

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25236
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] (Petitioners) protested the Notices of Deficiency Determination dated July 11, 2012, and September 21, 2012, issued by the Income Tax Audit Bureau of the Idaho State Tax Commission asserting additional income tax, penalty, and interest for taxable years 2010 and 2011 in the amounts of \$23,212 and \$40,164, respectively. Petitioners disagreed that their domicile remained in Idaho during those taxable years while they were living and working in [Redacted]. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

Petitioners timely filed a 2010 nonresident Idaho individual income tax return. The Income Tax Audit Bureau (Bureau) received information that Petitioners had a home in [Redacted], Idaho, on which they were claiming the homeowner’s exemption. The Bureau sent Petitioners a letter stating their 2010 Idaho income tax return was being reviewed and based upon the homeowner’s exemption they were getting, an amended Idaho income tax return needed to be filed to correct their residency status in Idaho. The Bureau also requested information on Petitioners’ 2011 income tax filing.

After a subsequent letter, Petitioners provided another copy of their 2010 nonresident Idaho income tax return, copies of other states’ tax returns filed for 2010, and a copy of the [Redacted] extension Petitioners filed for 2011. Petitioners stated their 2010 Idaho income tax return was filed correctly and that the homeowner’s exemption on their property in Idaho was

incorrectly claimed in 2010. Petitioners stated they would take the necessary steps to correct the effects of the homeowner's exemptions.

The Bureau reviewed the information Petitioners provided, but disagreed that the nonresident return filed by Petitioners was correct. The Bureau adjusted Petitioners' 2010 Idaho income tax return to reflect an Idaho resident status and sent Petitioners a Notice of Deficiency Determination. The Bureau stated the reason for the change was because Petitioners had not abandoned their Idaho domicile and therefore were required to file Idaho resident income tax returns.

Petitioners disagreed with the Bureau's determination and provided substantial documentation to support their claim that their domicile was in [Redacted] in 2010. The Bureau reviewed the information provided but was not persuaded that Petitioners abandoned Idaho as their place of domicile. Therefore, in addition to adjusting Petitioners' 2010 Idaho income tax return, the Bureau prepared a 2011 Idaho income tax return for Petitioners as if they were domiciled in Idaho. The Bureau sent Petitioners a Notice of Deficiency Determination for taxable year 2011, which Petitioners protested by filing a nonresident Idaho income tax return for 2011. The Bureau acknowledged Petitioners' protest and referred the matter for administrative review.

The Tax Commission reviewed the matter and sent Petitioners a letter that discussed the methods available for redetermining a Notice of Deficiency Determination. Petitioners requested a hearing, which was held on August 1, 2013. During the hearing Petitioners provided the following additional information.

Petitioners do not contest being domiciled in Idaho prior to 2010. Petitioners stated they moved to Idaho in 2007, after purchasing the house in [Redacted], Idaho in 2006. When

Petitioners purchased the [Redacted] house, their primary residence, or home, was in [Redacted], Oregon. In addition to purchasing the house in [Redacted], Petitioners also purchased a house in [Redacted] around the same time. Petitioners did not get the homeowner's exemption on the [Redacted]house until 2010. Petitioners did not apply for the exemption until June 2009.

Petitioners registered vehicles in Idaho in 2010, 2011, and 2012. Petitioners stated they purchased a pick-up in Idaho in 2011 to use in moving their things from Idaho. Petitioners' put their [Redacted] house on the market in 2009, but it did not sell until 2012. Petitioners sold the house furnished, but not accessorized; therefore the need for moving most of their personal items out of the house. Petitioners stated they kept their ski gear, some clothing, and a motorcycle (dirt bike) at their [Redacted] house. The dirt bike was later sold to a [Redacted] neighbor. The dirt bike was another vehicle that was registered in Idaho in 2010 and 2011. Petitioners also registered a 2004 BMW X3 in 2011.

Petitioners stated they owned other property in Idaho that was sold in 2009. The property was near [Redacted], Idaho, and Petitioners purchased the property with the intention of building a house. Petitioners stated they had everything ready to proceed with the project, and excavation had started, but their plans changed when the economy tanked. Petitioners scrapped their plans for building and sold the property.

Petitioners purchased a home in [Redacted] in 2006. A year later, Petitioners purchased more property in [Redacted] to build a resort. The resort was designed and built from the ground up by Petitioners. In addition to purchasing the resort property, Petitioners purchased 12 acres on which Petitioners built a dirt bike track. Mr. [Redacted] enjoys dirt bike riding, so the track was built to his specifications.

When Petitioners began building the resort in [Redacted], it was their intent to make [Redacted] their home. Petitioners began going through the immigration process, which is very long and arduous. Petitioners stated the process takes anywhere from 1½ to 2 years to get [Redacted] equivalent of a green card. Petitioners stated the process included a health certification, proof of solvency, and a criminal background check; not to mention all the authentication and certification papers they needed for proof of citizenship and country of origin. Petitioners stated they received their resident cards (green cards) in 2011. Petitioners stated their green cards had to be renewed every year.

When Petitioners decided to make [Redacted] their home, they shipped all their personal items to [Redacted]. This included three cats, a vehicle, a boat, and two jet skis. Petitioners paid a duty tax on all their personal items shipped to [Redacted]. Petitioners stated the duty paid on the vehicle was several times higher than normal. Petitioners stated it was not uncommon for the [Redacted] government to jack the duty up on vehicles brought into the country that the government wanted. The scheme is to tax the vehicle for every little thing so that the tax is so high the owner forfeits the vehicle and the government takes over ownership. Petitioners stated this was not going to happen to their vehicle.

Petitioners stated, in addition to building a resort in [Redacted], they made other significant purchases in [Redacted]; this included at least two vehicles. Petitioners stated they became part of the community in that they sponsored several surfers, soccer teams, and motorcycle riders. Petitioners stated they donated money to the community after the flood. They also donated clothing, soccer balls, and food. Petitioners became role models to the children in the area. They cared for the land and the animals. Mr. [Redacted] would take the locals fishing, he had motorcycle riding buddies, he rode in four local races, and he surfed with

the locals. These included the mayor, accountants, lawyers, and their neighbors. Petitioners stated Mr. [Redacted] also target practiced with the local police. As for Mrs. [Redacted], she is an avid runner and would run daily through the community and the surrounding area.

Petitioners stated they had a personal doctor in [Redacted]. The doctor is a good friend and has treated Mr. [Redacted] for a skin condition and an eye issue. Petitioners also had to be certified by an [Redacted] doctor as being in good health for Petitioners' immigration process.

Petitioners stated that in addition to their three cats, one of which died and is buried in [Redacted], they acquired two dogs. The dogs remain in [Redacted] to this day.

Petitioners' business, [Redacted] [Redacted]), requires that Petitioners travel extensively. [Redacted] is a family run business headquartered in Oregon. [Redacted] is a distributor of [Redacted] materials that withstand the elements and are excellent [Redacted]. Because of all the travel Petitioners do for the business, they usually spend not less than six months in [Redacted]. Even when Petitioners were living in Idaho, Petitioners stated they spent three to four months in [Redacted]. Petitioners stated when they travel, 90 percent to 100 percent of the time they travel together. Petitioners stated on those occasions when they did not travel together, Mrs. [Redacted] stayed in [Redacted] at their home and resort. Petitioners stated the resort was not profitable; nevertheless, Petitioners still own the resort and it is still a going concern. Petitioners have since repatriated and purchased a house in California in 2012. Petitioners stated when they left Idaho in 2010, it was never their intent to return to Idaho to live.

Petitioners stated their Idaho residency terminated in 2009. It was in 2009 when Petitioners changed their plans for the [Redacted] property and their intent to remain in Idaho changed. Petitioners stated they put their [Redacted] house on the market and began transitioning to [Redacted]. Petitioners stated they did return to Idaho for business and to

vacation at their [Redacted] house. Petitioners stated the [Redacted] house was on the market for over 2½ years before it sold in 2012. Petitioners stated they had to get a new realtor and drop the price on the house over \$300,000 from their original asking price in 2009, in order for the house to sell. Petitioners stated their total time spent in the [Redacted] house in 2010 and 2011, was about two months each year. In addition to vacationing in [Redacted], Petitioners came back to Idaho to keep up on the maintenance of the house. As previously stated, Petitioners left very few personal items at the [Redacted] house.

Mr. [Redacted] has two daughters from a previous marriage. Both are adults, both have never lived with them in either Idaho or [Redacted], but both have been to [Redacted] as visitors.

Petitioners stated even though they have repatriated in California, their intent is to return to [Redacted] to live and manage the resort full time.

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).

Petitioners stated their Idaho residency terminated in 2009, and they expatriated to [Redacted]. Petitioners argued their domicile was [Redacted] for the taxable years 2010 and 2011.

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, Petitioners claim that they abandoned Idaho and acquired [Redacted] as their domicile.

Petitioners did not go to [Redacted] for business, since their business was headquartered in Oregon, but their purchases and sales were, and still are, nationwide and worldwide. Petitioners did, however, start a business in [Redacted], but it was not their primary source of income.

Petitioners do not contest that they were domiciled in Idaho prior to 2010. Therefore, the presumption is Petitioners' domicile remained with Idaho until Petitioners established another domicile. In re Cooke's Estate, supra. The question whether a domicile has been changed is one of fact rather than of law. Newcomb v. Dixon, 192 N.Y. 238 (1908). 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, Ib. 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).

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).

In determining an individual's domicile, the Tax Commission looks at five primary factors that tend to show where an individual is domiciled. The first factor is the individual's primary home. In this case, Petitioners had a home in [Redacted], Idaho, they had property in [Redacted], Idaho, where they were preparing to build a home, and they had a home in [Redacted]. The [Redacted] property was sold in 2009, so that home never came to fruition. The [Redacted] home was put up for sale in 2009, so there is no sense of permanence with that home, or that Petitioners were intending to stay in Idaho. The remaining home, in [Redacted], is a place Petitioners purchased in 2006 and have stayed at frequently until 2010 when it became their primary place of abode.

Not only did Petitioners live in [Redacted], but Petitioners became a part of the local community in [Redacted]. Petitioners built a resort where they trained and employed the locals. Petitioners sponsored several of the locals in various sporting events. Petitioners associated with the locals and included many of them in their recreational activities. Petitioners were involved with the social gatherings of the community and the recovery after the flooding in 2011. Petitioners' actions in [Redacted] show the sentiment, feeling, and permanent association that go with calling a place a home. Matter of Starer v. Gallman, 50 A.D.2d 28, 377 N.Y.S.2d 645 (1975).

Petitioners applied for, and received, the homeowner's exemption for 2010 and 2011 on the house in [Redacted] in 2009. This exemption is a primary point of contention between the

Bureau and the Petitioners. It is also a point of contention with [Redacted]. Petitioners called the County to change their address to their business location in Oregon. This sent out red flags to the County and they began looking into whether Petitioners qualified for the homeowner's exemption. Petitioners told the County they traveled a lot and the [Redacted] house was their only residence in the United States. Petitioners stated their time spent in Idaho was approximately three to four months a year.

Subsequent to both the County and the Tax Commission looking into the taxes they paid, Petitioners realized the homeowner's exemption claimed on the [Redacted] property in 2010 and 2011, was incorrect. Petitioners stated it was a misunderstanding on their part, since they were under the assumption that since the [Redacted] property was the only residence they had in the United States, they would qualify for the exemption. Petitioners did not realize the house had to be their primary residence and place of abode. Petitioners did state that when the [Redacted] house was their primary residence and place of abode in 2007 through 2009, they did not get the homeowner's exemption.

Regardless of the outcome of the homeowner's exemption between Petitioners and the County, the fact remains that Petitioners' [Redacted] house was no longer Petitioners' primary residence or place of abode. The fact Petitioners owned property in Idaho does not equate to being domiciled in Idaho. Furthermore, the property was up for sale, which by itself shows Petitioners' intent to abandon their Idaho domicile. Therefore, this factor goes to the foreign domicile of [Redacted].

The second factor is the individual's business ties. Petitioners' primary source of income is from [Redacted]. Petitioners stated Mr. [Redacted] had an office in the house in [Redacted] for doing [Redacted] business. Petitioners stated there was no office in the [Redacted] house.

[Redacted] business is done in the Far East, Central and South America, and the United States. [Redacted] is headquartered in Oregon.

Petitioners also built a resort in [Redacted], which they own and manage. Although this business enterprise, in its infancy, is not currently profitable, Petitioners built this business with the hopes it would draw people to [Redacted] to experience the country and the people.

As for determining this factor, it is clear Petitioners' source of income is from [Redacted] and therefore it could be argued the factor goes to Oregon because of [Redacted] headquarters. However, Petitioners' time in Oregon is unknown and due to the fact that [Redacted] business requires Petitioners' to travel extensively, it seems that this factor should favor the place where Petitioners spent their time, which as discussed below, the majority of their time was in [Redacted]. Petitioners did state some [Redacted] business was done in Idaho when they were in Idaho, but that time appears to be pretty minor. And, not to be forgotten is Petitioners' resort in [Redacted]. Even though the business may not be currently profitable, Petitioners put time and effort into getting the resort built and operational. Therefore, this factor favors [Redacted].

The third factor is where the individual spends his time. In this case, Petitioners are world travelers, spending their time in South and Central America, Southeast Asia, New Zealand, and the United States. Petitioners stated they were in Idaho a total of two months in each of the years 2010 and 2011. Petitioners stated they usually spent no less than six months in [Redacted]. That leaves four months of traveling to Oregon and various other parts of the U.S., as well as going to the other parts of the world to meet and work with suppliers. Because Petitioners spend a lot of their time in a business travel mode, it stands to reason Petitioners' remaining time would be divided between where they enjoyed being the most and/or where the bulk of their possessions were. Petitioners stated they vacationed, took care of some business,

and maintained the [Redacted]house when they were in Idaho in 2010 and 2011. Compare that to the time Petitioners spent in [Redacted] building a business, going through the process of immigration, acquiring and developing property, recreating, acquiring friends and associates, and helping with natural disasters. From the evidence, it is clear Petitioners wanted to spend more time in [Redacted] and as a result, Petitioners did spend more time in [Redacted]. Therefore, this factor weighs in favor of [Redacted].

The fourth factor is where an individual's family connections are located. The only information known about this factor is that Mr. [Redacted] has two adult daughters; their whereabouts were not disclosed, other than to say that neither lived with Petitioners in either Idaho or [Redacted]. Based upon Petitioners' statements, or lack thereof, the Tax Commission is under the presumption that Petitioners did not have family in either Idaho or [Redacted]. In discussing their connections with either Idaho or [Redacted], not once did Petitioners state they had family members living at either place, or that they visited family when they were in Idaho or [Redacted]. Therefore, the Tax Commission finds this factor non-telling, other than that Petitioners were generally always together wherever they were, whether on business travel, vacationing, or at home. This being the case, and based upon where Petitioners spent their time, this factor favors [Redacted].

The fifth and last of the primary factors is the individual's "near and dear" items. This factor 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. Petitioners are into outdoor recreation. Mr. [Redacted]is into surfing, dirt bike riding, fishing, and skiing. Mrs. [Redacted] enjoys running and skiing. Petitioners also have pets. Petitioners stated when they left Idaho they took everything but the furniture in the house, a dirt bike, some clothes, and their

ski gear. The dirt bike was eventually sold to a neighbor in Idaho, and the clothing and ski gear was left for when they vacationed in Idaho in the winter. The furniture was left in the Idaho house to help sell the house. Petitioners stated only the furniture was left, no decorations or accessories.

When Petitioners moved to [Redacted], they shipped all their personal items, their pet cats, recreational equipment, and Mrs. [Redacted] vehicle to [Redacted]. While in [Redacted], Petitioners purchased other vehicles, dirt bikes, pet dogs, and more. Petitioners were making [Redacted] their home. From the information available, this factor also goes to [Redacted].

Each of these factors individually is not determinative; however, when combined or added together they show a pattern of intent. The Bureau, in its determination, placed significant weight on the homeowner's exemption Petitioners applied for in 2009, and received in 2010 and 2011. Based upon the facts, Petitioners' application in 2009 was appropriate at that time. The Bureau also places a lot of weight on Petitioners' statements to the County when it questioned Petitioners' qualifications for the homeowner's exemption. Petitioners may have misled the County, and Petitioners may not have fully understood what the County was asking; nevertheless, the Tax Commission is not obligated to follow the County's findings if the facts show otherwise.

The Bureau's determination was also based upon the fact that Petitioners acquired Idaho driver's licenses in 2009. Petitioners were residents of Idaho in 2009; they should have had Idaho driver's licenses. It was not until sometime in 2009 that Petitioners changed their plans regarding their Idaho residence and began making the transition to [Redacted]. If a taxpayer's post-departure links with a state were no stronger than those which coextend with claimed benefits reasonably to be expected from incidents of national citizenship, that state could not

rightfully claim them as domiciliaries on that basis alone. Post-departure acts of voting in [Redacted] elections and keeping current one's state drivers license will not, by themselves and without more, afford a basis for an inference of one's continued in-state domicile. Suglove v. Oklahoma Tax Commission, supra.

The Bureau determined Petitioners' Idaho domicile was never fully abandoned or that they acquired another domicile. Looking at the tests for a change of domicile, Petitioners concede an Idaho domicile in 2009, and their physical presence in Idaho at that time. However, beginning in 2010, Petitioners' physical presence in Idaho was severely limited to vacationing, some business, and house upkeep. Petitioners' dominate physical presence shifted to [Redacted]. As for Petitioners' intent to abandon, it seems fairly clear Petitioners were severing their ties to Idaho by selling their only real tie to Idaho, the [Redacted] house. At the same time, Petitioners were going through the immigration process to become residents of [Redacted]. See Matter of Bodfish v. Gallman, supra. (It would seem that one who intends to make a domicile in a foreign country ordinarily would obtain an immigration visa.) Petitioners moved their personal items to [Redacted] and became a part of the local community. From the information available it seems Petitioners had a fairly clear intent to acquire [Redacted] as their place of domicile.

CONCLUSION

Petitioners were domiciled in Idaho prior to 2010. Petitioners claim they abandoned Idaho in 2010 and never re-established a U.S. domicile until they purchased a house in California in September 2012. Petitioners claim their domicile was a foreign domicile in 2010 and 2011. Petitioners filed a 2010 nonresident Idaho income tax return and provided a 2011 nonresident Idaho income tax return in support of their position.

The factors considered all point to Petitioners' intent to abandon Idaho and acquire a domicile in [Redacted]. In addition, Petitioners were going through the onerous process to immigrate to [Redacted]. Petitioners' Idaho driver's licenses identify Petitioners with Idaho; however, Petitioners also acquired green cards and tax identification cards from [Redacted], which identify them with [Redacted].

Considering all the information available, the Tax Commission is of the opinion Petitioners moved to [Redacted] and established themselves a permanent home with all the sentiment, feeling and permanent association that goes with identifying that place as a domicile. See Matter of Starer v. Gallman, supra. Furthermore, when all the evidence is considered in its totality, there is no support in the record for the presence of *Animus revertendi*, the intention of returning to one's established domicile (See *Black's Law Dictionary*, Fourth Edition, p. 114). Suglove v. Oklahoma Tax Commission, supra. Therefore, the Tax Commission finds Petitioners were not domiciled in Idaho in 2010 and 2011, and consequently, are only required to report their income from Idaho sources to Idaho.

THEREFORE, the Notices of Deficiency Determination dated July 11, 2012, and September 21, 2012, and directed to [Redacted] and [Redacted] are hereby CANCELLED.

An explanation of the Petitioners' 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.
