

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

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|---------------------------------|---|------------------|
| In the Matter of the Protest of |) | |
| |) | DOCKET NO. 22482 |
| [Redacted], |) | |
| |) | |
| Petitioners. |) | DECISION |
| _____ |) | |

On October 9, 2009, 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 taxable year 2004 in the total amount of \$4,565.

On December 4, 2009, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers contacted the Tax Commission regarding their appeal and provided additional information about their situation in 2004 for the Tax Commission to consider. 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 taxable years 2004 and 2005. The Tax Discovery 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 contacted the taxpayers and obtained information from them regarding their 2004 and 2005 tax years. From this information and other information the Bureau obtained from third-party sources, the Bureau determined the taxpayers were required to file Idaho income tax returns. The Bureau prepared a 2004 income tax return for the taxpayers and sent them a Notice of Deficiency Determination.

The taxpayers disagreed with the Bureau's determination and filed a protest with the Tax Commission. The taxpayers stated they had no Idaho source income in 2004 and that they were [Redacted] residents the entire year. The taxpayers prepared and submitted a 2005 part-year

Idaho resident return. The Bureau reviewed the information and referred the matter for administrative review.

The Tax Commission reviewed the matter and 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 provided additional information about their situation and circumstances in 2004.

The taxpayers were residents [Redacted] prior to and beginning in 2004. [Redacted] was employed [Redacted] and he operated [Redacted]. The taxpayers owned a home [Redacted] which they sold in January 2004. The taxpayers leased an apartment [Redacted] from which [Redacted] operated his [Redacted] business. In February 2004, the taxpayers purchased a house in [Redacted], Idaho. The taxpayers stated it was their intent to move to Idaho, but when circumstances changed, they found that living in Idaho was just not sustainable for them.

The taxpayers purchased the home in Idaho because it was near [Redacted] mother who was very ill. It was also closer to [Redacted] sister. The only drawback to the [Redacted] house was that it was 45 to 50 miles away from [Redacted] employer and his major client. The house was purchased before [Redacted] was informed by his client that they wanted him to be available at a moment's notice. Consequently, the taxpayers kept the apartment in [Redacted] and remained in [Redacted] until [Redacted] client decided to have all its [Redacted] work done in house.

The Bureau determined that the taxpayers' domicile changed to Idaho in 2004 when they purchased the [Redacted] house. It is the taxpayers' contention that they remained [Redacted] residents and kept their [Redacted] domicile.

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. Hall v. Wake County Brd. of Elections, 280 N.C. 600, 187 S.E. 2d 52 (1972); Fry v. Fry, 332 Ill. App. 484, 76 NE 2d 225, 229 (1947). 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).

It takes no particular period of time to acquire a new domicile, the result being achieved when the person is physically present in the new place with a state of mind regarding the new place as home. Moreover, mere length of time cannot convert physical presence or residence into domicile. Taylor v. Milan, 89 F. Supp. 880 (1950). Domicile is not necessarily lost by

protracted absence from home where the intention to return remains. Wilson v. Pickens, 444 F. Supp. 53 (W.D. Okl. 1977).

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.

In determining an individual's domicile, the Tax Commission looks at five primary factors that tend to show where an individual is domiciled. 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.

The home factor looks at the individual's place of abode. Generally, this factor is a comparison of the structures where the individual lives; however, it also includes the community and the ties the individual established or is establishing. In this case, the taxpayers were renting an apartment [Redacted] and purchasing a house [Redacted]. The taxpayers stated they purchased the house [Redacted] with the intention of making it their primary residence. However, after purchasing the house the taxpayers' circumstances changed, and it became more of a weekend retreat than a primary residence. The taxpayers stated that due to [Redacted]

employment, it was not feasible for him to live in Idaho. When [Redacted] employment situation changed, the taxpayers almost immediately moved to their house in Idaho.

Based upon size and value, the home factor favors Idaho. However, if you consider time and use, there is a good argument for this factor [Redacted]. The taxpayers stated all their personal belongings stayed [Redacted]. [Redacted] spent the majority of his time [Redacted], largely due to his employment. [Redacted] was in both [Redacted] and [Redacted] spending about 60 – 70 percent of her time [Redacted].

The taxpayers applied for and received the homeowner's exemption on the [Redacted] house in 2004. The taxpayers stated they did not know that the homeowner's exemption was only for full-time residents of Idaho. They stated, as many other taxpayers have stated, that the homeowner's exemption paperwork was one of many they signed that was not fully explained when they purchased the house in Idaho.

The taxpayers' community involvement placed their ties [Redacted]. The taxpayers attended church [Redacted] and their physicians were in [Redacted]. [Redacted] was heavy into music, playing [Redacted] at their church [Redacted] and with the [Redacted]. Since he was a child, music has been a large part of [Redacted] life.

Considering the foregoing information it is apparent that the taxpayers' center of social activity was [Redacted] rather than [Redacted]. [Redacted] appears to be that place where the taxpayers 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). Therefore, the Tax Commission finds the home factor in favor of [Redacted].

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, there is no doubt [Redacted] business and employment was in [Redacted]. The taxpayers had no other involvement in business activities. In fact, when [Redacted] major client changed its business practice, it caused [Redacted] to close his business. Even after their move to Idaho in 2005, [Redacted] was still employed [Redacted]. Therefore, it is clear that the taxpayers' business and source of income came from [Redacted] sources.

The time factor is an analysis of where an individual spends his time during the year. Looking at the time factor purely as a quantitative analysis, the Tax Commission found it favors [Redacted]. The taxpayers' domicile prior to 2004 [Redacted]. [Redacted] employment and business contacts were [Redacted]. The taxpayers owned a home and leased an apartment [Redacted]. The taxpayers attended church [Redacted]. The taxpayers' doctors were [Redacted]. The taxpayers spent some weekends in Idaho, but [Redacted] stated he worked a lot of Saturdays, which kept him [Redacted]. [Redacted] spent time in Idaho attending to and visiting her ill mother who lived [Redacted] but that was less than 40 percent of the time, and when she did stay [Redacted] she went back [Redacted] on the weekends to attend church. This factor clearly shows the taxpayers spent more time [Redacted].

The family connections factor is an analysis of the individual's family both within and without Idaho. The taxpayers' known family connections were in Idaho. [Redacted] mother lived [Redacted] and she had a sister living in the same area. [Redacted] mother's health was failing and she was not expected to live very long. This along with being tired of city life,

prompted the taxpayers to purchase the house [Redacted]. [Redacted] regularly visited and cared for her mother; however, this by itself is not heavily weighted in considering this factor.

The record does not contain a lot of information about the taxpayers' family connections. Nothing is known about [Redacted] parents or siblings. It is also unknown if the taxpayers have any children. Furthermore, nothing in the record suggested the kind of relationship the taxpayers had with [Redacted] mother or her sister; although, everything mentioned makes it appear to be amicable. Therefore, considering the record, the Tax Commission did not find this factor conclusive and considers it neutral.

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 all their personal belongings stayed [Redacted]. [Redacted] interest/hobby is music, [Redacted]. The taxpayers stated [Redacted] was active [Redacted] and he regularly played at their church [Redacted]. There is no indication the taxpayers had anything in Idaho in 2004, other than the house and its surroundings, that the taxpayers considered an enhancement to their quality of life. Accordingly, the Tax Commission found this factor favoring [Redacted].

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. The Tax Commission has no record of the taxpayers' hunting and fishing licenses, but all the other minor factors clearly show [Redacted] as the place the taxpayers identified themselves with. It was not until March 2005 when the taxpayers converted their voter's registration, driver's licenses, and vehicle registrations to Idaho. Looking at the minor factors, the Tax Commission found them pointing to a [Redacted] domicile.

The Tax Commission also considered the concurrence of events stated in IDAPA 35.01.01.030.02.a. Idaho Income Tax Administrative Rules. The first test, did the taxpayers have the intent to abandon their old domicile? The Tax Commission found the taxpayers did intend to abandon their old domicile. The taxpayers stated they fully intended to move to Idaho; therefore, it is reasonable to assume the taxpayers fully intended to abandon their [Redacted] domicile. The second test, did the taxpayers intend to acquire a new domicile? The Tax Commission found the taxpayers did intend to set up a new domicile in Idaho as indicated by their statement. The third and final test is physical presence in the new domicile. The taxpayers had physical presence in Idaho during 2004; however, as shown in the time factor discussed above, the time spent in Idaho was limited; more like that of a visitor or vacationer. The taxpayers' primary physical presence was in [Redacted].

Since [Redacted] was the taxpayers' domicile prior to 2004, the Tax Commission has the burden of showing that the taxpayers abandoned [Redacted] and acquired Idaho as their domicile. The Bureau's position is that the taxpayers' domicile changed when they purchased the house [Redacted] and applied for the homeowner's exemption. However, the ownership of Idaho property, in and of itself, does not establish a domicile in Idaho. The taxpayers must do other things that establish themselves as permanent or indefinite fixtures of Idaho. The taxpayers did not do those things until the latter part of March 2005. The taxpayers' presence in Idaho, in 2004, was not much more than that of a visitor.

Therefore, it is the Tax Commission's opinion that the taxpayers did not become domiciled in Idaho until 2005 when they acquired Idaho driver's licenses, registered their vehicles in Idaho, and registered to vote in Idaho. Since the taxpayers were not domiciled in Idaho in 2004, and they had no Idaho source income, they were not required to file an Idaho

income tax return for 2004. Therefore, the Notice of Deficiency Determination should be cancelled.

WHEREFORE, the Notice of Deficiency Determination dated October 9, 2009, is hereby CANCELLED.

An explanation of the taxpayer's right 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.
