

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 19230
[REDACTED],	)	
	)	DECISION
Petitioner.	)	
_____	)	

On November 1, 2005, the Tax Discovery Bureau (TDB) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NOD) [Redacted] (petitioner), proposing income tax, penalty, and interest for the years 2002 and 2003 in the total amount of \$6,268.

On December 29, 2005, the petitioner filed a timely protest and petition for redetermination. An informal hearing has not been requested by the petitioner. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision affirming the NOD.

The petitioner was identified as an Idaho individual income tax nonfiler for tax years 2002 and 2003. The petitioner previously filed Form 40 for 2000 and 2001, using the address [Redacted]. Information in the Commission's records showed that the petitioner filed his 1997 and 1999 federal income tax returns using the [Redacted] address. [Redacted]

The petitioner works in [Redacted]. While he may work [Redacted] outside of Idaho, it appears that he hasn't abandoned his Idaho domicile. The petitioner applied for and received an Idaho driver's license [Redacted]. The petitioner applied for and received an Idaho Fish & Game license [Redacted] where he stated that he lived in Idaho since his birth [Redacted]

There is no record of the petitioner registering to vote [Redacted]. However, the petitioner registered [Redacted]. [Redacted], the petitioner applied for and received a partial refund of the Idaho sales tax he paid at registration, as sales tax was previously paid [Redacted] where he

purchased the vehicle. This refund was sent [Redacted]. The petitioner registered [Redacted].

On September 16, 2005, the TDB sent a letter with a questionnaire to the petitioner to help the Commission properly determine the petitioner's filing requirement. There was no response to the letter.

After the petitioner did not respond to the inquiry letter, [Redacted]. The petitioner's NOD was issued based on the fact that all of his W-2s for both years were issued [Redacted]. The petitioner's 2002 [Redacted] return showed an Idaho address, while his [Redacted] return was filed [Redacted]. All the companies that the petitioner worked for in 2002 and 2003 exist on the Commission's database, and most of these companies reported wages to the Idaho Department of Commerce and Labor.

Before the expiration of the petitioner's protest period, he returned the original nonfiler letter and questionnaire sent to him on September 16, 2005. In the nonfiler letter he marked that "I am not required to file" for the years 2002 and 2003. In the Idaho Resident Information section of the questionnaire under Non-resident, the petitioner stated [Redacted]

In a letter to the petitioner dated January 4, 2006, the TES stated in part:

Information available to this office indicates that you were an Idaho resident in 2002 and 2003. In order for us to determine your correct residency/domicile status for these years, please complete the enclosed questionnaire and return it to me in the enclosed [sic] envelope by January 27, 2006. . . .

The petitioner did not respond to this letter.

The petitioner's file was transferred to the Commission's legal/tax policy division to allow him to continue with his rights of appeal.

The Tax Policy Specialist (policy specialist) sent the petitioner a hearing rights letter on March 17, 2006, to inform him of his alternatives for redetermining a protested deficiency

determination. A follow-up letter was sent on June 12, 2006. The petitioner did not respond to either letter.

The petitioner claimed he was a resident of the state [Redacted]. However, the petitioner has provided nothing to show he abandoned his Idaho domicile and acquired a new domicile [Redacted]. Since the petitioner failed to provide documentation to support his claim that he changed his domicile, he has not met his burden of proof. Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984).

Once a domicile of choice is established, it persists until another is legally acquired. In re Estate of Cooke, 96 Idaho 48, 59, 524 P.2d 176 (1973). "The existing domicile, whether of origin or selection, continues until a new one is acquired, and the burden of proof rests upon the party who alleges the change." Bodfish v. Gallman, 378 N.Y.S. 2d 138, 141, 50 A.D.2d 457 (1976).

Since the petitioner's domicile was Idaho, the presumption is the Idaho domicile continues until the petitioner establishes a new domicile. In re Estate of Cooke, supra. The petitioner did not show he established a new domicile [Redacted]. Therefore, the Commission finds that for the taxable years 2002 and 2003 the petitioner's domicile remained in Idaho.

[Redacted] The petitioner has not provided the Commission with a contrary result to the determination of his income [Redacted]Therefore, the Commission must uphold the NOD.

WHEREFORE, the Notice of Deficiency Determination dated November 1, 2005, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2002	\$1,790	\$448	\$407	\$2,645
2003	\$2,766	\$692	\$481	<u>\$3,939</u>
			TOTAL DUE	<u>\$6,584</u>

Interest is computed through February 27, 2007.

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

An explanation of the petitioner's right to appeal this decision is included with this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2006, 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]  
[REDACTED]  
[REDACTED]

Receipt No.  
  
\_\_\_\_\_