

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 25879
Petitioners.)
DECISION
_____)

[Redacted] and [Redacted] (Petitioners) protested the Notice of Deficiency Determination dated July 25, 2013, proposing income tax and interest for taxable years 2011 and 2012 in the total amount of \$1,995. Petitioners challenged the Income Tax Audit Bureau’s (Bureau) decision that [Redacted] domicile stayed with Idaho and a portion of [Redacted] income was reportable to Idaho under the community property laws. Petitioners requested a hearing and provided additional information. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

Petitioners filed married filing joint Idaho individual income tax returns reporting [Redacted] as a part-year resident for taxable years 2011 and 2012, and [Redacted] as a non-resident for taxable year 2011 and a part-year resident for 2012. The Bureau selected Petitioners’ 2011 and 2012 Idaho income tax returns to examine [Redacted] residency status for the proper allocation of community property income to Idaho. The Bureau sent each Petitioner a questionnaire designed to provide information in the determination of an individual’s residence and domicile. [Redacted] completed most of the questionnaire with the response not applicable. [Redacted] questionnaire provided her current and last known Idaho addresses and a statement that she has been living in Idaho for the past 15 months.

The Bureau reviewed the information, or lack thereof, and determined, based upon the other information gathered from other sources (driver's license, homeowners' exemption, and fish and game license) [Redacted] was domiciled in Idaho for both taxable years 2011 and 2012. The Bureau corrected Petitioners' returns to reflect [Redacted] being domiciled in Idaho and for the proper allocation of community income to Idaho. The Bureau sent Petitioners a Notice of Deficiency Determination, which Petitioners protested.

Petitioners stated [Redacted] moved to [Redacted] in 2011, where she lived with [Redacted] and found employment. Petitioners stated it was [Redacted] intent to make [Redacted] her home. Petitioners stated [Redacted] house in Idaho was rented until they moved to Idaho on April 4, 2012. Petitioners stated their move to Idaho was predicated on economics, [Redacted] unemployment, and a job offer in Idaho. Petitioners stated their move to Idaho was temporary and that they always intended to move back to [Redacted]. Petitioners stated they purchased land in [Redacted] and are building a house for them to move into.

The Bureau acknowledged Petitioners' protest and referred the matter for administrative review. The Tax Commission reviewed the matter and sent Petitioners a letter that discussed the methods available for re-determining a protested Notice of Deficiency Determination. Petitioners requested a telephone hearing, however, due to timing issues, when Petitioners telephoned for what the Tax Commission thought was to schedule a telephone hearing, the parties discussed Petitioners' case and the Tax Commission gathered additional information to decide the matter. Therefore, the Tax Commission issues its decision based upon all of the information provided and available.

Petitioners met at a wedding of their friends and found they shared a common attraction and enjoyed each other's company. At that time, [Redacted] was working and living in Idaho,

and [Redacted] was working and living in [Redacted]. [Redacted] owned a home in [Redacted] and [Redacted] was in the process of purchasing a home in [Redacted]. [Redacted] was domiciled in [Redacted] and [Redacted] was domiciled in Idaho. Petitioners continued to see each other and in February or March 2011, [Redacted] moved to [Redacted] to live with [Redacted]. Petitioners later married on [Redacted], 2011.

Petitioners stated [Redacted] took what was needed with her to [Redacted]. Anything else was placed in storage in [Redacted] near or at, where [Redacted]family lived. Petitioners stated [Redacted] did not initially obtain a [Redacted] driver's license, but since their acquisition of land in [Redacted], [Redacted] now has a [Redacted] license.

In 2012, [Redacted] was laid off from his job in [Redacted]. [Redacted] looked for work in the [Redacted] area, but was unable to find any. Petitioners stated [Redacted] was offered a [Redacted] job from a friend in [Redacted], Idaho. Petitioners decided they would move to Idaho until something better came along. Petitioners' decision was based upon economics. [Redacted] house in [Redacted]cost far more to keep than [Redacted] house in Idaho, and [Redacted] had a job waiting for him in Idaho. In addition, Petitioners preferred eastern [Redacted]to western [Redacted] since most of their family lived in eastern [Redacted]. Petitioners stated they sold [Redacted] house in April 2012 and moved into [Redacted] house in Idaho.

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 his true, fixed, permanent home; the place he intends to return to whenever he is absent. An

individual can have several residences or dwelling places, but can legally have only one domicile at a time. Domicile is the place 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 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 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 his time, where the individual keeps his 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 [Redacted] did change her domicile from Idaho to [Redacted]. [Redacted] appears to have abandoned Idaho when she moved to [Redacted] to live with and marry [Redacted]. [Redacted] return to Idaho was due to the situation Petitioners found themselves in after [Redacted] lost his job. [Redacted] desire was to always be a [Redacted] resident and apparently [Redacted] desire was to be with [Redacted].

[Redacted] was employed while she was in [Redacted] and she did rent her house in Idaho. The rental of the Idaho house was to mitigate the cost of ownership until Petitioners could dispose of the house. [Redacted] primary business concern was employment, and at that time her employment was in [Redacted].

[Redacted] time was spent in [Redacted] with [Redacted]. The record does not give any indication [Redacted] spent any time in Idaho after she left in early 2011. However, one can assume she visited family in eastern [Redacted] and likely hopped across the border to check on her Idaho house while visiting family. Nevertheless, the majority of [Redacted] time was spent in [Redacted].

Petitioners stated [Redacted] moved all her possessions to [Redacted]. Petitioners stated whatever [Redacted] did not take with her to [Redacted] she put in storage near her family in [Redacted]. Petitioners stated [Redacted] moved into [Redacted] house in [Redacted] and they were married shortly thereafter. Since Petitioners were married and making a household

together, one can assume [Redacted] had a lot of her former near and dear items with her and that she was acquiring new near and dear items.

The last of the primary factors is [Redacted] family connections. As previously stated, most of [Redacted] family was in [Redacted]. [Redacted]family may have been of the other side of the state of [Redacted], but nevertheless, they are in [Redacted]. [Redacted]also created new family connections by marrying [Redacted]. And with [Redacted] being the primary reason [Redacted] left Idaho and moved to [Redacted] [Redacted] connection became all the stronger.

Although [Redacted] driver's license was from Idaho, she acquired it in June 2009, long before she knew [Redacted], and her renewal in 2012 was after [Redacted] and [Redacted] moved to Idaho. This is also true of the Idaho fish and game licenses [Redacted] purchased; all before [Redacted]move to [Redacted] to be with [Redacted].

CONCLUSION

A change of domicile requires a specific intent to abandon the old domicile, a specific intent to acquire a new domicile, and physical presence in the new domicile. The facts in this case show a specific intent to abandon Idaho when [Redacted] moved to [Redacted] and married [Redacted]. [Redacted] ties to Idaho were limited, and due to Petitioners' employment circumstances, the short stay in [Redacted] did not prevent [Redacted] from establishing a domicile in [Redacted]. Even though [Redacted] did not acquire a [Redacted]driver's license during her 13 to 14 month residency in [Redacted], the underlying facts of the case show her intent to acquire [Redacted] as her domicile. And finally, [Redacted] was physically present in [Redacted] living with [Redacted] in [Redacted] home. [Redacted] move to [Redacted] appeared to be with all the permanence, sentiment, and feeling that go with calling a place a home (Starer

v. Gallman, 50 A.D.2d 28, 377 N.Y.S.2d 645 (1975)). [Redacted]left Idaho to begin her new life with [Redacted] in [Redacted].

Based upon the foregoing facts, the Tax Commission finds that [Redacted] successfully changed her domicile from Idaho to [Redacted] in 2011. Therefore, the Tax Commission accepts Petitioners' returns as filed.

THEREFORE, the Notice of Deficiency Determination dated July 25, 2013, and directed to [Redacted] and [Redacted] is hereby CANCELLED.

An explanation of the Petitioners' 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.
