

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25734
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] (taxpayers) protested the Notice of Deficiency Determination (NODD) issued by the Income Tax Audit Bureau of the Idaho State Tax Commission (Commission) dated March 23, 2013, asserting additional Idaho income tax, penalty, and interest for taxable years 2010 and 2011 in the total amount of \$5,777.

The taxpayers disagreed with the Bureau’s determination that they were domiciled in Idaho during the years in question. The Commission, having reviewed the file, issues its decision.

BACKGROUND

The taxpayers’ 2010 and 2011 Idaho individual income tax returns were selected for review by the Income Tax Audit Bureau (Bureau) of the Commission. Specifically at issue was the residency status of the taxpayers. For the taxable years in question, the taxpayers filed Idaho form 43. For taxable year 2010, the Idaho return showed [Redacted] as a non-resident, and [Redacted] as a resident. For taxable year 2011, the Idaho return showed both taxpayers as part-year residents, residing in Idaho for 11 months each. The Bureau contacted the taxpayers and requested they fill out a residency and domicile questionnaire, which they did.

The Bureau reviewed the information provided by the taxpayers and gathered additional information regarding the taxpayers. The Bureau determined from that information that the taxpayers did not abandon Idaho as their state of domicile. The Bureau adjusted the taxpayers’

2010 and 2011 Idaho income tax returns to show them domiciled in Idaho, and sent them an NODD, which they protested.

The taxpayers protested the Bureau's determination stating that in taxable year 2010, they found jobs in [Redacted] began renting a house in [Redacted], and moved their family and belongings to [Redacted]. The taxpayers stated they do own a home in [Redacted], Idaho, and intend to keep the house, but do not call it home.

The Bureau referred the matter for administrative review and the Commission sent the taxpayers a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. The taxpayers did not respond to the letter, did not request a hearing, and have provided no additional information for the Commission's consideration.

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 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.

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 (home) or it can be a community to which the individual has established strong and endearing ties. In this case, the taxpayers' home

for many years has been Idaho. It was in February, 2010, that [Redacted] began renting an apartment and working in [Redacted]. According to information provided by the taxpayers on the domicile questionnaire, [Redacted] lived in Idaho approximately six months in taxable year 2010, and lived in Idaho just one month in taxable year 2011. Other than renting property and earning wages in [Redacted], the taxpayers have not shown that they considered [Redacted] to be their permanent home 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). For all practical purposes, the appearance is that the taxpayers were in [Redacted] for employment purposes only. Nothing was presented to show that the taxpayers went to [Redacted] to make it their permanent, indefinite home.

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, [Redacted] earned wages in [Redacted] for both taxable years 2010 and 2011. However, based on income information available to the Commission, it does not appear that [Redacted] began working in [Redacted] until mid to late 2011, as the Idaho Department of Labor shows wages reported to [Redacted] in all four quarters of taxable year 2010, and the first two quarters of taxable year 2011. Prior to the [Redacted] employment, the taxpayers were partners in [Redacted], a business registered with the Idaho Secretary of State in 1994. In 2000, the taxpayers changed the name of the company to [Redacted], Inc., which continued to conduct business in Idaho until sometime in taxable year 2008. While [Redacted] business involvement during 2010 and 2011 favors [Redacted] favors Idaho.

The time factor is an analysis of where an individual spends his time during the year. In this case, it can easily be said that most of [Redacted] time in both taxable years 2010 and 2011, was spent in [Redacted], due to his employment. [Redacted] time, according to the domicile questionnaire, was split evenly between [Redacted] and Idaho in taxable year 2010, and favored [Redacted] in taxable year 2011. When asked on a domicile questionnaire how many days he was physically present in Idaho during each year, [Redacted] replied, 80 days in taxable year 2010 and 20 days in taxable year 2011. No mention was made of how many [Redacted] was physically present in Idaho. Based on this information, it is likely [Redacted] spent the majority of his time in [Redacted]. It is difficult to determine exactly how many days [Redacted] was in Idaho, but from the information available, it is likely she spent the majority of her time in Idaho. Even though the time factor for [Redacted] favors [Redacted], the evidence supporting this factor does not show the sentiment, feeling, and permanent association that goes with calling a place a home. Starer, supra.

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. Questions concerning hobbies, recreational activities, and how the taxpayers spend their off time are generally asked during an informal hearing. In this case, the taxpayers did not request a hearing and no such information was captured on the domicile questionnaire. Consequently, recreational activities do not weigh heavily in favor of one place over another.

The last of the primary factors considers 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, was in Idaho for a significant portion of taxable year 2010 and at least part of taxable year 2011. The taxpayers provided no information on any family living in

[Redacted] other than they did state their grandson lived with them and attended school in [Redacted]. With no mention of other family connections in [Redacted], this factor points to Idaho.

The primary factors tend to show Idaho as being the taxpayers' domicile. However, adding the minor factors can either solidify or swing the determination to [Redacted]. The minor factors considered were the taxpayers' privilege licenses, their vehicle registrations and the homeowner's exemption.

During the years in question, both [Redacted] maintained an Idaho driver's license. Idaho driver's licenses are not available to nonresidents of Idaho. The taxpayers also continue to take advantage of the homeowner's exemption on the home located at [Redacted] purchased an Idaho resident fish and game license in taxable year 2010, stating on the application that he had been an Idaho resident since 1981. The taxpayers registered vehicles in Idaho on September 3, 2010, February 28, 2011, March 8, 2011, and October 7, 2011.

Looking at these minor factors, there is very little that associated the taxpayers with the state of [Redacted].

FINDINGS

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 his domicile, the intent to acquire a new domicile, and physical presence in the new domicile. Prior to taxable year 2010, both [Redacted] were domiciled in Idaho. It is clear [Redacted] continued to maintain her Idaho domicile into taxable year 2010. It is also clear that the taxpayers have a residence in [Redacted]. What is not clear is whether the taxpayers have established a new domicile in [Redacted].

[Redacted] had physical presence in both Idaho and [Redacted]; Idaho during a part of his off time, and [Redacted] mostly while working. [Redacted] stated that when he and [Redacted] found work in [Redacted], and began renting a house there in taxable year 2010, they then considered themselves [Redacted] residents. [Redacted] also stated that they intend to keep the house in [Redacted] Idaho, but cannot call it home in the foreseeable future.

As mentioned previously, when asserting a change in domicile, the burden of proof is always on the party asserting a change to show that a new domicile has been created. The taxpayers have not met that burden. When all the facts and circumstances presented were considered, the Commission found that the actions of the taxpayers indicate that they have not abandoned Idaho as their state of domicile. The Commission found the taxpayers' connections to Idaho were stronger and more fixed. The taxpayers, especially [Redacted], primary purpose or reason for being in [Redacted] was for employment.

THEREFORE, the Notice of Deficiency Determination dated March 22, 2013, and directed to [Redacted], is hereby AFFIRMED.

IT IS ORDERED that the taxpayers pay the following amount of tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2010	\$2,197	\$220	\$2,417
2011	3,270	195	<u>3,465</u>
		TOTAL DUE	<u>\$5,882</u>

Interest is calculated through January 17, 2014.

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

An explanation of the taxpayers' 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.