

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 23754
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

On November 30, 2010, the staff of the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayers) proposing income tax, penalty, and interest for taxable years 2003 through 2008 in the total amount of \$16,580.

On January 31, 2011, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not respond to the Commission's hearing rights letter and have provided nothing further for the Commission to consider. The Commission, having reviewed the file, hereby issues its decision.

The Bureau received information that the taxpayers may have a filing requirement with the state of Idaho. The Bureau researched the Tax Commission's records and found that the taxpayers stopped filing Idaho income tax returns with taxable year 2003. The Bureau sent the taxpayers a letter asking about their requirement to file Idaho income tax returns. The taxpayers responded to the Bureau's letter by phone stating in a conversation with the auditor that they had filed non-resident returns in the state of [Redacted] since 2003. Based on information available to the Commission and that obtained from [Redacted], the Bureau determined the taxpayers were domiciled in Idaho under Idaho Code section 63-3013 and, as such, had a tax liability in Idaho for taxable years 2003 through 2008.

The taxpayers protested the Bureau's determination. They stated they needed additional time to gather the needed records because they were in both [Redacted] and Idaho. They also stated they believed taxes were paid to [Redacted] for taxable years 2003 through 2008 either as residents or non-residents. The taxpayers believed with an extension of time, they would be able to gather the information and provide it to a tax preparer to put together during the preparation of the current year's tax return.

The Bureau acknowledged the taxpayers' appeal and granted them an extension of time, until March 25, 2011, to provide returns. On March 25, 2011, the Bureau received the taxpayers' 2008 and 2009 Idaho resident individual income tax returns, along with transcripts from [Redacted] showing taxes paid to [Redacted] for taxable years 2003 through 2007. The transcripts received did not show whether the returns filed in [Redacted] were resident or non-resident returns.

The Bureau reviewed the 2008 Idaho return along with the other information provided by the taxpayers. The 2008 return was accepted as filed, and the NODD was cancelled for that year. Based on the [Redacted] return transcripts, the Bureau adjusted the NODD, allowing the taxpayers a credit for taxes paid to California. The Bureau sent the taxpayers a modified NODD along with a letter asking them to withdraw their appeal if they agreed with revised figures. The taxpayers responded stating they still disagreed with the NODD and wished to continue their protest. The Bureau referred the matter for administrative review.

The Commission sent the taxpayers a letter giving them two alternative methods for having the NODD redetermined. The taxpayers did not respond. Therefore, the Commission decided the matter based upon the information available.

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 Commission and making a determination based upon the available information. This decision hinges upon where the taxpayers were domiciled in taxable years 2003 through 2007. 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 taxpayers to prove that they abandoned their domicile in Idaho and established a domicile in [Redacted], and until that burden is met, Idaho continues to be their domicile.

The Bureau relied upon numerous factors in the 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 the taxpayers had not established [Redacted] as their new domicile.

The taxpayers filed a part-year resident Idaho income tax return in taxable year 2000, a resident return in taxable year 2001, and resident returns again in 2008 and 2009. The taxpayers

did not file Idaho income tax returns for taxable years 2003 through 2007. However, the taxpayers continued to take advantage of Idaho privileges during those years.

Mr. [Redacted] renewed his Idaho driver's license in 2003 and 2008; Mrs. [Redacted] renewed her Idaho driver's license in 2004 and 2008. Mr. [Redacted] obtained Idaho resident fish and game licenses on October 4, 2003, October 17, 2004, June 19, 2005, October 24, 2005, and May 1, 2006. Idaho Fish and Game requires that residency be proved before a license is issued. Mr. [Redacted] license indicates that he has been a resident since 1998, 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 with Idaho no less than six- months immediately prior to applying for this license/tag." Mrs. [Redacted] obtained Idaho resident fish and game licenses on October 6, 2003, and October 29, 2005, substantiating with her Idaho driver's license that she had been a resident of Idaho since 2000.

The taxpayers also registered numerous motor vehicles in Idaho between the years 2003 and 2007. Information available to the Commission shows the taxpayers registered a vehicle on March 29, 2004, November 10, 2005, June 7, 2006, September 11, 2006, December 29, 2006, and May 31, 2007.

The taxpayers bear the burden of showing that they abandoned their domicile in Idaho and established a new domicile in California. 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, the taxpayers claim to have relocated to [Redacted] in 2002 and then returned to Idaho in 2008. However, other than wages from [Redacted] wages, there is little to identify the taxpayers with the state of [Redacted]. The taxpayers continued to register vehicles in Idaho, purchase Idaho resident fish and game licenses, and renew Idaho driver's licenses during this time. They obviously considered themselves Idaho residents when performing these acts.

From the information available, the Commission does not see that the taxpayers made a permanent and indefinite move to [Redacted] from Idaho. There is nothing in the record that shows a permanent home in [Redacted], 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). Therefore, the Commission finds the taxpayers were domiciled in Idaho during the years 2003 through 2007 and, as such, were required to file Idaho income tax returns for those years.

THEREFORE, the NODD dated November 30, 2010, is hereby MODIFIED and as modified, is APPROVED and MADE FINAL.

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>
2003	\$1,220	\$305	\$583	\$ 2,108
2004	1,696	424	708	2,828
2005	1,509	377	539	2,425

2006	1,530	383	451	2,364
2007	1,708	427	384	<u>2,519</u>
			TOTAL DUE	<u>\$12,244</u>

Interest is calculated to November 13, 2012.

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 \_\_\_\_\_ 2012.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2012, 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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