

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
)
[Redacted],) DOCKET NO. 31125
)
)
Petitioners.) DECISION
)
)
_____)

[Redacted] and [Redacted] (Petitioners) protested the Notice of Deficiency Determination dated December 9, 2013, asserting additional Idaho income tax and interest for taxable years 2010 and 2011 in the total amount of \$1,799. Petitioners disagreed that [Redacted] was domiciled in Idaho during taxable years 2010 and 2011. The Tax Commission, having reviewed the file, issues its decision.

BACKGROUND

Petitioners filed part-year/nonresident Idaho individual income tax returns for taxable years 2010 and 2011. The Income Tax Audit Bureau (Bureau) reviewed Petitioners' returns and, based upon its determination on Petitioners' 2009 Idaho individual income tax return, the Bureau adjusted Petitioners' 2010 and 2011 Idaho income tax returns, asserting both [Redacted] and [Redacted] were Idaho residents. The Bureau sent Petitioners a Notice of Deficiency Determination, which Petitioners protested.

Petitioners stated [Redacted] was not a resident of Idaho and had not been a resident of Idaho since 2006. Petitioners stated that the state of Idaho was fully aware that [Redacted] worked full-time in [Redacted], attended school in [Redacted], and lived in [Redacted] since 2006. Petitioners stated that since [Redacted] resided and worked in [Redacted] since 2006, the assertion that [Redacted] was a resident and domiciled in Idaho is untrue and invalid. Petitioners

further stated that [Redacted] did not have any community income from Idaho sources and that Idaho is not entitled to any of her income earned in [Redacted].

Petitioners stated [Redacted] obtaining an Idaho driver's license, voting in Idaho, and getting an Idaho fish and game license were oversights and done without any preconceived intention to defraud the state of Idaho. Petitioners stated they understand what was presented at the hearing on their 2009 audit, but they disagree with the Board of Tax Appeals findings. Petitioners do not believe [Redacted] was a resident of, or domiciled in, Idaho in 2009, 2010, or 2011.

The Tax Commission reviewed the matter and sent Petitioners a letter discussing the methods available for redetermining a protested Notice of Deficiency Determination. Petitioners requested a telephone hearing, which was held on August 22, 2014. During the hearing, Petitioners provided the following information.

Petitioners have been together since 1998. They lived together in [Redacted], Idaho, from 2000 through 2006. Both were married before. [Redacted] divorced in 1997 and she and [Redacted] married in 2008. When Petitioners married, they signed a premarital agreement that provided for all their property prior to marriage, and the income therefrom, would remain separate property. Petitioners stated they would provide a copy of the agreement.

Petitioners stated when all [Redacted] children left their household, [Redacted] went back to college and earned her degree. In September 2005, [Redacted] was employed by [Redacted]. She continued to work at the [Redacted] until she was laid off, at which time she went to work at a community college in [Redacted].

Petitioners stated that [Redacted] has always worked after she graduated from college. [Redacted] works five days a week and whenever she gets a vacation she goes to [Redacted] to

visit her children. Petitioners stated [Redacted] did spend some weekends in Idaho with [Redacted] but they were few and far between. Someone always needed to look after [Redacted] mother. Petitioners stated they would occasionally take [Redacted]mother to Idaho on the weekends [Redacted] would go to Idaho, but that was only in the early stages of [Redacted] mother's [Redacted]. Petitioners stated they would provide a schedule of the days [Redacted] was in Idaho. Petitioners stated [Redacted] was in Idaho for only a few days after moving into the [Redacted] property in [Redacted].

Petitioners stated [Redacted] purchased the [Redacted] property in 2005. [Redacted] mother moved into the [Redacted] property when she relocated from [Redacted] in 2006. [Redacted] also moved into the [Redacted] property in January 2006, to care for [Redacted] mother and to be closer to her place of employment. [Redacted] mother had [Redacted]. [Redacted] also lived at the [Redacted]property, but because [Redacted] had [Redacted] in Idaho that he needed to care for, he would often stay at his property in Idaho.

[Redacted] retired from teaching in [Redacted]County, however, he still kept a full schedule of substitute teaching. In addition to substitute teaching, [Redacted] supplemented his retirement with several rental properties. [Redacted] purchased all his properties before the real estate bubble popped. Petitioners stated all [Redacted] properties are fully mortgaged and mostly upside down.

Petitioners stated [Redacted] has never owned any of [Redacted] properties. The last property [Redacted] purchased, the [Redacted] property, was in October 2006 before their marriage. Petitioners' premarital agreement put in writing that [Redacted] has no interest in the properties, even though she may contribute to paying for the property. Petitioners stated their intent was to move to the [Redacted] property when [Redacted] retired. However, after several

life events: the [Redacted], the [Redacted], [Redacted] and hospitalized in [Redacted] for several weeks, and [Redacted] losing her job at [Redacted], Petitioners stated it is now unclear where they will end up. It could be Idaho or it could be [Redacted]. Petitioners stated they want to be close to their children and right now they don't know which state that will be. Regardless, for the years in question and currently, [Redacted] was, and is, a resident of Washington.

Petitioners later provided the number of days [Redacted] stayed in Idaho. Petitioners stated that from 2006 to 2008 [Redacted] did not stay overnight in Idaho. In 2009, [Redacted] was in Idaho on two separate weekend camping trips in the [Redacted] area. In 2010, [Redacted] had his [Redacted] and [Redacted] was in [Redacted] when she was not working in Washington. In June 2011, Petitioners stated [Redacted] was in Idaho for a weekend in [Redacted] (when [Redacted] bought her an Idaho fishing license). Petitioners do not believe [Redacted] was a resident of Idaho nor was she domiciled in Idaho from 2006 to the present time.

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 Bureau asserts [Redacted] was domiciled in Idaho on the basis of a prior audit that was affirmed by the Board of Tax Appeals. While it is true that [Redacted] was domiciled in Idaho prior to 2006, it is questionable that [Redacted] domicile was in Idaho beginning with taxable year 2006. The record shows [Redacted] left Idaho in January 2006 and prior to that, [Redacted] was employed in [Redacted] after finishing college in [Redacted] in September 2005. Petitioners stated [Redacted] moved into a house [Redacted] purchased in 2005 in [Redacted] to be with [Redacted] mother when [Redacted] was not working. Petitioners stated [Redacted] did not return to Idaho other than for visits and the occasional appointment.

Looking at the five factors Idaho uses to determine where an individual is domiciled, the factors do not weigh in favor of Idaho. [Redacted] home was in [Redacted]; she did not have a home in Idaho. [Redacted] employment was in [Redacted]; she had no income sources from Idaho. [Redacted] spent most of her time in [Redacted]; she was in Idaho occasionally and only for a few weekends. [Redacted] family was in [Redacted], Idaho, and [Redacted]; [Redacted] lived with her mother-in-law in [Redacted] and her husband stayed with her in [Redacted] far more than she stayed with him in Idaho. [Redacted] children live in [Redacted]. As for where [Redacted] keeps her near and dear items, the record is silent, however, one can assume that [Redacted] near and dear items are in the home on [Redacted] in [Redacted], [Redacted]. Petitioners stated [Redacted] moved to that house in 2006 and has lived there ever since. There is no indication or evidence that [Redacted] had any personal items or effects at any location in Idaho. Considering these factors, there is very little to connect [Redacted] with Idaho.

[Redacted] Idaho connections consist of an Idaho driver's license, voting in Idaho, and an Idaho fish and game license. Petitioners stated that the driver's license and voting were essentially uninformed choices that were made when [Redacted] driver's license expired and voting absentee when [Redacted] requested absentee ballots. As for the fishing license, a weekend trip to [Redacted], an overzealous husband, and an Idaho driver's license found [Redacted] with a resident fishing license. All these minor factors give the impression that [Redacted] was holding herself out to be a resident of Idaho when, in fact, she was probably a resident of [Redacted].

Another factor the Tax Commission must consider is whether [Redacted] presence in Idaho was limited in such a way as to qualify her for the safe harbor provision of Idaho Code section 63-3013(2). Idaho's safe harbor provision provides that an individual who is outside the state for 445 days in a consecutive fifteen (15) month period and then is not present in Idaho for more than 60 days in a calendar year, shall be considered a nonresident for income tax purposes. An exception to this rule is that the individual did not maintain a permanent place of abode in this state where a spouse was present for more than 60 days in a calendar year. It is evident from the record that [Redacted] was absent from the state for longer than the fifteen months required and she has not been present in the state for more than 60 days in any calendar year. She also did not maintain a permanent place of abode in Idaho. Therefore, whether [Redacted] is considered to be domiciled in Idaho or not, [Redacted] does meet the safe harbor provision of Idaho Code section 63-3013(2) and should be considered a nonresident for Idaho income tax purposes.

As for Petitioners' community income argument, Idaho and [Redacted] are community property states. Both consider wages as community property and, therefore, community income. *See* Idaho Code section 32-906 and Revised Code of Washington (R.C.W.) section 26.16.030.

This is true even if the husband and wife do not always live together. Suter v. Suter, 97 Idaho 461, 546 P.2d 1169 (1976) Desfosses v. Desfosses, 120 Idaho 354, 815 P.2d 1094 (Ct. App. 1991). Washington's community property law provides an exception to this general principle where the husband and wife do not always live together. However, in most cases, [Redacted] courts have held that for the exception to apply, the married couple must be living apart as a result of marital discord. A couple living apart is not, by itself, sufficient to give rise to the separate property treatment of the [Redacted] law.

Petitioners' living apart was not due to marital discord. Petitioners' living apart was due to [Redacted] having [Redacted] in Idaho that he needed to manage and care for. The frequency of [Redacted] staying or living in Idaho is unknown and immaterial since [Redacted] considered himself an Idaho resident.

Because Petitioners' earnings, other than from rents and profits from [Redacted] rental properties (premarital agreement), are considered community income, half of [Redacted] income is attributable to [Redacted]. Since [Redacted] was a resident of Idaho and [Redacted], at the least, considered a nonresident of Idaho, [Redacted] community income attributable to [Redacted] is taxable by Idaho.

CONCLUSION

Domicile is primarily determined by an individual's intent. There must be intent to abandon an existing domicile and intent to acquire a new domicile. From the facts available, it is questionable that [Redacted] maintained a domicile in Idaho. Regardless, [Redacted] met the requirements of Idaho's safe harbor and is considered a nonresident of Idaho. Therefore, [Redacted] can only be taxed, by Idaho, on her Idaho source income. However, because [Redacted] was living in a community property state, half of her income is attributable to

[Redacted] and [Redacted] is required to report that half as income on Petitioners' Idaho income tax return.

Therefore, the Tax Commission reverses the Bureau's determination that [Redacted] Washington income is fully taxable by Idaho and modifies the Notice of Deficiency Determination to include only the community property portion attributable to [Redacted].

THEREFORE, the Notice of Deficiency Determination dated December 9, 2013, and directed to [Redacted] and [Redacted] is AFFIRMED as MODIFIED by this decision.

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

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2010	\$ 32	\$ 4	\$ 36
2011	287	31	<u>318</u>
		TOTAL DUE	<u>\$354</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 _____ 2015.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2015, 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.
