BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NO. 23613
[Redacted],	)	
	)	
Petitioners.	)	DECISION
	)	

[Redacted] (taxpayers) protested the Notice of Deficiency Determination issued by the Tax Discovery Bureau of the Idaho State Tax Commission dated April 19, 2010, asserting additional Idaho income tax, penalty, and interest for taxable years 2004 through 2006 in the total amount of $21,673.

The taxpayers disagreed with the Bureau's determination that they were domiciled in Idaho during the years in question. The taxpayers requested a hearing wherein they provided additional information. The Tax Commission, having reviewed the file, issues its decision.

BACKGROUND

As part of the Tax Commission's review of income tax filings, the Tax Discovery Bureau (Bureau) found that the taxpayers had a gap in their filings of Idaho individual income tax returns. The Bureau contacted the taxpayers and asked them about their requirement to file Idaho income tax returns for the missing years 2004, 2005, and 2006. The taxpayers stated they moved from Idaho in 2003 because [Redacted] lost his job. The taxpayers stated [Redacted] found permanent work at a mine [Redacted], so they moved [Redacted]. The taxpayers provided copies of their federal income tax returns for 2004 and 2006.

The Bureau reviewed the taxpayers' federal returns and gathered additional information regarding the taxpayers. The Bureau determined from that information that the taxpayers did not abandon Idaho as their state of domicile. The Bureau prepared returns for the taxpayers and sent them a Notice of Deficiency Determination.

The taxpayers protested the Bureau's determination stating they left Idaho because of economic conditions. They lost their house [Redacted] to foreclosure and had no legal place of residence. The taxpayers stated they purchased a trailer [Redacted] and remained there until [Redacted] retired in 2006. The taxpayers stated they purchased a mobile home [Redacted] in 2004 but only used it as a vacation home. The taxpayers stated that the property purchased [Redacted] did not meet the criteria for a place of domicile.

The Bureau referred the matter for administrative review and 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 and presented the following information.

The taxpayers were long-time residents of Idaho and lived in the [Redacted] area for many years. [Redacted] worked [Redacted] until [Redacted] shut down in December 2001. [Redacted] began looking for work and ended up [Redacted] in January 2002. The taxpayers stayed in [Redacted] for six months, returned to [Redacted] for about a month, and went back to [Redacted] until May 2003. After [Redacted] the taxpayers moved [Redacted]. The taxpayers ended their employment hopping in October 2003 when they moved [Redacted]. The taxpayers stayed [Redacted] until October 2006 when [Redacted] retired.

In the fall of 2002, the taxpayers received a foreclosure notice on their house [Redacted]. The taxpayers were unable to remedy the foreclosure, so in February 2003, the taxpayers cleaned out the house and gave it back to the bank. In October 2003 when [Redacted] found permanent employment [Redacted], the taxpayers purchased a mobile home [Redacted]. The taxpayers later traded up to a larger mobile home in December 2004. The taxpayers stated the job at the mine was a job from which [Redacted] could retire, so they planned on staying there indefinitely.

When the taxpayers lost their house [Redacted], they put a lot of their belongings in storage. Some of their furniture was given away, and the rest went with them [Redacted].

When the taxpayers left [Redacted] in 2002, they returned to [Redacted] for one month after being gone for six months. After that, the taxpayers only came back to visit family occasionally for 2 to 4 days at a time. The taxpayers' children and grandchildren lived [Redacted], as did [Redacted] brother and sister. In October 2004, the taxpayers purchased a mobile home [Redacted]. The taxpayers stated this home was used as a vacation home. The taxpayers stated it was more comfortable to stay in their own home when they visited family. It also came in handy when [Redacted] was spending more time in Idaho when her sister was terminally ill.

The taxpayers stated [Redacted] became their home in 2003 until they moved back to Idaho in October 2006 at the urging of their children. The taxpayers had their pets [Redacted], [Redacted] attended church [Redacted], they had a small circle of friends that they hung around, all their shopping was done locally, [Redacted] played golf [Redacted], and their financial accounts were [Redacted]. The taxpayers' medical needs were also attended to [Redacted]. [Redacted] is diabetic, and all his needs were met at a clinic [Redacted]. The taxpayers stated they attended the community social functions, i.e., the local fair and annual [Redacted] as well as patronized the local gaming establishments. The taxpayers became a part of the [Redacted] community.

The taxpayers maintained their Idaho driver's licenses in 2004 through 2006, and [Redacted] purchased Idaho resident fish and game licenses while they lived [Redacted]. The taxpayers stated the driver's licenses were multiple year licenses that had yet to expire, and [Redacted] kept purchasing Idaho fish and game licenses so that he could be grandfathered in on the [Redacted] endorsement. The taxpayers stated [Redacted] did not hunt or fish in Idaho during the years they lived in [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 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, it appears the taxpayers did not necessarily want to leave Idaho; they simply had no choice but to go where [Redacted] found work. It is apparent the taxpayers did not want to lose their [Redacted] home but, due to the economic climate, they found it not sustainable. In most of the domicile cases, the Tax Commission determines where the taxpayers are seeking employment, generally one of the taxpayers remains in Idaho while the other works in another state. This is not the case here. When [Redacted] found employment, [Redacted] went with him, and they moved their household. From all practical appearances it looked like the taxpayers abandoned Idaho.

In determining an individual's domicile, the Tax Commission looks at five primary factors. The primary factors are the individual's 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 lost their home [Redacted] and were forced to create a home somewhere else; be it Idaho or another state. The taxpayers lived in a few different places until they settled [Redacted]. After they settled [Redacted], the taxpayers acquired a second home in [Redacted] that they considered a vacation home. A comparison of the [Redacted] home to the Idaho home yields little useful information. Both homes were mobile or manufactured homes of similar size. Therefore, as far as the structures are concerned, the homes themselves are non-determinative.

As for community ties, the record gives a lot of information about the taxpayers' interaction with the community [Redacted]. The only information about [Redacted] is that the taxpayers visited family from time to time. The taxpayers' community involvement clearly shows the taxpayers were a part of the [Redacted] community; therefore, the Tax Commission finds this factor in favor of a [Redacted] domicile.

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 at a mine near [Redacted]. His work shift was 12 – 14 hours a day, six weeks on, one week off. [Redacted] was not employed, and the taxpayers had no business involvement in Idaho or anywhere else. Therefore, this factor favors a [Redacted] domicile.

The time factor is an analysis of where an individual spends his time during the year. As mentioned in the business activity factor, [Redacted] spends a great deal of his time working at the mine [Redacted]. [Redacted] was with [Redacted] so most of her time was also spent in

[Redacted]. The taxpayers did come to Idaho to visit family during the years in question, but it was not until sometime in 2006 that [Redacted] began spending more time in Idaho to care for her ailing sister. After the sister's death, [Redacted] returned to [Redacted] until [Redacted] retired. The time factor shows the taxpayers' time was spent mostly in [Redacted]. When the taxpayers were in Idaho, their time in Idaho was more like a seasonal or occasional visitor. Consequently, this factor favors a [Redacted] domicile.

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 taxpayers stated they put their belongings in storage when they lost their house in 2003. However, they apparently took household necessities with them [Redacted]. Once in [Redacted] and after the taxpayers purchased their first mobile home, the taxpayers began to make [Redacted] their home. Their pets were with them [Redacted] and [Redacted] played golf [Redacted]. It is unknown where [Redacted] kept his [Redacted] equipment, but the taxpayers did state that [Redacted] did not hunt in Idaho during the years in question. The record shows the taxpayers were becoming part of the community [Redacted]; therefore, one can assume that, in addition to their pets and golf equipment, the taxpayers had the things with them that made their life [Redacted] more enjoyable. The Tax Commission finds this factor in favor of a [Redacted] domicile.

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, the taxpayers' immediate family and [Redacted] siblings lived in Idaho. The taxpayers had no family [Redacted]. From purely a location standpoint, this factor indicates an Idaho domicile; however, this is the factor that taxpayers have the least control over. Taxpayers can choose to live in the same area as their family; likewise, the family can also choose to live in the same area of the taxpayer. Taxpayers may also want to live in the same area as their family, but because of financial or economic circumstances, it may not be possible. Therefore, even though the factor favors Idaho, the Tax Commission does not give it much weight in this case.

The primary factors clearly weigh in favor of [Redacted] as the taxpayers' state of domicile. Even though the taxpayers maintained some connection to Idaho, the Tax Commission agrees with the factor analysis that the taxpayers identified themselves with the community [Redacted] and, therefore, the state [Redacted].

However, in 2006, the taxpayers returned to Idaho when [Redacted] retired. The taxpayers stated [Redacted] retired in October 2006. They stated they returned to Idaho and lived in the home they used as vacation property. The taxpayers also stated that when [Redacted] retired, he took the lump sum option of his retirement plan from the mine. The taxpayers thought the payment was received in 2007 but, in fact, it was received in 2006. Since the lump sum payment was received after [Redacted] retired, it is likely the taxpayers received the payment after becoming Idaho residents. That being the case, the lump sum payment is taxable by Idaho in 2006.

The amount of the lump sum payment received plus the prorated portion of two other pensions [Redacted] received was greater than the filing threshold for part-year residents for taxable year 2006. (See Idaho Code section 63-3030.) Therefore, the taxpayers were required to file an Idaho individual income tax return for taxable year 2006.

CONCLUSION

The taxpayers left Idaho in 2002 seeking employment. In the process, they lost their home in Idaho but eventually found suitable employment and a replacement home [Redacted],

[Redacted]. The taxpayers did not return to Idaho to live until 2006 when [Redacted] retired. Once settled [Redacted], the taxpayers became a part of that community. The taxpayers had no Idaho source income from 2002 to October 2006. The taxpayers appeared to have established a domicile [Redacted] and it continued until October 2006 when the taxpayers retired in Idaho.

The taxpayers received a lump sum payment from [Redacted] retirement plan after his retirement and after their move to Idaho. The taxpayers were not required to file Idaho individual income tax returns for taxable years 2004 or 2005, but because they received the lump sum payment while they were residents of Idaho, the taxpayers were required to file an income tax return for taxable year 2006.

THEREFORE, the Notice of Deficiency Determination dated April 19, 2010, and directed to [Redacted] is AFFIRMED AS MODIFIED by this decision.

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

YEAR	TAX	PENALTY	INTEREST	TOTAL
2004	$ 0	$ 0	$ 0	$ 0
2005	0	0	0	0
2006	466	116	117	699
			TOTAL DUE	$699

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

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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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