

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 24940
[Redacted],)
)
)
Petitioner.) DECISION
)
_____)

[Redacted] (Petitioner) protested the Notice of Deficiency Determination dated March 9, 2012, issued by the Income Tax Audit Bureau of the Idaho State Tax Commission asserting additional income tax, penalty, and interest for taxable years 2007 through 2010 in the total amount of \$48,994. Petitioner disagreed that he was domiciled in Idaho during those taxable years. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

Petitioner filed part-year resident Idaho individual income tax returns for taxable years 2003, 2004, 2006, and 2008. Petitioner filed nonresident Idaho individual income tax returns for taxable years 2005 and 2010. Petitioner filed an Idaho resident individual income tax return for taxable year 2009, which Petitioner subsequently filed an amended return changing his status to a nonresident. Petitioner did not file an Idaho individual income tax return for taxable year 2007.

Petitioner’s amended 2009 return was referred to the Income Tax Audit Bureau (Bureau) and it decided a review of Petitioner’s taxable years 2007 through 2010 was needed. The Bureau requested information from Petitioner and Petitioner provided a narrative of the information he thought the Bureau was seeking. The Bureau reviewed the information provided and determined Petitioner was domiciled in Idaho at minimum for taxable years 2007 through 2010, but quite possibly earlier; however, the earlier years were closed by statute.

The Bureau prepared an Idaho income tax return for Petitioner for taxable year 2007, adjusted Petitioner's 2008 and 2010 Idaho income tax returns to reflect an Idaho domicile, and denied Petitioner's 2009 amended Idaho income tax return. The Bureau sent Petitioner a Notice of Deficiency Determination, which Petitioner protested.

Petitioner stated he left Idaho in the 1960's to attend [Redacted] and other than vacations and family visits, the only time he was in Idaho since then was in 2003 when he took a small job in [Redacted], Idaho. The [Redacted] job was his only employment in Idaho, and when it was at a point that he could leave, he went back to [Redacted] and began working overseas again. Petitioner stated he did acquire some connections in Idaho, but those connections were not indicative of his intent to establish a domicile. The Bureau reviewed Petitioner's argument and the additional information he submitted, acknowledged Petitioner's protest, and referred the matter for administrative review.

The Tax Commission reviewed the matter and sent Petitioner a letter giving him two options for having the Notice of Deficiency Determination redetermined. Petitioner requested a hearing wherein the following information was presented.

Petitioner's domicile of origin was Idaho up until he left Idaho to attend college in [Redacted] Petitioner did not return to Idaho for other than visits until 2003. In 2003, Petitioner separated from his wife and came to Idaho to establish a residence in order to file for divorce in Idaho. Petitioner was concerned about the amount of alimony he would be required to pay if he filed for divorce in [Redacted], so Petitioner came to Idaho to establish residence, but before he could file his wife filed for divorce in [Redacted]. The divorce was long and costly for Petitioner and it was final in February 2005.

Prior to coming to Idaho in 2003, Petitioner was domiciled in [Redacted]. He was married, owned a home in [Redacted], had a [Redacted]driver's license, was registered to vote, and owned investment property in [Redacted]. It was while Petitioner was in [Redacted] in the 1980s that a [Redacted] patrolman pulled him over and found Petitioner had an expired state side driver's license. Petitioner produced a valid [Redacted]driver's license, but the patrolman told him he needed a license from a state to operate a vehicle in [Redacted].

When Petitioner moved to Idaho in 2003 his sole purpose was to put him in the most advantageous position possible for his upcoming divorce. Petitioner took a job with [Redacted] to develop their new plant [Redacted]. This job was a lower paying job than what Petitioner could have had overseas, but he took it to establish an income stream for alimony purposes. However, when Petitioner's wife filed for divorce in [Redacted] and Petitioner was served in Idaho, it no longer mattered that he tried to establish an Idaho residency. Consequently, as soon as Petitioner was no longer needed on the [Redacted] project he returned to [Redacted], went through a lengthy divorce, and then began working overseas again on a job in [Redacted].

After completing the job in [Redacted] and a smaller job in [Redacted], Petitioner returned to [Redacted]where he purchased a 35 foot trailer, had a friend move it to a RV park, and lived in it in [Redacted] until taking a job in [Redacted] in the fall of 2008. When Petitioner left for [Redacted] he moved his trailer to his father's property in [Redacted]. Petitioner already had a pickup stored in Idaho that he left there when he departed in 2004. Petitioner had no need of a vehicle in [Redacted] since his employer provided him with a company vehicle.

The [Redacted] job shut down due to its infeasibility, so by the end of 2008 Petitioner was between jobs. At that time, Petitioner came to Idaho to spell his brother from caring for their elderly father. Because the [Redacted] job ended so abruptly, Petitioner's employer was not

prepared to send him to the next job. Apparently, international work requires special permissions that must be obtained from the host country before employees can work in particular countries. Consequently, Petitioner's stay in Idaho was longer than normal. Other than caring for his father, Petitioner had most if not all his possessions in Idaho. Petitioner's trailer was in Idaho, he had a vehicle in Idaho, and just prior to leaving for [Redacted], Petitioner purchased his father's house in [Redacted]. Petitioner had no other place where he was connected when the [Redacted] job ended.

Petitioner last purchased a resident Idaho hunting license in 1989. Petitioner recalls this because he was fined for having a resident license when he returned to [Redacted] at a border check station. Petitioner was in [Redacted] when Idaho fish and game served a warrant at his father's house. From that time forward, Petitioner has only purchased nonresident Idaho hunting licenses.

Petitioner does not have a lot of time to pursue many activities outside of work. Petitioner stated he liked to play golf and at one time he had a 9 handicap. Recently, Petitioner has not had the time to play golf. Petitioner stated he has no other hobbies or interests. Petitioner stated he liked to travel and enjoyed being in different places. Petitioner's desire to travel is one of the reasons he works overseas; another is the money. Overseas work pays more than domestic work and currently there is a lot of it.

Petitioner is a member of the [Redacted] and has been one for over thirty years. Petitioner's father talked him into becoming a member. He pays his dues but hasn't attended a meeting for nearly thirty years.

Petitioner has no real medical needs. He used a [Redacted] doctor once to get a physical for a job, but he does not have a regular physician. Petitioner's dental needs are met wherever he happens to be. He has had dental work done in [Redacted] and in the [Redacted].

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.

It is a fundamental rule of law that all persons have a domicile somewhere. Taylor v. Milam, 89 F. Supp. 880, 881 (P.C. Ark. 1950); ex parte Phillips, 275 Ala. 80, 152 So. 2d 144, 146 (1963). Equally, no person has more than one domicile at a time. Smith v. Smith, 45 Cal. 2d 235, 288 P.2d 497, 499 (1955).

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).

Petitioner stated he never intended Idaho to be his state of domicile. Petitioner stated his domicile was wherever his employment took him. Petitioner argued his domicile was the foreign country he was in at the time.

The presumption against a foreign domicile is stronger than the general presumption

against a change of domicile. Matter of Bodfish v. Gallman, 50 A.D.2d 457, 378 N.Y.S.2d 138.

In Suglove v. Oklahoma Tax Commission, 605 P.2d 1315 (1979) the court discussed domestic moves and foreign moves. The court stated,

Moves from one state to another are a common occurrence today. They are commonly considered to be permanent, or at least for an indefinite time and without intention of returning to the previous domicile. A move from one state to another is an ordinary event. The person remains within the same culture and among people who speak the same language. A person who moves from one state to another is not a foreigner anywhere in the United States. One's friends and family are still within a reasonable distance. In the absence of countervailing factors, it is not unreasonable to infer that such a move is permanent and constitutes a change of domicile.

On the other hand, a move to a foreign country entails a drastic change in one's life, thus making the intention to stay permanently in a foreign country less likely. Moving to a foreign country means leaving one's own culture, one's family, and friends in a way which most people would be reluctant to do. It is hence not unreasonable to infer that when an individual moves abroad on a foreign-situs job assignment he is not necessarily adopting it as a new domicile.

Although the question of domicile remains one of fact in each case, there still remains a strong presumption against a change of domicile in a situation where a person leaves his own country to live or carry on business in another for the "ties of country, of manners and of language might be so strong that one could with difficulty break them altogether." Suglove v. Oklahoma Tax Commission, supra. citing In re Hoff's Estate, 178 Misc. 515, 35 N.Y.S.2d 60, 63 (NY 1942). Nevertheless, Petitioner presented nothing to suggest he established himself in the foreign countries where he was employed. In fact, Petitioner stated he was only in the foreign markets because the money was better and he liked the change of scenery. Petitioner stated when the job was completed he was on to whatever job was offered next. Petitioner's comings and goings in various foreign countries does not show the intent to make the foreign countries his permanent home with all the sentiment, feeling and permanent association that goes with it. Matter of Starer v. Gallman, 50 A.D.2d 28, 377 N.Y.S.2d 645 (1975).

Clearly Petitioner established himself in [Redacted] up to the time of his attempted change to Idaho in 2003 to get more favorable divorce conditions. It is also clear Petitioner abandoned his attempt to be associated with Idaho when his ex-wife filed for divorce in [Redacted] eliminating any chances of Petitioner filing for divorce in Idaho. Petitioner's domicile was likely [Redacted] during all this time.

Petitioner's domicile remained with [Redacted] until he began acquiring more Idaho connections just prior to leaving for the job in [Redacted]. The factors that show Petitioner identified himself more with Idaho than with any other state began in 2008 when he purchased the house in Idaho, moved his trailer ([Redacted] home) to Idaho, renewed his Idaho driver's license, and consistently returned to Idaho. Another factor is that Petitioner filed nonresident [Redacted] income tax returns for 2007 through 2010. Each of these factors individually is not determinative; however, when combined or added together they show a pattern. And, when the [Redacted] job suddenly ended, Petitioner returned to the only place he was connected, Idaho. In addition, the time Petitioner spent in Idaho went beyond the time considered temporary or transitory and therefore he was presumed to be an Idaho resident. *See* IDAPA 35.01.01.040.02 Income Tax Administrative Rules.

CONCLUSION

It is clear from the record, Petitioner's sojourning outside the United States was purely employment related and there was no intent to make the foreign jobsites Petitioner's permanent home. Therefore, based upon the foregoing discussion and the fact that Petitioner abandoned [Redacted], the Tax Commission finds Petitioner established a domicile in Idaho beginning mid-December 2008. In accordance with this finding, Petitioner was not required to file Idaho

individual income tax returns for taxable years 2007 and 2008, but he was required to file Idaho individual income tax returns for taxable years 2009 and 2010.

During the review of this case, the Tax Commission found Petitioner did not claim a deduction for the taxes he paid to the foreign countries. The Bureau reviewed the foreign income exclusion but did nothing with the excess foreign taxes Petitioner claimed on his federal income tax returns. In Bogner v. State Tax Commission, 107 Idaho 854, 693 P.2d 1056 (1984), the Idaho Supreme Court made it clear an individual can deduct from taxable income itemized deductions as defined by various sections of the Internal Revenue Code, including section 164 which specifically allows foreign income taxes as a deduction, regardless of whether the individual chooses to do so on his or her federal returns. Since the Tax Commission is requiring Petitioner to file Idaho individual income tax returns, it is only right that the Tax Commission allow Petitioner all the deductions the Tax Commission has knowledge of. Therefore, the Tax Commission modified the Bureau's audit report to include an itemized deduction for the balance of the foreign taxes Petitioner paid.

THEREFORE, the Notice of Deficiency Determination dated March 9, 2012, and directed to [Redacted] is hereby AFFIRMED AS MODIFIED by this decision.

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

<u>YEAR</u>	<u>REFUND</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2007		\$ 0	\$ 0	\$ 0
2008		0	0	0
2009	(\$1,644)	0	0	(1,644)
2010		18,349	1,413	<u>19,762</u>
			TOTAL DUE	<u>\$18,118</u>

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of Petitioner's right to appeal this decision is enclosed.

DATED this _____ day of _____ 2013.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2013, 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.
