

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 25744
[Redacted],	)	
	)	
Petitioners.	)	DECISION
_____	)	

On September 25, 2012, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayers), proposing income taxes, penalties, and interest for taxable years 2002 through 2005, and taxable year 2009 in the total amount of \$11,209.

On November 27, 2012, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not respond to the Commission’s hearing rights letter and have not provided anything further for the Commission to consider. The Commission, having reviewed the file, hereby issues its decision.

The Tax Discovery Bureau (Bureau) received information that the taxpayers may be required to file Idaho individual income tax returns. The Bureau researched the Commission’s records and found that the taxpayers had not filed Idaho income tax returns for the aforementioned years. The Bureau sent the taxpayers a letter asking about their requirement to file Idaho individual income tax returns. The taxpayers responded that they were not required to file returns in Idaho for years mentioned above because, “I have not earned or lived in Idaho for many years. I do own property at the [Redacted] address, but do not live there.”

The Bureau obtained additional information from the [Redacted], the [Redacted] County Assessor and the Idaho Department of Motor Vehicles. The Bureau determined the taxpayers did

have a filing requirement for taxable years 2002 through 2005, and taxable year 2009. The Bureau prepared individual income tax returns for the taxpayers and sent them an NODD.

A timely protest of the NODD was filed by taxpayers. The protest consisted of [Redacted] signature along with the statement, "I disagree with your findings" which was handwritten on a copy of the NODD.

The Bureau referred the matter for administrative review. The Commission sent the taxpayers a letter discussing the methods available for redetermining the NODD. The taxpayers did not respond. Therefore, the Commission decided the matter based upon the information available.

The Bureau had information that indicated the taxpayers may need to file Idaho individual income tax returns for taxable years 2002 through 2005, and for taxable year 2009. The Bureau found that there was no record of the taxpayers filing Idaho income tax returns for the previously mentioned years. The taxpayers stated that while they did own property in [Redacted], Idaho, they did not live in Idaho, and therefore were not required to file Idaho income tax returns.

Determining domicile is not always clear or easy, yet the outcome of the decision has far reaching consequences. Often times, the terms "residency" and "domicile" are confused, but Idaho Income Tax Rule 030.02 defines domicile as:

The term domicile means 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. An individual can have several residences or dwelling places, but he legally can have but one domicile at a time. Domicile, once established, is never lost until there is a concurrence of a specific intent to abandon an old domicile, an intent to acquire a specific new domicile, and the actual physical presence in a new domicile.

The key to understanding domicile based upon this rule is the intent of the individual. Determining the intent of an individual is not a bright-line test; rather, the determination is made using the totality of the evidence before the Commission and making a determination based upon the available information. This decision hinges upon where the taxpayers were domiciled in taxable years 2002 through 2005, and taxable year 2009. The long-established rule is that “[w]here a change of domicile is alleged, the burden of proof rests upon the party making the allegation.” Desmare v. United States, 93 U.S. 605, 610, (1876), Pratt v. State Tax Comm’n, 128 Idaho 883, 884, 920 P.2d 400, 401 (1996). The burden rests with taxpayers to prove that they abandoned their domicile in Idaho and established a domicile in another state, and until that burden is met, Idaho continues to be their domicile.

The Bureau relied upon numerous factors in the determination that Idaho domicile had not been abandoned; none of which by itself is dispositive of domicile, but rather as a whole, the factors were used to determine that the taxpayers had not established any other state as their new domicile.

The Bureau found that the taxpayers purchased property on [Redacted] Idaho in December 2005, and began claiming the homeowner’s exemption on that property in 2006. However, this does not appear to be the first Idaho address for the taxpayers as the homeowner’s exemption application listed [Redacted], Idaho as the taxpayers’ previous address. [Redacted] maintained an Idaho driver’s license from 1990 through the present. [Redacted] maintained an Idaho driver’s license from 2001 through the present. The license [Redacted] acquired in 2008 showing the [Redacted] address, does not expire until 2016. [Redacted] also purchased resident Idaho fish and game licenses each year from 2000 to 2006, each year stating he had been an Idaho resident since July 15, 1972. [Redacted] completed a voter’s registration card on October

23, 2010, stating he had been a resident of Idaho for 20 years. Additional research by the Bureau showed the taxpayers registered vehicles in Idaho in taxable years 2000, 2004, 2005, 2007, and 2010.

The taxpayers bear the burden of showing that they abandoned their domicile in Idaho and established a new domicile in another state. Determining domicile is a mixed question of fact and law. Conduct is often more persuasive than expressions, since that reflects the intent of the individuals. The United States Tax Court has determined that “where there is any doubt as to one’s domicile, the domicile of origin prevails.” Webb v. C.I.R., 72 T.C.M. (CCH) 1522 (T.C. 1996).

Individuals frequently move across state lines; abandoning an old domicile and establishing a new one. The burden of proving intent to abandon an old and establish a new domicile is not very great, and there are consequences, sometimes significant tax consequences, when individuals move. Taxpayers give up the benefits of being domiciled in their old state and take advantage of the benefits of the new state; they cannot take advantage of benefits from both states. In this case, the taxpayers admit to owning property in Idaho, but claim they do not live there, that they have not lived in Idaho for many years and have not earned any income in Idaho. The taxpayers listed an address in [Redacted] as their current address, but have provided little else to identify them with the state of [Redacted].

The Bureau determined, and the Commission agrees, that based on the information contained in the file, the taxpayers were domiciled in Idaho and, therefore, were required to file Idaho individual income tax returns. The Idaho individual income tax returns the Bureau prepared on behalf of the taxpayers were based on income information gleaned from the taxpayers’ [Redacted] income records. The Bureau added interest and penalty to the

taxpayers' Idaho tax. The Commission reviewed those additions and found them appropriate and in accordance with Idaho Code sections 63-3045 and 63-3046, respectively.

THEREFORE, the Notice of Deficiency Determination dated September 25, 2012, and directed to [Redacted] is hereby APPROVED and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2002	\$1,875	\$469	\$1,058	\$3,402
2003	839	210	429	1,478
2004	1,431	358	646	2,435
2005	509	127	199	835
2009	2,349	587	338	3,274
			TOTAL DUE	\$11,424

Interest is computed to December 10, 2013.

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.  
  
\_\_\_\_\_