

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

In the Matter of the Protest of )  
[Redacted], ) DOCKET NO. 22725  
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 )  
Petitioners. ) DECISION  
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\_\_\_\_\_ )

[Redacted] (taxpayers) protested the Notice of Deficiency Determination issued by the staff of the Idaho State Tax Commission dated January 25, 2010, asserting additional Idaho income tax, penalty, and interest for taxable years 2006, 2007, and 2008 in the total amount of \$41,495. The taxpayers disagreed with the Income Tax Audit Bureau’s determination that [Redacted] was domiciled in Idaho in 2006, 2007, and 2008. The taxpayers claimed [Redacted] domicile was in [Redacted] during those years and his income was not taxable by Idaho.

**BACKGROUND**

The taxpayers timely filed their 2007 Idaho individual income tax return as residents of Idaho. They later filed an amended 2007 income tax return changing [Redacted] status to a nonresident of Idaho. The taxpayers then filed a 2008 Idaho individual income tax return reporting [Redacted] as a resident of Idaho and [Redacted] as a nonresident of Idaho. The Income Tax Audit Bureau (Bureau) selected the taxpayers’ 2007 and 2008 Idaho income tax returns to verify the taxpayers’ filing statuses of nonresident [Redacted] and resident [Redacted]. The Bureau sent the taxpayers questionnaires which they completed and returned to the Bureau. The Bureau reviewed the information with other information it had gathered and decided to expand the scope of the examination to include 2006, a taxable year the taxpayers did not file an Idaho income tax return. Based upon the information provided and obtained, the Bureau determined [Redacted] was domiciled in Idaho. The Bureau prepared a part-year resident return

for the taxpayers for taxable year 2006 and adjusted the taxpayers' 2007 and 2008 returns to show [Redacted] as domiciled in Idaho. The Bureau sent the taxpayers a Notice of Deficiency Determination, which the taxpayers protested.

The taxpayers stated they disagreed with the basis of the Bureau's determination. They acknowledged mistakes were made but those actions did not evidence [Redacted] intent to establish a domicile in Idaho. The taxpayers stated [Redacted] had no intention of establishing a domicile in Idaho. The taxpayers stated [Redacted] and went directly to work [Redacted]. [Redacted] was where [Redacted] resided and spent most of his time; it is the place he intended to make his home.

The Bureau referred the matter for administrative review. The Tax Commission sent the taxpayers a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. The taxpayers requested a hearing which was held on October 21, 2010. The taxpayers did not attend the hearing, but were represented by their tax preparer. The representative was unable to answer most of the questions asked about the taxpayers, so the hearing was adjourned with the understanding that the Tax Commission would provide the taxpayers with a list of questions they could answer and return to the Tax Commission.

The Tax Commission provided the taxpayers' representative with a list of questions which were sent to the taxpayers. The taxpayers answered the questions via a letter from their representative. The Tax Commission, having considered all the information provided, hereby issues its decision.

## LAW AND ANALYSIS

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 Rule, 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.

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 purchased a house in [Redacted], Idaho, for [Redacted] and their children to live in while [Redacted] lived in employer provided housing and with friends [Redacted] until he could rent an apartment. When [Redacted] was on the job, he was required to live on the site; consequently, he lived in employer provided housing. It is unknown when [Redacted] acquired an apartment; nevertheless, at some point, he rented an apartment [Redacted].

It is interesting to note that the taxpayers stated one of the reasons the family did not move [Redacted] was that there was no single housing available within reasonable commuting distance. However, the apartment [Redacted] rented [Redacted] was over 150 miles away from his employer, [Redacted].

[Redacted] apartment was not furnished with any of the families' furnishings. The taxpayers stated they decided all their furnishings would go into the house where [Redacted] and the children lived and [Redacted] would rent a furnished apartment or buy furnishings [Redacted].

The taxpayers did not provide an exact count of the number of days [Redacted] stayed in the house in Idaho, but based upon the various statements made by [Redacted] it is likely [Redacted] spent as much time living in the Idaho house as he did living in the apartment [Redacted]. Because [Redacted] apartment, its furnishings, and the probable time spent at the apartment do not give one the sense of permanence with all the sentiment, feeling, and permanent association that goes with calling a place a home (Starer v. Gallman, 50 A.D.2d 28, 377 N.Y.S.2d 645 (1975)), the Tax Commission sees the home factor favoring 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 under contract [Redacted] providing [Redacted] services [Redacted]. [Redacted] had no other business activities until mid to late 2008 when the taxpayers converted the family residence purchased [Redacted] to a rental. All [Redacted] contract engineering work was done [Redacted] beginning in June [Redacted]. This factor favors [Redacted] but it is apparent that [Redacted] is only in [Redacted] for employment.

The time factor is an analysis of where an individual spends his time during the year. In this case, it can easily be said that most [Redacted] time was spent [Redacted], due to his employment. The taxpayers provided lists of [Redacted] consulting invoices for 2007 and 2008

showing [Redacted] was in [Redacted] work sites a total of 189 days in 2007 and 185 days in 2008. Initially, the taxpayers stated [Redacted] spent 161 days in Idaho in 2007 and 167 days in Idaho in 2008. [Redacted] stated he spent time in Idaho as his work schedule permitted but he did not always go to Idaho during his days off. [Redacted] stated he also spent time [Redacted] visiting friends and vacationing with family. The taxpayers stated there were times [Redacted] would stay [Redacted] and the family would visit him.

Based solely on the numbers, the time factor favors [Redacted]; however, it is apparent from the taxpayers' statements and the information provided that [Redacted] time [Redacted] was due mostly to his employment. He would leave [Redacted] whenever possible to visit family and friends. Even though this factor favors [Redacted] the evidence supporting this factor does not show the sentiment, feeling, and permanent association that goes with calling a place a home. Starer, supra.

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]. Both of these activities are easily portable and can be done in all the places [Redacted] frequented. [Redacted]. As to where [Redacted] stored his [Redacted] equipment during the off season, that information was not provided; however, if either had any value, one would presume [Redacted] stored his snowboarding gear and his golf clubs in Idaho where someone was present all the time rather than in an apartment that was vacant for several days at a time. Consequently, [Redacted] recreational activities do not weigh heavily in favor of one place over another.

As for other items that may be near and dear [Redacted], the taxpayers stated all their furnishings and possessions from their [Redacted] home were moved to Idaho with the family.

The taxpayers stated they did this to give their children the feeling that Idaho was their home. Everything other than [Redacted] personal effects was in Idaho and remained in Idaho. [Redacted] apartment was furnished with [Redacted] purchases; not likely to have much sentimental value. Considering the information available, the Tax Commission finds this factor favors Idaho primarily because the taxpayers have not shown that [Redacted] had any sentimental attachments in or to [Redacted].

The last of the primary factors considers 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 was in Idaho. The taxpayers stated Idaho was chosen because [Redacted] had a sister in Idaho and because there was no single family housing available within a reasonable commute [Redacted]. The taxpayers stated it was a financial decision that the family live in Idaho and [Redacted]. The taxpayers provided no information on any family living [Redacted]. With no family connections [Redacted], this factor definitely points to Idaho.

The primary factors tend to show Idaho as being [Redacted] domicile. However, adding the minor factors can either solidify or swing the determination to [Redacted]. The minor factors considered were [Redacted] privilege licenses, his voter's registration, their vehicle registrations, [Redacted] medical and dental care, [Redacted] civic and community functions, and the use of financial institutions.

During the years in question, [Redacted] had an Idaho driver's license. The taxpayers stated that [Redacted] could not get a [Redacted] driver's license because he had no street address [Redacted]. [Redacted] purchased the Idaho driver's license because his [Redacted] license expired and he had an Idaho address that he could use. The taxpayers stated [Redacted]

did not immediately get a [Redacted] driver's license after he got his apartment because of convenience.

When [Redacted] purchased his Idaho driver's license, rather than getting the customary four-year license, he purchased the optional eight-year license. This does not lend credence to establishing a domicile in another state. In fact, [Redacted] did not get a [Redacted] license until sometime in 2009 and possibly after being contacted by the Bureau. Furthermore, where is the inconvenience when [Redacted] work schedule was such that he was off for several days in a row? If [Redacted] spent as much of his off time [Redacted] as the taxpayers claim, he could easily have obtained a [Redacted] driver's license once he had a street address. 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. 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 purchased his eight-year Idaho driver's license in 2006.

[Redacted] did not have an Idaho resident fish and game license for these years, and it is unknown whether he had a [Redacted] fish and game license. [Redacted] did not vote in either state and apparently did not register to vote in either state.

The taxpayers registered all their vehicles in Idaho. The taxpayers stated the pickup [Redacted] used was initially registered in Idaho because it was going to stay in Idaho to be used by their oldest child. They stated [Redacted] thought he was going to be given a company truck to drive, but that was not the case. [Redacted] took the pickup [Redacted] but never licensed it [Redacted]. Once again, [Redacted] had plenty of time to register the pickup [Redacted] once he

knew he needed to provide his own transportation. Someone who wants to be identified with [Redacted] will register his vehicles [Redacted].

[Redacted] mailing address for his contract engineering was the house in Idaho. This same address was used by the taxpayers on their federal income tax returns.

The taxpayers stated [Redacted] has not needed any medical attention and his dental checkups were done in Idaho when he was in Idaho visiting his family.

The taxpayers' financial institution was a national bank. They stated they were using the same account they opened [Redacted]. With the national bank, banking could be done wherever [Redacted] or [Redacted] happened to be.

The taxpayers provided no information on [Redacted] civic and social functions other than to say [Redacted] competed in a [Redacted] tournament with friends [Redacted]. It may have been that [Redacted] were the extent of [Redacted] social life.

Looking at these minor factors, there is very little that associated [Redacted]. If [Redacted] were stopped for a traffic violation or had to present identification, he would be identified with Idaho. Even if [Redacted] stated he was working and living [Redacted] the impression is that he was only [Redacted] for the short term.

## **FINDINGS**

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 his domicile, the intent to acquire a new domicile, and physical presence in the new domicile. Prior to June 2006, [Redacted] were domiciled in [Redacted]. It is clear [Redacted] abandoned [Redacted] and acquired Idaho as her domicile. It is also clear that [Redacted] abandoned [Redacted]. What is not clear is where [Redacted] established a new domicile.

[Redacted] had physical presence in both Idaho [Redacted]; Idaho during a large part of his off time and [Redacted] mostly while working. The taxpayers stated [Redacted] never intended to make Idaho his domicile, he intended to make [Redacted] his domicile. However, the factors indicating domicile do not show the intent to make [Redacted] domicile. [Redacted] did not do the things one would expect of an individual if he was acquiring [Redacted] as his domicile. 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 finds that although [Redacted] connection with Idaho is somewhat limited, Idaho was the state [Redacted] identified himself with and therefore [Redacted] was domiciled in Idaho.

WHEREFORE, the Notice of Deficiency Determination dated January 25, 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	\$ 4,367	\$1,092	\$1,052	\$ 6,511
2007	14,740	737	2,517	17,994
2008	16,498	825	1,760	<u>19,083</u>
			TOTAL DUE	<u>\$43,588</u>

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

An explanation of the taxpayer's right to appeal this decision is enclosed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2011.

IDAHO STATE TAX COMMISSION

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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.

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