

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
██████████) DOCKET NO. 1-216-996-352
██████████)
██████████)
Petitioners.) DECISION
██████████)

██████████ and █████ (Petitioner-husband and Petitioner-wife, respectively; Petitioners, jointly) protested the Notice of Deficiency Determination (Notice) dated June 25, 2024. The Tax Commission reviewed the matter and hereby issues its final decision to modify the Notice.

Background

Petitioners filed an Idaho return for 2021 claiming to be part-year residents (two months and six months for Petitioner-husband and Petitioner-wife respectively). Petitioners also filed an Idaho return for 2022 claiming to be part-year residents (eight months and six months for Petitioner-husband and Petitioner-wife respectively). The Tax Commission's Income Tax Audit Bureau (Audit) selected these returns for examination and sent Petitioners a letter on June 30, 2023, requesting information regarding their domicile and income received during their periods of Idaho residency. After Audit granted an extension of time to respond, on August 31, 2023, Petitioners provided the information requested. On November 3, 2023, Audit sent a second letter requesting different information regarding Petitioners' domicile. After two additional extensions, on February 6, 2024, Petitioners provided a response. On February 7, 2024, Audit sent a third letter requesting financial records that Petitioners had not provided in response to Audit's second letter. Petitioners provided these records on February 21, 2024.

Audit issued the Notice on June 25, 2024. In the Notice, Audit explained the difference between the concepts of “domicile” and “residence” and who bore responsibility for proving changes in domicile. Audit also presented an analysis of five primary factors and several secondary factors used in determining a person’s domicile. Audit determined that both Petitioners changed their domiciles to Idaho as of April 1, 2021, that Petitioner-husband was domiciled in Idaho for all of 2022, and that Petitioner-wife changed her domicile from Idaho to Oregon on October 26, 2022. After making these determinations, Audit showed the financial effects of the domicile determinations, increasing Petitioners’ Idaho taxable income for 2021 by \$1,069,060 and reducing their Idaho taxable income for 2022 by \$137,703.

On July 1, 2024, Audit spoke with Petitioner-husband on the telephone. During their conversation, they discussed the determinations Audit made. Audit’s notes state “[Petitioner-husband] indicated he would compile a list of any additional questions he might have” to discuss at a later date.

On August 27, 2024, Audit received a letter from [REDACTED] of [REDACTED] Mr. [REDACTED] letter disagreed with Audit’s domicile determinations, the resulting allocation of community income, and the changes to personal deductions and grocery credit. Mr. [REDACTED] acknowledged that the Notice indicated the burden of proof for a change of domicile rests with the person asserting the change. He also states that this concept is inconsistently applied as the Notice contains statements that Petitioners bear the burden of showing a change when they did not make such a claim. The letter also states that there is no basis for Audit to assert a negligence penalty and that Petitioners disagree with the application of a substantial understatement penalty.

On September 6, 2024, Audit sent Petitioners a letter acknowledging the protest and informing them that the matter was being forwarded to the Tax Commission’s Tax Appeals unit

(Appeals). On November 5, 2024, Appeals sent Petitioners a letter outlining the options available for redetermining a protested Notice. On December 19, 2024, Appeals received a Power of Attorney form naming Mr. [REDACTED] as Petitioners' attorney-in-fact (AIF) and representative on their behalf to the Tax Commission. Appeals spoke with AIF on January 27, 2025, and granted an extension of time to provide additional information for the Tax Commission to consider in redetermining the Notice. On February 14, 2025, AIF sent Appeals information about Petitioners' living arrangements and intentions during 2021 and 2022. He stated that Petitioners did not dispute Audit's determinations for tax year 2022.

Because AIF and Petitioners opted not to request an informal hearing, the Tax Commission must make its decision based on the information provided during the examination and redetermination process.

Law & Analysis

This case hinges on Petitioners' status as part-year residents of Idaho during tax years 2021 and 2022. A part-year resident is defined in Idaho Code section 63-3013A as an individual who changes their domicile to Idaho or from Idaho during the tax year. On their 2021 Idaho return, Petitioner-husband reported being a resident for two months while Petitioner-wife reported being a resident for six months. On their 2022 Idaho return, Petitioner-husband reported being a resident for eight months while Petitioner-wife again reported being a resident for six months. During the examination, Audit determined the following:

- Petitioner-husband changed his domicile to Idaho on April 1, 2021, and remained domiciled in Idaho through the end of 2022.
- Petitioner-wife changed her domicile to Idaho on April 1, 2021, and remained domiciled in Idaho until she changed her domicile to Oregon on October 26, 2022.

The term *domicile* refers to a person's true, fixed, permanent home, and the place to which that person has the intent to return whenever away.¹ It is the place one considers "home" for the indefinite future.² *Domicile* implies an intention or attitude toward a place as being the center of one's domestic, social, and civil affairs. Every person has a *domicile*, and once established it is never lost until there is a concurrence of: 1) an intent to abandon the current *domicile*; 2) an intent to establish a new *domicile*; and 3) physical presence in the new *domicile*.³ A change of *domicile* is a question of fact rather than one of law, and the person alleging a change bears the burden to prove that the change occurred.⁴ The burden of proof is clear and convincing evidence. *Id.* *Domicile* is not necessarily lost simply because a person is away for an extended period when the intention to return remains.⁵ A person may have multiple residences at the same time but legally has only one *domicile* at any time. In *Matter of Newcomb*, the judge wrote,

In order to acquire a new *domicile* there must be a union of residence and intention. Residence without intention, or intention without residence is of no avail. Mere change of residence although continued for a long time does not effect a change of *domicile*, while a change of residence even for a short time with the intention in good faith to change the *domicile*, has that effect . . . Residence is necessary, for there can be no *domicile* without it, and important as evidence, for it bears strongly upon intention, but not controlling, for unless combined with intention it cannot effect a change of *domicile*.

In other words, both intention and action are required elements of a *domicile* change, and intention and action must coincide. Neither intention without action nor action without intention can create a change of *domicile*.

¹ *Idaho Income Tax Administrative Rule 030.02*

² *Allen v. Greyhound Lines*, 583 P.2nd 613, 614 (Utah 1978)

³ *Idaho Income Tax Administrative Rule 030.02.a*

⁴ *Matter of Newcomb*, 192 N.Y. 238 (1908)

⁵ *Wilson v. Pickens*, 444 F.Supp. 53 (W.D. Okl. 1977)

As mentioned above, an allegation of a change of domicile must be supported by clear and convincing evidence. This level of evidentiary support falls between “beyond a reasonable doubt” and “preponderance of the evidence.” “Beyond a reasonable doubt” is the level of proof required for a conviction in a criminal case.⁶ It means that there can be no other reasonable explanation based on the evidence given during a trial or that nearly 100% of the evidence points to a single conclusion. “Preponderance of the evidence” is the standard used in many civil trials and is met when the party bearing the burden of proof convinces the fact finder that the claim is more than 50% likely to be true.⁷ The “clear and convincing evidence” standard does not carry with it a specific numerical value. Instead, it is more nebulous. The Supreme Court determined in *Colorado v. New Mexico*, 467 U.S. 310 (1984), that “clear and convincing” means the evidence is highly and substantially more likely to be true than untrue.⁸ In the referenced case, the standard would be met “only if the material [the party bearing the burden of proof] offered instantly tilted the evidentiary scales in the affirmative when weighed against the evidence [the other party] offered in opposition.”

Determination of one’s domicile depends on an objective analysis of facts. There are five primary factors to examine (home, active business involvement, time, near and dear items, and family connections) and an unlimited number of supporting factors which help develop the primary factors. Domicile is not based simply on how many factors weigh in favor of a particular place as a person’s domicile. Instead, domicile is determined through an analysis of all the information available. Audit requested that Petitioners complete questionnaires and provide other documentation to assist in determining their domicile, which they did.

⁶ From https://www.law.cornell.edu/wex/beyond_a_reasonable_doubt.

⁷ From https://www.law.cornell.edu/wex/preponderance_of_the_evidence.

⁸ From https://www.law.cornell.edu/wex/clear_and_convincing_evidence.

Prior to Audit issuing the Notice, Petitioners provided nearly 800 pages of documentation including completed questionnaires, copies of driver's licenses, vehicle registrations, monthly earnings statements, yearly W-2s, bank account and credit card statements, and various other documents. They also provided a written statement summarizing their situation. On August 30, 2023, Petitioners included the following information in a statement:

- They lived in their "forever home" in [REDACTED] Oregon, until they moved to Washington for Petitioner-wife to go to [REDACTED] school. They plan to return to this Oregon home to retire.
- During 2021 and 2022, they lived in various locations. There were times when they lived separately.
- They were not familiar with the intricacies of Idaho's homeowner's property tax exemption.
- They purchased a home in Moscow, Idaho, in January 2021. The house remained vacant until April 1, when Petitioner-wife moved in. She was finishing her degree at Washington State University in Pullman, Washington, and had accepted a one-year rotation at a [REDACTED] clinic in Boise, Idaho. Petitioner-wife rented a house in Boise from June 2021 through July 2022.
- Petitioner-husband did not move into the Moscow home until November 2021. Between April and November, he split his time between [REDACTED] [REDACTED] Oregon; Pullman, Washington; [REDACTED] California; and Moscow, Idaho.
- Petitioner-husband lived in the Moscow home until June 2022, when he moved to Spokane, Washington, with Petitioner-wife following her acceptance of another [REDACTED] internship there. They remained there until October 2022 when Petitioner-wife moved to the [REDACTED] home after accepting a staff [REDACTED] position in Oregon. Petitioner-husband stayed in [REDACTED] until the end of October and then moved back to Moscow, at which point he obtained an Idaho driver's license.

Audit reviewed the information Petitioners provided and concluded that the returns in question required adjustments to be accurate. After analyzing the available information, Audit determined that the amount of time Petitioners claimed to have been Idaho residents during 2021 and 2022 was incorrect. What follows below is a discussion of Audit's domicile analysis and resulting adjustments.

Audit compared multiple residences for Petitioners, including a single-family home in Moscow, Idaho; a single-family home in Pullman, Washington; apartments in Boise, Idaho, and Spokane, Washington; and a single-family home in [REDACTED] [REDACTED] Oregon. Audit summarized the analysis of the “home” factor:

- Petitioners purchased the Moscow property in January 2021 and sold the Pullman property in April 2021.
- Petitioner-wife rented apartments in Boise and Spokane during the audit period.
- Petitioner-husband did not have a residence in either Boise or Spokane.
- Petitioner-wife began using the [REDACTED] [REDACTED] property as her residence in October 2022.

Audit looked at Petitioners’ active business involvement during 2021 and 2022 and noted several items. First, Petitioner-husband earned wages from multiple companies during 2021 and 2022, mostly working remotely from home or in the field. Second, Petitioner-wife earned wages from multiple businesses in Idaho, Washington, and Oregon during 2021 and 2022. Petitioners owned a partnership with 100% Idaho apportionment which began in December 2021 and continued through 2022.

Audit examined Petitioners’ credit card and bank statements to determine their locations when they made purchases and compared the results to timelines Petitioners provided. Audit determined that the timeline Petitioner-husband provided did not accurately reflect where he made purchases and therefore presumably lived. According to Audit’s analysis, Petitioner-husband began living in the Moscow home before the Pullman home was sold in early 2021, did not live in Pullman after the sale of the property, and did not live in Spokane at all during 2022, all contrary to the timeline Petitioner-husband provided. Audit found that Petitioner-wife began spending time in the Moscow home prior to the sale of the Pullman home, spent nearly all the time from June 2021 through June 2022 in Boise, spent most of the time from July 10, 2022, through October 2, 2022, in Spokane, and then moved to Oregon later in October 2022.

Audit reviewed “near and dear” items and family connections, as well. Audit assumed that Petitioners kept near and dear items in Oregon and Pullman at the beginning of 2021, moving the items in Pullman to Moscow after purchasing the Moscow property. Regarding family connections, Petitioners mentioned spending Thanksgiving 2021 with family in Oregon, but not much more than that was known about Petitioners’ family.

As secondary factors, Audit discussed where and when Petitioners obtained driver’s licenses and the residency requirements associated with them, vehicle titling and registration, voter registration, and tax filings. Petitioner-husband was issued a Washington driver’s license in January 2019, changed the address on that license to another Washington address in July 2022, and obtained an Idaho driver’s license in November 2022. Petitioner-wife was issued an Idaho driver’s license in March 2021 and a Washington driver’s license in July 2022. According to Idaho law, nonresidents of Idaho cannot obtain an Idaho driver’s license, and the applicant must certify that they are domiciled in Idaho and provide proof of Idaho residency. Petitioners owned vehicles that they titled and registered in Oregon, Washington, and Idaho during the years in question. Petitioners transferred the title of two vehicles (a Ford F350 and a Ford F150) from Washington to Idaho in March 2021. Based on available information, the owner’s driver’s license number matches Petitioner-husband’s Idaho license, but his license was not issued until November 2022. The Tax Commission has no way to explain this discrepancy. Petitioner-wife provided voting records showing that she registered to vote in Washington in 2017. Petitioners filed income tax returns in October 2022 and April 2023 using their Moscow address.

Audit summarized the analysis with the following conclusions:

- Petitioners both changed their domicile from Washington to Idaho on April 1, 2021, which is earlier than either claimed on the Idaho return.
- Petitioners did not change their domicile from Idaho during 2021 after establishing on April 1. Therefore, Petitioners were both nine-month Idaho residents for 2021.

- Petitioner-husband remained domiciled in Idaho through the end of 2022 and was therefore a full-year Idaho resident for 2022.
- Petitioner-wife changed her domicile from Idaho to Oregon on October 26, 2022, and was therefore a ten-month Idaho resident for 2022.

Based on these changes to Petitioners' reported residency, along with other information they provided, Audit adjusted the amount of income that must be reported as taxable to Idaho. Audit determined that all income earned by both spouses from April 1, 2021, through the end of 2021 was taxable in Idaho. Audit also made an adjustment to fully account for a \$950,883 bonus depreciation addition from a pass-through entity.

AIF stated in his letter to Appeals dated February 14, 2025, that Petitioners do not disagree with Audit's determinations for tax year 2022. Instead, they disagree with Audit's contention that Petitioners both changed their domicile to Idaho on April 1, 2021. Therefore, the question to be answered is whether Audit has provided clear and convincing evidence that Petitioners' intention to change (abandon and re-establish) their domicile and actions to do so coincided on April 1. It would be one thing if Petitioners and AIF had not given any counter argument, but they did. Especially in domicile cases, all facts and circumstances must be considered to draw the proper conclusion.

In the protest letter dated August 27, 2024, AIF stated that the Notice contains factual inaccuracies resulting in an incorrect determination. AIF also wrote that there were multiple factors in the domicile analysis that did not favor Audit's determination, but those were ignored or not given proper weight. Additionally, he said that the "burden of proof" is not applied consistently (i.e., Petitioners were asked to prove they changed their domicile at a time they did not contend to have done so).

In his letter to Appeals dated February 14, 2025, AIF affirmed the legal principle that domicile, once established, does not change until a new one is acquired and that one may have

multiple residences but only one domicile at any given time. He stated that Petitioners had established their domicile in [REDACTED] Oregon, after maintaining their “permanent home for decades.” He argued, “Their temporary relocations to Washington and later Idaho were in support of [Petitioner-wife’s] pursuit of her [REDACTED] education – a temporary, albeit multi-year, endeavor that did not constitute an abandonment of their Oregon domicile.”

AIF went on to say that Petitioner-wife’s presence in Moscow in early 2021 did not represent an intent to establish permanent residency at the time. It was simply to fulfill mortgage requirements while completing her studies at Washington State University. He pointed out her acceptance of an internship in Boise from June 2021 through July 2022 as “further evidence[of]the temporary and uncertain nature of her Idaho connections during this period.” He stated further, “While she executed a primary residence affidavit in [September] 2021 attempting to backdate occupancy to [March] 2021, this retroactive declaration cannot override the contemporary evidence of her actual circumstances and intent during that period.”

Regarding Petitioner-husband, AIF explained that he “maintained clear and continuous ties to his established Oregon domicile throughout 2021.” AIF stated that his presence in Moscow prior to November 2021 was “demonstrably temporary and transient” and did not exceed the threshold for days present in the state to be a statutory resident. AIF wrote that Petitioner-husband maintained his permanent residence in Oregon but lived in a recreational trailer while working remotely and overseeing property improvements. AIF pointed out that Petitioner-husband never affirmed being an Idaho resident or took other steps to establish Idaho domicile until November 2021.

Audit’s determination of Petitioners’ change of domicile to Idaho in April 2021 assumes that Petitioners were truly domiciled in Washington prior to that time. There is no doubt they resided there, but AIF has argued that Petitioners maintained domicile in Oregon while Petitioner-

wife attended [REDACTED] school. He stated that their intent was to return to Oregon. As noted in *Matter of Newcomb*, “A temporary residence for a temporary purpose, with intent to return to the old home when that purpose has been accomplished, leaves the domicile unchanged...” Petitioner-wife attending [REDACTED] school and even engaging in a contracted one-year internship afterwards could be temporary purposes for being away from Oregon, if there was no intention at the time to abandon Oregon and establish Washington as her domicile. Petitioner-husband’s residence in Washington likewise does not necessarily indicate a change in domicile. It is possible that he simply wished to be with his wife while she attended school and was privileged enough to be able to work remotely. If there was no intent to abandon Oregon, but rather there was an intent to return after Petitioner-wife’s schooling was completed, then there was no change in domicile.

Typically, one will look at a person’s actions to attempt to discern intent. Many states, including Washington and Idaho, have laws that limit the issuance of a driver’s license or the registration of a vehicle only to declared residents of that state. It is possible that Petitioners obtained licenses in Washington and Idaho simply because that is where they were residing (even without an intention to remain indefinitely) and registered vehicles in each state because that was where they would do the majority of their driving or because that was where the vehicles would be stored. It is not unlikely that they may not have understood the potential tax ramifications of these actions.

One significant factor often cited as evidence of intent is Idaho’s homestead property tax exemption offered under Idaho Code section 63-602G. This benefit is reserved for Idaho homeowners who use their Idaho property as their primary residence. In September 2021, Petitioner-wife submitted an *Application for Owner-Occupied Residential Land/Improvement Exemption* to Latah County for the Moscow property she and Petitioner-husband own. The “Date

First Occupied Home" was listed as March 1, 2021. While Petitioners co-own the property – both names appear in the property record and on the mortgage interest statement from the lender – only Petitioner-wife's name appeared on the application. Although the home was listed as first occupied on March 1, this is not necessarily indicative of intent to establish Idaho domicile at that time. Recall that intent and action must coincide. Two significant facts must be noted. First, the date Petitioner-wife signed the application was during the period she was living in an apartment in Boise completing an internship. Second, Petitioner-husband was not listed as an applicant for the exemption in September 2021. This could be an indication that, at the time of the application, he did not yet have intent to establish Idaho as his domicile.

In support of an earlier-than-claimed domicile change, Audit provided arguments and evidence which, when viewed in isolation, could be seen as clear and convincing. However, the Tax Commission is not considering this matter in a vacuum. Petitioners and AIF offered information and statements that contradict Audit's position. After carefully considering all the facts and circumstances, the Tax Commission determined that Audit has not met the clear and convincing evidentiary standard in regard to when Petitioners' domicile changed to Idaho in 2021, although the preponderance of the evidence does support the conclusion that they changed their domicile to Idaho earlier than the time claimed on their return. The Tax Commission therefore determined that no change to Petitioners' residency status for 2021 is warranted, and no adjustment to Idaho income as reported is needed. However, Audit did make an adjustment to Petitioners' total adjusted income as reported by accounting for bonus depreciation claimed by a pass-through entity of which Petitioners jointly own 100%. The Tax Commission agrees that this adjustment is necessary in accordance with Idaho Code section 63-2022O.

Regarding tax year 2022, the Tax Commission agrees that Petitioner-husband was domiciled in Idaho for the entirety of 2022 and that Petitioner-wife changed her domicile from Idaho to Oregon in October 2022. Furthermore, the Tax Commission agrees with Audit's reallocation of Petitioners' community and separate income for 2022 as set forth in the Notice.

Audit added interest and two penalties to Petitioners' tax deficiency. After reviewing all available information, the Tax Commission finds the inclusion of interest to be appropriate and in accordance with Idaho Code section 63-3045. However, Petitioners' additional tax due for 2021 no longer meets the criteria for the substantial understatement penalty, and the Tax Commission determined that a negligence penalty in this case is not warranted.

Conclusion

In light of contradictory testimony and information, the Tax Commission determined that Audit did not meet the required standard of proof in determining that Petitioners were domiciled in Idaho earlier in tax year 2021 than they reported on their Idaho return. The Tax Commission found that Petitioners did not report their total adjusted income correctly on their 2021 part-year resident return. Audit did meet the burden of proof in the determinations for tax year 2022.

THEREFORE, the Notice dated June 25, 2024, and directed to [REDACTED] and [REDACTED] is hereby MODIFIED and MADE FINAL.

Petitioners are due a refund based on the following calculation:

YEAR	TAX	PENALTY	INTEREST	TOTAL
2021	\$110	\$0	\$8	\$118
2022	(8,329)	0	(634)	(8,963)
Net Refund Due			<u><u>\$(8,845)</u></u>	

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

DATED this _____ day of _____ 2025.

IDAHO STATE TAX COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2025,
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.

[REDACTED]

[REDACTED]