

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 24941
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted](taxpayers) protested the Notice of Deficiency Determination (NODD) issued by the Income Tax Audit Bureau of the Idaho State Tax Commission (Commission) dated March 9, 2012, asserting additional Idaho income tax, penalty, and interest for taxable years 2008 through 2010 in the total amount of \$29,947.

The taxpayers disagreed with the Bureau’s determination that they were domiciled in Idaho during the years in question. The Tax Commission, having reviewed the file, issues its decision.

BACKGROUND

The taxpayers’ 2008 through 2010 Idaho individual income tax returns were selected for review by the Income Tax Audit Bureau (Bureau) of the Commission. Specifically at issue was the residency status of the taxpayers. For all taxable years in question, the taxpayers filed Idaho Form 43, indicating on the returns that they were nonresidents. The Bureau contacted the taxpayers and requested they fill out a residency and domicile questionnaire, which they did.

The Bureau reviewed the information provided by the taxpayers and gathered additional information regarding the taxpayers. The Bureau determined from that information that the taxpayers did not abandon Idaho as their state of domicile. The Bureau adjusted the taxpayers’ 2008 through 2010 returns to show them domiciled in Idaho and sent them an NODD, which they protested.

The taxpayers protested the Bureau's determination, stating they were residents of and domiciled in, the state of [Redacted]. The taxpayers stated they do own a home [Redacted] The taxpayers stated they purchased a home in [Redacted] when it is too hot to golf in [Redacted].

The Bureau referred the matter for administrative review and the Commission sent the taxpayers a letter that discussed the methods available for redetermining a protested NODD. The taxpayers responded to the letter but did not request a hearing.

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.

In determining an individual's domicile, the 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.

The home factor looks at the individual's 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, the taxpayers have two homes, a home [Redacted] and a home in [Redacted]. The [Redacted] home is larger in size but the [Redacted] home has a greater value per square foot. A comparison of the [Redacted] home

to the Idaho home yields little determinative information unless you consider time and use, which would favor this factor going to [Redacted].

The taxpayers applied for and received the homeowner's exemption on the [Redacted] house in taxable year 2001 when they purchased the home. When given the opportunity to provide additional comments on the domicile questionnaire, the taxpayers stated that when Mr. [Redacted] inquired at the [Redacted] County Assessor's office about removing the homeowner's exemption, he was told that if he was not taking it on his [Redacted] residence, he could use it on the [Redacted] residence. The taxpayers have subsequently learned this is not an accurate statement, have removed the exemption, and repaid [Redacted] County the amount of benefit received from the homeowner's exemption.

The taxpayers' community involvement placed their ties with [Redacted]. The taxpayers attended church in [Redacted], volunteered for election work and were members of the [Redacted] [Redacted]. Mr. [Redacted] is an avid golfer and spends much of his time playing the [Redacted] course; the taxpayers' [Redacted] home is located near the [Redacted]. According to the information presented, Mr. [Redacted] also enjoys playing the slot machines and has frequent interaction with the gaming community in [Redacted]. The only information about [Redacted] is that the taxpayers visited family from time to time. The taxpayers' community involvement clearly shows the taxpayers were a part of the [Redacted] community; therefore, the 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] [Redacted] domicile.

The time factor is an analysis of where an individual spends his time during the year. As mentioned earlier, one of the main reasons the taxpayers purchased a home in [Redacted] was because of the warmer climate. The taxpayers have stated they spend the majority of their time in [Redacted], returning to Idaho mainly during the summer months. A review of the taxpayers' joint credit card statements shows numerous charges were made in both [Redacted] by one of the taxpayers. However, with the exception of an extended stay by Mrs. [Redacted] in February 2009, to care for her ailing father, the pattern of the purchases seems to support the taxpayers' claim of spending the majority of each year in [Redacted]. The time factor shows the taxpayers' time was spent mostly in [Redacted]. When the taxpayers were in Idaho, their time in Idaho was more like a seasonal or occasional visitor. Consequently, 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 taxpayers have provided a list several pages long of items kept at the [Redacted] residence. The list shows a wide variety of items; hobby and craft supplies, sewing machine, four televisions, yard tools, complete wardrobes for both, church records, family photos, bowling balls, and golf clubs. It appears the taxpayers had the things with them that made their life [Redacted] more enjoyable. The 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, the taxpayers'

have a son and four grandchildren living in [Redacted], a daughter and three grandchildren five hours from [Redacted], another son in [Redacted] and another participating in the master's program at [Redacted]. Mrs. [Redacted] father resided in [Redacted] until his passing in taxable year 2009, Mr. [Redacted] parents and Mrs. [Redacted] mother are deceased. From purely a location standpoint, this factor indicates a [Redacted] domicile; however, this is the factor that taxpayers have the least control over. Taxpayers can choose to live in the same area as their family; likewise, the family can also choose to live in the same area of the taxpayer. Taxpayers may also want to live in the same area as their family, but because of financial or economic circumstances, it may not be possible. Therefore, even though the factor favors [Redacted], the Commission does not give it much weight in this case.

The primary factors clearly weigh in favor of [Redacted] as the taxpayers' state of domicile. Even though the taxpayers maintained some connection to Idaho, the Commission agrees with the factor analysis that the taxpayers identified themselves with the community [Redacted] and, therefore, the state [Redacted].

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 the taxpayers' hunting and fishing licenses, but all the other minor factors clearly show Nevada as the place the taxpayers identified themselves with. The taxpayers have registered to vote in [Redacted], licensed their vehicles in Nevada and have obtained [Redacted] drivers licenses. Looking at the minor factors, the Commission found them pointing to a [Redacted] domicile.

CONCLUSION

The taxpayers left Idaho in taxable year 2002 seeking a residence in a warmer climate, which they found in [Redacted]. Once settled [Redacted], the taxpayers became a part of that community. The taxpayers continued to have Idaho source income during taxable years 2008 through 2010 and report that to Idaho on Form 43 as non-residents. The taxpayers did incorrectly receive the homeowner's exemption for taxable year 2011, have repaid that amount to [Redacted] County and requested the exemption be removed. The taxpayers also incorrectly received the benefit for the homeowner's exemption for taxable years 2008 through 2010 and have indicated to the Commission that they will also repay the county for these years.

THEREFORE, the NODD dated March 9, 2012, is hereby 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.
