

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25125
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

On November 18, 2011, the staff of the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayers) proposing income tax, penalty, and interest for taxable year 2007 in the total amount of \$9,913.

On January 10, 2012, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not respond to the Commission’s hearing rights letter and did not request a hearing. They did not provide any additional information for consideration. The Commission, having reviewed the file, hereby issues its decision.

The Bureau received information that the taxpayers may have a filing requirement with the state of Idaho. The Bureau researched the Commission’s records and found that the taxpayers did not file an Idaho income tax return for taxable year 2007. The Bureau sent the taxpayers letters asking about their requirement to file an Idaho income tax return for taxable year 2007. The taxpayers did not respond to the Bureau’s letters. The Bureau obtained additional information from the [Redacted] and determined the taxpayers were required to file an Idaho individual income tax return for taxable year 2007. The Bureau prepared the return for the taxpayers and sent them an NODD.

The taxpayers protested the Bureau's determination. They stated they lived and worked in [Redacted] in taxable year 2007 and their tax preparer at the time advised them against filing an Idaho income tax return because they were not residents.

The Commission sent the taxpayers a letter giving them two options for having the NODD redetermined. The taxpayers did not respond. The Commission decided the matter based upon the information available.

The taxpayers filed resident Idaho income tax returns for taxable years 1997 through 2006, and taxable years 2008 through 2010. The taxpayers did not file an Idaho income tax return for taxable year 2007, but did file a [Redacted] income tax return with an Idaho address and claiming Idaho as their tax home. The information the Bureau gathered during its research of the taxpayers showed that they both maintained Idaho driver's licenses from 2003 through present; that they titled and registered two vehicles in Idaho in taxable year 2007, and that they claimed the homeowner's exemption continuously since taxable year 2003 for their residence located at [Redacted]Idaho. The homeowner's exemption is property tax relief available only to residents of Idaho.

Idaho Code section 63-3002 states the intent and purpose of the Idaho Income Tax Act:

[T]o impose a tax on residents of this state measured by Idaho taxable income wherever derived and on the Idaho taxable income of nonresidents which is the result of activity within or derived from sources within this state.

Idaho Code section 63-3013 defines resident as any individual who is domiciled in Idaho for the entire year or who maintains a place of abode in Idaho and is present in the state for more than 270 days in the taxable year.

Domicile is defined in the Tax Commission's Administrative 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. An individual can have several residences or dwelling places, but he legally can have but one domicile at a time.” Income Tax Administrative Rule 030.02 (IDAPA 35.01.01.030.02). The essential distinction between residence and domicile is that domicile requires intent to remain at one place for an indeterminate or indefinite period. Reubelmann v. Reubelmann, 38 Idaho 159, 164, 220 P. 404, 405 (1923). Domicile, once established, persists until a new domicile is legally acquired. In re Cooke’s Estate, 96 Idaho 48, 524 P.2d 176 (1973). In domicile law, three things must happen for a change of domicile to occur: 1) intent to abandon the old domicile, 2) intent to acquire a new domicile, and 3) physical presence in the new domicile. See Idaho Income Tax Administrative Rules IDAPA 35.01.01.030.02.a. See also, Pratt v. State Tax Commission, 128 Idaho 883, 885 n.2, 920 P.2d 400, 402 n.2 (1996). Whether an individual has the specific intent to create a new domicile is evidenced by that individual’s actions and declarations. Generally speaking, 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, Inc., 583 P.2d 613, 614 (Utah 1978).

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).

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. Milam, 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).

The taxpayers stated they did not live in Idaho during taxable year 2007. However, their maintaining of Idaho driver's licenses, their filing federal income tax returns with an Idaho address, their continued claiming of the homeowner's exemption, and their registering of vehicles, show the taxpayers considered themselves Idaho residents in taxable year 2007. Therefore, the Commission found the taxpayers established a domicile in Idaho as early as 1997.

The information available showed the taxpayers had definite ties with Idaho. The taxpayers did not provide anything to show they severed their ties with Idaho. The burden of proof rests with the person asserting a change of domicile. Margani v. Sanders, 453 A.2d, supra, at 503; see generally, Restatement (Second) of Conflicts, § 19 (1971); R. Leflar, American Conflicts of Law, § 15, 3rd Ed. 1977. The taxpayers provided no information to show their domicile changed.

Since the taxpayers have not shown they abandoned Idaho and acquired another domicile, the Commission finds the taxpayers were required to file a 2007 Idaho income tax return. The taxpayers also provided nothing to show that the return prepared by the Bureau was in error or incorrect. They have not met their burden of proof. (*See* Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984).) Therefore, the Commission upholds the Bureau's computation of the taxpayers' Idaho income tax.

The Bureau added interest and penalty to the taxpayers' Idaho tax liability. The Commission reviewed those additions and found them appropriate and in accordance with Idaho Code sections 63-3045 and 63-3046.

THEREFORE, the NODD dated November 18, 2011, is hereby APPROVED and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2007	\$6,869	\$1,717	\$1,597	\$10,283

Interest is calculated through January 31, 2013.

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.
