

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23008
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] (petitioners) protested the Tax Computation letter issued by the Idaho State Tax Commission (Commission) dated May 20, 2010, and the Statement of Account dated May 28, 2010, which asserted additional Idaho income tax, interest, and penalty for taxable year 2007 in the total amount of \$930.95.

The issue in this docket is whether petitioner husband changed his domicile from Idaho to Nevada during the period that he was working and residing in [Redacted], Nevada, during taxable year 2007. If Idaho was still petitioner husband’s domicile during taxable year 2007, then petitioners must pay Idaho tax on the income petitioner husband earned while working in Nevada.

BACKGROUND FACTS

Petitioner husband held a full-time position at [Redacted], Nevada, during taxable year 2007. During this period, he maintained a dwelling place in Nevada. According to petitioners’ tax return, petitioner husband spent six months outside Idaho during taxable year 2007. While petitioner husband was working in Nevada, petitioner wife and their son remained in Idaho.

For the taxable year 2006, petitioners filed a Form 40 income tax return as Idaho residents. Petitioner husband has held Idaho resident licenses issued by the Idaho Fish and Game during taxable years 2002, 2006, 2007, 2008, 2009, and 2010. His Idaho residence date as recorded with the Fish and Game is December 2, 1991.

Petitioner wife expressed her opinion regarding her husband's 2007 income in a letter to the Commission. She stated, "I do not agree that the income he earned while living and working in the state of Nevada should be subject to state tax in Idaho!"

The Commission sent a letter to petitioners on January 21, 2011, explaining the definition of domicile for state tax purposes. The Commission stated, in part:

Based on the facts before us, it appears that Idaho was Mr. [Redacted] domicile even though he worked in Nevada for a period of time. The fact that Mrs. [Redacted] and your son remained in Idaho further indicates that Mr. [Redacted] had the intention to return home to Idaho after the period of working in Nevada concluded. If you have any further information to demonstrate otherwise, please provide it to us.

Please provide any further information that you would like the Commission to consider by February 25, 2011. At that date the Commission may issue a decision based on the information now available. You can provide further information by mail, fax, email, or by phone.

As of the date of this decision, petitioners have not provided any further information and have not made any contact with the Tax Commission regarding this matter.

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 Idaho Administrative Income Tax Rule 35.01.01.030 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, 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). 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 facts, in this case, suggest that petitioner husband did not change his domicile from Idaho to Nevada. Although petitioner husband had physical presence in Nevada while he was working there, the specific intent to abandon Idaho as his domicile and the intent to acquire Nevada as his new domicile does not appear to have been present. Petitioner husband's time in Nevada was a temporary work arrangement, from which it appears he always intended to return home to Idaho when the work in Nevada ended. Petitioner wife and their son remained in petitioners' home in Idaho. According to petitioners' 2007 tax return, petitioner husband was only out of Idaho for six months during the year, after which, it appears he returned home to

Idaho. Petitioner husband held an Idaho resident license from the Idaho Fish and Game during taxable year 2007.

The Tax Commission finds that petitioner husband did not abandon Idaho as his domicile, did not establish Nevada as his new domicile, and therefore, is subject to Idaho state income tax on the income he earned while working in Nevada.

CONCLUSION

WHEREFORE, the amount asserted due by the Tax Computation letter dated May 20, 2010, and the Statement of Account dated May 28, 2010, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that petitioners pay the following tax, penalty, and interest (computed to June 23, 2011):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL DUE</u>
2007	\$680	\$170	\$115	<u>\$965</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.
