

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 25942
)
)
Petitioners.) DECISION
)
_____)

[Redacted] and [Redacted] (Petitioners) protested the Notice of Deficiency Determination 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 2007 through 2011, in the total amount of \$20,494. Petitioners disagreed with the Tax Discovery Bureau’s determination that [Redacted] was domiciled in Idaho for the years in question. Petitioners stated [Redacted] domicile was in [Redacted] and [Redacted] during those years.

BACKGROUND

Petitioners began filing Idaho individual income tax returns in 1999, after their move from [Redacted] to Idaho. Taxable year 2006 was the last Idaho income tax return filed by Petitioners. The Tax Discovery Bureau (Bureau) sent Petitioners a letter asking if they simply forgot to file their Idaho income tax returns for taxable years 2007 through 2011. Petitioners responded that the Bureau’s letter caught them by surprise, because their tax preparer told them they did not need to file Idaho individual income tax returns, since [Redacted] lived and worked outside of Idaho in 2007 through 2011. Petitioners stated their tax preparer prepared 2008 through 2011 Idaho income tax returns that they are sending. Petitioners stated 2007 was not done because they did not have the records.

The Bureau received, reviewed, and rejected Petitioners 2008 through 2011 Idaho income tax returns, because it did not believe the returns were correct in their depiction of Petitioners’

resident status. Petitioners' returns reported [Redacted] as a part-year resident for all years and [Redacted] as a resident for 2008 and part-year resident for the remaining years. The Bureau also found that even if the resident status was correct, the returns did not correctly report Petitioners' Idaho taxable income based on the community property laws. The Bureau prepared corrected Idaho income tax returns on the basis that Petitioners were domiciled in Idaho and sent Petitioners a Notice of Deficiency Determination.

Petitioners protested the Bureau's determination. Petitioners retained the services of a certified public accountant who determined Petitioners income tax returns were filed incorrectly, but still disagreed with the returns the Bureau prepared. Petitioners' protest stated that [Redacted] was a resident and domiciled in [Redacted] and [Redacted] was a resident and domiciled in Idaho. Petitioners agreed that their Idaho taxable income should be determined based upon a community property allocation. Petitioners' primary argument was that [Redacted] was not domiciled in Idaho and not all his income was reportable to Idaho. Petitioners provided corrected returns reflecting their position.

The Bureau reviewed Petitioners' protest and their corrected returns. The Bureau acknowledged Petitioners' protest and referred the matter for administrative review. The Tax Commission sent Petitioners a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. Petitioners did not request a hearing, but rather asked that the Tax Commission make its redetermination on the information and returns presented. The Tax Commission, having considered all the information provided, hereby issues its decision.

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); 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 Tax 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 (house) or it can be a community to which the individual has established strong and endearing ties. In this case, Petitioners had a house in [Redacted] where [Redacted] and the family lived. [Redacted] rented an apartment in [Redacted] in 2007, and an apartment in [Redacted] beginning in January 2008, through the present time.

[Redacted] and Petitioners' children moved to Idaho from [Redacted] in October 1998. [Redacted] followed in May 1999. [Redacted] lived in Idaho until May 2004, when Petitioners decided the family needed more income than what their Idaho rental properties could provide. [Redacted] returned to his former job in [Redacted] and stayed with that employer until he could start collecting retirement income from that employer, which was in January 2006. [Redacted] retired and returned to Idaho with a prospect of obtaining employment with [Redacted]. When the [Redacted] position did not materialize, Petitioners knew the family could not be supported

without [Redacted] being employed. Petitioners made a conscious decision to keep their Idaho property and send [Redacted] outside Idaho for employment. This is when [Redacted] was employed in [Redacted] and subsequently, in [Redacted]. At no time did Petitioners consider moving the family to where [Redacted] was employed.

Petitioners provided no information about [Redacted] apartments; how they were furnished, what he did to make it more pleasant, etc. Petitioners did state [Redacted] did visit his family in [Redacted] on a regular basis and on holidays. The record does not mention [Redacted] family ever going to visit with him in either [Redacted] or [Redacted]. Even though Petitioners argue [Redacted] apartments were his true, fixed, and permanent homes, the appearance is that [Redacted] permanent home was with his family in [Redacted]. Petitioners have not shown that [Redacted] apartments were accorded the sense of permanence with all the sentiment, feeling, and permanent association that goes with calling a place a home (Starer v. Gallman, 50 A.D.2d 28, 377 N.Y.S.2d 645 (1975)).

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] worked for [Redacted] in [Redacted], and [Redacted]. Petitioners also had rental properties in Idaho.

Petitioners knew, from past experience, that [Redacted] retirement income and their rental income could not support the family. Petitioners also knew the small community of [Redacted] and the surrounding area could not support someone specialized in [Redacted] profession; therefore, [Redacted] had to seek employment outside of Idaho. There is no question

Petitioners' primary source of income and [Redacted] primary business was outside of Idaho, but it is apparent that [Redacted] was outside of Idaho for employment reasons only.

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 was spent outside of Idaho, due to his employment. In 2007, [Redacted] spent the majority of his time, from March to January 2008, in [Redacted]. Beginning in 2008, [Redacted] spent the majority of his time in [Redacted]. During all the years, [Redacted] would regularly come back to Idaho monthly, bi-weekly, and/or on holidays. Petitioners provided no other information as to where [Redacted] spent his time.

Based solely on [Redacted] employment, it is clear [Redacted] spent the majority of his time outside of Idaho. However, as with the business factor, it is just as clear that [Redacted] was outside of Idaho purely for employment purposes.

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. Very little is known about [Redacted] life in [Redacted] and [Redacted] outside of his employment. Petitioners stated [Redacted] has numerous friends in [Redacted], he frequents a [Redacted] library, and he belongs to a Gold's gym in [Redacted]. Petitioners did not describe [Redacted] apartments, nor did they describe what [Redacted] does on his down time from work. One can only assume from the record, [Redacted] does a lot of reading and exercising while living in [Redacted]. From the information available, Petitioners have not shown that [Redacted] had any sentimental attachments in [Redacted] or [Redacted]

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 was in Idaho. The record does not state if [Redacted] had family in

either [Redacted] or [Redacted] however, one would assume not, since Petitioners stated [Redacted] only had friends in [Redacted]. The record does show that [Redacted] family grew by an additional grandchild in 2009, which based upon the returns submitted, the grandchild lives in the [Redacted] house with [Redacted]. Petitioners stated it was a financial decision that [Redacted] live and work outside of Idaho.

When the primary factors are not conclusive, adding the minor factors can generally point to where an individual is domiciled. The minor factors are other actions that show where an individual considers his true home. These actions include obtaining privilege licenses, voter's registration, vehicle registrations, medical and dental care, being involved in civic and community functions, and the use of financial institutions.

During the years in question, [Redacted] had an Idaho driver's license. Petitioners stated [Redacted] considered himself a resident of both Idaho and [Redacted]; therefore, he could get a driver's license from either state. Not obtaining a driver's license from the state an individual is claiming to be identified with, when it could be easily obtained, does not lend credence to establishing a domicile in that state. In addition, the fact that [Redacted], when it was time to renew his license in 2010, purchased an eight year Idaho driver's license, shows his intent to be identified with Idaho for quite some time. If [Redacted] considered [Redacted] his home state and his intent was to remain there indefinitely, one would assume obtaining a [Redacted] driver's license would be a priority. Furthermore, Idaho driver's licenses are not available to nonresidents of Idaho. Therefore, [Redacted] had to affirm to the Department of Motor Vehicles that he was a resident of Idaho when he purchased his eight-year Idaho driver's license in 2010.

In addition to the Idaho driver's license, Petitioners registered their vehicles in Idaho. With [Redacted] living in [Redacted], there is no mention in the record he ever registered a

vehicle in [Redacted]. The only reference in Petitioners' argument is that vehicle registration was something [Redacted] thought he could do in either Idaho or [Redacted] because he considered himself a resident of both states.

Like the vehicle registrations, [Redacted] registered to vote in Idaho in 2012 because of his belief about being a resident of both states. However, on [Redacted] voter's registration card, he stated he had been a resident of Idaho for ten years. This is also true of the Idaho Fish and Game license [Redacted] purchased in 2012, where he stated he was domiciled in Idaho since January 1, 1998. Although both the registration and the license were completed and purchased outside the scope of the years examined, both give the indication or impression that [Redacted] considered himself an Idaho resident for the past 10 to 14 years.

Petitioners stated [Redacted] had a membership to [Redacted] gym in [Redacted], he sees a dentist in [Redacted], his tax preparer is in [Redacted], and he has his vehicle serviced in [Redacted]. Petitioners stated [Redacted] has several friends in [Redacted]; however, the record is silent as to any community functions [Redacted] participates in or civic organizations [Redacted] belongs to. As for [Redacted] dealings with financial institutions, Petitioners stated they opened an account years ago with [Redacted] while living in [Redacted] and have stayed with [Redacted] since that time.

Looking at these minor factors, there is little that associates [Redacted] with the state of [Redacted]. On the other hand, wherever [Redacted] goes, his driver's license and vehicle registration identify him with Idaho. If [Redacted] truly wanted to be identified with [Redacted] he would have done the simple little things necessary to show he considered [Redacted] his home for an indefinite time.

CONCLUSION

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 March 2007, [Redacted] was domiciled in Idaho. In March 2007, [Redacted] began searching for employment in [Redacted] and then in [Redacted]. It is clear [Redacted] had physical presence in both [Redacted] and [Redacted]. Petitioners stated [Redacted] intent was to live and work outside of Idaho in order to support his family in [Redacted]. This may have been [Redacted] intent with regard to being employed, but it does not speak to his intent with regard to his domicile.

As a whole, the factors indicating domicile do not show [Redacted] intent to abandon Idaho or the intent to make [Redacted] or [Redacted] his domicile. [Redacted] did not do the things one would expect of an individual if he was acquiring another state as his domicile. Petitioners did not show that [Redacted] considered anywhere other than Idaho a place of permanence 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). Therefore, the Tax Commission finds that Idaho was the state [Redacted] identified himself with and, therefore, [Redacted] was domiciled in Idaho.

THEREFORE, the Notice of Deficiency Determination dated May 8, 2013, and directed to [Redacted] and [Redacted] is AFFIRMED.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2007	\$1,832	\$ 458	\$531	\$ 2,821
2008	3,171	793	719	4,683
2009	2,643	661	468	3,772
2010	3,138	785	404	4,327
2011	4,149	1,037	368	<u>5,554</u>
			TOTAL DUE	<u>\$21,157</u>

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

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.
