

became ill and subsequently died. Petitioner completed the information gathering and supplied it to the Bureau.

The Bureau reviewed the information provided along with other information available to the Tax Commission. The Bureau determined Petitioners were, at some time, domiciled in Idaho and never intended to abandon Idaho but planned to return to Idaho when [Redacted] retired. The Bureau prepared Idaho income tax returns for Petitioners for taxable years 2004 through 2007 and corrected Petitioners' 2008 return to reflect Petitioners' Idaho domicile.

Petitioner protested the Bureau's determination stating she and her husband were not residents of, or domiciled in Idaho in taxable years 2004 through 2007. Petitioner stated for taxable year 2008 she was a part-year resident and her husband was a nonresident of Idaho. The Bureau acknowledged Petitioner's protest and referred the matter for administrative review. The Tax Commission reviewed the matter and sent Petitioner a letter explaining the methods available for redetermining a protested Notice of Deficiency Determination. Petitioner requested a telephone hearing in which the following information was provided.

In August 1980, Petitioners left California and moved to Oregon where [Redacted] began working for [Redacted]. [Redacted] job kept the family moving throughout the Pacific Northwest but mainly in Oregon and Washington. In December 1985, [Redacted] was transferred to Coeur d'Alene, Idaho for a project that bridged three states; Washington, Idaho, and Montana. Petitioners moved their family to Idaho, as was their custom, and enrolled [Redacted] teenage kids in school to complete their senior year of high school. Soon after [Redacted] kids graduated in the spring of 1986, [Redacted] was transferred to Vancouver, Washington. Petitioners packed up their belongings and moved back to Washington. [Redacted] kids stayed with friends in Coeur d'Alene for a few months after graduation. The kids later left

Idaho in pursuit of education and employment. This was the last project [Redacted] had charge of in Idaho. While in Idaho Petitioners did not acquire property and there is no indication Petitioners obtained any resident privilege licenses. Petitioners were not in Idaho long enough to qualify for resident privilege licenses.

Petitioners did not return to Idaho until sometime after August 1993, when [Redacted] daughter moved back to Idaho from Las Vegas, Nevada. Petitioners did not move to Idaho but occasionally visited their daughter and grandchildren. In 2003, [Redacted] son moved back to Coeur d'Alene from California, which created another reason for Petitioners to visit Idaho. Petitioner did not move to Idaho until February 2008 when Petitioner needed regular medical supervision. Petitioner moved to Idaho but [Redacted] continued working for [Redacted] on various projects until he retired in May 2009. Since Petitioner lived in Idaho for part of the year in 2008, Petitioners filed a 2008 resident Idaho income tax return.

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 Bureau asserts Petitioners acquired an Idaho domicile and never fully abandoned or acquired another domicile. However, it is questionable whether Petitioners ever had an Idaho domicile prior to Petitioner moving to Idaho in 2008. The record shows Petitioners lived in Idaho for five to six months in 1986. Petitioner did not return again to Idaho to live until 2008 when Petitioner needed more immediate medical care. Prior to 2008, Petitioners were only in Idaho for work purposes (1986) and to visit Petitioner's children and grandchildren (1993 through 2008). Petitioners had no contact with Idaho from mid-1986 to mid-1993. The reason Petitioners decided on Idaho in 2008 was because of Petitioner's children and grandchildren. Nothing in the record suggests Petitioners ever intended to return to Idaho after leaving in 1986. Even if by some stretch of the imagination, Petitioners acquired an Idaho domicile in 1986, they clearly met the safe harbor provisions of Idaho Code section 63-3013 since they had no contact or connection with nor did they enter Idaho for over seven years.

Determining where Petitioners were domiciled requires a look back into Petitioners' history. In the early 1980's, Petitioners were domiciled in California before moving to Oregon to take the job with [Redacted]. Therefore, one can assume Petitioners domicile changed from California to Oregon when Petitioners moved to Oregon. From that time forward, Petitioners moved from one project to the next at the direction of [Redacted]. Most of the projects were in either Oregon or Washington. [Redacted] worked on very few projects outside of Oregon and Washington. From the evidence/information available, the Tax Commission does not see where Petitioners ever acquired an Idaho domicile. Petitioners' only significant time in Idaho was in

1986 for employment purposes. Any other time up until February 2008 Petitioners were visitors in Idaho.

Petitioners may have chosen Idaho as the place they were going to retire; however, until they fully abandon the old domicile and have physical presence in the new domicile, their domicile does not change. Even though Petitioners took steps that would indicate a change of domicile, i.e. acquired Idaho driver's licenses and voted in Idaho, Petitioners' domicile did not change to Idaho until they had physical presence in Idaho for more than temporary or transitory purposes.

The question whether a domicile has been changed is one of fact rather than of law, and the burden of proof rests upon the party who alleges a change. Newcomb v. Dixon, 192 N.Y. 238 (1908). In this case, the record shows Petitioners were domiciled in either Oregon or Washington before Petitioners came to Idaho in 1986 to work on a [Redacted] project. Therefore, the burden is the Tax Commission's to show a change of domicile occurred when Petitioners lived in Idaho for six months or less. That burden has not been met.

Looking at the tests for a change of domicile, it is apparent Petitioners had physical presence in Washington, and their presence in Idaho was limited to special occasions and holiday visits with family. As for Petitioners' intent to abandon and intent to acquire, the record is fairly clear that Petitioners were planning to retire in Idaho. Even though Petitioners began the acquisition process it does not change the fact that Petitioners did not fully abandon their previous domicile until Petitioners moved to Idaho in 2008 and 2009.

CONCLUSION

Petitioners' lifestyle was nomadic due to [Redacted] employment with [Redacted]. When Petitioners began their employment with [Redacted] their domicile was Oregon. Over the next

thirty years, Petitioners went to wherever [Redacted] needed [Redacted]. During this time Petitioners' domicile likely switched back and forth between Oregon and Washington, but it was never Idaho. Petitioners did intend to establish a domicile in Idaho but it did not come to fruition until 2008. Therefore, Petitioners were not required to file Idaho individual income tax returns for the taxable years 2004 through 2007 or for taxable years 1997 through 2003.

However, Petitioners did have a filing requirement for taxable year 2008 but it was not the resident return Petitioners filed. Since [Redacted] moved to Idaho in February 2008, she was a part-year resident in 2008. [Redacted], on the other hand, was not a resident of Idaho and his domicile remained outside of Idaho. As a result, the correct income tax filing for Petitioners for taxable year 2008 was a part-year resident/nonresident return showing a community property split of income for the eleven months [Redacted] was an Idaho resident.

THEREFORE, the Notice of Deficiency Determination dated November 22, 2011, and directed to [Redacted] is AFFIRMED as MODIFIED by this decision.

IT IS ORDERED that Petitioners receive the following refund of tax and interest:

<u>YEAR</u>	<u>TAX/REFUND</u>	<u>INTEREST</u>	<u>TOTAL</u>
2008	\$(2,821)	\$(470)	\$(3,291)

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

An explanation of the Petitioner's 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.
