

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 25006
)
)
Petitioners.) DECISION
)
_____)

[Redacted] (taxpayers) protested the Notice of Deficiency Determination (NODD) issued by the staff of the Idaho State Tax Commission dated March 1, 2012, asserting additional Idaho income tax and interest for taxable years 2008, 2009, and 2010 in the total amount of \$9,405. The taxpayers disagreed with the Income Tax Audit Bureau’s (Audit) determination that Mr. [Redacted] was domiciled in Idaho during taxable years 2008, 2009, and 2010. The taxpayers claimed Mr. [Redacted] domicile was in [Redacted] during those years and his income was not taxable by Idaho.

BACKGROUND

The taxpayers submitted Idaho Form 43 for taxable years 2008, 2009, and 2010. Audit selected the returns for review and contacted the taxpayers for additional information, specifically an explanation and documentation of Mr. [Redacted]’ status as a non-resident. Mr. [Redacted] returned the residency and domicile questionnaire as requested by Audit but did not submit any additional documentation. Audit reviewed this information, gathered other information, researched the issue, and made its determination. Audit determined Mr. [Redacted] was domiciled in Idaho and adjusted the taxpayers’ 2008 through 2010 returns to show Mr. [Redacted] as domiciled in Idaho. Audit sent the taxpayers an NODD, which the taxpayers protested.

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 whatsoever, 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 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.

An individual's home can be a physical building (home) or it can be a community to which the individual has established strong and endearing ties. In this case, the taxpayers' home for many years has been Idaho. It was not until 2005 that Mr. [Redacted] began renting first an RV space and then a house in [Redacted] due to his employment with [Redacted], a mining company in [Redacted]. Mr. [Redacted] began living in [Redacted] while Mrs. [Redacted] and the minor children remained in Idaho. Other than renting living space, Mr. [Redacted] has not shown that he considered [Redacted] to be his permanent home with all the sentiment, feeling, and permanent association that goes with calling a place a home. See Starer v. Gallman, 50 A.D.2d 28, 377 N.Y.S.2d 645 (1975). For all practical purposes, the appearance is that Mr. [Redacted] was in [Redacted] for employment purposes only. Nothing was presented to show that Mr. [Redacted] went to [Redacted] to make it his permanent and indefinite home.

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, Mr. [Redacted] was a mine maintenance worker with the [Redacted] mining corporation operating in [Redacted]. This factor favors [Redacted], but it is apparent that Mr. [Redacted] is only in [Redacted] for employment.

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. When asked on a domicile questionnaire how many days he was physically present in Idaho during each year, Mr. [Redacted] replied 120 days for calendar year 2010. He did not provide a response for the other years in question. However, in other correspondence with Audit, the taxpayer stated he worked a five on four off schedule and, when possible, would return home to be with his family on his days off. The figure of 120 days provided by Mr. [Redacted] would be consistent with this type of work schedule. The time factor slightly favors [Redacted], but even so, the evidence supporting this factor does not show the sentiment, feeling, and permanent association that go with calling a place a home. Starer, supra.

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. There is no record of family pets, recreational vehicles, collectibles, photo albums, etc. in [Redacted]. From the information available, one would assume with his wife, children, and a house in Idaho, Mr. [Redacted] had closer near and dear items in Idaho. Considering the information available, the Commission finds this factor favors Idaho primarily

because the taxpayers have not shown that Mr. [Redacted] had any sentimental attachments in or to [Redacted].

The last of the primary factors considers the individual's family connections. This factor is an analysis of the individual's family both within and without Idaho. In this case, Mr. [Redacted] immediate family was in Idaho. The taxpayers provided no information on any family living in [Redacted]. With no family connections in [Redacted], this factor definitely points to Idaho.

The primary factors tend to show Idaho as being Mr. [Redacted] domicile. However, adding the minor factors can either solidify or swing the determination to [Redacted]. The minor factors considered were Mr. [Redacted] privilege licenses, his voter's registration, vehicle registrations, Mr. [Redacted] medical and dental care, Mr. [Redacted] civic and community functions, and the use of financial institutions.

During the years in question, Mr. [Redacted] maintained an Idaho driver's license, renewing it on February 13, 2009. In addition, Idaho driver's licenses are not available to nonresidents of Idaho. Therefore, Mr. [Redacted] had to affirm to the Department of Motor Vehicles that he was a resident of Idaho when he obtained his license in 2009.

Mr. [Redacted] also purchased Idaho resident fish and game licenses on January 12, 2008, August 24, 2009, and February 13, 2010, all claiming residency in Idaho since 1999. Mr. [Redacted] also indicated on his domicile questionnaire that he voted in Idaho and registered vehicles in Idaho.

Looking at these minor factors, there is very little that associated Mr. [Redacted] with the state of [Redacted].

FINDINGS

Idaho Income Tax Administrative Rule IDAPA 35.01.01.030.02.a. states, for a domicile to change, there must be a concurrence of specific events. The taxpayer must have the intent to abandon his domicile, the intent to acquire a new domicile, and physical presence in the new domicile. Prior to 2005, both Mr. [Redacted] and Mrs. [Redacted] were domiciled in Idaho. It is clear Mrs. [Redacted] has maintained her Idaho domicile. It is also clear Mr. [Redacted] has a residence in [Redacted]. What is not clear is whether Mr. [Redacted] has established a new domicile.

Mr. [Redacted] had physical presence in both Idaho and [Redacted]; Idaho during a part of his off time and [Redacted] mostly while working. Mr. [Redacted] stated that, "My personal residence was [Redacted], in the years 2008-2010. In the state of [Redacted] when you are employed in that state you are a domicile of that state."

As mentioned previously, when asserting a change in domicile, the burden of proof is always on the party asserting a change to show that a new domicile has been created. The taxpayers' have not met that burden. When all the facts and circumstances presented were considered, the Commission found that the actions of Mr. [Redacted] indicate that he has not abandoned Idaho as his state of domicile. The Commission found Mr. [Redacted] connections to Idaho were stronger and more fixed. His primary purpose or reason for being in [Redacted] was for employment.

THEREFORE, the NODD dated March 1, 2012, and directed to [Redacted], is hereby AFFIRMED.

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

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2008	\$3,101	\$516	\$3,617
2009	2,449	285	2,734
2010	3,064	213	<u>3,277</u>
		TOTAL DUE	<u>\$9,628</u>

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.
