



nonresident. Petitioners' returns were referred to the Bureau, which the Bureau reviewed and determined that a residency examination was warranted.

The Bureau sent Petitioners a questionnaire designed to determine an individual's domicile. Petitioners completed the questionnaire and returned it to the Bureau. The Bureau reviewed the information Petitioners provided in the questionnaire and determined both [Redacted] were domiciled in Idaho as early as 2005. The Bureau corrected Petitioners' 2007, 2008, and 2009 returns and sent them a Notice of Deficiency Determination.

Petitioners contacted the Bureau and stated they disagreed with the Bureau's determination because they filed income tax returns with the state [Redacted] where [Redacted] lived and worked. The Bureau asked for copies of Petitioners' California returns, which Petitioners provided. The Bureau reviewed the Petitioners' [Redacted] returns and adjusted its determination to include a credit for taxes paid [Redacted] but did not change its position on the domicile [Redacted]. The Bureau sent Petitioners its revised determination to which Petitioners asked for a formal appeal.

Petitioners protest stated they strongly disagreed with the Bureau's revised determination but gave no reason or basis for their disagreement. The Bureau referred the matter for administrative review, and the Tax Commission sent Petitioners a letter setting forth the options available for redetermining a protested Notice of Deficiency Determination. Petitioners did not respond to the Tax Commission's letter, nor did they respond to the follow-up letter sent to them. Therefore, the Tax Commission decided the matter based upon the information available.

## **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).

From the information available, it is clear Petitioners left [Redacted] and established their domicile in Idaho in 2005. Petitioners moved to [Redacted], Idaho, where [Redacted] was to work [Redacted]. Petitioners purchased a house [Redacted] and made it their home. However, due to financial issues with the hospital, [Redacted] was forced to return [Redacted] to earn the income Petitioners had become accustomed. Petitioners stated [Redacted] lived in a small apartment [Redacted] and was only there for work. Petitioners stated [Redacted] came back to Idaho whenever she could and spent between 100 and 125 days per year in Idaho. Petitioners stated [Redacted] and their daughters lived full-time in Idaho.

Generally, the Tax Commission looks to five primary factors (home, business, time, near and dear items, and family) in determining domicile cases, but in this case, it is clear Petitioners abandoned [Redacted], moved to Idaho, and established Idaho as their state of domicile. It was only after their Idaho domicile was established that [Redacted] returned [Redacted] to obtain a suitable income. Therefore, Petitioners fulfilled the requirements stated in Administrative Rule 030.02.a. in that Petitioners had the specific intent to abandon their old domicile ([Redacted]), they had the specific intent to acquire a new domicile (Idaho), and they had actual physical presence in the new domicile (Idaho). Since Petitioners' domicile was Idaho prior to [Redacted] returning [Redacted], the presumption is the Idaho domicile continues until a new domicile is established. *See In re Estate of Cooke, supra.* Petitioners have not shown [Redacted] subsequently abandoned Idaho and established a new domicile [Redacted].

The record shows the only reason [Redacted] went back [Redacted] was because she could earn a higher salary than she could in [Redacted], Idaho. While [Redacted] likely had connections in [Redacted], there is nothing in the record that [Redacted] obtained the connections that would identify and associate her with [Redacted]. The facts show that

[Redacted] maintained ties to Idaho throughout the years in question and was only in [Redacted] for her earnings potential.

In Idaho, a State Tax Commission deficiency determination is presumed to be correct, and the burden is on the taxpayer to show that the deficiency is erroneous. Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986). Petitioners did not show that [Redacted] Idaho domicile was abandoned or that she acquired a domicile in [Redacted] they did not meet their burden of proof.

### CONCLUSION

Petitioners' acquired Idaho as their domicile when they moved [Redacted] to Idaho; therefore, the presumption is the Idaho domicile continues until a new domicile is established. *See In re Estate of Cooke*, supra. Petitioners did not show [Redacted] established a new domicile when she left Idaho to work [Redacted]. The available facts and information show that [Redacted] maintained and continues to maintain her Idaho ties while she is employed [Redacted]. Petitioners did not show that, [Redacted] was a place of permanence 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 Tax Commission finds [Redacted] domicile remained in Idaho in 2007, 2008, and 2009.

Petitioners provided copies of the income tax returns they filed [Redacted] for the years in question. The Bureau considered those returns and modified its original deficiency notice to include a credit for taxes paid [Redacted]. The Tax Commission finds the modification appropriate and hereby upholds the modified tax deficiency.

The Bureau added interest and penalty to Petitioners' Idaho tax liability. The Tax Commission reviewed those additions and found them appropriate and in accordance with Idaho Code sections 63-3045 and 63-3046.

THEREFORE, the Notice of Deficiency Determination dated March 14, 2011, and directed to [Redacted] is AFFIRMED AS MODIFIED by this decision.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2007	\$1,380	\$345	\$309	\$2,034
2008	1,300	325	208	1,833
2009	304	76	33	413
			TOTAL DUE	<u>\$4,280</u>

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 \_\_\_\_\_ 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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