

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23427
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] (petitioners) protested the Notice of Deficiency Determination (NODD) issued by the Income Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) dated August 6, 2010, asserting additional Idaho income tax, interest, and penalty for taxable years 2007 and 2008 in the total amount of \$48,125.

The issue in this docket is whether petitioner husband changed his domicile from Idaho to [Redacted] during the period that he was working in Boston from October 2006 through August 2008.

BACKGROUND FACTS

Petitioner husband worked in [Redacted], from October 2006 through August 2008. Prior to 2006, petitioners filed income tax returns as full-time Idaho residents. In 2006, the petitioners filed as nonresidents. In 2007, they did not file an Idaho income tax return. In 2008, they filed as part-year residents claiming six months residency in Idaho. In 2009, they again filed as residents of Idaho. The Bureau determined that petitioners had not changed their domicile from Idaho and, therefore, should have filed returns and paid income tax on the income petitioner husband earned while working in [Redacted]. Pursuant to Idaho Code section 63-3029, the Bureau calculated the credit for the income tax petitioners had already paid on the income to the state of [Redacted] and issued an NODD for the amount remaining due to the state of Idaho.

In 2006, petitioner husband received a job offer with [Redacted] ([Redacted]) that would require him to work in [Redacted]. At the time, petitioners were living in Boise, Idaho. Petitioners' daughter had just started her junior year of high school. Petitioners were reluctant to disrupt their daughter's life by pulling her out of high school in Boise and moving the family to [Redacted]. Petitioners decided not to relocate the family to [Redacted], but rather, petitioner wife and their daughter remained in Boise. [Redacted] offer letter listed the terms of petitioner husband's employment. Among these terms, the following was stated:

You will be based in our [Redacted] office. We will provide you with temporary housing through December 31, 2007. We will provide for weekly commutation to and from your home in Boise, Idaho through June 30, 2008. In 2008, we will provide you with a managed relocation from Boise to [Redacted].

Petitioners have stated that their intent was that petitioner wife would move to join petitioner husband in [Redacted] once their daughter had graduated from high school. They also anticipated that they would sell their Boise home once their daughter graduated from high school. Petitioners have stated that on some occasions petitioner wife would come to visit in [Redacted] and that while there petitioners sometimes attended open houses for the purpose of scouting out possible places they might want to live when petitioner wife eventually moved to [Redacted].

Petitioner husband began working in [Redacted] in October 2006. Petitioner husband has stated that he wasn't sure how long he would be in [Redacted]; he speculated that he would be there at least five years. Petitioner husband registered to vote, registered his car, obtained a driver's license, and paid state income taxes in [Redacted].

Petitioners have stated that it was always their intent to return to Idaho once petitioner husband retired. Petitioners stated that earlier in petitioner husband's career he once relocated to Oregon for a job but then returned to Idaho afterward. At another time, he relocated to California for a job but returned to Idaho afterward as well. Petitioners stated that all their close friends live in

Idaho and that they have always been very fond of Idaho. In addition to their Boise home, petitioners owned a home in [Redacted], Idaho, at which petitioners spent several vacation days during the audit period. Petitioners allege that they spoke to a real estate agent about preparing to sell their Boise home in the spring of 2008, but never listed it for sale.

Petitioners have explained that the unexpected acquisition of [Redacted] in the summer of 2008 ended petitioner husband's employment sooner than expected. The acquisition vested petitioner husband's stock options and substantially increased their value which gave the family a windfall that allowed for retirement in 2008. Petitioner husband decided to retire rather than continue working for [Redacted]. In August 2008, petitioner husband left [Redacted] for good, came home to Idaho, and retired.

Petitioners maintained the Idaho homeowner's exemption for property tax purposes throughout this period. On May 11, 2010, about two weeks after receiving the initial letter from the Commission regarding their residency status, petitioners made restitution to [Redacted] County.

Recently, petitioners provided a letter written by the president of [Redacted]. The letter states, in part:

At the time of his hire [petitioner husband] and his family were residing in Idaho. As a result, The [Redacted] agreed to provide relocation to incent him and his family to relocate to Boston. [Petitioner husband] and his family decided to delay their relocation until after their daughter graduated from high school in May of 2008.

... His role required him to work out of our Boston office for the majority of his time while his remaining time was spent traveling to various client sites around the country. It was our expectation that [petitioner husband] and his family would permanently relocate to the Boston office shortly after their daughter's high school graduation. Unfortunately, shortly after The [Redacted] was acquired in August of 2008, [petitioner husband] decided to retire from The [Redacted]

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 Rules 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 [Redacted]. Although petitioner husband had physical presence in [Redacted] for most of the period at issue, the specific intent to abandon Idaho as his domicile and the intent to acquire [Redacted] as his new domicile does not appear to have been present. While it is believable that petitioners were very serious about the possibility of relocating the family to [Redacted] after their daughter graduated, they never actually did relocate.

During the period of time at issue in this audit, the petitioners' frame of mind seems to have been that Boise was still "home" and that petitioner husband was commuting to work in Boston. The terms of petitioner husband's employment, as stated by [Redacted], provided that the company would provide him with "temporary housing" and that the company would "provide for weekly commutation to and from your home in Boise, Idaho through June 30, 2008." (Emphasis added.) Then, after this temporary period of commuting to Boston, the company was planning to provide petitioner husband "with a managed relocation from Boise to Boston." This planned relocation for the summer of 2008, that didn't end up happening, very possibly could have effected a change in domicile.

The letter that was recently provided by the president of [Redacted] further demonstrates that both petitioners and [Redacted] had the frame of mind that petitioner husband was temporarily commuting to work in [Redacted] and that Boise was still home. The letter from [Redacted] states that the company "agreed to provide relocation to incent him and his family to relocate to [Redacted]," but that petitioners "decided to delay their relocation until after their daughter graduated from high school in May of 2008." The company expected that petitioners

“would permanently relocate to the Boston office shortly after their daughter’s high school graduation.” However, "shortly after [Redacted] was acquired in August of 2008, [petitioner husband] decided to retire from [Redacted]”

The Commission finds that petitioner husband did not abandon Idaho as his domicile, did not establish [Redacted] as his new domicile, and therefore, is subject to Idaho state income tax on the income he earned while working in [Redacted]. It is believable that petitioners expected that they might eventually abandon Idaho and establish [Redacted] as their domicile, but the facts indicate that any plan to do so did not happen. The facts in this case indicate that both petitioners and [Redacted] were of the mindset that petitioner husband was commuting to [Redacted] from his home in Boise, that he was being provided with temporary housing in [Redacted], and that eventually in the summer of 2008 they would relocate to [Redacted]. However, plans changed and petitioners never carried out the expectation to relocate to [Redacted].

CONCLUSION

WHEREFORE, the Notice of Deficiency Determination dated August 6, 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 May 11, 2011):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2007	\$13,519	\$3,380	\$2,222	\$19,121
2008	27,331	0	2,739	<u>30,070</u>
			TOTAL DUE:	<u>\$49,191</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.