

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 24444
Petitioners.)
DECISION
_____)

[Redacted] (petitioners) protested the Notice of Deficiency Determination issued by the Income Tax Audit Bureau of the Idaho State Tax Commission dated August 12, 2011, asserting additional Idaho income tax and interest for taxable years 2008 through 2010 in the total amount of \$8,337.

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

BACKGROUND

Petitioners filed non-resident Idaho individual income tax returns for taxable years 2008, 2009, and 2010. Prior to 2008, Petitioners filed resident Idaho individual income tax returns. The Income Tax Audit Bureau (Bureau) selected Petitioners’ income tax filings for taxable years 2008 through 2010 to examine Petitioners’ resident status. The Bureau sent Petitioners a residency/domicile questionnaire which Petitioners completed and returned. Petitioners requested a telephone conference with the auditor stating that some of the questions were difficult to know how to answer. The auditor discussed some of Petitioners’ responses with Petitioners and determined Petitioners did not abandon Idaho as their state of domicile. The Bureau corrected Petitioners’ 2008 through 2010 returns to reflect an Idaho resident status and sent Petitioners a Notice of Deficiency Determination.

Petitioners protested the Bureau's determination stating they were domiciled in [Redacted]. Petitioners stated they had no home in Idaho, put in a change of address with the United States Postal Service [Redacted], utilized medical services [Redacted], and initiated most of their cell phone usage from towers located [Redacted]. The Bureau reviewed the information and referred the matter for administrative review.

The Tax Commission sent Petitioners a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. Petitioners requested a telephonic hearing and presented the following information.

Petitioners were residents of Idaho prior to 2008 and filed married filing joint income tax returns since taxable year 2003. Petitioners lived in [Redacted], Idaho, and rented a small house there. In December 2007, [Redacted] applied for employment [Redacted] in [Redacted], Idaho. [Redacted] was hired and, in January 2008, began working for the company [Redacted]. Petitioners moved [Redacted] and lived in company provided housing. Petitioners moved all their belongings [Redacted] including three horses and five dogs. Petitioners paid the utilities and taxes on the provided housing, but there was no traditional rent paid. Petitioners wanted to purchase property [Redacted] but the only land available was large tracts that were above their means for purchasing. The only other housing [Redacted] was rundown, and there was no available land in or near the town. Petitioners moved [Redacted] because of [Redacted] employment. Petitioners stated they did not know how long they would be [Redacted] but they were prepared to stay there indefinitely to remain employed.

In 2010, Petitioners' daughter was born. The delivery was performed [Redacted], Idaho, but their daughter's first year and a half was mostly spent [Redacted]. The community [Redacted] was mostly older folks, so Petitioners' daughter had lots of attention and lots of

grandparents. Petitioners attended a church [Redacted], 13 miles up the road, where there were younger families and children close to their daughter's age. Petitioners participated in the communities' social events and functions. [Redacted] would go to morning coffee, work on crafts with the other women, participate in the Christmas Bazaar, and participate in the community pot luck. Petitioners would often have dinner with another couple in the town and they were active in the community horse events, like roping.

In 2007, [Redacted] began operating a hair and nails salon [Redacted]. When Petitioners moved to [Redacted], [Redacted] continued her business with her older clientele and family by coming back to Idaho once a month for 3 to 5 days. She did this as a convenience for her family and her older clients and because there is not much of a demand for this type of service [Redacted].

Petitioners maintained their Idaho driver's licenses out of convenience. Both [Redacted] purchased driver's licenses in 2007 before knowing they would be living [Redacted] for an indefinite time. [Redacted] also purchased a lifetime Idaho fish and game license several years before moving [Redacted]. When [Redacted] purchased tags and permits, he simply took whatever the vendors gave him and didn't push his non-resident status.

Petitioners did their banking [Redacted]. Since the nearest bank [Redacted] was in [Redacted], Idaho, or [Redacted], Petitioners chose to stay with the [Redacted] bank. Since [Redacted] went through [Redacted] once a month, it was more convenient.

In June 2010, Petitioners purchased five acres of ranch land from the landlord they rented from [Redacted]. Petitioners stated it was a good opportunity and they purchased it as an investment. They purchased bare ground, and it is still bare ground even after moving back to Idaho. Petitioners moved back to Idaho when an Idaho position opened up within [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 was not Petitioners' first choice to leave Idaho; however, the work was in [Redacted] so they took what was available. Initially, Petitioners may have thought the [Redacted] position was temporary, but they were prepared to stay in [Redacted] as long as [Redacted] was employed. 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] was employed with [Redacted], [Redacted] left her [Redacted] business, packed up their household, and moved [Redacted]. From all practical appearances it looked like Petitioners 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, Petitioners had no home in Idaho and their Idaho community ties were limited to family, old friends, and clientele.

In [Redacted], Petitioners had a home (albeit company provided), were part of the local community (participated in community events), and were a significant infusion to the area (a young family in a small community). The record gives a lot of information about Petitioners' interaction with the community [Redacted]. The only information about [Redacted] or anywhere in Idaho is Petitioners visited family and [Redacted] maintained her older clientele. Petitioners' community involvement clearly shows they 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] was employed with [Redacted] and worked almost exclusively in [Redacted]. [Redacted] work was close to the Idaho border and his employer kept track of the number of hours he worked in Idaho. [Redacted] worked in Idaho less than 120 hours each year. [Redacted]. [Redacted] came to Idaho once a month for three to five days to service her clientele. With Petitioners' move [Redacted], [Redacted] Idaho clients were mostly family. Considering most of Petitioners' income came from [Redacted] employment in [Redacted] and [Redacted] business was limited in Idaho, 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 in [Redacted]. [Redacted] was also in [Redacted] except for monthly trips to Idaho to visit family and [Redacted]. Petitioners' time spent in Idaho was regular but occasional. 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 record does not give a lot of detail on Petitioners' near and dear items. However, it appears Petitioners took everything with them [Redacted]. Petitioners stated they moved from a very small, very old ranch house in Idaho to a double-wide mobile home [Redacted]. Petitioners had three horses and five dogs that went with them [Redacted]. There is nothing to indicate Petitioners left anything in Idaho that would not make their life in [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, Petitioners' had family in Idaho living in the area they moved from. Petitioners had no family in [Redacted]. However, while in [Redacted] Petitioners apparently decided to start a family of their own. Petitioners' daughter was born in 2010 after being in [Redacted] for over two years. Seeing that Petitioners were willing to begin a family away from parents, grandparents, and siblings gives some indication petitioners were looking to stay in [Redacted] indefinitely. The Tax Commission finds this factor weighs in favor [Redacted].

The primary factors clearly weigh in favor [Redacted] as Petitioners' state of domicile. Even though Petitioners maintained Idaho connections, such as driver's licenses, vehicle registrations, and purchasing resident hunting tags out of convenience and lack of knowledge, those actions are overshadowed by the primary factors showing Petitioners' intent to remain in [Redacted] for an indefinite period, and the actions of Petitioners to become a part of the local community. The facts presented show Petitioners regarded [Redacted] with the sense of

permanence with all the sentiment, feeling, and permanent association that goes with calling a place a home (Starer v. Gallman, 50 A.D.2d 28, 377 N.Y.S.2d 645 (1975)).

CONCLUSION

Petitioners left Idaho in 2008 when [Redacted] landed a job where he would be working in [Redacted]. Petitioners moved everything they had, including multiple pets, [Redacted]. Petitioners became a part of the community and began raising a family. Petitioners' contact with Idaho was due to the remote location of their new abode and existing family in Idaho. Petitioners ultimately returned to Idaho when the opportunity presented itself; nevertheless, for the years at issue, the Petitioners positioned themselves to stay [Redacted] indefinitely. Therefore, the Tax Commission finds Petitioners' domicile changed [Redacted] in 2008, and a non-resident Idaho income tax form was the appropriate return for Petitioners for taxable years 2008, 2009, and 2010.

THEREFORE, the Notice of Deficiency Determination dated August 12, 2011, and directed to [Redacted] is CANCELLED.

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

An explanation of Petitioners' 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.
