

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25025
[REDACTED])	
Petitioner.)	
)	DECISION
_____)	

[Redacted], Personal Representative, (Petitioner) protested the Notice of Deficiency Determination issued to the Estate of [Redacted] by the Tax Discovery Bureau of the Idaho State Tax Commission dated May 4, 2012, asserting Idaho income tax, penalty, and interest for taxable year 2007 in the total amount of \$14,338.

Petitioner disagreed with the Bureau’s determination that [Redacted] was domiciled in Idaho for the entire taxable year 2007. Petitioner requested a hearing; however, in lieu of a hearing the Tax Commission and Petitioner’s representative discussed the matter and came to a resolution through a series of telephone conversations. The Tax Commission, having reviewed the file hereby issues its decision.

BACKGROUND

The Tax Discovery Bureau (Bureau) received information from the Internal Revenue Service that showed [Redacted] filed her 2007 [Redacted] income tax return with an Idaho address. The Bureau researched the Tax Commission’s records and found [Redacted] did not file an Idaho individual income tax return for taxable year 2007. The Bureau sent [Redacted] a letter asking about her requirement to file an Idaho income tax return for taxable year 2007. Petitioner replied that [Redacted] died March 25, 2012, and therefore, was unable to respond to the Bureau’s request. The Bureau sent additional requests for information to Petitioner to which

Petitioner stated [Redacted] was not available to answer the questions and any claim should be submitted to her estate.

The Bureau reviewed the information available and determined [Redacted] was required to file a 2007 Idaho income tax return. The Bureau prepared a return for [Redacted] and sent a Notice of Deficiency Determination to Petitioner. Petitioner protested the Bureau's determination that [Redacted] was required to file an Idaho individual income tax return.

The Bureau referred the matter for administrative review and the Tax Commission sent Petitioner a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. Petitioner contacted the Tax Commission and provided the following information.

[Redacted] was a long time resident of the state of Washington. In 2007, [Redacted] sold her home in [Redacted]. Because [Redacted] home was a duplex she continued to rent the unit she lived in. [Redacted] was looking for senior living accommodations and had a specific facility in mind. When [Redacted] could not get into the facility, she came to Boise to visit her son, Petitioner, until an opening was available. A few weeks later, [Redacted] was preparing to return to [Redacted] when she fell and broke her wrist. The injury to [Redacted]wrist was such that she was unable to drive. Consequently [Redacted] stayed with Petitioner while her wrist mended. At all times during [Redacted] recovery, her plan was to return to [Redacted] where her siblings lived.

However, at some point [Redacted] considered staying in Boise. She began looking into the senior living accommodations in Boise and when a suitable facility had an opening, [Redacted] contracted with the facility to move into the facility in January 2008. It is unknown exactly when [Redacted] decided to make Boise her home; however, Petitioner suspects the

decision was made when [Redacted] began looking at the various senior living facilities. Based upon this timeframe, Petitioner prepared and provided an Idaho income tax return for [Redacted] showing she was resident of Idaho for three months.

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, 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 [Redacted] was domiciled Washington when she came to Idaho in August 2007 to visit Petitioner. Therefore, the burden is the Tax Commission's to show a change of domicile occurred when [Redacted] came to Idaho.

Looking at the tests for a change of domicile, it is apparent [Redacted] had physical presence in Idaho; however, that presence was initially intended to be temporary. As for

Ms. [Redacted] intent to abandon and intent to acquire, the record is fairly clear that her intention changed due to physical limitations. [Redacted] did not plan on living in Idaho it just became the convenient thing to do. [Redacted] intent to change her domicile did not manifest itself until [Redacted] began looking for senior living accommodations in Idaho. Therefore, the Tax Commission agrees that [Redacted] domicile did not change until October 2007.

CONCLUSION

[Redacted] came to Idaho as a visitor intending to return to her home state, Washington. Due to unfortunate circumstances [Redacted] stay in Idaho was longer than anticipated. [Redacted] ultimately decided Idaho's senior living facilities suited her and she contracted with a facility to move in. [Redacted] moved into the complex and only returned to Washington to liquidate some of her belongings and move the rest to Idaho. As a result, [Redacted] abandoned Washington and acquired Idaho as her domicile.

The Idaho income tax return Petitioner provided was an attempt to show [Redacted] change of domicile beginning in October. However, the return Petitioner prepared was a full year resident return that tried to show a part-year resident status. Therefore, the Tax Commission prepared a return for [Redacted], on the correct form, showing her part-year resident status from October through December 2007.

THEREFORE, the Notice of Deficiency Determination dated May 4, 2012, and directed to the [Redacted] is AFFIRMED as MODIFIED by this decision.

IT IS ORDERED that the Estate pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2007	\$1,090	\$273	\$256	\$1,619

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.

Copy to:

[Redacted]