

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25397
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] (Petitioners) protested the Notice of Deficiency Determination dated July 23, 2012, proposing income tax, penalty, and interest for taxable years 2007, 2008, and 2009 in the total amount of \$37,789. Petitioners challenged the Bureau’s decision that [Redacted] was domiciled in Idaho and thus subject to Idaho state income tax on monies earned while living in [Redacted]. Petitioners requested a hearing and provided additional information. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

Petitioners purchased a home and have lived in [Redacted], Idaho since 1978. In 1999, [Redacted] accepted a position with the [Redacted]. [Redacted] employment required Petitioners to relocate and temporarily live in [Redacted] from 1999-2000, [Redacted] from 2000-2002, and [Redacted] from 2002-2006. During that entire time, Petitioners kept their home in Idaho, and [Redacted] periodically returned to Idaho to visit their adult daughter who was living in Petitioners’ home while attending college.

In 2006, [Redacted] [Redacted] changed to [Redacted], [Redacted]. There Petitioners bought a house in [Redacted] rather than renting due to the fact [Redacted] would be stationed in [Redacted] for a minimum of four years. Consequently, [Redacted] obtained a [Redacted] driver’s license, registered a vehicle in [Redacted], and registered to vote in [Redacted]. [Redacted] kept her driver’s license and voter registration in Idaho. Petitioners kept a spare

vehicle at their home in Idaho that was registered in Idaho. Petitioners also filed their [Redacted] taxes using their Idaho address as their primary home address.

From 2006-2009, Petitioners predominantly lived in [Redacted]. [Redacted] would occasionally return to Idaho for weeks at a time, while [Redacted] was working [Redacted]. [Redacted] spent no more than two weeks per year during this time in Idaho.

The Bureau reviewed the information available, determined that Petitioners were domiciled in Idaho, and sent Petitioners a Notice of Deficiency Determination seeking taxes on Petitioners' income earned in [Redacted] while domiciled in Idaho. Petitioners protested the Notice of Deficiency Determination, stating that [Redacted] had successfully changed his domicile to [Redacted]. The Bureau reviewed the information and referred the matter for administrative review.

The Tax Commission reviewed the matter, and sent Petitioners a letter that discussed Petitioners' hearing rights and the methods available for re-determining a protested Notice of Deficiency Determination. Petitioners scheduled a telephone hearing and supplemented the information collected by the Bureau. Therefore, the Tax Commission decides this matter based upon all of 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). Domicile is defined in the Idaho Administrative Income Tax Rules 35.01.01.030 as the place where an individual has their true, fixed, permanent home. The place they intend to return to whenever they are absent. An individual can have several residences or dwelling places, but can legally have only one

domicile at a time. Domicile denotes the state where an individual has the intention to remain permanently or for an indefinite time. *Id.*

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, 920 P.2d 400, 402 (Idaho 1996). Domicile, once established, persists until a new domicile is legally acquired. In re Cooke's Estate, 524 P.2d 176 (Idaho 1973). In determining where an individual is domiciled, the factfinder 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 created. State of Texas v. State of Florida, 306 U.S. 398, 427 (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). Moreover, mere length of time cannot convert physical presence or residence into domicile. Taylor v. Milam, 89 F. Supp. 880, 883 (W.D. Ark. 1950). Domicile is not necessarily lost by protracted absence from the home where the intention to return remains. Wilson v. Pickens, 444 F. Supp. 53, 55 (W.D. Okl. 1977).

To determine domicile, the Tax Commission evaluates five primary factors. These factors include the location of the individual's primary residence, where the individual is actively involved in business, where the individual spends their time, where the individual keeps their

near and dear items, and the individual's family connections. While no single factor is determinative and secondary factors should also be taken into consideration, these five factors are to be weighted more heavily to determine domicile.

The facts in this case applied to the five primary factors suggest that Petitioners did change their domicile from Idaho to [Redacted]. Petitioners established a home in [Redacted] and only returned to Idaho as occasional visitors. [Redacted] business was conducted internationally out of the State Department's regional office in [Redacted]. Petitioners' time was spent mostly in [Redacted] when [Redacted] was not overseas on assignment. [Redacted] vacation time was split between Idaho and [Redacted], while [Redacted] spent more time in Idaho and [Redacted] when [Redacted] was on assignment. When Petitioners moved to [Redacted], they brought their "near and dear" items with them. Petitioners were making their [Redacted] house into the home they wanted with the intention of retiring in [Redacted] when [Redacted] retired from the [Redacted]. Petitioners had with them all of the various items that would make any location a home. Petitioners also became part of a community in [Redacted], comprised of a network of friends and various social functions and activities. And finally, because Petitioners were together in [Redacted], the family connections factor favors a domicile in [Redacted]. Petitioner's adult daughter was the only family Petitioners had in Idaho, and that was only until their daughter finished college and moved on with her life. In addition, there is also [Redacted] registering an automobile, registering to vote, and obtaining a driver's license while in [Redacted].

CONCLUSION

By applying the facts of this case to the five factors and reviewing the ancillary factors, Petitioners successfully changed their domicile from Idaho to [Redacted]. Therefore, since

Petitioners were not domiciled in Idaho, the Tax Commission cannot seek to collect Idaho state income taxes on the income earned by Petitioners while working and living in [Redacted].

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