

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

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|---|---|--------------------------|
| In the Matter of the Protest of |) | |
| |) | DOCKET NO. 1-785-368-576 |
| [Redacted] |) | |
| |) | |
| Petitioners. |) | DECISION |
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[Redacted] (petitioners) protested the Notice of Deficiency Determination (NODD) issued by the staff of Idaho State Tax Commission dated January 1, 2015, asserting additional Idaho income tax, penalty, and interest for taxable year 2011 in the total amount of \$1,356. The petitioners disagreed with the Income Tax Audit Bureau's (Audit) determination that Mr. ^[Redacted] was domiciled in Idaho in 2011. The petitioners claimed Mr. ^[Redacted] was a resident of North Dakota during 2011 and his income was not taxable by Idaho.

The petitioners submitted Idaho form 43 for taxable year 2011, showing Mrs. ^[Redacted] as a resident and Mr. ^[Redacted] as a part-year resident. Audit selected the return for review and contacted the petitioners for additional information, specifically an explanation and documentation of Mr. ^[Redacted] status as a part-year resident. Mr. ^[Redacted] returned the residency and domicile questionnaire as requested by Audit, but did not submit any additional documentation. Audit reviewed this information, gathered other information, researched the issue, and made its determination. Audit determined Mr. ^[Redacted] was domiciled in Idaho and adjusted the petitioners' 2011 return to show Mr. ^[Redacted] as a resident of in Idaho. Audit sent the petitioners an NODD, which the petitioners protested.

The petitioner protested Audit's determination stating that for 2011, the year in question, Mr. ^[Redacted] was living and working in the state of North Dakota, and was not a resident of Idaho; therefore, not required to include all income on his Idaho tax return. Audit acknowledged the petitioners' appeal and requested he complete the aforementioned residence/domicile

questionnaire to assist them in determining his Idaho filing requirement. Audit reviewed the information contained in the questionnaire, but determined the NODD showing Mr. [Redacted] as an Idaho resident was accurate. Audit referred the matter for administrative review.

The Commission sent the petitioners a letter giving them two alternative methods for having the NODD redetermined. The petitioners did not respond; therefore, the Commission decided the matter based upon the information available.

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 Mr. [Redacted] was domiciled in taxable year 2011. 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 Commission, 128 Idaho 883, 884, 920 P. 2 d 400, 401 (1996). The burden rests with petitioners to prove that Mr. [Redacted] abandoned his domicile in Idaho and established a domicile in another state, until that burden is met Idaho continues to be his domicile.

In determining an individual's domicile, the 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 (home) or it can be a community to which the individual has established strong and endearing ties. In this case, the petitioners' home beginning in 2010 was Idaho. In 2011 Mr. [Redacted] began work in North Dakota and lived in a travel trailer in an RV park for six months, then in various employer provided housing in different states. Mrs. [Redacted] and the minor children remained in Idaho. Other than renting living space, Mr. [Redacted] has not shown that he considered North Dakota or any other state in which he worked, to be his permanent home 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). For all practical purposes, the appearance is Mr. [Redacted] was living outside of Idaho for employment purposes only. Nothing was presented to show that Mr. [Redacted] went to North Dakota to make it his permanent, indefinite home.

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, Mr. [Redacted] was a field service technician/electrician in the oil fields of North Dakota primarily, but also worked in other oil producing states. This factor favors North Dakota, but it is apparent that Mr. [Redacted] is only absent from Idaho for employment.

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 Mr. [Redacted] time in 2011 was spent in North Dakota, due to his employment. When asked on the domicile questionnaire how many days he was physically present in Idaho during 2011, Mr. [Redacted] replied 15 weeks. Therefore, the time factor favors North Dakota, but even so, the evidence supporting this factor does not show the sentiment, feeling, and permanent association that go with calling a place a home. Starer, supra.

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. Mr. [Redacted] has stated that he did take with him to North Dakota his tools, his golf clubs, computer and 42” big screen television. While these items are obviously of importance to Mr. [Redacted], one would assume with his wife, children, and a house in Idaho, Mr. [Redacted] had closer near and dear items in Idaho. Considering the information available, the Commission finds this factor favors Idaho primarily because the petitioners have not shown that Mr. [Redacted] had any sentimental attachments in or to North Dakota.

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, Mr. [Redacted] immediate family was in Idaho. The petitioners provided no information on any family living in North Dakota. With no family connections in North Dakota, this factor definitely points to Idaho.

The primary factors tend to show Idaho as being Mr. [Redacted] domicile. However, adding the minor factors can either solidify or swing the determination to North Dakota. The minor factors considered were Mr. [Redacted] privilege licenses, his voter registration,

vehicle registrations, medical and dental care, civic and community functions, and the use of financial institutions.

While there is limited information pertaining to these factors, for the year in question, Mr. [Redacted] did maintain an Idaho driver's license and registered his vehicles in Idaho. Looking at these minor factors, there is very little that associated Mr. [Redacted] with the state of North Dakota.

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 2011 both Mr. [Redacted] and Mrs. [Redacted] were domiciled in Idaho. It is clear Mrs. [Redacted] has maintained her Idaho domicile. It is also clear Mr. [Redacted] resided in North Dakota. The question is whether Mr. [Redacted] has established a new domicile.

Mr. [Redacted] had a physical presence in both Idaho and North Dakota; Idaho during a part of his off time and North Dakota mostly while working. Mr. [Redacted] stated that, his primary residence was in Idaho, but he had to work in North Dakota to provide for his family.

As mentioned previously when asserting a change in domicile, the burden of proof is always on the party asserting a change to show that a new domicile has been created. The petitioners' have not met that burden. When all the facts and circumstances presented were considered, the Commission found that the actions of Mr. [Redacted] indicate that he has not abandoned Idaho as his state of domicile. The Commission found Mr. [Redacted] connections to Idaho were stronger and more fixed. His primary purpose or reason for being in North Dakota was for employment.

The petitioner bears the burden of showing that he abandoned his domicile in Idaho and established a new domicile in North Dakota. 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).

From the information available, the Commission does not see that Mr. [Redacted] made a permanent and indefinite move to North Dakota from Idaho. There is nothing in the record that shows a permanent home in North Dakota, 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 Commission finds that Mr. [Redacted] was domiciled in and a resident of Idaho during taxable year 2011, and as such, was required to include all of his income, from whatever source, on his Idaho income tax return for that year.

THEREFORE, the NODD dated January 1, 2015, and directed to **[Redacted]**, is hereby AFFIRMED.

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

| <u>YEAR</u> | <u>TAX</u> | <u>PENALTY</u> | <u>INTEREST</u> | <u>TOTAL</u> |
|-------------|------------|----------------|-----------------|--------------|
| 2011 | \$1,172 | \$59 | \$193 | \$1,424 |

Interest is calculated through September 1, 2016.

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 _____ 2016.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2016, 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.
