

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 1-584-079-872
)	
Petitioners.)	DECISION
<hr style="width: 45%; margin-left: 0;"/>)	

(Petitioners) protested the Notice of Deficiency Determination (Notice) dated August 9, 2023. Petitioners disagreed with adjustments the Income Tax Audit Bureau (Bureau) made to their 2018 through 2020 Idaho individual income tax returns. The Idaho State Tax Commission (Tax Commission), having reviewed the file, hereby issues its decision.

BACKGROUND

The Bureau selected Petitioners’ 2020 Idaho income tax return for review. Specifically, the foreign earned income exclusion and the retirement benefits deduction. The Bureau notified Petitioners of the examination and requested they fill out questionnaires regarding these issues. During the Bureau’s examination of Petitioners’ 2020 return, they received information from the Internal Revenue Service (IRS) of an adjustment to Petitioners’ 2018 and 2019 federal returns¹; therefore, the Bureau added these years to their examination.

Petitioners responded by completing the questionnaires. The Bureau reviewed this information, the IRS adjustments, and the information available to the Tax Commission, and

¹ The IRS disallowed the foreign earned income exclusion claimed on Petitioners’ federal income tax returns for both years and included cancellation of debt income in their 2018 adjusted gross income.

issued a Notice. The Notice disallowed the foreign earned income exclusion, the retirement benefits deduction, and included the cancellation of debt income.

Petitioners protested the Bureau's adjustments. Mr. [REDACTED] stated in the protest that none of the adjustments the Bureau made in the Notice is acceptable to them because he had no income from Idaho sources as he was not a resident of Idaho.

The Bureau acknowledged Petitioners' protest and referred the matter to the Tax Commission's Appeals Unit (Appeals) for administrative review. Appeals reviewed Petitioners' case and sent their representative an email explaining the options available for redetermining a Notice. The representative responded but did not request an informal hearing. The Tax Commission, having reviewed all information, decides the matter as follows.

LAW AND ANALYSIS

The Bureau asserted Mr. [REDACTED] domicile remained with Idaho while he was working out of the country. The Bureau based this upon the fact that Mr. [REDACTED] maintained an Idaho driver's license, registered a car in Idaho in 2021, maintained an Idaho address, and filed Idaho resident income tax returns jointly with Ms. [REDACTED] for 2018 through 2020. The Bureau's position is that Mr. [REDACTED] had an Idaho domicile that he did not abandon, and he did not acquire another domicile.

Idaho Code section 63-3013 defines a resident of Idaho as an individual who is domiciled in the state for the entire year or one who maintains a place of abode for the entire taxable year in Idaho and spends in aggregate more than 270 days of the taxable year in Idaho. Subsection (2) of Idaho code section 63-3013 provides a safe harbor provision for Idaho residents that for whatever reason are absent from the state. It provides that an individual who is absent from Idaho for 445

days in a consecutive fifteen-month period and then not present in Idaho for more than 60 days in any calendar year shall not be considered a resident.

Domicile is the place where an individual has his or her true, fixed, permanent home and principal establishment, and to which place he or she has the intention of returning whenever he or she is absent. The term domicile denotes a place where an individual has the intent to remain permanently or for an indefinite time².

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. See *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. See *In re Cooke's Estate*, 96 Idaho 48, 524 P.2d 176 (1973). The burden of proof is always on the person asserting the change to show that a new domicile was, in fact, created. See *Texas v. State of Florida*, 306 U.S. 398, 59 S. Ct. 563, 577 (1939).

Idaho determines the residency of a taxpayer based on several primary and secondary factors. The primary factors include their home, time, near and dear items, business activity, and family connections. Secondary factors include driver's licenses, where they register to vote, Fish and Game licenses, vehicle registration, etc. No one factor determines domicile, rather a combination of factors with consideration of all facts and circumstances determines domicile. Idaho Income Tax Administrative Rule 030.020 states, "An individual can have several residences or dwelling places but can have only one domicile at a time."

² Idaho Administrative Income Tax Rule 030.02

While Petitioners provided information in the Bureau’s questionnaires, Appeals asked more detailed questions related to the primary and secondary factors to determine residency, including, but not limited to, whether Mr. _____ ever applied for the Alaska Permanent Fund Dividend (PFD) since he stated he considers himself an Alaska resident; whether Mr. _____ renewed his Idaho driver’s license online or in-person in 2019; whether he signed his 2021 divorce decree electronically or in-person, and how long he stayed in Idaho when he came to pick up his personal belongings stored in Mountain Home, Idaho.

Domicile in Alaska

Mr. _____ clarified that he did not apply for the Alaska PFD because he had to be living in Alaska to claim it, and since he departed Alaska in January 2000 to take a job with the U.S. Army in Kosovo, he would not be eligible to receive the Alaska PFD. Although Mr. _____ insisted that his legal residence has been in Alaska since 1994 as he voted absentee in 2016 while he lived in Idaho and did so again in 2020 while he lived in Bahrain, being registered to vote in Alaska is the only factor that Mr. _____ presented to support his Alaska domicile. After Mr. _____

left Alaska in January 2000, he had no home, no business involvement, no time spent, no “near and dear” items stored, and no family connections in Alaska. The Tax Commission finds that Mr. _____ abandoned his Alaska domicile when he left Alaska in January 2000 although he might not have intended to do so.

Idaho driver’s license

As for maintaining an Idaho driver’s license, Mr. _____ stated they moved to Idaho in 2015, and after spending 270 days in Idaho, they both got Idaho driver’s licenses in 2016. In February 2019, Mr. _____ renewed his Idaho driver’s license because he needed a valid U.S.

driver's license to operate a vehicle in Bahrain. Mr. [REDACTED] clarified that he renewed his Idaho driver's license online and did not come to Idaho.

Separation and divorce

When Mr. [REDACTED] left Idaho in October 2017, Ms. [REDACTED] moved out from the apartment where they lived together since 2015, she rented another apartment for herself and stored his belongings in a storage unit located in Mountain Home, Idaho.

While Petitioners were in process of separating, even though there was no separation agreement or financial support order, Mr. [REDACTED] provided financial support (i.e., car payments, cell phone bills, etc.) to Ms. [REDACTED] "as a husband would do", instead of abandoning her and leaving her in a destitute condition³. In 2021, Mr. [REDACTED] electronically signed the divorce decree, and sometime later that year after the divorce was finalized, he came to Idaho just to pick up his personal belongings. Ms. [REDACTED] left Idaho in 2021 after the divorce was finalized.

Car registered in Idaho

After Mr. [REDACTED] left Bahrain in March 2021, he moved to New Mexico and worked for the U.S. Air Force at Holloman Air Force Base. When Mr. [REDACTED] purchased a car in New Mexico, the car dealership registered his car in Idaho because he only had an Idaho driver's license at that time. It is not clear whether he registered the car online or in person; however, even if he did it in person, satisfying one of the secondary factors alone does not support his residency in Idaho. It is also not clear whether he drove the car to Idaho when he picked up his belongings later

³ Idaho Code section 18-401(3) Having sufficient ability to provide for a spouse's support, or who is able to earn the means for such spouse's support, who willfully abandons and leaves a spouse in a destitute condition, or who refuses or neglects to provide such spouse with necessary food, clothing, shelter, or medical attendance, unless by the spouse's misconduct he or she is justified in abandoning him or her; Shall be guilty of a felony and shall be punishable by a fine of not more than five hundred dollars (\$500), or by imprisonment for not to exceed fourteen (14) years, or both.

in 2021; however, even if he did, he left Idaho immediately. In July 2022, Mr. [REDACTED] left New Mexico and moved to California for an employment opportunity with the US Navy. In August 2023, Mr. [REDACTED] left California and moved to Diego Garcia in the Indian Ocean where he currently resides. It is not clear whether Mr. [REDACTED] kept or sold the car when he left New Mexico, California, and then moved out of the country. Whatever Mr. [REDACTED] did with the car is irrelevant as the event would have happened outside Idaho after the current review period.

There is no question that when Petitioners moved to Idaho in 2015 it became their domicile and Ms. [REDACTED] maintained that domicile through 2020. However, it is less clear that Mr. [REDACTED] was domiciled in Idaho after he moved to Bahrain on October 13, 2017. It is also less clear that Mr. [REDACTED] acquired another state as his domicile after he left Idaho in October 2017 to pursue employment opportunities out of the country.

For tax years 2018 through 2020, Mr. [REDACTED] received wages from the United States Navy Moral Welfare and Recreation (MWR) Fund, for which Petitioners claimed the foreign earned income exclusion. Mr. [REDACTED] worked as a civilian, not on active duty, and his federal Form W-2s from the U.S. Navy MWR shows “XX” as the state abbreviation, and the boxes for state wages and state income tax were both left blank for all years under examination.

As for the retirement benefit Mr. [REDACTED] received in 2020, he explained that it was not Idaho source income because it is from his employment with the U.S. Army while on active duty and as a civilian from October 1974 through December 2010. Mr. [REDACTED] clarified that he started receiving the retirement benefits in February 2011 while he was living in the Philippines with Ms. [REDACTED]

Mr. [REDACTED] left Idaho in October 2017 and did not return to Idaho, not even one day, until 2021⁴. Mr. [REDACTED] spent his time in foreign countries from October 2017 until he temporarily visited Idaho in 2021. Idaho Code section 63-3013(2) provides Idaho's safe harbor provision, and those who qualify are not considered Idaho residents. Mr. [REDACTED] absence from Idaho exceeded the 445 days as required by Idaho Code section 63-3013(2)(a), and his presence in Idaho did not exceed the subsequent 60 days in any calendar year as defined by Idaho Code section 63-3013(2)(b). The Tax Commission finds that Mr. [REDACTED] met Idaho's safe harbor provision and is therefore not considered a resident of Idaho. With the determination that Mr. [REDACTED] was not considered a resident of Idaho, the Tax Commission finds that the wages and the retirement benefits he received were not Idaho source income for 2018 through 2020.

However, the potential for audit adjustments is not automatically eliminated because Mr. [REDACTED] received the cancellation of debt income, and Ms. [REDACTED] was domiciled in Idaho. There is still the need to determine what income, if any, should be reported to Idaho.

Generally, when one spouse is domiciled in Idaho and the other spouse is not, the income of the spouse domiciled in Idaho is community property. When filing a return, the Idaho spouse must report half of the community income and the spouse not domiciled in Idaho reports the other half of the community income to Idaho. Under Idaho law, earnings of a spouse are presumed to be community property⁵. *Martsch v. Martsch*, 103 Idaho 142, 645 P.2d 882 (1982). This is true even if the husband and wife are separated and living apart. *Suter v. Suter*, 97 Idaho 461, 546 P.2d 1169

⁴ Mr. [REDACTED] response to the Bureau's Foreign Earned Income Questionnaire indicated that he temporarily came back to Idaho in 2020; however, he later clarified in his correspondence with the Bureau that he did not come back to Idaho until 2021.

⁵ Idaho Code § 32-906(1)

(1976) *Desfosses v. Desfosses*, 120 Idaho 354, 815 P.2d 1094 (Ct. App. 1991). Under Idaho law, only death or a legal divorce will disband the community.

However, IRC section 66(b) states, “Community property laws will be disregarded and the income will be treated as the separate income of a person who acted as if an item of community income was solely his or hers, and who failed to notify his or her spouse of the nature and amount of the income before the due date of the return, including extensions, for the year the income was earned.”

In the present case, Mr. [REDACTED] received the cancellation of debt income in 2018 and 2020 but didn’t include it in the joint returns filed with Ms. [REDACTED]. Since Mr. [REDACTED] treated the cancellation of debt income as solely his, Ms. [REDACTED] would have never known unless the IRS and the Tax Commission audited them. The Tax Commission finds that the cancellation of debt income is not community property, and with the determination that Mr. [REDACTED] was not considered a resident of Idaho, the cancellation of debt income was not Idaho source income for 2018 and 2020.

On the other hand, the income earned by Ms. [REDACTED] while she worked at Mountain Home Air Force Base is community property because she was an Idaho resident; therefore, Ms. [REDACTED] must report half of her income, and Mr. [REDACTED] must report the other half of the community income to Idaho. The Tax Commission finds that Petitioners properly reported the community income in the Idaho married joint returns they filed.

CONCLUSION

The Tax Commission determined that Mr. [REDACTED] absence from Idaho met the requirements of Idaho’s safe harbor provision. Mr. [REDACTED] is not considered a resident of Idaho. With this determination, the Tax Commission found that the wages, the retirement income, and

the cancellation of debt income received by Mr. _____ are not Idaho source income, and
Petitioners reported their income as required by Idaho community property laws.

THEREFORE, the Tax Commission CANCELS the Notice dated August 9, 2023, directed
to _____ and _____

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

DATED this _____ day of _____ 2024.

IDAHO STATE TAX COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2024,
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.

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I hereby certify that on this _____ day of _____ 2024,
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