BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NOS. 0-828-512-256
	)	0-886-650-880
	)	
Petitioners.	)	DECISION
	)	

The Idaho State Tax Commission (Commission) reviewed your case and this is our final decision. We uphold the Notice of Deficiency Determination (Notice) dated August 15, 2017, for taxable years 2007 through 2009, and modify the Notice dated August 15, 2017, for taxable years 2010 through 2014. This means **you need to pay $16,707 and $24,897,** of tax, penalty, and interest, respectively. The Commission now DEMANDS immediate payment of these amounts.

The Commission's Tax Discovery Bureau (Bureau) contacted

(Petitioners) on July 12, 2016, as the Bureau could not find Petitioners' Idaho individual income tax returns for taxable years 2010 through 2014. Petitioners responded to the non-filer letter saying they were not Idaho residents, therefore not required to file Idaho individual income tax returns. The Bureau still had questions concerning Petitioners' residency status, so they requested Petitioners complete a residency and domicile questionnaire. Petitioners returned the completed questionnaire and included a copy of Mr. South Dakota driver's license along with a South Dakota residency affidavit. The Bureau reviewed this information, researched Commission records, obtained third party information, and decided Petitioners were Idaho residents for all years in question, with income amounts in each year above the filing requirement. Therefore, the Bureau prepared returns for Petitioners, sending them a Notice on August 15, 2017.

During the inquiry into Petitioners' missing 2010 through 2014 returns, the Bureau also reviewed Petitioners' 2007 through 2009 Idaho non-resident returns on file with the Commission. Based on their research, the Bureau determined Petitioners were Idaho residents in these years as well and an adjustment to their 2007 through 2009 returns was warranted, but the general three-year statute of limitations provision set out in Idaho Code § 63-3068(a) had expired. However, Idaho Code § 63-3068(c) provides an exception to the general three-year statute of limitation for issuing a deficiency notice. That subsection provides:

> In the case of a fraudulent return or a false return with the intent to evade the tax imposed in this chapter, or a willful attempt in any manner to defeat or evade the tax imposed in this chapter, a notice of deficiency may be issued, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

The Bureau determined Petitioners' 2007 through 2009 nonresident returns were filed in an attempt to evade tax, therefore, the three-year statute of limitations did not apply. The Bureau issued Petitioners a Notice for these years, changing the returns to reflect their status as residents, increasing their adjusted gross income to match that shown on their federal returns, and asserting the civil fraud penalty.

Petitioners protested the Notices on October 10, 2017, again challenging the Bureau's determination that they were Idaho residents. The Bureau acknowledged Petitioners' protest and sent the matter to the Commission's appeals unit for administrative review.

The appeals specialist sent Petitioners a letter discussing the alternatives for redetermining a protested Notice. Petitioners requested an informal hearing which was held on September 12, 2018. Present at the hearing was Mr. Commissioner and Tax Specialist Mr. did not provide any additional documentation at the hearing but did answer many of the Commission's questions related to Petitioners actions

during the years in question. Mr. oral testimony, along with the contents of the audit file, have been taken into consideration.

This is a domicile case. Petitioners have asked the Commission for a redetermination of the Notices that assert they were domiciled in, and therefore residents of, the state of Idaho during taxable years 2007 through 2014. Petitioners contend that they were residents of South Dakota during this time or at best, only part-year residents of Idaho.

The Commission's electronic data base shows Petitioners filed Idaho resident income tax returns consistently between 1995 through 2004, a part-year resident return in taxable year 2005, no return in 2006, a part-year resident return in 2007, non-resident returns for taxable years 2008 and 2009, and no Idaho returns in taxable years 2010 through 2014. Petitioners clearly established Idaho as their domicile as early as 1995. The question is, did they ever abandon their Idaho domicile and acquire South Dakota, or any other state, as their new domicile?

Under Idaho's income tax laws, a resident of this state must report and pay income tax on all his or her taxable income regardless of source. *See* Idaho Code § 63-3030. A nonresident, on the other hand, must report and pay Idaho income tax on only his or her taxable income derived from Idaho sources. The term "resident" is defined in Idaho tax laws as follows, Idaho Code § 63-3013:

> Resident. – (1) The term "resident," for income tax purposes, means any individual who:
> (a) Is domiciled in the state of Idaho for the entire taxable year; or
> (b) Maintains a place of abode in this state for the entire taxable year and spends in the aggregate more than two hundred seventy (270) days of the taxable year in this state. Presence within the state for any part of a calendar day shall constitute a day spent in the state unless the individual can show that his presence in the state for that day was for a temporary or transitory purpose.

Domicile is defined in the Commission's Administrative 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. An individual can have several residences or dwelling places, but he legally can have but one domicile at a time." *See* Income Tax Administrative Rule 030.02, IDAPA 35.01.01.030.2 (2001). The essential distinction between residence and domicile is that domicile requires intent to remain at one place for an indeterminate or indefinite period. *See Reubelmann v. Reubelmann,* 38 Idaho 159, 164, 220 P 404, 405 (1923). Domicile, once established, persists until a new domicile is legally acquired. *In re Cooke's Estate*, 96 Idaho 48, 524 P.2d 176 (1973). A concurrence of three factors must occur to change an individual's domicile. The factors are (1) the intent to abandon the present domicile, (2) the intent to acquire a new domicile, and (3) physical presence in the new domicile. *See* Idaho Income Tax Administrative Rule 030.02.a (IDAPA 35.01.01.030.02.a).; *Pratt v. State Tax Commission*, 128 Idaho 883, 885 n.2, 920 P.2d 400, 402 n.2 (1996). Whether an individual has the specific intent to create a new domicile is evidenced by that individual's actions and declarations. Generally speaking, in domicile cases an individual's actions are accorded more weight than his declarations since declarations can tend to be deceptive and self-serving. *See Allan v. Greyhound Lines*, 583 P.2d 613, 614 (Utah 1978).

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. *See State of Texas v. State of Florida*, 306 U.S. 398, 427, 59 S.Ct. 563, 577 (1939); *See generally*, Restatement, Second, Conflict of Laws § 19 comment c (1971). Although not entirely clear, it appears that under Idaho law a change in domicile must be established by a preponderance of the evidence. *See Ramsey v. Ramsey*, 96 Idaho 672, 535 P.2d 53 (1975).

A person's domicile will normally be that place where they have their true, fixed and permanent home. The term "home" as used in the Restatement, Conflicts of Law 2d, means "the place where a person dwells and which is the center of his domestic, social and civil life." *See* Rest., Conflicts of Laws 2d, § 12. The Restatement goes on to provide that "[d]omicil is a place, usually a person's home, to which the rules of Conflict of Laws sometimes accord determinative significance because of the person's identification with that place." *See* Rest., Conflicts of Laws 2d, § 11(1). The comments to this section of the Restatement emphasizes that a person's domicile is usually that person's home; "A person's domicil is usually the place where he has his home. But some persons have no home in the ordinary sense while others have two or more. Certain persons also lack capacity to acquire a domicil of choice, and in such instances the law may assign them as their domicil a place where their home is not located. (see §§ 22-23). The rule applicable to a person who has two or more dwelling places is stated in § 20." *See* Rest., Conflicts of Laws 2d, § 11(1), comment 1a.

Those comments go on to provide that, "[w]hen a person has one home and only one home, his domicil is in the place where his home is, except as stated in section16, Comment c and sections 22-23, relating to domicil in a vehicle and to persons who lack legal capacity to acquire a domicil of choice." *See* Rest., Conflicts of Laws 2d, § 11(1), comment 1h. Thus, with only a few exceptions, a person who only has one home will be domiciled at that place where his home is.

It is not uncommon for the person whose domicile is at issue to have two or more homes or residences, any of which might be considered his principal home or domicile. The Restatement, Conflict of Laws 2d, provides a very useful discussion of domicile of choice where an individual has more than one residence. Section 20 of the Restatement provides as follows, "When a person with capacity to acquire a domicil of choice has more than one dwelling place, his domicil is in the earlier dwelling place unless the second dwelling place is his principal home." The comments to that section of the Restatement also provide some helpful guidance in those cases where the person has two dwelling places, either one of which could conceivably be his principal home. For instance, comment b provides in part as follows:

> *b.* If a person has two dwelling places, any one of the following situations may arise:
>
> 1. One dwelling place may be a home in the sense used in this Restatement (see § 12), and the other merely a residence. This is the most common situation of all. It is likely to exist whenever a person has one dwelling place where he lives during the major portion of each year and another which he uses only for weekend and vacation purposes. Here his domicil will be at the dwelling place which is his home.
>
> 2. Both dwelling places may be homes in the sense used in this Restatement, but one may be the person's principal home. In this case his domicil is at the principal home. As between two homes, a person's principal home is that to which he is more closely related or, stated in other words, that which is more nearly the center of his domestic, social and civil life. This will normally be the home where he and his family spend the greater part of their time. Also significant are such factors as which home is the more spacious, which contains the bulk of the household furnishings, in which has he shown more interest, which home has a way of life, (county life, for example, as opposed to city life) more conducive to the person's tastes, and from which home does he engage more actively in social and civic affairs, as by voting, holding public office, attending church, belonging to local clubs and the like. The person's own feelings towards the dwelling place are of great importance. His statements in this connection cannot be deemed conclusive, however, since they may have been made to attain some ulterior objective and may not represent his real state of mind (see Special Note following this Section).

> 3. Both dwelling places may have some of the aspects of a home in the sense used in this Restatement and both in more or less equal degree. In this unusual situation, the domicil remains at that one of the two dwelling places which was first established. This is because a domicil, once established, continues until superseded (see § 19), and here there is no basis for preferring the later dwelling place over the earlier one.

Rest., Conflict of Laws 2d, § 20, comment b.

If an individual has more than one home or dwelling that could be considered his or her primary home, factors that may be considered in determining which dwelling is the individual's true domicile include the following:

1. The nature and use of the home, such as whether it is used as a "vacation home," "second home," or "summer home."
2. Whether the home is owned, rented, or provided free of charge.
3. The size of the home. Generally, as between two or more homes, the larger home is more likely to be considered the individuals principal or primary home.
4. Value of the home. Generally, as between two or more homes, the more valuable home is more likely to be considered the individual's principal or primary home.
5. How much time is spent at each home. Generally, as between two or more homes, the home where the individual spends the greater amount of time is more likely to be considered that individual's principal or primary home.
6. Which home the individual's spouse or minor children view as their primary home. Generally, as between two or more homes, the home that the individual's spouse or minor children regard as their primary home is more likely to be considered that individual's principal or primary home.
7. Which home the individual keeps his pets, valuable artwork, photo albums, hobby equipment, collectibles, and other "near-and-dear" items. Generally, as between two or more homes, the home where the individual maintains most of his "near-and-dear" items is more likely to be considered that individual's principal or primary home.

In the present case, Petitioners have a home located in Idaho, which was purchased in 1980, and a residence in South Dakota. According to the domicile questionnaire completed by Petitioners they maintained a residence at in from September 2010 through May 2011, and from September 2011 through June 2012. They also maintained a residence at in from September 2012 through May 2013, and from September 2013 through May 2014. Petitioners

provided little information about these homes in South Dakota but based on information currently in the file and that provided by Mr. during the informal hearing, the Commission finds the home located in Idaho was Petitioners primary home. Factors that lead to this conclusion include the following:

- Petitioners claimed the Idaho homeowner's exemption beginning in 2006 and it remained in place until 2015
- On August 24, 2007, filed with the Gooding County Assessor's Office an Idaho "Homeowners Exemption" form, claiming the homeowner's property tax exemption on the home he owned at Idaho. The homeowner's property tax exemption only applies to owner-occupied real property that is being used as the owner's primary residence. *See* Idaho Code § 63-602G(2)(a) ("The exemption . . . may be granted only if . . [t]he residential improvements are owner-occupied and used as the primary dwelling place of the owner . . . ."). That homeowner's property tax exemption has never been removed from the Street home. However, in 2006, the Gooding County Assessor, because of a change of address notice, had reason to question the validity of exemption. Mr. was notified by the Assessor's office that the exemption would be removed if he did not verify the street home was his primary residence. Mr. provided the Assessor's office with adequate documentation and the exemption remained. Mr. for all years under review to the present, has accepted the benefit of the homeowner's property tax exemption, which is specifically limited to the owner's primary residence.
- Petitioners obtained Idaho driver's licenses; Mr. in 2005, 2007 and 2013, Mrs. in 2007, 2009 and 2011.
- Petitioners registered to vote as Idaho residents. Mr. registered in 2007 and voted in elections held in 2008 and 2012 through 2016. Mrs. registered to vote in 1982 and voted in many elections prior to the years under review, but also in elections held in 2008 and 2010 through 2016.
- Petitioners registered vehicles in Idaho 2010 and 2011.
- According to LoopNet, a mobile and online commercial real estate marketplace, South Dakota, is an office building built in 1989 with rentable area of 10,733 sq. feet. Satellite photos taken in 2011 show signage for a childhood learning center and Alternative Resources Mail forwarding service.
- South Dakota, according to satellite photos and internet research, is the "Dakota Post" mailing service. The Dakota Post website states that it is "more than just mail forwarding, we can also walk with you, step by step, to help you set up residency in South Dakota, as well as assist you with all of your vehicle registrations." The website also advertises, "Enjoy No State Income Tax with a South Dakota Residency."

- Mr. said during the hearing his Wendell home has never been for sale and neither he nor his wife have established themselves with doctors in South Dakota. When asked what ties he has with South Dakota other than a mailing address and a driver's license, Mr. said he has a day permit for fishing, because "I don't stay long enough to get a South Dakota license."

Based on the factors listed above, the Commission finds that Petitioners have not established the necessary intent to abandon their Idaho domicile nor have they acquired a new domicile. While Petitioners may spend time outside of Idaho each year in South Dakota, there is nothing in the record before the Commission to support Petitioners' contention that they intended to abandon their Idaho domicile and they certainly did not acquire a new domicile at either of the South Dakota addresses provided. Rather, it appears that their primary home and domicile is still at the Street house that Mr. has owned since 1980, that he and Mrs. continue to occupy, and that he has continued to claim as their primary home for Idaho property tax exemption purposes. In short, because Petitioners have not established the necessary intent to abandon their Idaho domicile, they still are residents of Idaho for taxable years 2007 through 2014.

As Idaho residents, Petitioners were required to file Idaho resident income tax returns for taxable years 2007 through 2014, but they did not do so. Which brings up the question, did they do this with the intent to evade or defeat Idaho tax?

The allegations of fraud or filing of a false return with intent to evade or defeat the Idaho tax centers on the residency status claimed by Petitioners on their 2007 through 2009 Idaho income tax returns and the lack of Idaho returns for tax years 2010 through 2014.

The authority for this penalty is set out in Idaho Code § 63-3046(b) which stated:

> If any part of any deficiency is due to fraud with intent to evade tax, then fifty percent (50%) of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected and paid.

In consideration of the application of the civil fraud penalty in a tax case, the Idaho Supreme Court stated, in part:

> The intent of the Idaho Income Tax Act is to make the provisions of the Act "insofar as possible ... identical to the provisions of the Federal Internal Revenue Code." I.C. § 63-3002. The Ninth Circuit has addressed the elements of civil tax fraud. In a case involving the 50 percent penalty of the Federal Internal Revenue Code, the Ninth Circuit stated that "[i]n the context of the 50 percent penalty ... fraud is intentional wrongdoing on the part of the taxpayer with the specific intent to avoid a tax known to be owing." Conforte v. Commissioner, 692 F.2d 587, 592 (9th Cir.1982). The burden is on the Commissioner to establish fraud by clear and convincing evidence, but intent can be inferred from strong circumstantial evidence. Bradford v. Commissioner, 796 F.2d 303, 307, (9th Cir.1986)(citing Conforte, 692 F.2d at 592; Spies v. United States, 317 U.S. 492, 499, 63 S.Ct. 364, 368, 87 L.Ed. 418, 423 (1943)).
>
> Federal law has also recognized "badges of fraud," from which intent to defraud may be inferred. Bradford, 796 F.2d at 307. These "badges of fraud" include "(1) understatement of income; (2) inadequate records; (3) failure to file tax returns; (4) implausible or inconsistent behavior; (5) concealing assets; and (6) failure to cooperate with tax authorities." Id. (citations omitted).
>
> [6] It is therefore appropriate to adopt the definition of "tax fraud" as defined by federal courts, which is "intentional wrongdoing on the part of the taxpayer with the specific intent to avoid taxes known to be owing." Conforte, 692 F.2d at 592. This wrongdoing may be proven through strong circumstantial evidence. Spies, 317 U.S. at 499, 63 S.Ct. at 368, 87 L.Ed. at 423; see also Bradford, 796 F.2d at 307; Pittman v. Commissioner, 100 F.3d 1308, 1319 (7th Cir.1996).

Idaho State Tax Commission v. Hautzinger, 137 Idaho 401, 403-404, 49 P.3d 406, 408-409 (2002).

In discussing the application of the fraud penalty, the U. S. Tax Court stated, in part:

> The existence of fraud is a question of fact to be resolved upon consideration of the entire record. Gajewski v. Commissioner, 67 T.C. 181, 199 (1976), affd. without published opinion 578 F.2d 1383 (8th Cir.1978); Estate of Pittard v. Commissioner, 69 T.C. 391 (1977). Fraud is not to be imputed or presumed, but rather must be established by some independent evidence of fraudulent intent. Beaver v. Commissioner, 55 T.C. 85, 92 (1970); Otsuki v. Commissioner, 53 T.C. 96 (1969). Fraud may not be found under

> "circumstances which at the most create only suspicion." Davis v. Commissioner, 184 F.2d 86, 87 (10th Cir.1950); Petzoldt v. Commissioner, 92 T.C. 661, 700 (1989). However, fraud may be proved by circumstantial evidence and reasonably inferred from the facts, because direct proof of the taxpayer's intent is rarely available. Spies v. United States, 317 U.S. 492 (1943); Rowlee v. Commissioner, 80 T.C. 1111, 1123 (1983); Stephenson v. Commissioner, 79 T.C. 995 (1982), affd. 748 F.2d 331 (6th Cir.1984). A taxpayer's entire course of conduct may establish the requisite fraudulent intent. Stone v. Commissioner, 56 T.C. 213, 223 224 (1971); Otsuki v. Commissioner, supra at 105-106. The intent to conceal or mislead may be inferred from a pattern of conduct. See Spies v. United States, supra at 499.
>
> Courts have relied on several indicia of fraud when considering the section 6653(b) addition to tax. Although no single factor may conclusively establish fraud, the existence of several indicia may be persuasive circumstantial evidence of such. Solomon v. Commissioner, 732 F.2d 1459, 1461 (6th Cir.1984), affg. per curiam T.C.Memo. 1982 603; Beaver v. Commissioner, supra at 93.
>
> Circumstantial evidence which may give rise to a finding of fraudulent intent includes: (1) Understating income; (2) keeping inadequate or no records; (3) failing to file tax returns; (4) maintaining implausible or inconsistent explanations of behavior; (5) concealing assets; (6) failing to cooperate with tax authorities; (7) filing false Forms W-4; (8) failing to make estimated tax payments; (9) dealing in cash; (10) engaging in illegal activity; and (11) attempting to conceal an illegal activity. Bradford v. Commissioner, 796 F.2d 303, 307 (9th Cir.1986), affg. T.C.Memo. 1984 601; see Douge v. Commissioner, 899 F.2d 164, 168 (2d Cir.1990). These "badges of fraud" are nonexclusive. Miller v. Commissioner, 94 T.C. 316, 334 (1990). Both the taxpayer's background and the context of the events in question may be considered as circumstantial evidence of fraud. United States v. Murdock, 290 U.S. 389, 395 (1933); Spies v. United States, supra at 497; Plunkett v. Commissioner, 465 F.2d 299, 303 (7th Cir.1972), affg. T.C.Memo. 1970-274.

Verdunn v. Commissioner, T.C.M. 1995-117.

In the present case there are several facts and circumstances that support a finding of intent to evade or defeat tax. Petitioners claim a mail drop in South Dakota (which has no state income tax) as their primary home address while continuing to take advantage of privileges available only

to Idaho residents. They kept their Idaho driver's licenses, voted in local elections and reduced their property taxes with the Idaho homestead exemption.

But perhaps the strongest evidence of Petitioners' intent to evade Idaho tax is the statements made by Mr. during the informal hearing. Mr. stated, "I found a way to save some of the money I earned for the last 28 years. I use the money I save by not paying Idaho taxes for rent at RV parks." When discussing the fraud penalty, Mr. objected to the Commission saying he had an intent to evade tax, stating rather he was, "gaming the system" and "took advantage of a loophole."

Petitioners claimed to be Idaho residents when it suited their needs. When it came to filing Idaho income tax returns and paying their fair share of Idaho taxes, Petitioners intentionally chose to concoct a non-existent South Dakota residence. Based on the abovementioned, the Commission finds that Petitioners filed false or fraudulent Idaho income tax returns with the intent to evade or defeat Idaho tax for taxable years 2007 through 2009 and the civil fraud penalty is appropriate. The Commission also finds Petitioners' failure to file Idaho income tax returns for taxable years 2010 through 2014 was a blatant attempt to evade tax. Therefore, the Commission asserts the civil fraud penalty for taxable years 2010 through 2014 as well.

The record before the Commission shows Petitioners maintained their status as Idaho residents for taxable years 2007 through 2014 and were well aware of their requirement to file Idaho individual income tax returns.

THEREFORE, the Notice of Deficiency Determination dated August 15, 2017, and directed to for taxable years 2007 through 2009, is hereby APPROVED and MADE FINAL.

The Notice of Deficiency Determination dated August 15, 2017, and directed to

for taxable years 2010 through 2014 is MODIFIED, and as so MODIFIED by this decision, APPROVED and MADE FINAL.

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

YEAR	TAX	PENALTY	INTEREST	TOTAL
2007	$2,255	$1,128	$1,047	$4,430
2008	2,892	1,446	1,157	5,495
2009	3,666	1,833	1,283	6,782
			TOTAL	$16,707
2010	$2,585	$1,293	$783	$4,661
2011	2,467	1,234	648	4,349
2012	5,222	2,611	1,178	9,011
2013	2,061	1,031	397	3,489
2014	2,049	1,025	313	3,387
			TOTAL	$24,897
		TOTAL AMOUNT DUE		**$41,604**

Interest is calculated through April 15, 2019, and will continue to accrue at the rate set out in Idaho Code § 63-3045(6)(b).

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

DATED this _____ day of _____ 2019.

IDAHO STATE TAX COMMISSION

_____
COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2019, 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.

_____