

Prior to 2015, Petitioners were residents of, and worked in, Idaho. For the years in question, Mr. [REDACTED] resided in the family home in Caldwell, Idaho and primarily worked for the local school district as a teacher. In 2015, Mrs. [REDACTED] employer transferred her place of employment from a hospital in Idaho to [REDACTED] Hospital in Murray, Utah, where she worked as a Revenue Integrity Director.

Mrs. [REDACTED] resided in Murray, Utah during the workweek, but frequently returned to Caldwell, Idaho on the weekends and during the holidays to be with her family. For the years in question, Mrs. [REDACTED] made over 100 trips back to Idaho to be with family. Each time Mrs. [REDACTED] would spend two to three days in Idaho, and more for the holidays. In addition, Mrs. [REDACTED] did not register to vote in or get a Utah driver's license. She registered to vote in Idaho and renewed her Idaho driver's license.

Petitioners used a tax preparer to file their returns. In pertinent part, Petitioners claimed Mr. [REDACTED] was a resident of Idaho and Mrs. [REDACTED] was a resident of Utah; and the credits and deductions set forth in the table below.

	<u>2015</u>	<u>2016</u>	<u>2017</u>
Moving Expenses	\$ 1,523		
Unreimbursed Employee Travel	10,632	\$15,185	\$15,836
Unreimbursed Home Office, etc.	6,243	5,974	4,957
Non-cash Charitable Contributions	5,700		
Idaho Educational Contributions	119		
Energy Efficiency Upgrades	2,533		

There were several other deductions, such as Schedule A personal property and other taxes, but the amounts in question are minimal and will not be discussed in detail in this decision.

The Bureau determined Mrs. [REDACTED] was domiciled in Idaho and was a resident for Idaho income tax purposes even though she resided in Utah during most of the time. In making the determination, the Bureau stressed the importance of Mrs. [REDACTED] frequent trips to Idaho to be

with her family. As a result of the domicile determination, the Bureau found Petitioners were entitled to credit for taxes paid to another state and adjusted the returns accordingly. The Bureau disallowed most of the deductions and credits as matter of law and some for lack of substantiation.

DISCUSSION

Domicile

Domicile is the place where an individual has his [or her] true, fixed, permanent home and principal establishment, and to which place he has the intention of returning whenever he is absent¹. Although the words “residence” and “domicile” are sometimes used interchangeably, these words do have distinct meanings. A residence is simply a place of abode or dwelling where a person may reside from time to time. In today’s day and age, it is not at all uncommon for an individual to have two or more residences at one time. Domicile, on the other hand, connotes something more, an intention or attitude towards a particular place as being the center of the individual’s domestic, social and civil affairs. It is that one place where an individual makes his [or her] “home” for the indefinite future.

An individual can have several residences or dwelling places, but legally can have but one domicile at a time. All individuals who have been domiciled in Idaho for the entire taxable year are residents for Idaho income tax purposes, even though they have actually resided outside Idaho during all or part of the taxable year².

In determining where an individual is domiciled, the factfinder will generally look at all the surrounding facts and circumstances. No one fact or circumstance is, by itself, determinative. Rather, the factfinder must analyze all the relevant facts and determine whether, taken as a whole,

¹ Income Tax Administrative Rule 030.02, IDAPA 35.01.01.030.2

² Idaho Code § 63-3013.

those facts point in favor of some particular place as the person's domicile³. Five factors are looked at as the primary indicia of domicile. The five primary factors are: (1) home, (2) active business involvement, (3) time, (4) location of "near and dear" items, and (5) family connections. Other facts and circumstances can also be considered. The relevance of the factors was discussed in detail in the Notice.

In short, Mrs. [REDACTED] maintained significant family ties in Idaho and frequently returned to Idaho to be with her family. Given the facts, Mrs. [REDACTED] was in Utah because she had to for work but spent weekends and holidays in Idaho because she wanted to. Also, Mrs. [REDACTED] voted and registered automobiles in Idaho. In this situation, Idaho would likely be the place Mrs. [REDACTED] intended to be her permanent home despite the fact her employment, and most of her time, was in Utah.

The burden of proving a change of domicile is upon the party asserting the change. The evidence to effect a change of domicile must be "clear and convincing."⁴ Thus, a taxpayer who has been historically domiciled in Idaho who is claiming to have changed her domicile must be able to support her intentions with unequivocal acts. In this case, the burden is on Petitioners and they have not provided clear and convincing evidence to support a change of domicile from Idaho to Utah. The mere fact Mrs. [REDACTED] worked and had a condo in Utah is not enough. Therefore, the Tax Commission holds that Mrs. [REDACTED] was domiciled in Idaho and a resident for Idaho income tax purposes.

Moving expenses

A taxpayer may deduct certain expenses of moving to a new home if the move results from a change in the individual's principle place of employment and if a distance test and time test is satisfied⁵. A taxpayer

³ In *Matter of Bodfish v. Gallman*, 50 AD2d 457, the court stated: "The test of intent with respect to a purported new domicile has been stated as 'whether the place of habitation is the permanent home of a person, with the range of sentiment, feeling and permanent association with it.'"

⁴ As noted in *Bodfish v. Gallman*.

⁵ Internal Revenue Code (IRC) § 217

is permitted to deduct only the cost of moving household goods and personal effects to the new residence, and the transportation and lodging costs of moving the taxpayer and family from the old residence to the new residence. No deduction is allowed for the purchase of new furniture and household goods.

For purposes of moving expenses, “residence” means the taxpayer’s principle residence. It does not include other residences owned or maintained by the taxpayer or the taxpayer’s family members. Whether or not property is used by the taxpayers as the principle residence depends on all the facts and circumstances⁶.

As discussed above, Mrs. [REDACTED] stayed in the Utah condo during the workweek rather than returning to her home in Idaho where her family resided. Mrs. [REDACTED] frequently returned to Idaho on weekends and during the holidays to be with her family. In addition, Mrs. [REDACTED] did not take several secondary steps to demonstrate a change of domicile, such as registering to vote or getting a Utah driver’s license. Given the facts, Mrs. [REDACTED] principle residence did not change. Additionally, some of receipts Petitioners provide to support their moving expenses included the purchase of new furniture and household goods. Therefore, Tax Commission upholds that Petitioners are not entitled to a deduction for moving expenses.

Travel Expense

A taxpayer may deduct the costs of away-from-home business travel⁷. To qualify as travel, the taxpayer must be away from his or her tax home overnight. A taxpayer’s tax home is the taxpayer’s principle place of business, employment, or post of duty regardless of where the personal or family residence is maintained. Thus, a taxpayer domiciled or residing in Idaho with a permanent post of duty in another state is an Idaho resident for Idaho income tax purposes. However, he or she is not entitled to a deduction for travel expenses incurred in the other state since that is his or her tax home⁸. Expenses

⁶ Treasury Regulation § 1.217-2(b)(8)

⁷ Treasury Regulation 1.162-2 allows deduction for travel expenses; provides treatment of business travel mixed with personal activities.

⁸ Income Tax Administrative Rule 030.02, IDAPA 35.01.01.010.07

aren't deductible where the nature of the position is such that the taxpayer could reasonably be expected to move the taxpayer's residence there, but for personal considerations the taxpayer maintains a residence elsewhere.

As discussed previously, Mrs. [REDACTED] employer transferred her place of employment to [REDACTED] Hospital in Murray, Utah. Mrs. [REDACTED] made over 100 trips between the condo in Murry, Utah and the family home in Caldwell, Idaho. These trips to Idaho to see her family were deducted as unreimbursed employee business travel expenses.

Mrs. [REDACTED] principle place of business, employment, post of duty, or tax home was Utah, and her family home was Idaho. In order to deduct travel expenses, the expenses must have a business purpose. The travel to Idaho was primarily to see her family; Mrs. [REDACTED] employer did not require her to travel to Idaho for business. Therefore, the Tax Commission upholds the adjustment for the travel away from home expenses.

Home Office Expenses & Other Expenses

A taxpayer who operates a trade or business from home can claim a deduction for expenses related to its business use. Expenses such as mortgage interest, utilities, real property taxes, and repairs can be allocated on a reasonable basis to the area of the home used for a business purpose. To claim a deduction strict tests must be satisfied⁹.

A specific part of the home must be used exclusively for carrying on a trade or business. A taxpayer who does not have another business location can deduct the cost of using an area in the home for storing inventory on a regular basis. If a room is used for a trade or business and is also for personal activities, the exclusive use test is not met and no deduction for home office expenses is allowed.

⁹ IRC § 280A

The home office must also be regularly used as the principle place to conduct a trade or business belonging to the taxpayer or a place to meet or deal with patients, clients, or customers in the normal course of the trade or business. In addition, a taxpayer who uses a home office to conduct substantial administrative or management activities and has no other fixed location to conduct these activities is allowed to deduct the cost of a home office. The taxpayer must still use the home office exclusively and on a regular basis in carrying on a trade or business.

An employee who uses an office in their home to conduct business for their employer must meet an additional test. Employees use must be “for the convenience of the employer” and “required as a condition of employment” before any deduction for a home office may be taken. Because most employee use of a home office is for the convenience of the employee (i.e. people work at home because they want to, not because they are required to), most employee situations will not result in a deduction for home office expenses.

To be deductible, an expenditure or a loss must have a business purpose that is unrelated to its tax effect. Under the business purpose concept, there must be a business purpose that exceeds any tax avoidance motive. The primary motive for the transaction must be to make a profit. Failure to establish a business purpose for the expenses can result in the loss of the deduction. When a taxpayer has both business and personal reasons for an expenditure, a taxpayer risks losing the deduction. For these expenditures, the taxpayer will need to show that the business purpose was the primary or dominant motive for this transaction.

Mr. [REDACTED] claimed home office deductions for the home in Caldwell, Idaho and Mrs. [REDACTED] claimed home office deductions for the condo in Murray, Utah. Petitioners provided schedules and receipts to support their expenses but did not establish that their home offices were used exclusively on a regular basis as their principle place of business. Additionally, they did not

establish as employees they maintained the offices for the convenience of their employers and were required as a condition of their respective employment.

Also, Petitioners did not show the primary purposes of their other unreimbursed employee expenditures were business and were not personal. A taxpayer's general statement that his or her expenses were incurred in pursuit of a trade or business is not sufficient to establish that the expenses had a reasonably direct relationship to any such trade or business. Therefore, the Tax Commission upholds the adjustment for the home office and other unreimbursed employee expenses.

Noncash Charitable Contributions

Individuals are allowed to deduct contributions to organizations that are organized for religious, charitable, education, scientific, or literary purposes¹⁰. For a taxpayer who contributes property, the amount of charitable contributions is generally the fair market value of the property at the time of the contribution.

For a contribution not made in cash, the records a taxpayer must keep depends on whether the deduction for the contribution is less than \$250, at least \$250 but not more than \$500, over \$500 but not more than \$5,000, or over \$5,000¹¹. A taxpayer who claims a deduction of over \$5,000 for a noncash charitable contribution of one item or a group of similar items must have a contemporaneous written acknowledgement of the contribution from the qualified organization, detailed written records, and obtain a qualified written appraisal of the donated property from a qualified appraiser.

¹⁰ IRC Code § 170.

¹¹ See IRS Publication 526 on records to keep.

As noted, Petitioners claimed a \$5,700 deduction for noncash charitable contributions for tax year 2015. The Bureau limited the deduction to \$3,300. Petitioner contributed clothing and household items to the Idaho Youth Ranch. Petitioners kept records that would suffice for contributions less than \$500 but not for contributions greater than \$500. Petitioners did not have detailed written records or a qualified written appraisal. Therefore, the Tax Commission upholds the adjustment to noncash charitable contributions.

Credit for Contributions to Idaho Educational Entities

A taxpayer who donates cash to a qualified Idaho educational entity can claim a tax credit¹². Donations of goods or services do not qualify. The credit is limited to the smallest of 50% of the amount donated, 50% of tax, \$1,000 on a joint return, or tax liability after subtracting the credit for taxes paid to another state. To claim the credit, a taxpayer must be able to provide copies of canceled checks and/or receipts for contributions to a qualified educational entity.

For tax year 2015, Petitioners claimed a \$119 credit, which indicated they made a \$238 cash donation. However, Petitioners did not provide copies of canceled checks and/or receipts to prove a donation was made. Therefore, the Tax Commission upholds the adjustment to noncash the credit for contributions to Idaho educational entities.

Idaho Energy Efficiency Deduction

A taxpayer can deduct qualified expenses related to the installation of energy efficiency upgrades in the residence of the taxpayer built or subject to an outstanding building permit on or before 2002¹³. “Energy efficiency upgrade measure” means an energy efficiency improvement to the building envelope or duct system that meets or exceeds the minimum value for the improved

¹² Idaho Code § 63-3029A.

¹³ Idaho Code § 63-3022B.

component established by the version of the international energy conservation code (IECC) in effect in Idaho during the taxable year in which the improvement is made or accrued.

Petitioners claimed a deduction for a furnace, which does not qualify as an expense related to the installation of energy efficiency upgrades. Therefore, the Tax Commission upholds the adjustment to the energy efficiency deduction. The Tax Commission considered if the expenses would qualify for the alternative energy device (AED) deduction. In order to qualify for the AED deduction, certain rules must be satisfied. For example, a natural gas or propane heating unit must replace a noncertified wood stove. Without additional information, it is unclear if Petitioners are entitled to the AED deduction.

CONCLUSION

On appeal, a deficiency determination issued by the Tax Commission “is presumed to be correct, and the burden is on the taxpayer to show that the Commission’s decision is erroneous¹⁴. The Tax Commission requires Petitioners to provide clear and convincing evidence to establish Mrs. [REDACTED] made a change of domicile from Idaho to Utah. Here the Petitioners did not provide adequate evidence.

Deductions are a matter of legislative grace, and the taxpayer bears the burden of proof to establish entitlement to any claimed deduction¹⁵. This burden requires the taxpayer to substantiate deductions claimed by keeping and producing adequate records that enable the Commissioner to determine the taxpayer's correct tax liability¹⁶. A taxpayer claiming a deduction on an income tax return must demonstrate that the deduction is allowable pursuant to some statutory provision and

¹⁴ *Parker v. Idaho State Tax Comm’n*, 148 Idaho 842, 845, 230 P.3d 734, 737 (2010) (citing *Albertson’s Inc. v. State Dep’t of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984)).

¹⁵ *INDOPCO, Inc. v. Commissioner*, 503 U.S. 79, 84 [69 AFTR 2d 92-694] (1992); *New Colonial Ice Co. v. Commissioner*, 292 U.S. 435, 440 [13 AFTR 1180] (1934)

¹⁶ *Hradesky v. Commissioner*, 65 T.C. 87, 89-90 (1975), aff’d per curiam, 540 F.2d 821 [38 AFTR 2d 76-5935] (5th Cir. 1976); *Meneguzzo v. Commissioner*, 43 T.C. 824, 831-832 (1965).

must further substantiate that the expense to which the deduction relates has been paid or incurred¹⁷. Here the Petitioners did not demonstrate that they were entitled to various deduction as a matter of law and fact.

The Bureau added interest and penalty to the income tax deficiency. The Commission reviewed those additions and found both to be appropriate per Idaho Code sections 63-3045 and 63-3046 and has updated interest accordingly. Interest is calculated through April 30, 2020 and will continue to accrue at the rate set forth in Idaho Code section 63-3045(6) until paid.

THEREFORE, the Notice of Deficiency Determination dated January 24, 2019, and directed to Petitioners is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

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>
2015	\$2,534	\$127	\$409	\$3,070
2016	1,997	100	248	2,345
2017	2,126	106	195	2,427
				<u>\$7,842</u>

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

An explanation of Petitioners' right to appeal this decision is enclosed.

DATED this _____ day of _____ 2020.

IDAHO STATE TAX COMMISSION

¹⁷ *Hradesky v. Commissioner*, 65 T.C. at 89-90

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2020 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:



Receipt No.

