonresident of Idaho, the taxpayers stated, as their secondary position, that at most, [Redacted] was a part-year resident of Idaho and only as it was convenient for him to have a place to stay while awaiting assignment. The taxpayers stated it was never [Redacted] intent to establish a permanent residence in Idaho.

The auditor reviewed the taxpayers' protest and referred the matter for administrative review. The Tax Commission reviewed the matter and sent the taxpayers a letter setting forth the methods available for redetermining a protested Notice of Deficiency Determination. The taxpayers replied that they had nothing further to provide; everything they had was already submitted. The taxpayers stated that [Redacted] employment contract required him to be [Redacted] and he was fully dependent on the fire season for determining when and where he would be working.

The issue in this case is the taxpayers' domicile and/or state of residence in 2005, 2006, and 2007. It was previously agreed that [Redacted] acquired Idaho as her domicile as early as 1996. Therefore, this decision will focus on the determination of [Redacted] domicile/residence during this period.

Domicile forms the constitutional basis for the imposition of state income taxes on an individual. New York, ex rel, Cohn v. Graves, 300 U.S. 308, 313 (1937); Lawrence v. State Tax Commission of Mississippi, 286, U.S. 276, 279 (1932). Domicile is defined in Idaho Administrative Income Tax Rule 030 as the place where an individual has his true, fixed, permanent home and principal establishment and to which place he has the intention of returning whenever he is absent. The term domicile denotes a place where an individual has the intention to remain permanently or for an indefinite time. 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 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, it is clear that [Redacted] domicile of choice [Redacted] prior to 2001. It is also clear that, in 2001, [Redacted] when he sold their primary residence and moved to Idaho. In 2001, the taxpayers purchased their third house [Redacted] and [Redacted] began work [Redacted] out of the [Redacted] [Redacted]. [Redacted] continued working [Redacted] into 2002. He left [Redacted] in 2002 to work [Redacted]. [Redacted]. [Redacted] contract [Redacted] was a year-to-year contract. [Redacted] extended his contract each year through 2009.

In determining an individual's domicile, the Tax Commission looks at five primary factors. The primary factors are the individual's primary home, where the individual is actively involved in business, where the individual spends his time, where the individual keeps his near and dear items, and the individual's family connections.

An individual's home can be a physical building (house) or it can be a community to which the individual has established strong and endearing ties. In this case, the taxpayers sold their primary home [Redacted] and purchased a house in Idaho. The taxpayers also own a house [Redacted]; however, the taxpayers did not make the argument that [Redacted] was a resident of or domiciled [Redacted]. They only spoke of the [Redacted] home as a place they would go to in the wintertime. Consequently, the Tax Commission did not consider [Redacted] as a domicile [Redacted].

In 1996, the taxpayers purchased a house in Idaho [Redacted] when she was transferred [Redacted]. That house was later sold and another purchased in 1998. A third house was purchased in Idaho [Redacted] after the sale of their home [Redacted]. On the last two Idaho homes, the taxpayers applied for and received the homeowner's exemption for property taxes.

With the sale of their primary residence [Redacted], the taxpayers had no home connection [Redacted]. [Redacted] stated and provided other addresses that he used when he stayed [Redacted]; however, these addresses were not owned by the taxpayers nor was there a permanent attachment for the taxpayers on these properties.

As for community ties, the information available is very limited. [Redacted] stated the community connections he maintained [Redacted] were physicians, tax preparers, voting, friends, and relatives. The record contains little to no information about [Redacted] social, civic, and recreational activities. The only information available is that [Redacted] returns to [Redacted] for a fishing trip in the early fall and he regularly attends a basketball tournament in November.

In deciding this factor, the Tax Commission looked at what was available to [Redacted] in both [Redacted] and Idaho. The taxpayers sold their primary residence [Redacted]; consequently, [Redacted] did not have a permanent place to live, although he did have two places available virtually any time he needed. The taxpayers purchased a house in Idaho in 2001 and continue to live in that house. The appearance is that this house became the taxpayers' primary home when it was purchased in 2001. Therefore, because [Redacted] did not have a primary home elsewhere, the Tax Commission found the home factor in favor of Idaho.

The active business involvement factor looks at the individual's pattern of employment. This includes where the individual operates his business if he is a sole proprietor, where he earns his wages if he is a wage earner, and where he actively participates in a partnership, limited liability company, or corporation. In this case, [Redacted] worked for a company that was headquartered [Redacted] with his base of operations [Redacted]. As a [Redacted] providing support services [Redacted], [Redacted] performed his job duties in the several states of the Great Basin area. With [Redacted] as his designated base, it appears [Redacted] began and ended his seven day work shift [Redacted].

The taxpayers also had rental property [Redacted] and farm land [Redacted]; however, there is no indication in the record that [Redacted] actively participated in the rentals or farming. All of [Redacted] active business activities seem to stem from his employment [Redacted], and since he was based in Idaho, the Tax Commission finds this factor in favor of Idaho.

The time factor is an analysis of where an individual spends his time during the year. In this case, [Redacted] left [Redacted] in April/May 2001. The taxpayers stated they returned [Redacted], but only for visits of limited duration. From January 1, 2005, to October 23, 2006, the taxpayers reported only one trip [Redacted] for eight days. The majority of the rest of their time, the taxpayers reported they were either in Idaho or Arizona. Since [Redacted] was not claimed as a place of residence or domicile, it is clear from the taxpayers' statements that they spent far more time in Idaho [Redacted]. Therefore, the time factor favors Idaho beginning in 2005 and possibly as early as 2001.

The factor of items near and dear deals with the location of items an individual holds "near and dear" to his heart, items with sentimental value, and the personal items which enhance the quality of life. The taxpayers stated that all their possessions were divided between their homes in Boise and [Redacted]; they left no substantial personal goods [Redacted]. [Redacted] did state that his hunting and fishing gear were in [Redacted], yet there is little indication that this gear was used with any frequency. [Redacted] stated he usually went [Redacted] to fish in the fall, but made no mention of any hunting activities. [Redacted] also did not provide or produce any information about his [Redacted] hunting and fishing licenses.

Other than hunting and fishing, the record does not purport any activities or objects that show a near and dear quality [Redacted]. The one thing that stands out as being near and dear [Redacted] is his attachment to [Redacted]. Therefore, even though [Redacted] has limited personal possessions [Redacted], this factor tends to favor [Redacted].

The last of the primary factors is the individual's family connections. This factor is an analysis of the individual's family both in and outside of Idaho. In this case, [Redacted] children are adults, and they live in different states. [Redacted] has lived in Idaho since 1996 and is apparently the only family that presently lives [Redacted]. The taxpayers stated the majority of their family and friends are [Redacted]. The taxpayers also stated [Redacted] is the only one of her siblings to leave [Redacted]. As for [Redacted] children, if any, the record does not specify. It only speaks to [Redacted] children and our children.

Generally, the strongest family connection is between the spouses. Therefore, one would expect the domicile of the spouses to be the same. However, this is not always the case. Split-domiciles have become more common in today's world and are a phenomenon that is recognized by the Tax Commission. This does not appear to be the case here. In split-domiciles the spouses live apart from each other for the majority of the year, this is not the case with the taxpayers. The record shows the taxpayers have lived with each other since 2001 and their dwelling places were either Idaho or [Redacted].

Since the taxpayers did not show that there was any marital discord, and there is no indication they lived apart beginning in 2001, the Tax Commission finds this factor slightly in favor of Idaho. However, considering the information regarding this factor, the Tax Commission also finds this factor not persuasive.

Reviewing the primary factors gives the edge to Idaho as being [Redacted] domicile. However, when considering all the facts and circumstances, adding the minor factors should present a clear indication of [Redacted] domicile. Some minor factors have already been mentioned within the primary factors; nevertheless, they bear repeating here.

During the years in question, [Redacted] maintained an [Redacted] driver's license and voter's registration. [Redacted] driver's license was issued in September 2005 during the only trip the taxpayers made [Redacted] in 2005. The address [Redacted] gave for his residence was a post office box. [Redacted] voter's registration card does not have an issue date; however, the address given as his residence is the same as one of the rental properties [Redacted]. When compared to [Redacted] [Redacted] voter's registration card, whose address is the [Redacted] home the taxpayers sold in 2001, [Redacted] registration card has different House and Senate references. [Redacted] card was issued in 1992. Therefore, it appears these cards are old and not up-to-date with the taxpayers' current status. The taxpayers may not even qualify to vote [Redacted] since they have not resided there for the required time. The information available on [Redacted] voting history, albeit limited, shows that he may have voted in the primary and general elections of 2008.

It is assumed that [Redacted] had an [Redacted] fish and game license; although nothing confirmed this other than the taxpayers' statement that [Redacted] usually went fishing in the fall. However, this seems contradictory to [Redacted] employment contract in that his seasonal work ends in late September.

The taxpayers licensed and registered two vehicles in Idaho. [Redacted] also brought a vehicle [Redacted] in 2004 and stated on the paperwork that he was a new resident of Idaho.

The taxpayers both applied for and received the homeowner's exemption on two of the houses they purchased in Idaho. This exemption attests that the house is the primary residence of the individual(s) making the application.

The taxpayers used both Idaho and [Redacted] addresses, mostly Idaho, for their tax information documentation. The taxpayers also reported [Redacted] current state of residence as Idaho on their 2002, 2003, and 2004 Idaho income tax returns.

The taxpayers stated [Redacted] physicians [Redacted]; however, when [Redacted] had a bout with cancer he received treatment and care in Idaho. [Redacted] cancer was likely discovered after his move to Idaho, and he may have based his treatment decisions on the results of the treatment of [Redacted] cancer; nevertheless, this act does not lend credence to retaining [Redacted] as his domicile.

Considering all the information available, the statements and actions of the taxpayers and in particular, [Redacted] actions, the Tax Commission finds that [Redacted], although he may not have intended to, changed his domicile [Redacted] to Idaho. His actions and presence show that he planned to be in Idaho for an indefinite time beginning with his move to Idaho in 2001. It is apparent that, at that time, Idaho began to become more increasingly the center or focal point of [Redacted] activities. [Redacted] may always intend to return [Redacted] but, until that intention takes root, the taxpayers are Idaho residents.

With the finding that the taxpayers were Idaho residents in 2005, 2006, and 2007, it follows that the taxpayers should have filed resident income tax returns for those years. Therefore, the Tax Commission hereby upholds the auditor's determination of the taxpayers' Idaho taxable income.

The auditor added interest to the taxpayers' tax liability. The Tax Commission reviewed that addition and found it appropriate as provided for in Idaho Code section 63-3045. The auditor also added a substantial understatement penalty to the taxpayers' 2007 tax. The Tax Commission reviewed that addition and found that there was reasonable cause for the understatement and that the taxpayers acted in good faith in the preparation of their income tax returns. Therefore, the Tax Commission finds, in this case, the application of the penalty inappropriate.

WHEREFORE, the Notice of Deficiency Determination dated December 12, 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:

YEAR	TAX	PENALTY	INTEREST	TOTAL
2005	$ 3,652	$ 0	$ 920	$ 4,572
2006	4,481	0	848	5,329
2007	11,028	0	1,315	12,343
			TOTAL DUE	$22,244

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 ___________________ 2010.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ________ day of ___________________ 2010, 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.

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