

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25815
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] and [Redacted] (taxpayers) protested the Notice of Deficiency Determination (NODD) issued by the staff of the Idaho State Tax Commission dated May 8, 2013, asserting additional Idaho income tax, penalty, and interest for taxable years 2010, 2011, and 2012, in the total amount of \$13,538. The taxpayers disagreed with the Income Tax Audit Bureau's (Audit) adjustment to tax period 2012, and the determination that they were domiciled in Idaho in 2012. The taxpayers' appeal letter did not address taxable years 2010 and 2011, and those adjustments were finalized by Audit and will not be mentioned further in this decision. In regards to the appeal of the adjustments made to taxable year 2012, the taxpayers claimed they were part-year residents of [Redacted] and the income earned there was not taxable by Idaho.

The taxpayers submitted Idaho, married filing joint, form 40 resident income tax returns for taxable years 2009, 2010, and 2011. Mr. [Redacted] has filed Idaho resident income tax returns as early as 1995 and Mrs. [Redacted] as early as 2001. In taxable year 2012, the taxpayers filed a part-year/non-resident Idaho individual income tax return. Audit selected the 2012 return for review and contacted the taxpayers for additional information, specifically, an explanation and documentation of their status as part-year residents. The taxpayers returned the residency and domicile questionnaire, as requested by Audit, along with a copy of the income tax return filed with [Redacted]. Audit reviewed this information, gathered other information, researched the issue, and made its determination. Audit determined the taxpayers remained

domiciled in Idaho and were, therefore, required to file an Idaho resident income tax return, reporting income earned from all sources. Audit sent the taxpayers an NODD, which they protested.

The taxpayers stated in their appeal letter that the taxable income for Idaho was reported correctly on their return and the income earned in [Redacted] was properly reported on the [Redacted] state income tax return. They submitted a copy of the return filed with [Redacted] along with a statement from [Redacted] employer stating he was currently residing in company furnished housing.

The matter was referred for administrative review, and the Commission sent the taxpayers a letter giving them two alternatives for having the NODD redetermined. The taxpayers did not respond. Therefore, the Commission issues its decision based upon the information presently contained in the file.

Idaho Code section 63-3002 states that a resident of this state is required to report and pay a tax on all his or her taxable income, regardless of the source. Idaho Code section 63-3013 defines the term “resident” as any individual who:

- (a) Is domiciled in the state of Idaho for the entire taxable year; or
- (b) Maintains a place of abode in this state for the entire taxable year and spends in the aggregate more than two hundred seventy (270) days of the taxable year in this state. Presence within the state for any part of a calendar day shall constitute a day spent in the state unless the individual can show that his presence in the state for that day was for a temporary or transitory purpose.

Domicile is defined in the Tax Commission’s Administrative 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. An individual can have several residences or dwelling places, but he legally can have but one domicile at a time.” Income Tax Administrative Rule 030.02 (IDAPA 35.01.01.030.2 (2000)). The essential distinction between

residence and domicile is that domicile requires intent to remain at one place for an indeterminate or indefinite period. Reubelmann v. Reubelmann 38 Idaho 159, 164, 220 P 404, 405 (1923). Domicile, once established, persists until a new domicile is legally acquired. In re Cooke's Estate, 96 Idaho 48, 524 P.2d 176 (1973). A concurrence of three factors must occur to change an individual's domicile. The factors are (1) the intent to abandon the present domicile, (2) the intent to acquire a new domicile, and (3) physical presence in the new domicile. Income Tax Administrative Rule 030.02.a (IDAPA 35.01.01.030.02.a). See also, Pratt v. State Tax Commission, 128 Idaho 883, 885 n.2, 920 P.2d 400, 402 n.2 (1996). Whether an individual has the specific intent to create a new domicile is evidenced by that individual's actions and declarations. Generally speaking, in domicile cases, an individual's actions are accorded more weight than his declarations, since declarations can tend to be deceptive and self-serving. Allan 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).

It takes no particular period of time to acquire a new domicile, the result being achieved when the person is physically present in the new place with a state of mind regarding the new place as home. Moreover, mere length of time cannot convert physical presence or residence into domicile. Taylor v. Milan, 89 F.Supp. 880 (1950). Domicile is not necessarily lost by

protracted absence from home where the intention to return remains. Wilson v. Pickens, 444 F. Supp. 53 (W.D. Okl. 1977).

The taxpayers filed Idaho resident income tax returns in 2009, 2010, and 2011. The taxpayers' vehicles were registered in Idaho, both have W2 income in 2012 from Idaho sources, they claim to operate an Idaho schedule C business, and both possess Idaho driver's licenses. The taxpayers' actions clearly show that as of 2009, Idaho was their domicile of choice.

Since Idaho was [Redacted] domicile as early as 1995, and [Redacted] domicile as early as 2001, the taxpayers have the burden of showing that they abandoned Idaho and acquired another state as their domicile. The taxpayers argued that their domicile changed to [Redacted] in 2012. However, the taxpayers did not purchase a home or rent/lease living quarters in [Redacted] but rather, resided in corporate provided housing, and have provided no information other than a wage and tax statement that associates them the state of [Redacted].

The taxpayers did not do anything to establish themselves as permanent or indefinite fixtures. From the information available, the Commission does not see that the taxpayers made a permanent and indefinite move to [Redacted]. The taxpayers provided no documentation or information to show a change of domicile. There is nothing in the record that shows a permanent home in [Redacted] 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).

Since the taxpayers were domiciled in Idaho and they are asserting their domicile changed, the taxpayers bear the burden of showing that their domicile changed. State of Texas v. State of Florida, supra. The taxpayers have not met that burden. Therefore, the Commission

upholds the Bureau's determination that the taxpayers' domicile remained in Idaho for taxable year 2012.

THEREFORE, the NODD dated May 8, 2013, is hereby MODIFIED, and as MODIFIED, is AFFIRMED 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>
2012	\$4,904	\$245	\$178	<u>\$5,327</u>

Interest is calculated through May 15, 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 _____ 2014.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2014, 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.
