BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NO. 25176
[Redacted],	)	
	)	
Petitioner.	)	DECISION
	)	
	)	

On June 20, 2012, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) proposing income tax, penalty, and interest for taxable year 2008 in the total amount of $6,668.

On August 10, 2012, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer requested an informal hearing which was held October 22, 2012. The Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

This case began as an inquiry by the Tax Discovery Bureau (Bureau) as to the taxpayer's non-filed Idaho income tax return for taxable year 2008. The taxpayer was sent a letter by the Bureau on October 25, 2011, inquiring about her requirement to file an Idaho income tax return due to the Idaho address shown on her [Redacted] return. In response to this inquiry, the Bureau received a letter from the taxpayer's appointed representative stating that the taxpayer had moved to [Redacted] prior to 2008, lived there the entire year and was therefore not required to file an Idaho return. However, included with this correspondence was an Idaho form 43, nonresident return with no income attributable to Idaho. The Bureau then switched its focus from a non-filer inquiry to that of a residency and domicile issue.

When the taxpayer's representative was questioned about her domicile, he stated that she moved as necessary for work. The Bureau forwarded a domicile questionnaire to the representative which was completed and returned. The responses indicated the taxpayer did not obtain a [Redacted]driver's license, register to vote or own a vehicle while in [Redacted]. The Idaho address was reportedly kept on [Redacted] return because it was more convenient for her preparer. The Bureau then requested additional documentation to show the taxpayer had taken steps to abandon her Idaho domicile and establish a new domicile. The taxpayer provided copies of rental agreements for apartments in [Redacted], furniture leases and hotel receipts. The Bureau reviewed this information, gathered other information, researched the issue, and made its determination. The Bureau determined the taxpayer never abandoned her Idaho domicile and adjusted the taxpayer's 2008 return to show her as domiciled in Idaho. The Bureau sent the taxpayer a Notice of Deficiency Determination, which the taxpayer protested.

The taxpayer disagreed with the Bureau's determination that she was domiciled in Idaho. Her protest letter stated that she lived and worked in [Redacted] in taxable year 2008, and was only in Idaho for approximately 40 days visiting family and friends. The taxpayer also provided a letter from her employer, [Redacted] to verify she worked in [Redacted]. The letter stated the taxpayer was hired in June 2006 and as a condition of her employment, was required to reside at the location of each project for the duration of the project. During the 2008 calendar year, the taxpayer worked on the [Redacted] (from October 2007 to August 2008) and the [Redacted] (from September 2008 to January 2009), both were located in [Redacted] As a part of the management team she was required to live in [Redacted] for this time period with the option of visiting her family once a month for an extended weekend.

The Commission reviewed the matter and sent the taxpayer a letter giving her the option of two methods for having the NODD redetermined. The taxpayer chose to have an informal hearing which was held telephonically. During the hearing, the taxpayer provided additional information for the determination of her domicile. The Commission, having considered all the information provided, hereby issues its decision.

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 Idaho Income Tax Administrative Rule 030 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 whatever, 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.

From the information available, the taxpayer's domicile of origin was Idaho, and until June 15, 2006, the taxpayer was unquestionably domiciled in Idaho. The taxpayer left Idaho after graduating from [Redacted]and accepting employment with [Redacted]. The taxpayer stated her job took her initially to [Redacted] in 2006, then she spent time working in [Redacted] in 2007 and 2008. This general work history was verified by [Redacted].

The taxpayer stated during the informal conference that her first trip back to Idaho was in September, 2006, for a long weekend. The taxpayer also stated she returned to Idaho for 4-5 days around Thanksgiving and spent another four to five days in Idaho with family around Christmas. 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 (house) or it can be a community to which the individual has established strong and endearing ties. In this case, the taxpayer had no physical building or house. As for community ties, the record points to no specific place where the taxpayer considered herself connected. However, Idaho seems to have the established and endearing ties. The taxpayer stated she was living and working in [Redacted] in 2008 and all her belongings were with her. The taxpayer did not provide anything to show she was part of the community where she worked.

In deciding this factor, the Commission looked at the circumstances of why the taxpayer left Idaho and went to [Redacted]. As previously stated, the taxpayer's domicile prior to going to [Redacted] was Idaho. Her home was Idaho. The record shows the only reason the taxpayer went to [Redacted] was for employment. The taxpayer provided no information to indicate any real connections to [Redacted]; therefore, the Tax Commission found the home factor favored Idaho.

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, the taxpayer worked for an energy company on several different projects throughout her employment, but for taxable year 2008 the two wind projects she was involved in were located in [Redacted]. The taxpayer was a part of the project management team and as a condition of employment, required to reside at the location of each project. The taxpayer had no other involvement in business activities.

The taxpayer left Idaho for employment in June 2006. The taxpayer continued working outside the state for several years. In 2008 she worked mainly in [Redacted], but also worked on projects in [Redacted], eventually returning to Idaho and once again submitting resident income tax returns for taxable years 2009 and 2010. The record shows no indication the taxpayer came back to Idaho for employment or business reasons in 2006, 2007 or 2008. Considering the available facts, the Commission found the active business involvement factor favored [Redacted].

The time factor is an analysis of where an individual spends his time during the year. In this case, the taxpayer left Idaho in June 2006. She stated she returned to Idaho to visit family and friends mostly around the holidays or for a "long weekend." According to the taxpayer, (confirmed by a representative of [Redacted]), every four to six weeks she was given the opportunity to visit family for a long weekend and this was paid for by her employer. The taxpayer stated her first trip to Idaho was in September 2006, for a long weekend, which according to the taxpayer, generally meant arriving on a Thursday or Friday and returning the following Monday. The taxpayer returned to Idaho in November 2006 for Thanksgiving and again in December for Christmas, each time according to the taxpayer, for four to five days. In 2007, the taxpayer similarly returned to Idaho in November and December and for a long weekend in March. In 2008, the tax year shown on the NODD, the taxpayer provided copies of rental car receipts, parking receipts, apartment and furniture leases and hotel receipts to help document her whereabouts. Based on this information, it appears the taxpayer spent approximately 42 days in Idaho in 2008. From a purely quantitative analysis, the time factor favors [Redacted].

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. The taxpayer stated she had all of her possessions with her in [Redacted] and left nothing behind in Idaho. The taxpayer did not own property in Idaho nor did she own a vehicle. Therefore, Commission found the near and dear factor favors [Redacted].

The last of the primary factors is the individual's family connections. This factor is an analysis of the individual's family both within and without Idaho. In this case, the taxpayer was not married and did not have any children, but the taxpayer's parents did reside in Idaho. This information points the taxpayer's family connections to Idaho; there is nothing in the record that shows the taxpayer had any family in Texas. Therefore, the Commission finds this factor favoring an Idaho domicile.

Reviewing the primary factors gave the slight edge to [Redacted] as being the taxpayer's domicile. However, adding the minor factors can give a clearer picture and, therefore, swing the determination one way or the other. Some of the minor factors have already been mentioned within the primary factors; nevertheless, they bear repeating here.

During the years in question, the taxpayer maintained an Idaho driver's license. When asked why she maintained an Idaho driver's license, the taxpayer stated when she moved to [Redacted] her Idaho license had not expired yet and she did not want to pay for a new one if she did not need to. However, new residents of [Redacted], according to the [Redacted]Department of Public Safety website, "who are at least 16 years or older and have a valid driver license from another state, have 90 days after entry into the state to secure a [Redacted] Driver License".

In 2010, the taxpayer registered to vote in Idaho. The voter's registration card completed and signed by the taxpayer on November 2, 2010, showed she had been an Idaho resident for 26 years and 4 months. When this was mentioned to the taxpayer in the course of questions to determine her domicile, the taxpayer stated she had erred when filling out the registration card. As part of the information presented for the Commission's consideration the taxpayer provided an amended voter's registration, signed by the taxpayer on March 8, 2012, showing an Idaho residence for three years.

Idaho Income Tax Administrative Rule 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 Idaho as his domicile, the intent to acquire a new domicile, and physical presence in the new domicile. The factors discussed above do not evidence the intent to abandon Idaho. The factors also do not evidence the intent to acquire a new domicile. Of the specific events required, only the taxpayer's physical presence in [Redacted]was clearly accomplished.

Since the taxpayer's domicile was Idaho prior to June 15, 2006, the presumption is the Idaho domicile continues until the taxpayer establishes a new domicile. In re Estate of Cooke, supra. The taxpayer did not show she established a new domicile after she left Idaho. The facts show that the taxpayer maintained ties, albeit limited, to Idaho throughout the years she was employed in [Redacted]. She did not do the things one would expect of an individual if she was abandoning one place and acquiring another. The taxpayer did not show that, to her, [Redacted] was a place of permanence 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). Therefore, the Commission found the taxpayer's domicile remained with Idaho.

The Commission also examined the facts to ascertain whether the taxpayer qualified for the safe harbor provision of Idaho Code section 63-3013. Idaho Code section 63-3013(2) states in pertinent part:

> (2) An individual shall not be considered a resident, but may be considered a part-year resident, during a period of absence from this state described as follows:
> (a) The period begins with an individual leaving this state if the individual is absent from this state for at least four hundred forty-five (445) days in the first fifteen (15) months.

> (b) During such period, but excluding the first fifteen (15) months, the individual was not present in this state for more than sixty (60) days in any calendar year.
> (c) During such period, the individual did not maintain a permanent place of abode in this state at which his spouse (unless he and his spouse are legally separated) or minor or dependent children are present for more than sixty (60) days during any calendar year. . .
> (g) The period ends with an individual returning to this state if such individual remains or resides in the state for more than sixty (60) days.

The taxpayer stated she left Idaho on June 15, 2006. The fifteen month period for determining safe harbor would therefore end September 15, 2007. During this period, according to the taxpayer she came back to Idaho in September 2006 for a long weekend, came back in November and December, each time staying for four to five days and again in March 2007 for another long weekend. Based on the taxpayer's definition that a long weekend is generally at least four days, the taxpayer was in Idaho for more days than what is allowed for the safe harbor provision.

Based on these statements, the taxpayer did not meet the absence period of 445 days in the first 15 months after leaving Idaho. Therefore, the taxpayer did not meet the safe harbor provision, and the taxpayer was required to file an Idaho resident individual income tax return for both taxable years 2007 and 2008. The taxpayer did submit an Idaho return for taxable year 2007, claiming to be a nonresident, which based on the information presented, appears to be incorrect. However, taxable year 2007 is out of statute for audit adjustments, therefore that return will remain as submitted.

In Idaho, a State Tax Commission deficiency determination is presumed to be correct, and the burden is on the taxpayer to show that the deficiency is erroneous. Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986). Other than stating she was not required to file Idaho income tax returns because she lived and worked in [Redacted], the taxpayer has not shown that the Bureau's determination of her residency status and taxable income was incorrect. She did not meet her burden. Upon review of the 2008 return prepared by the Bureau and the information used to prepare that return, the Commission finds it to be a reasonable representation of the taxpayer's Idaho taxable income.

Therefore, for the reasons cited above, the Commission upholds the Bureau's determination that the taxpayer was required to file an Idaho resident individual income tax return for taxable year 2008 and its determination of the taxpayer's Idaho taxable income.

The Bureau added interest and penalty to the taxpayer's 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 June 20, 2012, and directed to [Redacted], is hereby APPROVED and MADE FINAL.

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

YEAR	TAX	PENALTY	INTEREST	TOTAL
2008	$4,755	$1,189	$828	$6,772

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

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

DATED this ________ day of ___________________ 2013.

IDAHO STATE TAX COMMISSION

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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.

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