

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 22006
[Redacted]	)	
	)	DECISION
Petitioners.	)	
<hr style="width: 45%; margin-left: 0;"/>		

On September 10, 2009, the Idaho State Tax Commission’s (Commission) Tax Discovery Bureau (TDB) issued a Notice of Deficiency Determination (NODD) to [Redacted] (petitioners) proposing additional income tax, penalty, and interest for taxable years 2006 and 2007 in the total amount of \$6,155. The petitioners filed a timely petition for redetermination. On January 5, 2010, the petitioners were informed of their appeal rights. The Commission, having reviewed the file, hereby issues its decision.

In its published decision in Docket No. 20713 dated September 11, 2008, the Commission held that the petitioners’ domicile had been changed to Idaho in 2005. The petitioners did not appeal the Commission’s decision.

The petitioners owned a home in Idaho during 2006 and 2007, upon which the petitioners claimed the Idaho homeowner’s exemption according to information obtained by the TDB. The petitioners completed Idaho voter registration forms in 2008 indicating that they were residing in Idaho during 2006 and 2007. One of the petitioners voted in an Idaho 2006 election. The petitioners filed a California nonresident income tax return for taxable year 2006 identifying Idaho as their place of residence for the entire 2006 taxable year. The petitioners’ Idaho address is reflected on the petitioners’ W-2s as well as on their California 2006 nonresident individual income tax return.

As a result of the 2005 decision, and based upon the additional information obtained by the TDB, it was determined that the petitioners had an Idaho filing requirement as Idaho

residents for taxable years 2006 and 2007. The TDB issued an NODD on April 14, 2009, seeking tax, penalty, and interest totaling \$29,924. The petitioners filed their petition for redetermination in June 2009. Subsequent to the issuance of the April 2009 NODD, the petitioners provided additional information which resulted in the cancellation of the April 2009 NODD and the issuance of the September 10, 2009, NODD seeking tax, penalty, and interest totaling \$6,155.

In the petitioners' petition for redetermination dated June 8, 2009, the petitioners argued that:

We do not agree with the determination and have issued this response as protest. In the tax years of 2006 & 2007 we lived in [Redacted] and only visited the state of Idaho to visit family separated by divorce and maintain a second home in [Redacted] for this reason.

In the Commission's hearing rights letter dated January 5, 2009, the petitioners were informed of their appeal rights. The petitioners did not respond to the Commission's hearing rights letter. As such, the Commission hereby renders its decision based upon the information available to the Commission.

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 Income Tax Administrative 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, (1996). Domicile, once established, persists until a new domicile is legally acquired. In re Cooke's Estate, 96 Idaho 48 (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 (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.

As of the end of taxable year 2005, the petitioners' domicile was Idaho. During 2006 through 2007, the petitioners registered to vote in Idaho, claimed the Idaho homeowner's exemption on their Idaho home, had their mail sent to their Idaho residence, and filed a

California nonresident income tax return reporting Idaho as their place of residence. The petitioners have not provided any information that would resolve this case in the petitioners' favor. It is the petitioners' burden of proving error on the part of the deficiency determination. Albertson's, Inc. v. State Dept. of Revenue, 106 Idaho 810, 814, (1984); Parsons v. Idaho State Tax Comm'n, 110 Idaho 572, 574 (Ct. App. 1986). Furthermore, the petitioners have not met their burden of showing a change in domicile from Idaho to California for taxable years 2006 or 2007. Since the petitioners have not met this burden of proof showing that the NODD prepared by the TDB for taxable years 2006 and 2007 is incorrect or that a change in domicile has occurred, the Commission upholds the TDB's determination for these years.

Interest was included in the NODD in accordance with Idaho Code section 63-3045 as was the Idaho Code section 63-3045(c)(1) failure to file an Idaho income tax return penalty. The penalty percentage is 5 percent per month with a maximum rate of 25 percent.

WHEREFORE, the Notice of Deficiency Determination dated September 10, 2009, and as subsequently modified by TDB, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioners pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2007	\$ 2,854	714	353	\$ 3,921
2006	1,642	411	319	<u>2,372</u>
			TOTAL DUE	<u>\$ 6,293</u>

Interest is calculated through June 25, 2010, and will continue to accrue at the rate set forth in Idaho Code section 63-3045.

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

An explanation of the petitioners' rights to appeal this decision is enclosed.

DATED this \_\_\_\_ day of \_\_\_\_\_ 2010.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
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.

\_\_\_\_\_