

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 25033
[Redacted],	)	
	)	
Petitioners.	)	DECISION
_____	)	

[Redacted] (taxpayers) protest the Notice of Deficiency Determination (NODD) issued by the auditor for the Idaho State Tax Commission (Commission) dated April 13, 2012, asserting additional liability for Idaho income tax and interest in the total amounts of \$11,237, \$8,907, and \$9,366 for taxable years 2008, 2009, and 2010, respectively.

[Redacted] filed Married, Filing joint, Idaho individual income tax returns for taxable years 2008 through 2010 in which Mr. [Redacted] claimed to be either a part-year resident or a nonresident. The returns submitted by the taxpayers for taxable years 2008 through 2010 reported only [Redacted] Idaho wages along with the interest, dividends, and capital losses reported on the [Redacted] returns. The returns were selected for review by the Income Tax Audit Bureau (Bureau), the issue specifically being the residency status of Mr. [Redacted].

The [Redacted] were asked to provide certain documentation and to complete a residency and domicile questionnaire, which they did. Additional information was also provided during phone conversations between the Bureau and Mrs. [Redacted]. The Bureau reviewed this information and gathered other information about Mr. [Redacted]. The Bureau found Mr. [Redacted] purchased an Idaho driver's license in October 2007 and again in October 2009. Mr. [Redacted] also purchased resident fish and game licenses in 2008, 2009, and 2010 and jointly purchased a home in [Redacted], Idaho, in taxable year 2007, where Mrs. [Redacted] and the

children resided. Based on this information, the Bureau determined Mr. [Redacted] was domiciled in Idaho and adjusted the taxpayers' 2008 through 2010 returns to show Mr. [Redacted] as domiciled in Idaho. The Bureau sent the taxpayers an NODD which the taxpayers protested.

The taxpayers, through their appointed representative, appealed the determination, contending that Mr. [Redacted] resided in the state of [Redacted] during taxable years 2008, 2009, and 2010 and that he has never established a domicile in Idaho.

The taxpayers stated prior to 2008, the entire family was domiciled in [Redacted]. In August 2007, the [Redacted] jointly purchased a home in [Redacted], Idaho, but when Mr. [Redacted] notified his [Redacted] employer he was going to move, they responded with a promotion and increased his wages. According to the taxpayers, it was then decided that Mrs. [Redacted] and the children would move to Idaho and Mr. [Redacted] would continue to live and work in Washington. They stated Mr. [Redacted] purchase of an Idaho driver's license was required in order for Mrs. [Redacted] to title the vehicles brought into Idaho since the [Redacted] title was in both of their names. As for the resident fish and game licenses, according to the taxpayers' appointed representative, Mr. [Redacted] would not have met the six month residency requirement to purchase a resident license so he must have simply purchased the wrong type of license.

In this case, the Bureau has taken a secondary position which is if Mr. [Redacted] is not an Idaho resident, there would still need to be an adjustment to the taxpayers' return to include Mrs. [Redacted] share of the community income. In response to this position, the taxpayers claim to have maintained separate property since Mrs. [Redacted] moved to Idaho, and are

therefore, also not in agreement with this position taken by the Bureau. The Bureau received statements from the taxpayers' representative that it is his belief neither one of the positions taken by the Bureau are correct. The Bureau then referred the matter to the Legal/Tax Policy Division for administrative review.

The Commission reviewed the matter and sent the taxpayers a letter discussing the methods available for redetermining a protested NODD. The taxpayers did not request a hearing, but their appointed representative did respond with a letter stating that all relevant information for the Commission's consideration had previously been submitted. Therefore, the Commission having reviewed the file, hereby issues its decision.

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 Rules 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. 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 the present case, after reviewing the file, the Commission agrees with the taxpayers' determination of Mr. [Redacted] domicile. From the information available, Mr. [Redacted] domicile of origin was Washington. His Washington domicile more than likely continues to this day. Mr. [Redacted] does return to Idaho to visit his family and did spend some time in Idaho searching for employment in 2007 but it does not appear Mr. [Redacted] abandoned his Washington domicile nor had intent to acquire Idaho as his domicile. Therefore, it is determined Mr. [Redacted] domicile is Washington.

With the determination that Mr. [Redacted] was not domiciled in Idaho, the potential for an audit adjustment is not automatically eliminated. Mrs. [Redacted] was domiciled in Idaho; therefore, there is still the need to determine what income, if any, should be reported to Idaho.

In cases where two individuals reside and are domiciled in different states, the Commission looks at how each state treats the marital community; whether it is community

property or separate property. In this case, we have an individual domiciled in Idaho, and the other, domiciled in Washington.

Both the state of Idaho and the state of Washington are community property states and both treat earnings as community property and, therefore, community income. Under Idaho law, earnings of a spouse are presumed to be community property. Idaho Code section 32-906(1); Martsch v. Martsch, 103 Idaho 142, 645 P.2d 882 (1982). This is true even if the husband and wife are separated and living apart. Suter v. Suter, 97 Idaho 461, 546 P.2d 1169 (1976) Desfosses v. Desfosses, 120 Idaho 354, 815 P.2d 1094 (Ct. App. 1991). Thus, under Idaho law, only death or a legal divorce will disband the community.

Washington community property law also provides that income earned through the labor of a spouse is presumed to be community income. R.C.W. section 26.16.030; In re Marriage of Hurd, 848 P.2d 185 (Wa.Ct.App. 1993) (“Earnings arising from services performed during marriage are community property.”). However, Washington community property law provides an exception to this general principle where the husband and wife are living separate and apart even though they are not legally divorced. Specifically, R.C.W. section 26.16.140 provides that “[w]hen a husband and wife are living separate and apart, their respective earnings and accumulations shall be the separate property of each.” Thus, under Washington law, earnings of a spouse are community property except where the spouses are separated and living apart, in which case, each spouse’s earnings are treated as his or her separate property. However, Washington courts have consistently held that in order for R.C.W. section 26.16.140 to apply, the married couple must be living separate and apart as a result of marital discord.

The taxpayers have made no indication that their living arrangement is in any way because of marital discord. Therefore, based on the community property laws of their respective

states of domicile, Mr. [Redacted] earnings and Mrs. [Redacted] earnings would be considered community income.

The taxpayers were both domiciled in community property states during taxable years 2008 through 2010 and filed their tax returns for all years with a filing status of Married, filing joint. There are certain exceptions within federal code and within the state of Washington community property laws that may allow certain taxpayers to treat their earnings as separate income. However, those exceptions are not present in this case. Therefore, the Commission concludes that the community property laws should govern the ownership of the income in question. Accordingly, the Commission finds that the auditor's secondary position, that the taxpayers had a split domicile and the community property income should be split and reported to Idaho, is the proper determination of Idaho taxable income.

THEREFORE, the NODD, dated April 13, 2012, is hereby MODIFIED, in accordance with the provisions of this decision and, as so MODIFIED, is APPROVED and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following tax and interest (computed to March 2, 2013):

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2008	\$4,184	\$714	\$ 4,898
2009	3,979	480	4,459
2010	4,173	307	4,480
		TOTAL DUE	<u>\$13,837</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

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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.