

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
	:	
of	:	
	:	
GORDON R. AND JENNIFER L. COOKE	:	DETERMINATION
	:	DTA NO. 823591
for Redetermination of a Deficiency or for Refund	:	
of New York City Personal Income Tax under the	:	
New York City Administrative Code for the Years	:	
2002 through 2004.	:	

Petitioners, Gordon R. Cooke and Jennifer L. Cooke, filed a petition for redetermination of a deficiency or for refund of New York City personal income tax under the New York City Administrative Code for the years 2002 through 2004.

A hearing was held before Herbert M. Friedman, Jr., Administrative Law Judge, at the offices of the Division of Tax Appeals, 1384 Broadway, New York, New York, on February 14, 2012 at 10:00 A.M., with all briefs to be submitted by June 8, 2012, which date commenced the six-month period for issuance of this determination. Petitioners appeared by McDermott, Will & Emery, LLP (Arthur R. Rosen, Esq., and Maria P. Eberle, Esq., of counsel). The Division of Taxation appeared by Mark F. Volk, Esq. (Peter B. Ostwald, Esq., of counsel).

ISSUES

I. Whether petitioners have established that they were not taxable as a domiciliaries and residents of New York City during the years 2002 through 2004.

II. Whether penalties asserted against petitioners should be abated.

FINDINGS OF FACT

1. Petitioners, Gordon R. and Jennifer L. Cooke, filed joint New York State resident income tax returns (Form IT-201) for the 2002, 2003 and 2004 tax years and fully satisfied their New York State income tax obligations for that period. Petitioners did not file New York City returns for those years, however.¹

2. On January 22, 2010, following an audit, the Division of Taxation (Division) issued to petitioners a Notice of Deficiency, which asserted additional New York City resident income tax due of \$266,316.00, \$38,342.00 and \$63,516.00 for the years 2002, 2003 and 2004, respectively. The Division determined that petitioners were liable for additional New York City personal income tax on the grounds that they were domiciled in New York City and, therefore, residents for 2002, 2003 and 2004. The Notice of Deficiency also asserted interest and penalties for negligence and substantial understatement of tax pursuant to Tax Law § 685(b) and (p) for each tax year.

3. Petitioner Gordon R. Cooke was born in 1945 in Winnipeg, Manitoba, Canada, and lived there until 1958, when he moved with his parents to Edmunds, Washington. After attending college in the state of Washington and graduate school in Oregon, he began his career in retail at The Bon Marché in Seattle. Petitioner became an American citizen in 1969.

4. In 1975, petitioner moved to New York City and became employed at Macy's, Inc., as the Senior Vice President for Sales and Promotion. That same year petitioner married his wife, Jennifer. She was born in San Diego, California, and had moved to New York City in 1965 to attend school. After their marriage, Jennifer Cooke ceased employment, and petitioner became

¹Petitioner Jennifer L. Cooke's name appears herein by virtue of having filed joint federal and New York State personal income tax returns with her husband, petitioner Gordon R. Cooke. Unless specified or required by context, references using the singular term "petitioner" shall mean petitioner Gordon R. Cooke.

their sole source of income. Neither petitioner had close family living in New York City when they moved there.

5. Since 1975, petitioners have continuously maintained an apartment in New York City. From that year through February of 1990, petitioners maintained an apartment at 429 East 52nd Street. Between 1990 and 1992, petitioners maintained an apartment at 530 East 76th Street. Finally, from 1992 to the present, petitioners maintained their current apartment at 400 East 57th Street.

6. In 1977, petitioner accepted a position at Bloomingdale's, Inc., in New York City as the Executive Vice President of Sales Promotion and Marketing. He remained employed with Bloomingdale's in New York City for the next 17 years.

7. Petitioners' daughter, Lauren Cooke, was born in New York City in 1978. Their daughter, Erica Cooke, was born in New York City in 1983.

8. During the period 1975 through 1984, petitioners' life centered around their New York City apartment at 429 East 52nd Street. They celebrated holidays, major family events, hosted parties and entertained there. Additionally, petitioners kept all of their possessions there, including family heirlooms and prized artwork. Petitioners concede that New York City was their domicile at that time.

9. Petitioners began traveling to the Hamptons shortly after they were married. They both grew to love the area, people and routine. Jennifer Cooke explained that they both felt the Hamptons would be a great place to have a house of their own and "establish a family." Consequently, in 1978, after the birth of their daughter Lauren, petitioners leased a house in the Hamptons and, once their affection for the area strengthened, began looking for a potential home to buy. In 1981, petitioners purchased a parcel of land on Merchants Path, Bridgehampton, New

York, for \$35,000.00. At the time, they did not have enough funds to construct a house on the lot. Nevertheless, petitioners frequently visited their undeveloped parcel with an eye on the future. Petitioner described a vignette that portrayed their excitement for their new property: “we put a champagne bottle in a tree and went out and visited and drank champagne just to see our property and stand amongst the trees.”

10. Petitioners began construction of a three-bedroom house on the Merchants Path property (Merchants Path House) in late 1983. They worked closely with an architect to design the house to their exact specifications, which included a space that was “100 percent liveable” and well suited for a young family and for entertaining. Construction was completed on the Merchants Path House in September 1984 for a cost of approximately \$300,000.00.

11. When completed, the Merchants Path House consisted of 2,400 square feet with an additional 300 square foot finished basement. It was situated on 1.5 acres of land that also contained a swimming pool and, eventually, a tennis court.

12. Petitioners worked with a decorator to help them install Americana decor in the Merchants Path House, including an original 38-star flag, a Bison head, and several antiques, including a spinning wheel, rocking horse, and multi-drawer dresser. They also completely furnished the entire home with new items from Bloomingdale’s, spending more money than they had ever spent furnishing their New York City apartment.

13. Additionally, in late 1984, petitioners moved an abundance of their valuable and cherished possessions out of the New York City apartment and into the Merchants Path House. These included their deceased parents’ papers, petitioner’s family bible and extensive stamp collection, valuable Curtis Indian prints, Greg Perillo pen and ink drawings, and their children’s artwork, photographs, awards, trophies, and yearbooks. Also included in the move was Jennifer

Cooke's sterling silver set obtained from her mother. Moreover, petitioners separately purchased a valuable Gorman print that they displayed there. According to petitioner, although they had ample space at their New York City apartment, the family wanted these items on display and used in the Merchants Path House.

14. In 1983, petitioners joined St. Ann's Episcopal Church in Bridgehampton, New York, and both of their children were baptized there two years later. Since then, the family has been very involved in activities at the church and regularly attends Sunday services. Petitioners' daughters both served as acolytes at St. Ann's when they were younger. Petitioners did not belong to any church in New York City.

15. Between late 1984 through 1995, petitioner's weekly routine typically commenced with a drive to New York City from Sagaponack with his family on Sunday evenings. The family spent Monday through Friday residing in the New York City apartment. During the workweek, petitioner spent the great majority of his daytime hours working in New York City. Meanwhile, Jennifer Cooke took care of their children and began taking classes there. Once they attained the proper age, their children attended private schools in New York City during this period. The children were very active in scholastic athletics, but did not entertain many friends or socialize while in New York City. On Fridays, petitioners and their children would drive back out to their Merchants Path House, where they would spend the weekend.

16. During this nine-year period, petitioners spent the majority of their free time at their Merchants Path House. Besides spending weekends, they celebrated most holidays there, including Christmas, Thanksgiving, Memorial Day, July 4th, and Easter. Additionally, petitioners hosted many parties for family and friends at the Merchants Path House. They also enjoyed many birthdays and other major family occasions there, such as petitioners' tenth wedding

anniversary and Jennifer Cooke's 40th birthday. These celebrations were not limited to the summer months, but instead occurred throughout the calendar year. During this period, such occasions were seldom, if ever held in the New York City apartment.

17. Perhaps petitioners' daughters' most enjoyable activity as children was horseback riding. In particular, Lauren Cooke, beginning at age six, was very involved in the sport, riding weekly throughout the year. That activity took place in the Hamptons. Eventually, petitioners purchased a horse for their daughters that was kept near their Merchants Path House.

18. Beginning at age 14, Lauren Cooke worked as a camp counselor in the Hamptons. At age 16, she also began working part-time throughout the year at a Banana Republic in the Hamptons. In the course of working these two jobs, Lauren developed most of her closest friendships with Hamptons residents.

19. Prior to 1996, petitioners filed New York City resident personal income tax returns.

20. In the fall of 1995, petitioner became president and CEO of J.Jill Group/D.M. Management (J.Jill), which is headquartered in Quincy, Massachusetts. Upon joining J.Jill, petitioner's primary business activity was no longer in New York City. Petitioner remained as president and CEO of J.Jill through May 2006.

21. In order to accommodate his new work venue, beginning in 1996, petitioner rented an apartment on Boylston Street in Boston, Massachusetts. He did not move any items there except for a few photographs and some clothing from the Merchants Path House. Petitioner lived in his Boston apartment during the workweek. He also obtained a Massachusetts drivers license and registered to vote and served on juries there. After discussion with his wife, petitioner chose not to relocate his family to Boston with him during the week because the children were already established in their schools in New York City.

22. During the years at issue, petitioner filed Massachusetts resident personal income tax returns on the advice of his accountant because he spent more than 183 days there during each of those years.

23. Lauren Cooke began attending Colby College in Maine in the fall of 1996. After her graduation in 2000, she moved into the New York City apartment for a few months while looking for a job. Subsequently, Lauren moved into a different apartment with friends in New York City, but moved to Boston in 2002 when she also accepted a position with J.Jill. Jennifer and Erica Cooke continued to use the New York City apartment during the workweek until 2001, when Erica enrolled and attended college at Brown University in Rhode Island. After her daughters ceased staying at the New York City apartment, Jennifer Cooke continued to use the New York City apartment as a base to allow her to continue her weekday class schedule routine and her study of opera. Her daughters' bedrooms in the New York City apartment were converted into other functions after their departures.

24. After he began working in Boston in 1996, the great majority of petitioner's time with his family was spent at the Merchants Path House. Typically, he would either drive from Boston to Connecticut at the end of the workweek and take the ferry to the Hamptons, or fly into LaGuardia Airport and drive with Jennifer to the Merchants Path House. Petitioner would return on Sunday nights to Boston.

25. Between 1996 and 2001, petitioner spent almost no time with his family in New York City. He stayed at the New York City apartment on occasion, but primarily as lodging for work-related trips. During that period, he attended the Broadway theater with his wife from time to time and infrequently met with friends for dinner dates in New York City. He seldom spent consecutive days there.

26. As was the case prior to his career move to Boston, after 1996, petitioner and his family spent the great majority of holidays and hosted numerous parties at the Merchants Path House. During the period between 1996 and 2001, petitioner spent the vast majority of his time at his Merchants Path House whenever he did not have to be somewhere else for a specific purpose.

27. In 2002, petitioner moved from his apartment in Boston to one on Belvedere Street. He renewed that lease in 2004, and rented the apartment until he retired from J.Jill in 2006.

28. Also in 2002, petitioners decided to sell the Merchants Path House and buy a new house on Parsonage Pond Road, Sagaponack, New York (Parsonage Pond House). The Parsonage Pond House is much larger than the Merchants Path House, being approximately 5,500 square feet in size, and cost petitioners \$3.6 million. Although their children were adults by that time, petitioners wanted to purchase a larger Hamptons house because, as they testified, they envisioned growing old there together and hosting their children's families. Lauren Cooke described the Parsonage Pond House as her parents' "dream home."

29. Petitioners moved all of their artwork, family heirlooms and other memorabilia from their Merchants Path House to their Parsonage Pond House. They also displayed their most expensive pieces of artwork and antiques there, including a Miro painting purchased by petitioner for his wife in 2002 for \$15,000.00. Jennifer Cooke described the painting as a "very special" Christmas gift. Petitioners did not purchase any artwork of comparable monetary or sentimental value for the New York City apartment during the years 2002 through 2004. Moreover, at that time, petitioners' homeowners insurance policy on the Parsonage Pond House included personal property insurance coverage of \$1.5 million. The contemporaneous personal property insurance coverage on their New York City apartment was \$153,000.00.

30. Petitioner bought a Range Rover in 2002. That vehicle was kept at his Hamptons residence, except for the occasions when he needed it for travel to Boston.

31. Lauren and Erica Cooke each have a bedroom at the Parsonage Pond House, containing all of their treasured personal memorabilia from their childhood. Lauren explained that she still stays in that room when she visits her parents. Conversely, neither daughter maintained a bedroom in the New York City apartment once they left for college.

32. The Merchants Path House sold in 2003 for approximately \$1 million. Petitioner incurred carrying costs between \$10,000.00 to \$12,000.00 per month on the Merchants Path House prior to its sale after moving into the Parsonage Pond House. In comparison, petitioner spent \$8,000.00 per month to maintain the New York City apartment during the same period.

33. Between 1984 and 1995, petitioners were members of the Noyac Golf Club, the Jensen Beach Club, and the Bridgehampton Tennis and Surf Club, all located in the Hamptons. Petitioners actively continued these memberships throughout the years at issue. Petitioner also made charitable donations to the Timothy Hill Children's Ranch in Riverhead, New York (on Long Island) during the relevant time. Conversely, he did not belong to any charitable, social, or religious organizations in New York City.

34. Petitioner continued in his executive roles at J.Jill until his retirement in 2006. While with J.Jill, petitioner continued to spend the majority of his workweek in Boston. He also traveled as part of his business responsibilities to other cities, including New York City. When there, he stayed at his New York City apartment. Petitioner likened his lodging in his New York City apartment during this time to staying in a hotel in other cities while on business.

35. As had been the case since 1984, petitioner returned to his Hamptons house on weekends, holidays and vacations to spend time with his family during the years at issue. As he

put it, “that’s where I like to relax. It was my home.” His typical activities there included shopping, chores, golf, tennis, and spending time with his family. Petitioners celebrated the vast majority of holidays at their Hamptons houses during the years at issue. They did not celebrate holidays in the New York City apartment during that time except for Christmas 2003 when Erica was hospitalized in New York City.

36. Between 2002 and 2004, petitioners continued to host parties and gatherings, both small and large, with friends at the Parsonage Pond House. According to Jennifer Cooke, these parties occurred “at least once a week,” and no matter the size of the gathering, “it was still sharing our home with others.” Petitioners testified that they did virtually no entertaining at the New York City apartment during this time period.

37. During the years at issue, petitioner was present in New York City for fewer than 183 days. The Division’s auditors determined that petitioner spent 69 days in New York City in 2002, 71 days in New York City in 2003, and 66 days in New York City in 2004. At hearing, petitioner approximated that 95% of that time was either related to business activities or specific commitments with his wife, such as dinner engagements or the theater. Meanwhile, the Division’s auditors also determined that petitioner was in the Hamptons for 52 days in 2002, 86 days in 2003, and 62 days in 2004. It appears that neither the New York City nor Hamptons day counts addressed partial days spent in either locale. Thus, many of petitioner’s “New York City days” were really partial New York City days, with part of the day (the morning or evening) spent in the Hamptons or traveling outside New York.

38. Petitioner testified that since his retirement from J.Jill in May 2006, he has spent more time than ever at the Parsonage Pond House. In addition, he and his wife continue to host

parties and holidays there, and they have begun searching for burial plots in the Hamptons. They stated that they plan to remain in the Hamptons for the remainder of their lives.

39. Lauren Cooke was married in the Hamptons in October 2006. In attendance were her closest friends from the Hamptons that she had developed over the years.

40. In 2004, petitioners purchased a fractional interest in a vacation property in Arizona. Petitioner explained that he did so to have “a place that was warm to go to in the winter months.”

41. Both petitioners and their daughter, Lauren Cooke, testified credibly at the hearing. Each declared their unbridled affection for the Hamptons and stated that it was their home prior to, during, and after the years at issue. Petitioner stated that the Hamptons was his home during the years at issue “because it is where all the memories and possessions that we treasure are located and it is where I’ve always intended to spend the rest of my life.” He added that “the Hamptons is where we have always considered our home with memories of years past and is where [his daughters] felt most comfortable.” Jennifer Cooke similarly referenced the memories and enjoyment of their Hamptons “home.” Lauren Cooke explained why she considers the Hamptons her home:

all my happiest and fondest memories took place in the Hamptons, all my best friends to this day are from the Hamptons and live in the Hamptons. You know, when I say I am going home, I mean I am going home to Bridgehampton.

All three insisted that they were not Hamptons “summer people,” but year-round residents.

42. As noted previously, as compared to the Hamptons, petitioners did not consider the New York City apartment their home. When asked to compare his feelings for New York City with those for the Hamptons, petitioner described the New York City apartment as “utilitarian,” whereas “the Hamptons was for life and remembrance.” Lauren Cooke candidly testified that she

did not think of the New York City apartment as her home, but stated that she “had a specific purpose for being in New York City” and likened her time there to being at a job.

43. Petitioner’s will, executed on February 9, 2001, identifies the Sagaponack as his domicile. Likewise, his healthcare proxy, executed the same date, and trust documents, executed on November 21, 2009, both reflect only petitioner’s Sagaponack address as his home.

44. Petitioner explained that throughout the years, he chose medical caregivers in the location where he spent his workweek. Thus, petitioner’s doctors and dentist were located in New York City prior to 1996. After his relocation to Boston in that year, he used Massachusetts physicians for his primary healthcare. Upon his retirement in 2006, petitioner used doctors located in the Hamptons. Similarly, his wife and children’s doctors were located in New York City based on their weekly presence there, although petitioners’ used pediatricians for their children in the Hamptons on weekends after 1984. Petitioner acknowledged that he retained some specialists in New York City during the years at issue.

SUMMARY OF THE PARTIES’ POSITIONS

45. Petitioners assert that they changed their domicile from New York City to Sagaponack in 1984, upon completion of the Merchants Path House. They claim that since 1984, their use of the residences, the time spent with their family, the location of their treasured possessions, and their social and charitable connections establish their intentions and regard for the Hamptons as their domicile. Alternatively, should the statutory notice be sustained, petitioners argue that penalties should be abated as they acted in good faith and had reasonable cause for their residency position.

46. On the other hand, the Division maintains that petitioners failed to meet their burden of proving by clear and convincing evidence that they abandoned their historic New York City

domicile and effectuated a change of domicile to the Hamptons during the tax years 2002 through 2004 with the intent to stay there permanently. It asserts that petitioners simply maintained the “proverbial second home Hamptons’ lifestyle.” Furthermore, the Division states that petitioners have shown no basis for the abatement of penalties.

CONCLUSIONS OF LAW

A. Administrative Code of the City of New York § 11-1701 imposes City personal income tax on every “city resident individual.” A “city resident individual” is generally defined in the Administrative Code as (1) an individual who is *domiciled* in the city or (2) an individual, commonly referred to as a “statutory resident,” who is *not domiciled* in the city but who maintains a permanent place of abode in the city and who spends more than 183 days in the city during the taxable year (*see* Administrative Code § 11-1705[b][1]). This case solely involves petitioners’ domicile, and not whether they were statutory residents during 2002 through 2004.

B. The Division’s regulations² define “domicile” in relevant part as follows:

(1) Domicile, in general, is the place which an individual intends to be such individual’s permanent home - - the place to which such individual intends to return whenever such individual may be absent.

(2) A domicile once established continues until the person in question moves to a new location with the bona fide intention of making such individual’s fixed and permanent home there. No change of domicile results from a removal to a new location if the intention is to remain there only for a limited time; this rule applies even though the individual may have sold or disposed of such individual’s former home. The burden is upon any person asserting a change of domicile to show that the necessary intention existed. In determining an individual’s intention in this regard, such individual’s declarations will be given due weight, but they will not

² The Division’s regulations with respect to the New York State income tax imposed by Article 22 of the Tax Law are applicable in their entirety to the income taxes imposed by the City of New York pursuant to Article 30 of the Tax Law and the New York City Administrative Code, and any reference in such regulations to “New York State domicile, resident and nonresident. . . shall be deemed to apply in like manner to City of New York domicile, resident and nonresident by substituting City of New York for New York State wherever applicable” (*see* 20 NYCRR 290.2).

be conclusive if they are contradicted by such individual's conduct. The fact that a person registers and votes in one place is important but not necessarily conclusive, especially if the facts indicated that such individual did this merely to escape taxation.

* * *

(4) A person can have only one domicile. If such person has two or more homes, such person's domicile is the one which such person regards and uses as such person's permanent home. In determining such person's intentions in this matter, the length of time customarily spent at each location is important but not necessarily conclusive (20 NYCRR 105.20 [d]).

C. It is well established that an existing domicile continues until a new one is acquired and the party alleging the change bears the burden to prove, by clear and convincing evidence, a change in domicile (*see Matter of Bodfish v. Gallman*, 50 AD2d 457, 378 NYS2d 138 [3d Dept 1976]). Whether there has been a change of domicile is a question "of fact rather than law, and it frequently depends upon a variety of circumstances which differ as widely as the peculiarities of individuals" (*Matter of Newcomb's Estate*, 192 NY 238, 250 [1908]). The test of intent with regard to a purported new domicile is "whether the place of habitation is the permanent home of a person, with the range of sentiment, feeling and permanent association with it" (*Matter of Bourne*, 181 Misc 238, 246, 41 NYS2d 336, 343 [1943], *affd* 267 App Div 876, 47 NYS2d 134 [2d Dept 1944], *affd* 293 NY 785 [1944]); *see also Matter of Bodfish v. Gallman*). While certain declarations may evidence a change in domicile, such declarations are less persuasive than informal acts which demonstrate an individual's "general habit of life" (*Matter of Silverman*, Tax Appeals Tribunal, June 8, 1989, citing *Matter of Trowbridge*, 266 NY 283, 289 [1935]).

D. In *Matter of McKone v. State Tax Commission* (111 AD2d 1051, 490 NYS2d 628 [3d Dept 1985], *affd* 68 NY2d 638, 505 NYS2d 71 [1986]), the Court favorably quoted the following treatise on the intent necessary to establish domicile:

The intention necessary for acquisition of a domicile may not be an intention of living in the locality as a matter of temporary expediency. It must be an intention to live permanently or indefinitely in that place. But it need not be an intention to remain for all time; it is sufficient if the intention is to remain for an indefinite period. (25 Am Jur 2d Domicile § 25, at 19 [1966].)

E. While the standard is subjective, the courts and the Tax Appeals Tribunal have consistently looked to certain objective criteria to determine whether a taxpayer's general habits of living demonstrate a change of domicile. "[T]he taxpayer must prove his subjective intent based upon the objective manifestation of that intent displayed through his conduct" (*Matter of Simon*, Tax Appeals Tribunal, March 2, 1989). Among the factors that have been considered are: (1) the retention of a permanent place of abode in the claimed domicile (*see e.g. Gray v. Tax Appeals Tribunal*, 235 AD2d 641, 651 NYS2d 740 [3d Dept 1997] *confirming Matter of Gray*, Tax Appeals Tribunal, May 25, 1995; *Matter of Silverman*, Tax Appeals Tribunal, June 8, 1989); (2) the location of business activity (*Matter of Erdman*, Tax Appeals Tribunal, April 6, 1995; *Matter of Angelico*, Tax Appeals Tribunal, March 31, 1994); (3) the location of family ties (*Matter of Gray*; *Matter of Buzzard*, Tax Appeals Tribunal, February 18, 1993, *confirmed* 205 AD2d 852, 613 NYS2d 294 [3d Dept 1994]); (4) the location of social and community ties (*Matter of Getz*, Tax Appeals Tribunal, June 10, 1993); and (5) formal declarations of domicile (*Matter of Trowbridge*; *Matter of Gray*; *Matter of Getz*).

F. After examining the entire record in light of the foregoing standards, it is concluded that petitioners have proven, by clear and convincing evidence, that they gave up their New York City domicile and acquired a domicile in the Hamptons as of the years at issue.

Petitioners' change of lifestyle during 1984 and their subsequent development and use of their respective residences strongly upholds their claim of a change in domicile. Prior to 1984, petitioners' life centered around their New York City apartment, where they spent their free time, hosted parties, celebrated holidays, and kept all of their most valuable possessions. Significantly, they concede that they considered the apartment "home." In 1984, however, petitioners completed construction of and began to inhabit the 2,400 square-foot Merchants Path House. They invested large sums of money and time in building and furnishing that house, working extensively with an architect and interior decorator to design a home to their exact specifications and desires. It is clear that petitioners intended to create a home that served as a place to entertain friends and spend time as a family. Petitioners' increased their financial and emotional investment in their Hamptons home with the purchase of the 5,500 square-foot Parsonage Pond House in 2003 for \$3.6 million and subsequent occupation. These efforts demonstrate petitioners' bona fide intention of making their fixed and permanent home in Sagaponack. Conversely, there is little to no evidence of comparable investment in the New York City apartment after the Merchant's Path House was built.

Moreover, petitioners moved most of their artwork, family heirlooms, and treasured keepsakes from New York City to the Merchants Path House in 1984. These items included their deceased parents' papers, petitioner's family bible and extensive stamp collection, valuable Curtis Indian prints, Greg Perillo pen and ink drawings, and their children's artwork, photographs, awards, trophies, and yearbooks. They also included Jennifer Cooke's mother's sterling silver set. Later, these and other meaningful, subsequently-acquired items, such as the important Miro painting, were moved to the Parsonage Pond House. Both petitioners and Lauren Cooke emphasized that the family wanted these items on display in the Hamptons and

not in New York City because the former was their home. Additionally, petitioners' homeowners insurance policy on the Parsonage Pond House included personal property insurance coverage well in excess of the same coverage on their New York City apartment. Thus, petitioners' financial investment in the Hamptons residences, along with the placement there of their extensive and valuable near and dear items, support a finding that petitioners intended to make Sagaponack their "fixed and permanent home" (*see Matter of Newcomb*).

G. Examination of petitioner's "general habit of life" during the years prior to and including 2002 through 2004 further substantiates the claimed domicile change. In essence, petitioner was an extremely busy executive who traveled extensively and returned to the Hamptons whenever he did not have somewhere he had to be. While petitioner worked, prior to the years at issue, his family spent Mondays through Fridays in New York City at their "jobs," and then would reconvene with petitioner on weekends and holidays at their Hamptons home. Once petitioners' daughters attended and graduated from college, they spent their workweek outside of New York City, only to likewise return to the Hamptons during their free time. Birthdays, milestones, and other significant events were celebrated by the family at their Hamptons homes, and the record is replete with photographs memorializing such events. Petitioners also developed a strong social network in the Hamptons, joining various clubs, and frequently entertained guests at the Merchants Path and Parsonage Pond Houses. Their religious participation also took place in the Hamptons, including their daughters' performance as acolytes at St. Ann's Episcopal Church in Bridgehampton. Similarly, their daughters involved themselves in other local Hamptons activities, such as horseback riding, tennis and employment. As with petitioners, the daughters developed several long-lasting friendships there. They were baptized there, and Lauren Cooke was married there. Meanwhile, few, if any,

comparable activities took place in New York City during this period. Finally, unlike in the New York City apartment, petitioners continued to maintain bedrooms for their daughters in the Parsonage Pond House for when they visited on holidays or otherwise once they reached adulthood. The totality of these facts demonstrates that petitioners' "general habit of life" was centered in the Hamptons during the years at issue (*see Matter of Silverman*, Tax Appeals Tribunal, June 8, 1989).

H. Petitioner's business ties to New York City greatly diminished well before the years at issue with his employment relocation to Boston in 1996 as president and CEO of J.Jill. Petitioner's career move meant that his employment was no longer centered in New York City, but in Boston. Additionally, despite employment relocation to Boston, petitioner's general lifestyle pattern remained as it had been since 1984 - he spent the week working in a major city and returned to his Hamptons home on his free time, such as weekends or holidays, to rejoin his family. Significantly, he did not move his family to Boston during his time with J.Jill, thereby underscoring that his presence there solely resulted from the demands of his career, as it had previously with New York City, and not a desire to make Boston his home (*see Matter of Taylor*, Tax Appeals Tribunal, December 8, 2011). Regardless of whether he was working in New York City or Boston, Sagaponack was the place to which petitioner intended to return whenever he was absent (*see* 20 NYCRR 105.20[d][1]).

I. Although less persuasive than his general habit of life, petitioner made certain "formal declarations" which also support his claimed Hamptons domicile. On February 9, 2001, just prior to the years at issue, petitioner executed a will and health care proxy stating that his domicile was Sagaponack, New York. These were both created without the benefit of tax advice regarding the use of his Hamptons address and suggest his true feelings at the time.

J. Perhaps the most compelling evidence of petitioners' Hamptons domicile was their candid, credible testimony to that effect, in addition to that of their daughter, Lauren. Each of the Cookes described with sincerity the powerful feeling and sentiment they, and in particular, petitioner, associated with their home in Sagaponack. Buttressed with documentary evidence such as photographs, baptism certificates, and calendars, and numerous anecdotes, petitioners and their daughter described the creation and furnishing of the Merchants Path and Parsonage Pond Houses, the growth of a family within them, and petitioners' intention to remain there throughout their lives. In stark contrast, they each displayed a dispassionate attitude towards the New York City apartment and the time spent there, especially during the years at issue, which was consistent with its described "utilitarian" use. In short, they clearly and convincingly demonstrated that during the years at issue, the Hamptons was their home, "with the range of sentiment, feeling and permanent association with it" (*Matter of Bodfish v. Gallman*).

K. The Division notes several facts in the record showing continuing ties to New York City that weigh against petitioners' claim of a change in domicile. It is well established, however, that a taxpayer may change his or her domicile without severing all ties with their prior domicile (*Matter of Sutton*, Tax Appeals Tribunal, October 11, 1990). In this matter, such continuing ties are insufficient to overcome the other evidence, discussed above, which prove petitioners' Sagaponack domicile.

In particular, the Division points to petitioner's continuing maintenance of the New York City apartment up to and during the years at issue. The Tribunal has recognized, however, that the continued maintenance of a dwelling in New York City is not determinative of an individual's domicile (*see Matter of Doman*, Tax Appeals Tribunal, April 9, 1992). It is clear that petitioner maintained the New York City apartment primarily for his wife, in order to allow

her to pursue her weekday interests in that city. Meanwhile, as discussed, petitioner's presence in New York City diminished significantly when he left to work with J.Jill in Boston in 1996. The record suggests that the great majority of petitioner's workweek after that point was spent in Boston or traveling, and that his use of the New York City apartment was akin to that of a hotel, providing him a place to stay while there on business. This contrasts sharply with petitioner's habitual return to the Hamptons on weekends, holidays, and other free time to be with his family and otherwise enjoy life.

L. Where an individual has two residences, the length of time spent at each location is an important factor to be considered in determining domicile (*see* 20 NYCRR 105.20[d][4]). Here, even under the Division's computations, the amount of time petitioner spent in New York City when compared with the Hamptons during the years at issue was approximately even. Moreover, petitioner's presence in New York City, especially after 1996, was largely related to business and business travel (*see Matter of Knight*, Tax Appeals Tribunal, November 9, 2006). Accordingly, while important, petitioner's time spent in New York City during the years at issue is not determinative of his domicile when meshed with the record as a whole.

M. Likewise, and contrary to the Division's argument, under the circumstances, petitioners' use of New York City doctors also is not determinative of petitioner's domicile. By the years at issue, his primary physicians were in Boston, not New York City. As petitioner explained, he chose the convenience of seeing caregivers where he spent his workweek, not because he considered Boston his home. To the extent that petitioner continued to see specialists in New York City between 2002 and 2004, he was hardly the only nonresident to do so.

N. While it is true that petitioners' daughters both attended elementary and high school in New York City prior to the years at issue, it appears that attendance was more in the nature of boarding school. The credible testimony and documentary evidence was clear that they would return "home" to Sagaponack on weekends. Furthermore, by 2002, although both daughters were either attending college or living out of New York state, it is significant that each maintained a bedroom in the Parsonage Pond House, and not New York City, for visits with their family.

O. The Division also argues that petitioners' claimed domicile was nothing more than a "weekend/vacations Hamptons lifestyle." That position, however, ignores the evidence in this case of the overwhelming amount of family activities and general habit of life that took place in the Hamptons throughout the calendar year. It also ignores the care and effort petitioners took in moving their most precious items to Sagaponack. Further, the Division's position ignores the sincere, credible, and unrefuted testimony of petitioners and their daughters insisting that Sagaponack was their full-time home and not just a summer retreat.

P. It is well settled that "[t]o effect a change in domicile, there must be an actual change in residence, coupled with an intention to abandon the former domicile and to acquire another" (*Matter of Ingle*, Tax Appeals Tribunal, December 1, 2011, quoting *Aetna Natl. Bank v. Kramer*, 142 AD 444 [1911]). In this case, there is little doubt that petitioners intended to move the focus of their life from New York City to the Hamptons. Before and during the years at issue, petitioner was a very successful executive with several prominent companies. Therefore, he was fortunate enough to be able to afford several residences. As his grounding place among many possibilities, however, petitioner chose the Hamptons, which he most consistently referred to as his home. The record makes clear that his traveling lifestyle was

centered and based at Sagaponack. Accordingly, during the years at issue, petitioners were domiciliaries of the Hamptons and not New York City.

Q. As the domicile issue for the years 2002 through 2004 is decided in petitioners' favor, the issue of penalties is moot.

R. The petition of Gordon R. and Jennifer L. Cooke is hereby granted and the notice of deficiency dated January 22, 2010 is canceled.

DATED: Albany, New York
November 15, 2012

/s/ Herbert M. Friedman, Jr.
ADMINISTRATIVE LAW JUDGE