BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NO. 22746
[Redacted],	)	
	)	
Petitioners.	)	DECISION
	)	

[Redacted] (taxpayers) protested the Notice of Deficiency Determination issued by the Income Tax Audit Bureau of the Idaho State Tax Commission dated February 1, 2010, asserting additional Idaho income tax and interest for taxable year 2007 in the total amount of $2,037.

The issue in this case is the domicile [Redacted] for taxable year 2007. The taxpayers did not respond to the Tax Commission's hearing rights letter and have provided nothing further for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision based upon the information available.

BACKGROUND

The Income Tax Audit Bureau (Bureau) examined the taxpayers' 2005 and 2006 Idaho individual income tax returns to verify the deductions and expenses claimed, and to determine [Redacted] state of domicile. The Bureau requested extensive documentation from the taxpayers but received very little. A Notice of Deficiency Determination was sent to the taxpayers that disallowed all the unsubstantiated deductions and expenses and found that [Redacted]had not abandoned Idaho as his state of domicile. The taxpayers stated they were going to protest the 2005 and 2006 Notice of Deficiency Determination, but a written protest was never received.

As part of the Bureau's examination, it was suggested that the taxpayers amend their 2007 Idaho income tax return to reflect [Redacted] correct residency status. However, rather than amend their 2007 return, the taxpayers asked that the Tax Commission examine the domicile issue for taxable year 2007. The Bureau began an audit of the taxpayers' taxable year 2007 and obtained additional information from the taxpayers. The taxpayers completed a domicile questionnaire, provided a list of the days [Redacted] was [Redacted] in 2007, provided copies of rental receipts, copies of pay stubs, vehicle registrations, [Redacted] resident fish and game license, union hall regulations, unemployment benefits, and Idaho nonresident fish and game license. The Bureau reviewed all the information provided, considered it as it related to [Redacted] domicile, and determined [Redacted] was still domiciled in Idaho in 2007. Therefore, the Bureau adjusted the taxpayers' 2007 Idaho income tax return and sent the taxpayers a Notice of Deficiency Determination.

The taxpayers protested the Bureau's determination stating that because [Redacted] had an [Redacted] driver's license, joined the union in [Redacted], received unemployment benefits from [Redacted], established a retirement in [Redacted], spent holidays and vacations in [Redacted], and had family in [Redacted], his domicile was in [Redacted]. The taxpayers stated the Bureau did not prove that [Redacted] intention was to have a permanent domicile in Idaho. The taxpayers asked for a redetermination, so the Bureau 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 did not respond, so the Tax Commission sent a follow-up letter to the taxpayers. The taxpayers still did not respond, so the Tax Commission decided the matter based upon the information available.

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 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 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, [Redacted] appears to be domiciled in Idaho as early as 1992. In 2002, [Redacted] began working in [Redacted]. He never stayed in [Redacted] for the entire year but would return to Idaho [Redacted]. [Redacted] typically worked for the same [Redacted] companies. [Redacted] pattern of employment continued this way until 2007 when his only employment was in [Redacted]; however, he still did not stay in [Redacted] for the full year. Beginning in 2008, [Redacted]has stayed in Idaho and has not sought employment in [Redacted].

In 2003, the taxpayers married and had a child. In 2004, two more children were added. [Redacted] and the children always stayed in Idaho whenever [Redacted] went to [Redacted] for an extended time.

While in [Redacted], [Redacted] housing was an apartment, a small house, or a room in a house. The taxpayers did not provide any specifics, but they did provide rental receipts that showed [Redacted] was only paying $150 a month on a month-to-month basis. The taxpayers gave the address of the place [Redacted] rented [Redacted]. This is the same address as [Redacted] landlord; thus giving the appearance [Redacted] was just renting a room.

The taxpayers stated [Redacted] purchased an [Redacted] driver's license and registered vehicles in [Redacted]. He also received mail in [Redacted]. The address [Redacted] used as his permanent mailing address in [Redacted] was a mail box [Redacted]. The location of the mailbox in relation to the [Redacted] address is some 59 miles apart. [Redacted] gave his residence address when registering his vehicles [Redacted] but the same mailing address in [Redacted]. The distance between these two locations is approximately 335 miles.

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, [Redacted] owned a home in Idaho and rented what appears to be a room in [Redacted]. Nothing is known about the place in [Redacted] other than it was rented from someone in the same local union and that it was close to an hour's drive from [Redacted] mail drop box.

As for community ties, the record gives no information about [Redacted] involvement with an [Redacted] community. The closest community involvement mentioned is [Redacted] hunting activities in [Redacted]. The record also gives little information on [Redacted]community involvement in Idaho. However, the record does point out that [Redacted] owns [Redacted] in Idaho [Redacted], his immediate family is in Idaho, his children attend Idaho schools, and his parents and grandparents live in the same area as [Redacted] wife and children. Based upon the available information, Idaho seems to have the established and endearing ties.

In deciding this factor, the Tax Commission looked at the circumstances of why [Redacted] was in [Redacted]. From the record, the appearance is that [Redacted] went to [Redacted] for employment and its recreational or hunting opportunities. There is no indication [Redacted] made any endearing ties in [Redacted] other than union hall friendships and extended family that lived somewhere in [Redacted]. In Idaho, [Redacted] also hunted and fished, was employed, and more importantly was raising a family. Therefore, because the taxpayer had no real connections to [Redacted], the Tax Commission found the home factor in favor of Idaho.

The active business involvement factor looks at the individual's employment and other business activities. 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 construction company based in [Redacted]. [Redacted]. In addition to working in [Redacted], [Redacted] worked in Idaho for [Redacted] companies. He also worked [Redacted]. [Redacted] typical work pattern when he first went to [Redacted] was that he worked in [Redacted] for a total of eight months and worked in Idaho for a total of four months. This was typical for each year except 2007. In 2007, [Redacted] worked in [Redacted] from the last week of March to the middle of October. [Redacted] was also in [Redacted] for three weeks in January, almost three weeks in February, and nearly two weeks in December; although he apparently was not working at these times.

The taxpayers' 2007 income tax return reported an Idaho farm or ranch operation ran by [Redacted]. The taxpayers stated [Redacted] operated [Redacted] but the return lists it as [Redacted] and also states that he materially participates in the operation.

Because of the taxpayers' [Redacted] operation in Idaho, this factor is split between [Redacted] and Idaho. However, where the Idaho operation is a loss and the employment in [Redacted] creates income for the taxpayers, this factor favors [Redacted].

The time factor is an analysis of where an individual spends his time during the year. As mentioned in the business activity factor, [Redacted] spent most of his time in [Redacted]. In 2007, [Redacted] was in [Redacted] for 267 days and in Idaho 98 days. Of the 267 days in [Redacted], the taxpayers documented [Redacted] working for 25 weeks. The taxpayers also documented that [Redacted] received unemployment compensation [Redacted]. From the information available, it appears [Redacted] was in [Redacted] for other than work purposes for a total of 94 days. During some of his non-work days, it is apparent that [Redacted] hunted in [Redacted]. The taxpayers provided documentation showing that [Redacted] harvested an [Redacted] [Redacted] on September 11, 2007. Although the time factor clearly favors [Redacted], the evidence available gives the impression [Redacted] was in [Redacted] for work purposes and the occasional sportsman's activities.

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 available information on this factor is sketchy. It is evident from the information and documentation that [Redacted] was a sportsman. He acquired fish and game licenses in both Idaho and [Redacted]; therefore, one can assume that [Redacted] had the necessary gear and equipment with him in both states for whatever hunting or fishing activity he was pursuing. As for other items that may be near and dear, the information is lacking. The taxpayers do have a [Redacted] but it is unknown how much [Redacted] actually participates in it. One could assume [Redacted] has an interest [Redacted] since he purchased the property where the activity takes place prior to getting married. Although the time spent in Idaho severely limits his ability to do much with this activity. Considering the lack of information available on this factor, the Tax Commission finds this factor non-determinative and neutral.

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, parents, and grandparents live in Idaho. The taxpayers stated [Redacted] had a brother, aunt, uncle, and cousins in [Redacted]. The taxpayers stated [Redacted] vacationed in [Redacted] but there is no indication that the immediate family vacationed in [Redacted] with [Redacted]. Because a taxpayer's immediate family is generally closest to the taxpayer, the Tax Commission finds this factor going to Idaho.

The primary factors do not clearly point to one state over the other in determining [Redacted] domicile. Therefore, the Tax Commission looked to the secondary or minor factors to solidify its determination. Some of the minor factors have already been mentioned within the primary factors; nevertheless, they bear repeating.

During the year in question, [Redacted] had an [Redacted] driver's license. He had a resident [Redacted] fish and game license. The taxpayers stated [Redacted] registered a vehicle and a recreational vehicle in [Redacted]; however, the documentation provided shows two different trucks one with a temporary permit expiring in July 2006 and the other good until May 2009, which meant [Redacted] licensed the second truck in May 2007. No recreational vehicle registration documentation was provided. It is on the pickups' registrations that the residence address given is over 300 miles away from [Redacted] residence address and mailing address.

[Redacted] purchased resident [Redacted] and nonresident Idaho fish and game licenses in 2007. In 2008, [Redacted] purchased a resident Idaho fish and game license with an

[Redacted] driver's license. The Bureau questioned a [Redacted] field officer about the 2008 license. The field officer stated he was very familiar with the [Redacted] family. He stated [Redacted] would go to [Redacted] for work, but he was always domiciled in Idaho. The field officer stated there is a substantial difference in the cost of resident licenses versus nonresident licenses in [Redacted]. So [Redacted] benefitted economically by obtaining a resident [Redacted] hunting and fishing license.

As an [Redacted] resident or domiciliary, [Redacted] would have been able to receive the [Redacted]. For all the years [Redacted] claimed to be domiciled in [Redacted], he never received the [Redacted].

In 2004, [Redacted] applied for and received the homeowner's exemption on his house in Idaho. [Redacted] certified and declared that he was the owner/occupant of the home as of September 1, 2003. [Redacted] has continued to receive the homeowner's exemption on this property. By obtaining the homeowner's exemption, the applicant, [Redacted], declared that he occupies this Idaho property as his primary dwelling. Even though the property qualified for the exemption for [Redacted] and the taxpayers' children, [Redacted] is listed as the owner and occupant.

[Redacted] wages from his employment in [Redacted] were direct deposited into a state bank in Idaho. Presumably, [Redacted] arranged this to provide for his family; nevertheless, it is not the action of an individual wanting to establish a domicile in another state.

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, [Redacted] achieved only a part-time physical presence in [Redacted].

CONCLUSION

[Redacted] domicile was Idaho prior to 2003; therefore, the presumption is his Idaho domicile continues until a new domicile is established. In re Estate of Cooke, supra. The taxpayers did not show [Redacted] established a new domicile when he left Idaho to work in [Redacted]. The facts show that [Redacted] maintained ties to Idaho throughout all the years he was employed in [Redacted]. He did not do all the things one would expect of an individual if he was abandoning one place and acquiring another. Even though [Redacted] acquired some of the privilege licenses that would seem to be available only to residents of [Redacted], he did not portray himself as someone who was a permanent fixture in [Redacted]. The taxpayers did not show that, to [Redacted] was 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 in 2007.

The Bureau added interest to the taxpayers' Idaho tax liability. The Tax Commission reviewed that addition and found it appropriate and in accordance with Idaho Code section 63-3045.

THEREFORE, the Notice of Deficiency Determination dated February 1, 2010, and directed to [Redacted] is AFFIRMED.

IT IS ORDERED that the taxpayers pay the following tax and interest:

YEAR	TAX	INTEREST	TOTAL
2007	$1,827	$322	$2,149

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.

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