

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25343
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] and [Redacted] (Petitioners) protested the Notice of Deficiency Determination issued by the Tax Discovery Bureau of the Idaho State Tax Commission dated July 23, 2012, asserting additional Idaho income tax, penalty, and interest for taxable years 2009, 2010, and 2011, in the total amount of \$6,528.

The issue in this case is the domicile of [Redacted]. Petitioners did not respond to the Tax Commission’s hearing rights letter and have provided nothing further for the Tax Commission to consider. The Tax Commission, having reviewed the file, issues its decision based upon the information available.

BACKGROUND

During the Tax Discovery Bureau’s (Bureau) review of the Tax Commission’s records, it found Petitioners did not file an Idaho individual income tax return for taxable year 2009. The Bureau sent Petitioners a letter asking about their requirement to file an Idaho income tax return for 2009. Petitioners did not respond, so the Bureau prepared a return for Petitioners, based upon [Redacted] information, and sent Petitioners a Notice of Deficiency Determination. Petitioners responded with an unsigned Idaho Part-year, Nonresident Form 43. The Bureau reviewed the return and decided to accept it, subject to a review of Petitioners’ residency status. In addition to a review of Petitioners’ 2009 residency status, the Bureau included Petitioners’ 2010 and 2011

Idaho income tax returns, since those returns were also filed as part-year resident, nonresident on Forms 43.

The Bureau requested additional information from Petitioners and asked them to complete a domicile questionnaire. Petitioners complied with the Bureau's requests and returned a completed domicile questionnaire. The Bureau reviewed the information provided and determined [Redacted] did not abandon his Idaho domicile. The Bureau adjusted Petitioners' 2009, 2010, and 2011 Idaho income tax returns to reflect [Redacted] being domiciled in Idaho and sent Petitioners a Notice of Deficiency Determination.

Petitioners protested the Bureau's determination in part. Petitioners stated they reviewed the matter with their accountant and based upon their situation, they agreed the proper filing for 2009 and 2011 was as residents of Idaho. However, Petitioners did not agree that [Redacted] was an Idaho resident in 2010, because he was not present in Idaho for more than sixty (60) days. Petitioners stated [Redacted] lived and worked in [Redacted]; he was only in Idaho fifty (50) days in 2010. Petitioners quoted a portion of Idaho Code section 63-3013, safe harbor provision, to support their position.

The Bureau reviewed Petitioners' argument 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 protested Notice of Deficiency Determination. Petitioners did not respond, so a follow-up letter was sent to Petitioners. Petitioners still failed to respond, so the Tax Commission decided the matter based upon the information available.

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. 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 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, [Redacted] appears to have been domiciled in Idaho as early as 2005. Petitioners filed Idaho resident, married filing joint, returns for taxable years 2005 through 2008. In 2009, [Redacted] lost his job and looked for work both inside and outside of Idaho. Petitioners stated [Redacted] began working in [Redacted] in January 2009, and then beginning in January 2010, [Redacted] started working in [Redacted]. Petitioners stated [Redacted] total days in Idaho in 2009 were 71; his total days in Idaho in 2010 were 50; and his total days in Idaho in 2011 were 69.

Petitioners stated [Redacted] kept his Idaho driver's license in hopes of finding employment in Idaho. [Redacted] is a registered voter in Idaho but has not voted in Idaho since 2008. Petitioners have had no children living at home since August 2009, and [Redacted] stayed in Idaho the entire time. [Redacted] did purchase an Idaho fish and game license in 2010 and used it maybe twice when he was off work in Idaho.

While working outside of Idaho, [Redacted] rented in Washington; it is not clear whether he rented in [Redacted] or he was provided employer housing. Petitioners stated [Redacted] opened a bank account in [Redacted] in 2009, and his bank account address was changed to [Redacted] in 2010, the same as his mailing address. Petitioners provided no information on what [Redacted] did to assimilate into the [Redacted] community where he lived, or what he did to identify himself with [Redacted].

In determining an individual's domicile, the Tax 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, [Redacted] owned a home in Idaho and rented or was provided employer housing in [Redacted].

As for community ties, the record gives no information about [Redacted] involvement with the community of [Redacted], [Redacted]. The closest community involvement mentioned is that [Redacted] has some financial matter in [Redacted]. The record also gives no information on [Redacted] community involvement in Idaho. However, the record does point out that [Redacted] went hunting on at least two occasions when in Idaho. Based upon the available information, Idaho seems to have the established and endearing ties.

In deciding this factor, the Tax Commission looked at the circumstances of why [Redacted] was in [Redacted]. It is clear from the record that [Redacted] was only in [Redacted] for employment purposes. As a result, the Tax Commission found the home factor in favor of Idaho.

The active business involvement factor looks at the individual's employment and other business activities. 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, [Redacted] worked for a railroad company in [Redacted], [Redacted]. In addition to working in [Redacted], Petitioners stated [Redacted] worked in [Redacted] when he was back in Idaho on his time off from his

[Redacted] employment. Therefore, because [Redacted] was not employed in Idaho, this factor favors [Redacted].

The time factor is an analysis of where an individual spends his time during the year. It is clear most of [Redacted] time is spent in [Redacted] because of his employment there. His remaining time was in Idaho, with some time spent in [Redacted]. Although the time factor clearly favors [Redacted], the evidence available clearly shows [Redacted] was in [Redacted] only for work purposes.

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 available information on this factor is sketchy. Petitioners stated [Redacted] near and dear items are with him in [Redacted] and that was all that was said. Therefore, because there is a lack of information regarding this factor, the Tax Commission is not assigning much weight to this factor; nevertheless, the 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, [Redacted] immediate family, his wife, is in Idaho. Petitioners stated other family members are located from [Redacted] to [Redacted]. [Redacted] apparently has no family connection in [Redacted]. The record does not give any information of [Redacted] visiting anyone other than his wife in Idaho, and because a taxpayer’s immediate family is generally closest to the taxpayer, the Tax Commission finds this factor going to Idaho.

The primary factors slightly favor [Redacted]; however, two of the three are directly related to [Redacted] employment and the third is lacking in information altogether. Consequently, the Tax Commission looked to the secondary, or minor, factors to solidify its

determination. Some of the minor factors have already been mentioned; nevertheless, they bear repeating.

In 2010, [Redacted] had an Idaho driver's license. He also purchased a resident Idaho fish and game license. [Redacted] was furnished a company car, so his pick-up in Idaho has not been registered for a number of years. [Redacted] other vehicle is registered and licensed in Idaho but it is used by [Redacted]. [Redacted] was registered to vote in Idaho; however, he has not exercised that privilege since leaving Idaho. [Redacted] is apparently not registered to vote in any other state.

Petitioners applied for, and received, the homeowner's exemption on their home in Idaho. [Redacted] signed the original application in 2009, but when Petitioners had to re-certify in 2012, only [Redacted] signed the application. By obtaining the homeowner's exemption, Petitioners declared that they occupied this Idaho property as their primary dwelling. Even though [Redacted] would have qualified for the exemption herself, [Redacted] did declare this house in Idaho as his primary dwelling.

Idaho Income Tax Administrative Rule IDAPA 35.01.01.030.02.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, [Redacted] achieved only the physical presence in another state.

Petitioners argued that [Redacted] was not present in Idaho for more than sixty (60) days during 2010; therefore, he is not a resident of Idaho. Petitioners based this argument on Idaho Code section 63-3013(2)(b), which they partially quote, "the individual was not present in this

state for more than sixty (60) days in any calendar year.” However, subsection (2) of Idaho Code section 63-3013 is Idaho’s safe harbor provision, and to qualify, Idaho residents must meet several tests. First and foremost, the individual must be absent from the state for 445 days in a consecutive fifteen (15) month period. Then after meeting the 445 day test, the individual cannot be present in the state for more than sixty (60) days in any calendar year. Based upon the calendar of days Petitioners provided, Mr. [Redacted] did not meet the 445 day requirement. In addition, Petitioners failed the next test that requires that the individual did not maintain a permanent place of abode in Idaho where his spouse or dependent child were present in Idaho for more than sixty (60) days. [Redacted] did not meet Idaho’s safe harbor.

CONCLUSION

[Redacted] domicile was Idaho prior to 2009; therefore, the presumption is his Idaho domicile continues until a new domicile is established. In re Estate of Cooke, supra. Petitioners did not show [Redacted] established a new domicile when he left Idaho for work in either [Redacted]. The facts show that [Redacted] maintained ties to Idaho even though he was employed outside Idaho. [Redacted] did not do the things one would expect of an individual if he was abandoning one place and acquiring another. [Redacted] did not portray himself as someone who was a permanent fixture in [Redacted]. Petitioners did not show that to [Redacted] [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 Tax Commission found [Redacted] domicile remained in Idaho in 2010.

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

THEREFORE, the Notice of Deficiency Determination dated July 23, 2012, and directed to [Redacted] and [Redacted] is AFFIRMED.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2010	\$2,623	\$131	\$267	\$3,021

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

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.
