

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 24769
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

On December 16, 2011, the staff of the Income Tax Audit Division (Audit) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayers) proposing additional income tax, penalty, and interest for taxable years 2008 through 2010 in the total amount of \$8,367.

On February 10, 2012, the taxpayers' appointed representative filed a timely appeal and petition for redetermination on their behalf. Included with the appeal for the Commissions consideration was additional information about the taxpayers' situation for taxable years 2008 through 2010. The Commission, having reviewed the file, hereby issues its decision.

The taxpayers' individual income tax returns for taxable years 2008 through 2010 were selected for audit; specifically being reviewed was Mr. [Redacted] status as a nonresident. Audit first contacted the taxpayers and requested that they complete a domicile questionnaire to assist them in determining Mr. [Redacted] state of domicile. The questionnaire was completed by the taxpayers and reviewed by Audit. Subsequent to the receipt of the questionnaire and a phone conference with the taxpayers, Audit determined Mr. [Redacted] was domiciled in Idaho. An NODD was issued changing Mr. [Redacted] residency status to that of an Idaho resident and taxing all income.

The taxpayers disagreed with Audit's determination and through their appointed representative, filed a protest with the Commission. The taxpayers' petition for redetermination

stated the NODD incorrectly concluded Mr. [Redacted] place of domicile as Idaho and thereby erroneously included Mr. [Redacted] half of his Washington earned income as Idaho income. The representative requested an informal conference on behalf of the taxpayers; therefore, Audit referred the matter to the Legal/Tax Policy Division for administrative review.

The Commission reviewed the matter and determined the taxpayers had provided sufficient information with their appeal for a decision to be reached and an informal conference would not be necessary.

Based on the taxpayers filing history, it appears they were residents of Idaho as early as 2000. In March 2005, Mr. [Redacted] accepted a job offer with a company in [Redacted] and relocated. Mrs. [Redacted] and the children remained in Idaho. The taxpayers stated it was their intent to relocate the entire family to [Redacted] but encountered several setbacks that delayed the move.

Audit determined that Mr. [Redacted] did not abandon his Idaho domicile in 2005 when he moved to [Redacted]. It is the taxpayers' contention that while Mrs. [Redacted] remained an Idaho resident, Mr. [Redacted] became domiciled in and, therefore, a resident of, the state of [Redacted] in taxable year 2005 and for all years contained in the NODD.

Domicile is defined as the place where an individual has his true, fixed, and permanent home. The place he intends to return to whenever he is absent. (Idaho Income Tax Administrative Rule IDAPA 35.01.01.030.02.) 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. Hall v. Wake County Brd. of Elections, 280 N.C. 600, 187 S.E. 2d 52 (1972); Fry v. Fry, 332 Ill. App. 484, 76 NE 2d 225, 229 (1947). 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).

It takes no particular period of time to acquire a new domicile, the result being achieved when the person is physically present in the new place with a state of mind regarding the new place as home. Moreover, mere length of time cannot convert physical presence or residence into domicile. Taylor v. Milan, 89 F. Supp. 880 (1950). Domicile is not necessarily lost by protracted absence from home where the intention to return remains. Wilson v. Pickens, 444 F. Supp. 53 (W.D. Okl. 1977).

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.

In determining an individual's domicile, the Commission looks at five primary factors that tend to show where an individual is domiciled. The primary factors are the individual's primary 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.

The home factor looks at the individual's principal place of abode. Generally, this factor is a comparison of the structures where the individual lives; however, it also includes the community and the ties the individual established or is establishing. In this case, Mr. [Redacted] rented an apartment in [Redacted] from January 2006 through April 2010, while his wife and children resided in the house in Idaho. Based upon size and value, the home factor favors Idaho. However, if you consider time and use for Mr. [Redacted], there is a good argument for this factor going to [Redacted].

The active business involvement factor looks at the individual's pattern of employment. 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, there is no doubt Mr. [Redacted] employment was in [Redacted]. The only other involvement in business activities by Mr. [Redacted] was as a passive owner in an S corporation located in Idaho in which Mrs. [Redacted] was involved. The taxpayers derived very little income from this corporation in Idaho, and the business could easily

be moved to [Redacted]. Therefore, it is clear that Mr. [Redacted] business and source of income came from [Redacted] sources.

The time factor is an analysis of where an individual spends his time during the year. In this case, it can easily be said that most of Mr. [Redacted] time was spent in [Redacted], due to his employment. Mr. [Redacted] did spend time in Idaho; approximately 142 days in 2008, 133 days in 2009, and 45 days during the first four months of 2010. Some of this time in Idaho, according to the appeal letter, was spent readying the Idaho house for sale or rent. This factor shows Mr. [Redacted] spent the majority of his time in [Redacted].

The family connections factor is an analysis of the individual's family both within and without Idaho. Mr. [Redacted] known family connections were in Idaho. The taxpayers provided no information on any family living in [Redacted]. With no family connections in [Redacted], this factor points to Idaho.

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 taxpayers stated Mr. [Redacted] moved the majority of his personal effects such as clothing, shoes, etc., to [Redacted] along with family pictures, medical records, tax returns, business records, and his religious books. Mr. [Redacted] did not move his car to [Redacted], choosing to sell it instead, as Mr. [Redacted] employer made a vehicle available to him. While Mr. [Redacted] did move some personal items to [Redacted], one would assume with his wife and children in Idaho, Mr. [Redacted] had closer near and dear items in Idaho. This factor therefore, favors Idaho.

Other minor factors considered by the Commission include voter's registration, driver's licenses, vehicle registrations, hunting and fishing licenses, banking institutions, and civic and

social functions. The Commission has no record of Mr. [Redacted] hunting and fishing licenses, but all the other minor factors clearly show [Redacted] as the place Mr. [Redacted] identified himself with. In 2006, Mr. [Redacted] surrendered his Idaho driver's license and obtained a [Redacted] State driver's license. Mr. [Redacted] registered to vote in [Redacted] in 2008 and in 2009 provided jury service in [Redacted]. Mr. [Redacted] driver's license and voter registration did not change until 2010 when he returned to Idaho. Looking at the minor factors, the Commission found them pointing to a [Redacted] domicile.

The Commission also considered the concurrence of events stated in IDAPA 35.01.01.030.02.a. Idaho Income Tax Administrative Rules. The first test, did Mr. [Redacted] have the intent to abandon his old domicile? The Commission found Mr. [Redacted] did intend to abandon his old domicile. Mr. [Redacted] stated he intended to live and work in [Redacted] permanently or at least for an indefinite time and fully intended to move his family's domicile to [Redacted]. The taxpayers stated they intended to put the Idaho home on the market once it was readied for sale. However, listing the home was delayed due a family member's illness, a bad economy, and an uncertainty of whether or not, due to restructuring, Mr. [Redacted] division within his [Redacted] company was going to be transferred to [Redacted]. While the house in Idaho was ultimately not sold, the taxpayers' state the intent to relocate Mrs. [Redacted] and the children only ceased in 2010 when Mr. [Redacted] accepted an unsolicited job offer from a Boise based company. Therefore, it is reasonable to assume Mr. [Redacted] fully intended to abandon his Idaho domicile. The second test, did Mr. [Redacted] intend to acquire a new domicile? The Commission found Mr. [Redacted] did intend to set up a new domicile in [Redacted] as indicated by his statements and the fact that he took steps to identify himself as a permanent or indefinite fixture in [Redacted] when he obtained a [Redacted] driver's

license and voter's registration. The third and final test is physical presence in the new domicile. Mr. [Redacted] did have physical presence in Idaho during taxable years 2008, 2009, and 2010; however, as shown in the time factor discussed above, the majority of his time was spent in [Redacted]. Mr. [Redacted] primary physical presence was in [Redacted].

Therefore, it is the Commission's opinion that Mr. [Redacted] abandoned his Idaho domicile in 2005 when he moved to [Redacted]. The taxpayer did have, and continued to have, connections with Idaho during the years shown in the NODD. However, the information available lacks a predetermined intent to keep Idaho as his state of domicile. Therefore, the NODD dated December 16, 2011, and directed to [Redacted], should be cancelled.

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.
