

claimed himself on his own return. They stated they have claimed [Redacted] ever since [Redacted] divorce. The taxpayers provided a copy of [Redacted] divorce decree to show that [Redacted] was awarded primary physical custody of [Redacted]. Taxpayer Accounting reviewed the information and referred the matter for administrative review.

Subsequent to Taxpayer Accounting's determination, the Income Tax Audit Bureau (Bureau) selected the taxpayers' 2006, 2007, and 2008 Idaho income tax returns to verify the taxpayers' filing statuses of nonresident and part-year resident [Redacted] and resident [Redacted]. The Bureau sent the taxpayers a questionnaire which they completed and returned to the Bureau. The Bureau reviewed the information with other information it had gathered and determined [Redacted] had not abandoned Idaho as his domicile. The Bureau adjusted the taxpayers' 2006, 2007, and 2008 Idaho returns and sent them the Notice of Deficiency Determination dated February 10, 2010. The taxpayers protested the Bureau's determination stating that the Bureau did not fully explore and consider the practicality of [Redacted] employment. The Bureau referred the matter for administrative review.

The taxpayers did not respond to the Tax Commission's hearing rights letter regarding the claimed dependent issue, but they did respond to the hearing rights letter regarding the domicile issue. The taxpayers requested a telephone hearing and agreed to have the two issues combined into a single case. The Tax Commission, having considered all the information provided, hereby issues its decision.

CLAIMED DEPENDENT

Deductions are a matter of legislative grace, and whether and to what extent deductions shall be allowed depends upon the clear provision for the particular deduction. A taxpayer seeking a deduction must be able to point to an applicable statute and show that he comes within

its terms. New Colonial Ice Co., Inc. v. Helvering, 292 US. 435, 54 S. Ct. 788 (1934); INDOPCO, Inc. v. Commissioner, 503 U.S. 79, 84, 112 S. Ct. 1039, 117 L.Ed.2d 226 (1992).

Internal Revenue Code (IRC) section 151 provides for the allowance of deductions for personal exemptions and exemption deductions for dependents. In this case, the taxpayers claimed a dependent exemption for a child that filed and claimed a personal exemption for himself. IRC section 151(d)(2) disallows the exemption amount in the case of certain dependents. It states that in the case of an individual, with respect to whom an exemption deduction is allowable to another taxpayer in the same taxable year, the exemption amount for such individual shall be zero. In other words, a personal exemption will not be allowed on an individual's income tax return if that individual can be claimed as a dependent by another taxpayer.

IRC section 152 defines a dependent as either a "qualifying child" or a "qualifying relative." To be a qualifying child the dependent must be an individual who 1) bears a certain relationship to the taxpayer, such as the taxpayer's child, 2) has the same principal place of abode as the taxpayer for more than one-half of the taxable year, 3) meets certain age requirements, and 4) has not provided over one-half of the individual's own support for the taxable year. IRC section 152(c)(1) through (3).

To be a qualifying relative, the dependent must be an individual 1) who bears a certain relationship to the taxpayer, such as the taxpayer's child, 2) whose gross income for the taxable year is less than the exemption amount, 3) with respect to whom the taxpayer provides over one-half of the individual's support for the taxable year, and 4) who is not a qualifying child of the taxpayer or of any other taxpayer for the taxable year. IRC section 152(d)(1) and (2).

Prior to 2005, a parent could claim a child, under the age of 19, as a dependent regardless of the amount of earned income the child had for the calendar year. However, for taxable years beginning on or after January 1, 2005, the child could not have provided over one-half their own support (qualifying child) or could not have gross income over the exemption amount (qualifying relative) to be a dependent of another taxpayer. In this case, the claimed dependent had gross income over the exemption amount, and while it is unclear whether [Redacted] earned income provided over one-half of his own support, the information available shows that [Redacted] lived with the taxpayers for most, if not all, of taxable year 2008.

In addition to the above, [Redacted] subsequently filed an amended return stating that he could be claimed as a dependent on another taxpayer's return. This action gives credence to the taxpayers' ability to claim the dependent exemption. Therefore, considering all the information available, the Tax Commission finds that the taxpayers can claim the dependent exemption for [Redacted] for taxable year 2008. And since the taxpayers can claim the dependent exemption, they are allowed to claim the grocery credit [Redacted] as well. See Idaho Code section 63-3024A.

DOMICILE

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 IDAPA 35.01.01.030 Idaho Administrative Income Tax Rules 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 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.

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 have a residence in [Redacted] Idaho, where [Redacted] son, lived full time and [Redacted] lived part-time. The remaining time [Redacted] lived in a travel trailer [Redacted]. [Redacted]the trailer as living quarters while he was working. Therefore, as a physical dwelling place, the home factor favors 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 [Redacted] driving a route [Redacted]. [Redacted] had no other business activities. All his work was done [Redacted]. Consequently, this factor favors a [Redacted] domicile.

The time factor is an analysis of where an individual spends his time during the year. In this case, [Redacted] spent most of his time [Redacted] because of his employment. The taxpayers stated [Redacted] would spend two weeks of vacation in Idaho and a lot of weekends and holidays in Idaho as his schedule and the weather permitted. The taxpayers stated that [Redacted] regularly takes two trips a year to [Redacted] usually in early spring and late summer. From a purely quantitative analysis, the time factor favors [Redacted]; however, this is due solely because of [Redacted] employment.

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. [Redacted] recreational activities included hunting, fishing, and boating. The taxpayers had a boat which was kept and licensed in Idaho. [Redacted] purchased Idaho resident fish and game licenses. If [Redacted] purchased a [Redacted] fishing or hunting license, it was a nonresident license. The taxpayers stated [Redacted] had other personal items with him [Redacted], but considering his living arrangements [Redacted], it can be readily assumed most [Redacted] near and dear items were at the house in Idaho. Therefore, the Tax Commission found the near and dear factor slightly favors Idaho.

The last of the primary factors is the individual's family connections. This factor is an analysis of the individual's family both within and without Idaho. In this case, [Redacted] immediate family and his parents were all in Idaho. The taxpayers had some rocky times in their relationship in these years, but nothing in the record shows that [Redacted] had any intention of leaving and staying [Redacted]. All the information points to [Redacted] family connections being in Idaho; nothing in the record shows [Redacted] had any family [Redacted]. Therefore, the Tax Commission finds this factor favoring an Idaho domicile.

The primary factors tend to show Idaho as being [Redacted] domicile. However, adding the minor factors can either solidify or swing the determination [Redacted]. Some of the minor factors have already been mentioned within the primary factors; nevertheless, they bear repeating here.

During the years in question, [Redacted] maintained an Idaho driver's license. There is no indication [Redacted] even entertained obtaining a [Redacted] driver's license. If [Redacted] considered [Redacted] his home state and his intent was to remain there indefinitely, obtaining a

[Redacted] driver's license would seem to be a priority considering his employment. In addition, Idaho driver's licenses are not available to nonresidents of Idaho. Therefore, [Redacted] had to affirm to the Department of Motor Vehicles that he was a resident of Idaho when he renewed his Idaho driver's license in 2008.

[Redacted] purchased Idaho resident fish and game licenses for these years. In 2008, [Redacted] purchased a nonresident [Redacted] fishing license for which he gave an address of [Redacted], Idaho, as his place of residence.

The taxpayers' vehicles were all registered in Idaho. The taxpayers also registered a boat and trailer in Idaho as well.

[Redacted] had most if not all his mail going to the address in Idaho. The taxpayers' federal income tax returns were filed with the Idaho address.

In 2006, when [Redacted] needed medical attention, he was admitted to the [Redacted] hospital in [Redacted]. From this, it is assumed [Redacted] medical and dental needs were all met in Idaho.

Idaho Income Tax Administrative Rule IDAPA 35.01.01.030.02.a. states for a domicile to change there must be a concurrence of specific events. The taxpayer must have the intent to abandon Idaho as his domicile, the intent to acquire a new domicile, and physical presence in the new domicile. The factors discussed above do not evidence the intent to abandon Idaho. The factors also do not evidence the intent to acquire a new domicile. Of the specific events required, only [Redacted] physical presence [Redacted] was clearly accomplished.

Prior to 2006, the taxpayers filed as Idaho residents. [Redacted] domicile was Idaho. Therefore, the presumption is the Idaho domicile continues until [Redacted] establishes a new domicile. In re Estate of Cooke, supra. The taxpayers did not show that [Redacted] established a

new domicile. The facts show that [Redacted] maintained ties to Idaho and continues to maintain ties to Idaho. [Redacted] did not do the things one would expect of an individual if he was abandoning one place and acquiring another. The taxpayers did not show that [Redacted] considered [Redacted] 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 found [Redacted] domicile remained in Idaho.

The grocery credit claimed on the taxpayers' 2008 Idaho return was for four residents of Idaho. The 2008 Idaho return the taxpayers filed was a part-year resident & nonresident return reporting only three individuals of which [Redacted] was a part-year resident for only one month. If this were the case, the claimed grocery credit was overstated by one individual and the eleven months [Redacted] claimed to be a nonresident. Taxpayer Accounting corrected the grocery credit in its Notice of Deficiency Determination to the taxpayers in addition to disallowing the grocery credit [Redacted]. However, because the Tax Commission determined [Redacted] was domiciled in Idaho in 2008, the grocery credit is allowed [Redacted] as determined by the Bureau, but the fourth grocery credit is disallowed as there are only three exemptions reported on the taxpayers' return. Taxpayer Accounting's disallowance of the fourth grocery credit is upheld.

WHEREFORE, the Notice of Deficiency Determination dated August 5, 2009, is hereby MODIFIED, in accordance with the provisions of this decision and, as so MODIFIED, is APPROVED, AFFIRMED, and MADE FINAL.

WHEREFORE, the Notice of Deficiency Determination dated February 10, 2010, is hereby 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>
2006	\$4,278	\$214	\$999	\$ 5,491
2007	5,981	598	978	7,557
2008	6,848	685	681	<u>8,214</u>
			TOTAL DUE	<u>\$21,262</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 _____ 2011.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2011, 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.
