

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23721
[REDACTED],)	
)	
Petitioner.)	DECISION
_____)	

[Redacted] (Petitioners) failed to file Idaho individual income tax returns for taxable years 2007 and 2008. On May 10, 2010, the Tax Discovery Bureau (TDB) sent Petitioners a letter asking about their filing requirements. On June 7, 2010, Petitioners submitted Idaho Form 43 returns for both taxable years. These returns indicated that Petitioners were part-year residents with no income attributable to Idaho; rather it was all attributable to Washington, which has no state income tax. The TDB inquired into Petitioners’ residence and domicile, and after discussing these matters with Petitioners, a Notice of Deficiency Determination (NODD) was sent on September 17, 2010, indicating that the TDB determined Petitioners were domiciled in Idaho under Idaho Code § 63-3013 and, as such, had a tax liability in Idaho for taxable years 2007 and 2008.

Determining domicile is not always clear or easy, yet the outcome of the decision has far reaching consequences. Often times, the terms “residency” and “domicile” are confused, but Idaho Income Tax Rule 030.02 defines domicile as:

The term domicile means 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. An individual can have several residences or dwelling places, but he legally can have but one domicile at a time. Domicile, once established, is never lost until there is a concurrence of a specific intent to abandon an old domicile, an intent to acquire a specific new domicile, and the actual physical presence in a new domicile.

The key to understanding domicile based upon this rule is the intent of the individual. Determining the intent of an individual is not a bright-line test; rather, the determination is made

using the totality of the evidence before the Idaho State Tax Commission (Commission) and making a determination based upon the available information. This decision hinges upon where Petitioners were domiciled in taxable years 2007 and 2008. The long-established rule is that “[w]here a change of domicile is alleged, the burden of proof rests upon the party making the allegation.” Desmare v. United States, 93 U.S. 605, 610, (1876), Pratt v. State Tax Comm'n, 128 Idaho 883, 884, 920 P.2d 400, 401 (1996). The burden rests with Petitioners to prove that they abandoned their domicile in Idaho and established a domicile in Washington, and until that burden is met, Idaho continues to be their domicile.

The facts available to the Commission in making this decision are numerous. In November 2006, Petitioners purchased a house located at [Redacted] that they had previously been leasing. At the time, Petitioners were domiciled in Idaho and their intent was to remain in the home and, therefore, remain domiciled in Idaho. Petitioners had a business based in Idaho and used the property in [Redacted] as their central hub for [Redacted]. By the following month, December 2006, Petitioners had decided to go to Washington to pursue what they thought would be a temporary job.

Petitioners spent about the next nine (9) months, from December 2006 until approximately August 2007, living with a daughter in [Redacted], Washington. After that, they purchased a [Redacted] trailer and began living in that while it was parked in [Redacted]. Petitioners paid \$350 per month to stay at the RV park. Petitioners lived in [Redacted] from about August 2007 until about February 2011. At some point during this time, Petitioners determined that the husband would stay on at the temporary job indefinitely. The house Petitioners owned in Idaho was never rented out nor put on the market for sale.

As Rule 030.02 indicates, in order to change domicile from Idaho to Washington, Petitioners need to show their intent to abandon Idaho and establish Washington as their domicile. The TDB relied upon numerous factors in their determination that Idaho domicile had not been abandoned; none of which by itself is dispositive of domicile, but rather as a whole, the factors were used to determine that there was no intent to abandon Idaho and establish Washington as Petitioners' new domicile.

IDAHO LICENSES

Prior to December 2006, Petitioners each had an Idaho driver's license; in addition, husband had a Commercial Driver's License (CDL). Husband had his license renewed in Idaho in 2007. When asked about this, he said since he was in Idaho at the time and thought it would be more convenient to simply renew his license. Husband went to the Department of Motor Vehicles in [Redacted], Idaho, and had his license renewed. Wife also had her Idaho driver's license renewed in person during taxable year 2010. She also claims this was for convenience.

According to Idaho Code § 49-303(13), nonresidents of Idaho shall not be issued an Idaho driver's license. When Petitioners had their licenses renewed, they used their Idaho address, indicating to the Department of Transportation that they were still residents of Idaho. Under Federal Regulation 49 C.F.R. § 383.71(b), when establishing a new domicile in a new state, a person has 30 days to apply for a new license. Petitioners did not apply for a Washington license until 2011.

Petitioners point to an earlier decision by the Commission, Docket No. 18830, as evidence that a driver's license does not indicate domicile. This decision has limited applicability to the present case. In the decision, the taxpayer lived in Idaho part of two (2)

years, during which time he received an Idaho driver's license. The Commission determined that he was a part-year resident, even though he had an Idaho driver's license.

The facts of that decision are not discussed, rather the only explanation given was the following statement, "Available information and the taxpayer's own statements make it clear; the taxpayer was not domiciled in Idaho for the entire taxable year of either 2002 or 2003." There is no analysis on this topic. The taxpayer had previously lived in another state for thirty (30) years and moved back to that state. The Commission merely determined whether or not he was domiciled in Idaho the entire year, and there was apparently no real question that he was not domiciled in Idaho the entire year. This differs from the current case in that Petitioners had been domiciled in Idaho for a number of years and have the burden of showing they are no longer domiciled in Idaho.

VEHICLE REGISTRATION

Prior to December 2006, Petitioners had no less than six (6) vehicles, including trailers and off-road machines, registered in Idaho. After December 2006, the registrations on these vehicles were renewed in Idaho; many were renewed numerous times. The property owned by Petitioners in Idaho had been used for storage for some of the vehicles. Petitioners claim they had their vehicles renewed in Idaho for convenience instead of having them registered in Washington. Washington's registration fees are significantly more expensive.

As stated before, Petitioners purchased and lived in a 1991 trailer while in Washington. This trailer was purchased and registered in Washington initially. However, in 2010, Petitioners had the trailer registered in Idaho. When asked why the change, they responded that they were pulled over by an Idaho law enforcement officer while pulling the trailer and told that they needed to have it registered in Idaho.

IDAHO RESIDENT FISH AND GAME LICENSE

Husband obtained Idaho resident Fish and Game licenses on June 23, 2007, September 8, 2009, and April 14, 2010. When questioned about why he obtained a resident fish and game license, he responded that he thought because he owned property in Idaho and because it was cheaper, he was able to claim he was a resident. When asked if he used the license, husband responded “No, because I thought I’d be home to use it.” On a number of occasions, husband referred to his Idaho house as his “home.”

Idaho Fish and Game requires that residency be proved before a license is issued. Petitioner’s license indicates that he has been a resident since 2004, and his Idaho driver’s license was used to substantiate that. Directly on the license is the following statement, “I certify that I have been domiciled continuously within Idaho no less than six months immediately prior to applying for this license/tag.” Plaintiff signed his signature directly under that statement, certifying and declaring that he was domiciled in Idaho in taxable years 2007, 2009, and 2010.

HOMEOWNER’S PROPERTY TAX EXEMPTION

When Petitioners purchased their home in Idaho, they applied for and received a Homeowner’s Exemption. Pursuant to Idaho Code § 63-602G, a qualifying taxpayer may apply for and receive an exemption for property tax purposes. At the time of application, the taxpayer is required to meet certain residency requirements. In this case, Petitioners met these requirements when they received the exemption in November 2006. However, if the house is no longer a primary residence, then the taxpayer no longer qualifies for the exemption.

Defendants have received the exemption since November 2006 and currently are still receiving the exemption. When questioned why they have not stopped receiving the exemption,

they responded that they were told by a realtor that they still qualified as long as nobody was renting the house. Based upon this, Petitioners never changed their status.

VOTING RECORD

According to the Commission's records, Petitioners voted in the Idaho general elections for 2006 and 2008, as well as a special [Redacted] election in 2010. They have not voted in Washington, but did register to vote in Washington in May 2011. Petitioners claim that they saw no need to change their voting address because their primary purpose was to vote in national elections and they did not think it made any difference where they were registered to vote.

TAX RECORDS

On the taxable years 2007 and 2008 Idaho Form 43 tax returns signed and submitted by Petitioners, they indicated that they lived in Idaho for three full months each year. When asked about this, Petitioners responded that it was a mistake by their accountant who filled out the returns and they did not know why the accountant wrote they lived in Idaho for three months in taxable year 2007 and in taxable year 2008.

The address used on Petitioners' 2007 Idaho Form 43 and 2007 federal Form 1040 is their Idaho address. Petitioners again did not know why that address was used. Further, on Form SSA 1099 for both taxable years 2007 and 2008, the Idaho address was used on the statement, but Petitioners claim the amounts were directly deposited into their bank in Washington, as opposed to their [Redacted] Bank account in Idaho.

The address used by Petitioners' employers on the W-2s for both taxable years 2007 and 2008 was their Idaho address. Petitioners said the Idaho address was used because they were living in Idaho when they started working for them and they just never changed it.

On Petitioners taxable year 2007 federal Schedule C, there is an expense of \$628 relating to their Idaho business. The expense is listed as “DOT license required to keep Co. open.” Petitioners said they had sold all of the assets of the business in Idaho and did not provide an explanation on why they were paying to keep the business active. Currently, the business is still listed as “Current” by the Secretary of State for Idaho.

CONCLUSION

Petitioners bear the burden of showing that they abandoned their domicile in Idaho and established a new domicile in Washington. Determining domicile is a mixed question of fact and law. Conduct is often more persuasive than expressions since that reflects the intent of the individuals. The United States Tax Court has determined that “where there is any doubt as to one's domicile, the domicile of origin prevails.” Webb v. C.I.R., 72 T.C.M. (CCH) 1522 (T.C. 1996).

Individuals frequently move across state lines; abandoning an old domicile and establishing a new one. The burden of proving intent to abandon an old and establish a new domicile is not very great, and there are consequences, sometimes significant tax consequences, when individuals move. Taxpayers give up the benefits of being domiciled in their old state and take advantage of the benefits of the new state; they cannot take advantage of benefits from both states.

In this case, Petitioners have taken advantage of the benefits connected with being domiciled in Idaho and Washington simultaneously. Petitioners indicated that when they went to Washington, they thought it was only going to be for a temporary purpose; it wasn't until some point later that they decided it would be indefinite. Petitioners say they intend Washington to be their domicile, yet they also still refer to Idaho as “home.” Looking at the actions of Petitioners

to determine, aside from working in Washington, there is little or no indication that Petitioners intended to abandon Idaho as their place of domicile.

During taxable years 2007 and 2008 and beyond, Petitioners continued to act as if they were domiciled in Idaho. A domicile analysis requires looking at the totality of the circumstances, and the totality of the circumstances, in this case, point to an Idaho domicile. Petitioners certainly have not met their burden of proof that they changed their domicile from Idaho to Washington. During taxable years 2007 and 2008, Petitioners did not abandon their domicile in Idaho, they even signed licenses certifying they resided and were domiciled in Idaho. They also used their Idaho mailing address for official documents during both years. There were numerous opportunities for them to take action that would help establish domicile in Washington, such as obtaining a Washington driver's license, registering vehicles in Washington, or voting in Washington, but they failed to do any of these things and continued to do these things in Idaho. While Petitioners had some sort of excuse as to why they did or did not do some of these things, in the totality of this decision, the facts speak louder than words.

THEREFORE, the Notice of Deficiency Determination dated September 17, 2010, is hereby APPROVED, AFFIRMED, and MADE FINAL.

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2007	\$1,583	\$396	\$290	\$2269
2008	3,278	820	391	<u>4489</u>
			TOTAL DUE	<u>\$6758</u>

Interest is calculated to November 1, 2011.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the Petitioners' 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.
