BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NO. 24143
[Redacted] &	)	
[Redacted],	)	
	)	DECISION
Petitioners.	)	
	)	

HISTORY

On April 21, 2011, The Idaho State Tax Commission's Income Tax Audit Bureau (Audit) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayers) proposing additional income tax for the 2009 taxable year in the amount of $841, being $798 in tax and $43 in interest that would accrue through June 23, 2011. The [Redacted] filed an Idaho Form 43 (Part-Year Resident and Nonresident Income Tax Return) for that year, however, the NODD was issued because Audit determined that [Redacted] was a resident of Idaho for income tax purposes. This determination was based on information collected from government records and from the taxpayers during the audit process indicating that [Redacted] maintained domicile in Idaho.

A letter containing the NODD and a brochure explaining appeal rights was sent to the taxpayers' [Redacted], Idaho, address by certified mail on April 21, 2011, but was returned to the Tax Commission by the U.S. Postal Service as "unclaimed." A second letter was sent to the taxpayers at the same address on May 17, 2011, also by certified mail, containing the same documents and briefly outlining the statutory timeframe for appealing an NODD.

The taxpayers replied to the second letter on June 21, 2011, appealing the NODD, and briefly explained that [Redacted] had lived in [Redacted] since 2006, that she did not receive mail at the [Redacted] address, and stated some reasons why the documentation Audit collected

showing her Idaho residency should not have been relied on. This letter was considered by the Tax Commission to be an appeal of the NODD, and on July 28, 2011, a hearing rights letter was sent to the taxpayers at the [Redacted] address they provided.

The Commission has had no further communication with the taxpayer and now moves forward with this decision.

DISCUSSION

The issue in this case is whether [Redacted] was a resident of Idaho for the 2009 taxable year for income tax purposes. Idaho Code defines residency for income tax purposes as:

> 63-3013. RESIDENT. (1) The term "resident," for income tax purposes, means any individual who:
>
> (a) Is domiciled in the state of Idaho for the entire taxable year; or
>
> (b) Maintains a place of abode in this state for the entire taxable year and spends in the aggregate more than two hundred seventy (270) days of the taxable year in this state. Presence within the state for any part of a calendar day shall constitute a day spent in the state unless the individual can show that his presence in the state for that day was for a temporary or transitory purpose.

A person can have multiple residences, or places to live, but a domicile is "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." Idaho Income Tax Administrative Rule 030.02. Once a domicile of choice is established, it persists until another is legally acquired. In re Estate of Cook, 96 Idaho 48 (1973). The steps of legal acquisition of a new domicile are also found in Rule 030.02 when it says:

> **a.** 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.

That intent is a key requirement of a domicile change has also long been apparent to Idaho courts. *See* Kirkpatrick v. Transtector Systems, 114 Idaho 559 (1988); Hawkins v.

Winstead, 65 Idaho 12 (1943); Reubelmann v. Reubelmann, 38 Idaho 159 (1923). To be recognized, the intent to change domicile must be shown by the party alleging the change with clear and convincing evidence, manifested with unequivocal acts. Bodfish v. Gallman, 378 N.Y.S. 2d 138 (1976).

In this case, the taxpayers have asserted that it was [Redacted] intent to change her domicile from Idaho to Washington during the pertinent time period. However, the evidence collected by Audit does not support that assertion. Records show that [Redacted] voted in general elections in Idaho in 2008 and 2010; she held an Idaho driver's license using her Idaho address, and renewed it regularly in 1994, 1998, 2002, 2006, and 2010 and she purchased resident fish and game licenses through 2010 claiming residency in Idaho since 1994. The periodic and regular nature of these transactions indicates [Redacted] intent to enjoy the benefits and responsibilities of Idaho domicile, regardless of the location of her residency.

Evidence supplied by the taxpayers also does not support [Redacted] claim that she abandoned her Idaho domicile. In a March 28, 2011, letter to Audit, [Redacted] [Redacted] stated her mother-in-law's declining health forced her to reside in [Redacted], but her intention was to live in Idaho. When asked by Audit to supply utility bills from the [Redacted] property, the taxpayers supplied various credit card statements and personal bills, but none specific to the property. During the audit process, the taxpayers both answered and denied receipt of mail sent to their Idaho address. In fact, the [Redacted] property is listed among several properties on the Taxpayers' 2009 federal income tax returns as rental property that was not used by the taxpayers, or their family, for personal purposes for more than 14 days out of that taxable year.

Courts in Idaho have determined that an NODD issued by the Idaho State Tax commission is presumed to be correct, and the burden is on the taxpayer to show that the tax

deficiency is erroneous. Albertson's Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814 (1984); Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986). The taxpayers have not provided clear and convincing evidence that [Redacted] had the intent to change her domicile from Idaho to [Redacted] before or during 2009 and, therefore, have not shown that the NODD is erroneous.

CONCLUSION

The information submitted by the taxpayers in support of their protest has been reviewed. The taxpayers have failed to present any legal or factual information to dispute the basis of the NODD, and, therefore, failed to meet their burden to show that the NODD is incorrect.

THEREFORE, the Notice of Deficiency Determination dated April 21, 2011, directed to [Redacted] is hereby APPROVED, AFFIRMED, and MADE FINAL.

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

YEAR	TAX	INTEREST	TOTAL
2009	$798	$75	$873

Interest is calculated through June 11, 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

_____

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.

Receipt No.

_____