

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

In the Matter of the Protest of )  
[Redacted], ) DOCKET NO. 23268  
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 )  
Petitioners. ) DECISION  
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\_\_\_\_\_ )

On August 5, 2010, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayers) proposing additional income tax, penalty, and interest for taxable years 2006 through 2009 in the total amount of \$12,115.

On August 23, 2010, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers requested an informal hearing which was held telephonically on June 16, 2011. Present at the hearing were the taxpayers' appointed representative, [Redacted], CPA; Tax Policy Specialist, [Redacted] and Tax Auditor, [Redacted]. The Commission, having reviewed the file, hereby issues its decision.

**BACKGROUND**

This case began as an inquiry by the Tax Discovery Bureau (Bureau) as to the taxpayers' non-filed Idaho income tax returns for taxable years 2006 and 2007. The taxpayers were sent a Forgot to File letter by the Bureau on March 11, 2010, reminding them that based on Commission records, they had a filing requirement for taxable years 2006 and 2007, but returns had not been received. On May 14, 2010, Mr. [Redacted] hand delivered returns for taxable years 2006 and 2007. Both returns were on Form 43, designed for Nonresident or Part-year residents. On May 19, 2010, the Bureau was notified by an auditor in the Income Tax Audit Bureau that the taxpayers' 2008 and 2009 income tax returns were being reviewed, specifically

Mr. [Redacted] status as a non-resident. The Bureau then expanded its audit to include taxable years 2008 and 2009 and, because returns were submitted for taxable years 2006 and 2007, switched its focus from a non-filer inquiry to that of a residency and domicile issue.

Mr. [Redacted] met briefly with a representative of the Bureau when he delivered his 2006 and 2007, non-resident income tax returns. During this brief conversation, Mr. [Redacted] stated that even though he was claiming to be a non-resident on the returns, he had been a resident of Idaho for years. Mr. [Redacted] further explained that he travels to Washington for a few weeks and then comes back to Boise for a few weeks. Mr. [Redacted] was told by the representative of the Bureau that he was not the auditor assigned to his case, but, based on what he had just explained, he should probably be filing Form 40, resident returns. A subsequent phone conversation and meeting took place between Mr. [Redacted] and the auditor in which the residency/domicile issue was discussed. Mr. [Redacted] was asked to provide certain documentation and to complete a residency and domicile questionnaire, which he did. The Bureau reviewed this information, gathered other information, researched the issue, and made its determination. The Bureau determined Mr. [Redacted] was domiciled in Idaho and adjusted the taxpayers' 2006 through 2009 income tax returns to show Mr. [Redacted] as domiciled in Idaho. The Bureau sent the taxpayers an NODD, which the taxpayers protested.

The taxpayers disagreed with the Bureau's determination that Mr. [Redacted] was domiciled in Idaho. They stated there were more factors that point to Mr. [Redacted] being domiciled in Washington than in Idaho.

The Commission reviewed the matter and sent the taxpayers a letter giving them the option of two methods for having the NODD redetermined. The taxpayers chose to have a hearing and were represented by their CPA, neither Mr. or Mrs. [Redacted] were present. The

Commission asked many somewhat personal questions to help determine Mr. [Redacted] domicile that the CPA was unable to answer. The hearing was concluded with the CPA stating he would contact Mr. [Redacted] and try to obtain answers to the questions asked or possibly schedule a second hearing at a time when Mr. [Redacted] could be present. However, no further information was received. The Commission, having considered all the information provided, hereby issues its decision.

### 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.

In determining an individual's domicile, the 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 (home) or it can be a community to which the individual has established strong and endearing ties. In this case, the taxpayers' home for many years has been Idaho. It was not until 2004 that Mr. [Redacted] began renting an apartment in Washington State due to his employment with the [Redacted]. Mr. [Redacted] began leasing an apartment in [Redacted], WA, while Mrs. [Redacted] and the children, one of whom was a minor until 2007, remained in Idaho. Other than leasing property and having

utilities billed in his name, Mr. [Redacted] has not shown that he considered Washington to be his permanent home 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). For all practical purposes, the appearance is Mr. [Redacted] was in Washington for employment purposes only. Nothing was presented to show that the taxpayer went to Washington to make it his permanent, indefinite home.

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, Mr. [Redacted] worked as a [Redacted], Washington. This factor favors Washington, but it is apparent that Mr. [Redacted] is only in Washington 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 of Mr. [Redacted] time was spent in Washington, due to his employment. When asked on a domicile questionnaire how many days he was physically present in Idaho during each year, Mr. [Redacted] replied 30-45 days each calendar year, but not all at one time. During a meeting with the auditor, Mr. [Redacted] stated he works for months at a time and only comes to Idaho for a few days to visit his children. At the informal hearing, the taxpayers' representative stated Mr. [Redacted] returns to Idaho once a month, every other month. Based on this varied information, it was difficult to determine how many days Mr. [Redacted] was present in Idaho during the years in question, but more than likely he spent the majority of his time in Washington. Even though the time factor favors Washington, 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. Questions about Mr. [Redacted] hobbies, recreational activities, how he spends his off time, were all asked during the informal hearing. The taxpayers' representative was unable to answer any of these questions. Consequently, recreational activities do not weigh heavily in favor of one place over another.

As for other items that may be near and dear to Mr. [Redacted], there is no record of family pets, recreational vehicles, collectibles, photo albums, etc. However, from the information available, one would assume with his wife, children, and a sizeable house in Idaho, Mr. [Redacted] had closer near and dear items in Idaho. Considering the information available, the Commission finds this factor favors Idaho primarily because the taxpayers have not shown that Mr. [Redacted] had any sentimental attachments in or to Washington.

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, Mr. [Redacted] immediate family was in Idaho. The taxpayers provided no information on any family living in Washington. With no family connections in Washington, this factor definitely points to Idaho.

The primary factors tend to show Idaho as being Mr. [Redacted] domicile. However, adding the minor factors can either solidify or swing the determination to Washington. The minor factors considered were Mr. [Redacted] privilege licenses, his voter's registration, their

vehicle registrations, Mr. [Redacted] medical and dental care, Mr. [Redacted] civic and community functions, and the use of financial institutions.

During the years in question, Mr. [Redacted] had an Idaho driver's license, renewing it on two separate occasions, in 2005 and again in 2009. In addition, Idaho driver's licenses are not available to nonresidents of Idaho. Therefore, Mr. [Redacted] had to affirm to the Department of Motor Vehicles that he was a resident of Idaho when he purchased his license in 2005 and 2009.

Mr. [Redacted] did not have an Idaho resident fish and game license for these years, and it is unknown whether he had a Washington fish and game license. Mr. [Redacted] did register to vote in Washington but, according to Washington records, has never voted. Mr. [Redacted] did purchase a Washington identification card on June 24, 2010; two months after the Bureau contacted him.

The taxpayers registered all their vehicles in Idaho. The taxpayers' protest letter stated that the only vehicle registered in Idaho is registered to Mrs. [Redacted]. This is partly correct. Currently, Mrs. [Redacted] is the only one with a titled and registered vehicle in Idaho. However, both taxpayers were listed on the Idaho title and registration of a [Redacted] from November 2005 through April 2008; and in September 2005, the taxpayers jointly purchased and titled a 2000 [Redacted]. On all of the vehicle purchase documentation, Mr. [Redacted] is listed at the Boise, Idaho, address.

Mr. [Redacted] mailing address for 17 of 21 federal tax documents issued between 2004 and 2009 was the house in Idaho. This same address was used by the taxpayers on their federal income tax returns for taxable years 2006 through 2009.

In April 2006 the taxpayers filed for bankruptcy in Idaho. On Schedule J, Current Expenditures of Individual Debtors, of the bankruptcy petition, there was a check box if a joint

petition was filed and debtor's spouse maintained a separate household. The box was not checked, and the rent and utilities, etc. for Mr. [Redacted] Washington apartment were listed under expenditures as installment payments.

The taxpayers' representative was asked during the informal hearing about Mr. [Redacted] medical and dental needs. The representative stated he had no idea whether or not Mr. [Redacted] needed any medical attention during the years in question and, if he did, where that attention was sought.

The taxpayers' financial institution was a regional bank with locations in both Washington and Idaho. Mr. [Redacted] maintained an account with an Idaho address from at least April 15, 2004, through September 6, 2007.

Neither the taxpayers nor their representative provided any information on Mr. [Redacted] civic and social functions.

Looking at these minor factors, there is very little that associated Mr. [Redacted] with the state of Washington.

## **FINDINGS**

Idaho Income Tax Administrative Rule 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 October 2004, both Mr. [Redacted] and Mrs. [Redacted] were domiciled in Idaho. It is clear Mrs. [Redacted] has maintained her Idaho domicile. It is also clear Mr. [Redacted] has a residence in Washington. What is not clear is whether Mr. [Redacted] has established a new domicile.

Mr. [Redacted] had physical presence in both Idaho and Washington; Idaho during a part of his off time and Washington mostly while working. Mr. [Redacted] stated that when he accepted the position of [Redacted], Washington, in 2004 he then considered himself a Washington resident.

As mentioned previously, when asserting a change in domicile, the burden of proof is always on the party asserting a change to show that a new domicile has been created. The taxpayers' have not met that burden. When all the facts and circumstances presented were considered, the Commission found that the actions of Mr. [Redacted] indicate that he has not abandoned Idaho as his state of domicile. The Commission found Mr. [Redacted] connections to Idaho were stronger and more fixed. His primary purpose or reason for being in Washington was for employment.

THEREFORE, the Notice of Deficiency Determination dated August 5, 2010, is hereby AFFIRMED.

IT IS ORDERED 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>
2009	\$3,149	\$315	\$282	\$ 3,746
2008	3,357	336	422	4,115
2007	2,299	575	436	3,310
2006	988	247	257	<u>1,492</u>
			TOTAL DUE	<u>\$12,663</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.

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