

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
CLAY E. AND RITA M. BUZZARD	:	DETERMINATION DTA NO. 808865
for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Years 1985 through 1988.	:	

Petitioners, Clay E. and Rita M. Buzzard, 3845 Partridge Place South, Boynton Beach, Florida 33436, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1985 through 1988.

A hearing was held before Timothy J. Alston, Administrative Law Judge, at the offices of the Division of Tax Appeals, 462 Washington Street, Buffalo, New York, on March 14, 1991 at 1:15 P.M. Petitioners filed a brief on May 9, 1991. The Division of Taxation filed a letter brief on June 24, 1991. Petitioners filed a reply letter brief on July 10, 1991. Petitioners appeared by Jaeckel, Fleischmann & Mugel (Paul A. Battaglia and Raymond P. Reichert, Esqs., of counsel). The Division of Taxation appeared by William F. Collins, Esq. (Deborah J. Dwyer, Esq., of counsel).

ISSUE

Whether petitioners have established that they were domiciled in the State of Florida and were therefore not subject to taxation as residents of the State of New York during the years 1985 through 1988.

FINDINGS OF FACT

On October 10, 1989, following an audit, the Division of Taxation issued to petitioners, Clay E. and Rita M. Buzzard, a Notice of Deficiency asserting additional personal income tax due of \$340,439.95, plus interest, for the years 1985 through 1988.

With respect to each of the years at issue, petitioners timely filed joint New York State

nonresident income tax returns (Form IT-203).

The asserted deficiency results from a Division determination that petitioners were domiciliaries of New York and therefore residents of New York during the years at issue. In accordance with said determination, the Division recomputed petitioners' New York income based upon a change in status from nonresident to resident. The computation of the deficiency is not in dispute.

In April 1963, petitioners and their six children moved from their hometown of Pittsburgh, Pennsylvania to the Buffalo, New York area. The move to Buffalo resulted from Mr. Buzzard's decision to take control of Middle Atlantic Warehouse Distributor, Inc. ("MAWDI"), which at the time was bankrupt.

MAWDI was and is engaged in business as a distributor of automotive parts and supplies. MAWDI sells to wholesale distributors.

Mr. Buzzard acquired 40% of the outstanding stock of MAWDI and became its president at the time he arrived in Buffalo to assume management of the company. By December 1963, Mr. Buzzard had acquired 99% of the outstanding MAWDI stock.

Over the years, MAWDI became a highly successful operation, expanding operations and acquiring facilities throughout the country. MAWDI's headquarters are located in Tonawanda, New York. MAWDI, through its wholly-owned subsidiaries, has warehouse facilities located in Atlanta, Georgia; Boston, Massachusetts; Dallas, Texas; Indianapolis, Indiana; Philadelphia, Pennsylvania; San Antonio, Texas; and Tonawanda, New York. Through these facilities MAWDI sells to customers located in 30 states. In addition, through subsidiary corporations, MAWDI operates wholesale automotive parts stores in Georgia, New York, Pennsylvania and Texas.

Petitioners have four sons, all of whom have been active in the family business since the age of 14.¹ Petitioners' oldest son, James E. Buzzard, held the positions of vice-president and

¹Petitioners also have two daughters, Karen L. Evanoka and Carol J. Buzzard. Neither of petitioners' daughters has been active in the family business.

executive vice-president of MAWDI from April 1978 through June 1983. He has been president and chief operating officer of MAWDI since June 1983. Petitioners' next oldest son, Robert C. Buzzard, was a vice-president of MAWDI from December 1979 until June 1983. He has been executive vice-president since June 1983 and has also been treasurer and assistant secretary since 1990. Petitioners' next oldest son, Richard A. Buzzard, has been a vice-president of MAWDI since June 1983, and is currently in charge of MAWDI's Texas operations. Petitioners' youngest son, Daniel S. Buzzard, has been a vice-president of MAWDI since 1981 and is responsible for MAWDI's Atlanta, Georgia and Indianapolis, Indiana operations.

Petitioner Clay E. Buzzard was president of MAWDI from April 1963 until June 1983, when he became chairman of the board, a position he continues to hold at the present time. When petitioner became chairman of MAWDI in 1983, he appointed his son, James, to the office of president.

From 1963 until 1978, MAWDI's board of directors consisted of petitioners and Mr. John Montfort, petitioners' friend and attorney. In 1978, the size of the board was increased to five with the addition of

petitioners' sons, James and Robert. In June 1983, the size of the board was increased to seven with the addition of petitioners' sons, Daniel and Richard. In December 1983, the board was reduced to six with Mr. Montfort's departure from the board. In December 1985, the board was increased to seven as petitioners' son-in-law, John S. Evanoka, was added to the board. There have been no changes in the board since December 1985.

As noted previously, by December 1963 Mr. Buzzard had acquired 99 of the 100 shares of common stock of MAWDI which were then issued and outstanding. Mr. Montfort owned the remaining one share of stock. In 1968, the two shareholders received 200 shares of common stock for each share previously owned. Mr. Buzzard's holdings were thereby increased to 19,800 shares and Mr. Montfort's to 200 shares. MAWDI has never been authorized to issue

stock other than common stock. Mr. Montfort's stock was purchased by the corporation in 1983 and since that time MAWDI has been owned 100% by the Buzzard family.

In 1975, Mr. Buzzard began a program of making gifts of shares of MAWDI stock to his children. These transfers were made primarily to provide the children with a proprietary interest in the business and, particularly in the case of those children active in the business, to strengthen their commitment to the business. The ownership of MAWDI stock as of March 14, 1991 was as follows:

<u>Shareholder</u>	<u>Number of Shares Owned</u>
Clay E. Buzzard	16,649
Carol J. Buzzard	266
Daniel S. Buzzard	646
James E. Buzzard	646
Richard A. Buzzard	646
Robert C. Buzzard	646
Karen L. Evanoka	<u>301</u>
Total issued and outstanding	19,800

In 1978, petitioners' youngest child, Carol, left home for college. Petitioners determined they were then able to spend time away from Buffalo. Accordingly, in 1978, petitioners purchased a residence at 3655 Royal Tern Circle, Boynton Beach, Florida. The purchase price for this three-bedroom residence was \$90,000.00.

On November 24, 1981, petitioners sold their residence located at 54 Carriage Circle, Amherst, New York. The residence had been acquired in 1965 for \$34,900.00. It was sold in 1981 for \$102,000.00.

On the income tax returns filed by petitioners for 1981, they reported the gain realized on the sale of the New York residence and paid Federal and New York State income tax thereon.

Following the sale of their New York residence in 1981, petitioners took up residence in their home at 3655 Royal Tern Circle, Boynton Beach, Florida, where they continued to reside until the purchase of a new Florida home in March 1989.

The move to Florida in November 1981 was prompted by both personal and business

considerations. Petitioners' children were then grown and emancipated. Those children who were active in the family business had attained the age, maturity and experience to permit Mr. Buzzard to turn over much of the day-to-day responsibility for the business to them. Furthermore, the Florida weather during the late fall, winter and spring months was easier on Mr. Buzzard's injured leg, as explained more fully below.

Petitioner Clay E. Buzzard served in the United States Army during World War II. He sustained a combat injury to his lower right leg which resulted in the award of a 40% disability pension benefit from the Veterans Administration, a benefit he continues to receive to this day. The nature of this injury is such that if Mr. Buzzard's leg is exposed to cold for any period of time, he reacts with pain and usually a secondary infection, which requires antibiotic therapy. Since moving to Buffalo in 1963, Mr. Buzzard has been a patient of Robert H. Miller, M.D. He was advised by Dr. Miller that no treatment would ease his condition, and that it was advisable to assume residence in a warm climate to alleviate the problems which the cold caused.

During the summer of 1982, petitioners rented a furnished home in Williamsville, New York, and spent the summer months (when not traveling on business or vacation) in western New York. They had no telephone listing for this address.

During the summer of 1983, petitioners rented a townhouse in Williamsville, New York, and spent the summer months (when not traveling on business or vacation) in western New York. They had no telephone listing for this address.

When they sold their Amherst residence in November 1981, petitioners intended to continue to spend significant amounts of time in the Buffalo area, mostly during the spring and summer months and also during the Christmas holiday season. Petitioners explored the possibility of buying or renting property in Canada for use as a summer residence. In this regard, they consulted with Mr. Montfort, who was the owner of a summer residence in Canada. Petitioners ultimately decided against acquiring Canadian property, partly due to the distance between such property and petitioners' childrens' homes in the Buffalo area. Petitioners believed that they would be unable to see their children and grandchildren as often as they

would like.²

Petitioners were not satisfied with their experience in renting a summer residence during the summer of 1982. Accordingly, in May 1983, petitioners contracted for the purchase of a lot in the Town of Amherst, New York, and the construction of a house thereon. Construction began in June 1983, and the purchase was closed in February 1984. This residence, 3 Stratford Court, Amherst, New York, is still owned by petitioners and is used by them when they are in the Buffalo area. The cost of the lot and construction of the residence was \$301,900.00.

Petitioners were dissatisfied with their rented accommodations in 1982 because, in Mr. Buzzard's words, "it was someone else's home". Petitioners thus had to place restrictions on their grandchildren, such as where they could go and what they could touch in the house. Such restrictions did not exist in their new home.

On September 18, 1982, petitioner Clay E. Buzzard executed his Last Will and Testament in which he recited his residence to be the "County of Palm Beach and State of Florida". That Will, which was prepared in New York, has not been amended or revoked.

In October 1982, petitioners each obtained a Florida driver's license and each has held a Florida driver's license since that time.

Petitioners registered to vote in Florida on October 25, 1982 and have voted in Florida since that time. When voting in Florida, petitioners have voted in person, never by absentee ballot. Petitioners last voted in New York in 1980. They believe their New York voter registrations were cancelled in 1982.

On February 2, 1983, petitioners applied for and were granted a homestead exemption for purposes of the Florida real property tax. The exemption continues in effect.

On March 3, 1989, petitioners purchased their current Florida home at 3845 Partridge

²Three of petitioners' children and eleven of their grandchildren reside in the Buffalo area. Specifically, petitioners' daughter, Karen L. Evanoka, resides in East Amherst, New York and has three children. Petitioners' son, James, resides in Clarence, New York and has four children. Petitioners' son, Robert, resides in Williamsville, New York and has four children.

Place South, Boynton Beach, Florida for a purchase price of \$475,000.00. On September 13, 1989, they sold their old Florida home (i.e., 3655 Royal Tern Circle, Boynton Beach, Florida) for a sale price of \$175,000.00. Pursuant to section 1034 of the Internal Revenue Code, petitioners elected to "rollover" the gain realized on the sale of the old Florida home.

Petitioners have filed Florida intangible tax returns each year since establishing residence in Florida.

Petitioners have filed nonresident New York personal income tax returns each year since establishing residence in Florida. Prior to establishing residence in Florida, petitioners had filed resident returns in New York.

On all income tax returns filed by petitioners since establishing residence in Florida their address has been shown to be in Florida.

Petitioners' passports have reflected that they are residents of Florida at least since 1985.

Since 1978, petitioners have been members of the Quail Ridge Golf & Country Club in Boynton Beach, Florida.

Since April 1983, petitioners have been members of the Delray Beach Club, Delray Beach, Florida.

Since July 1986, petitioner Clay E. Buzzard's VA disability benefit pension checks have been directly deposited into accounts maintained by petitioners in Florida. These checks were never directly deposited into New York accounts.

As alluded to previously (see Finding of Fact "17"), before the move to Florida in 1981, it had long been petitioner Clay E. Buzzard's intention that his children would one day take over operation of the family business and eventually come to own the business. To this end, petitioner had gotten his sons involved working for the business at an early age (see Finding of Fact "8") and had later begun to make gifts of MAWDI stock to his children (see Finding of Fact "12"). Accordingly, by the time of the move to Florida in 1981, petitioners' sons, particularly the two eldest sons, were of sufficient age and experience to assume responsibility for the day-to-day operations of the business. Indeed, by November 1981, petitioners' sons had

assumed many of the day-to-day responsibilities for the Buffalo MAWDI operation. At that point, petitioners' son, James, had been executive vice-president of MAWDI for nearly two years (see Finding of Fact "8"). Mr. Buzzard had thus begun to share responsibility for the day-to-day management of the Buffalo operation by the time of the move to Florida in 1981.

Subsequent to the move, Mr. Buzzard remained involved with the Buffalo operation, but his day-to-day involvement in the business diminished as his sons continued to assume a greater share of responsibility for running the company. By June 1983, when James Buzzard became president of MAWDI, Clay Buzzard's involvement in the day-to-day management of MAWDI was ended. At that time, he ceased maintaining an office in Buffalo.

Subsequent to June 1983, Mr. Buzzard has had three (more or less) formal areas of responsibility in connection with the operation of the corporation. As chairman of the board of directors he attends the company's formal board meetings. Mr. Buzzard was also paid as a consultant by MAWDI's Buffalo office. This salary amounted to less than 10% of his total salary during the years in question. He had no assigned duties in connection with this consultant status. Most of his hands-on responsibility with the MAWDI corporation subsequent to 1983 was with the Texas subsidiary. Mr. Buzzard was in close contact with his son, Richard, who was in charge of the Dallas office. Mr. Buzzard also had an office in Dallas during 1983 through 1988, and most of his salary was paid through the Texas corporation. During the years at issue, as a result of certain acquisitions, the Texas subsidiary became the largest of the MAWDI group of corporations.

Throughout the period at issue, Mr. Buzzard's total salary was greater than that paid to his son, James, MAWDI's president. Mr. Buzzard's total salary during the audit period ranged from approximately \$328,000.00 in 1985 to about \$535,000.00 in 1987. A small amount of that salary (\$10,000.00) may have been paid to Mrs. Buzzard. Mr. Buzzard estimated his son James' salary during this same period to have been about \$150,000.00 or \$175,000.00.

During the years at issue, Mr. Buzzard served the corporation for the most part in an informal manner. He drew upon his reputation in the industry and made contact with and

entertained parts dealers and customers. He was active in industry trade associations and regularly attended industry conventions, shows and meetings. He also entertained customers and suppliers at his homes in Florida and Buffalo. Often such entertainment took the form of playing golf.

As noted previously, Mr. Buzzard did not maintain an office in Buffalo subsequent to his stepping down as president of MAWDI in June 1983. However, he did have an office in Dallas. He also maintained an office in his Florida home.

During the period at issue, when in Buffalo, Mr. Buzzard generally went to the MAWDI office three or four times per week. He usually spent a few hours there reviewing his mail and conversing with employees.

Petitioners had their mail directed to MAWDI's Buffalo office where it was either held to be picked up by Mr. Buzzard or forwarded to the proper address.

Mr. Buzzard is an avid golfer. During the years at issue, whether in Florida or in Buffalo, he played golf on an almost daily basis.

Since 1981, petitioners have continued to maintain their memberships in two Buffalo area country clubs: the Country Club of Buffalo and Burke Hill Country Club. Petitioners play golf and have dinner with friends at these clubs. Additionally, Mr. Buzzard annually plays in a member-guest tournament each May at the Country Club of Buffalo.

Since 1981, petitioners have continued to maintain charge accounts in Buffalo stores and their primary bank accounts in Buffalo banks. Petitioners also maintain an account in a Florida bank. Petitioners have continued to engage the services of Buffalo attorneys and accountants. Petitioners' income tax returns have been prepared in Buffalo. Additionally, petitioners' primary physician is located in Buffalo.

Mr. Buzzard owns a 1978 Cadillac Eldorado which is registered and stored in New York. Mr. Buzzard treats this vehicle as a collector's item and drives it infrequently. Petitioners have use of a company car in Florida.

Petitioners' general pattern, commencing in 1982, was to spend the colder months in

Florida and then spend from about May through September in Buffalo. Petitioners also had frequent short stays in Buffalo at other times during the year. Petitioners generally did not spend any time in Florida between mid-April through mid-October. Petitioners have also consistently spent two to three weeks in Buffalo during December.

Petitioners' records for the years 1985 through 1988 indicate the following with respect to days spent in New York (Buffalo), Florida and elsewhere:

Number of Days In and Out of New York

<u>Location</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>
New York	116	131	156	140
Florida	94	98	115	115
Dallas	50	45	16	18
Atlanta	16	2	8	8
Other	59	59	57	58
Unknown	30	30	13	27

As may be deduced from the above-noted information, petitioners also travel frequently. From a review of petitioners' records for the 1985 through 1988 period, it appears that on such trips petitioners have traveled from and returned to both their Florida and Buffalo homes.

Petitioners have weak ties to their neighbors in New York. Petitioners have developed substantial social ties to their neighbors in Florida. While in Buffalo, petitioners socialize with friends who are fellow country club members.

Petitioners' children occasionally visit petitioners in their Florida home.

Petitioners purchased their Florida home in 1978 with the intent of living there as much as possible during the winter months. At first, petitioners used their Florida home for perhaps two weeks at a time. Petitioners made frequent trips between Florida and Buffalo during the 1978 through 1981 period. As time passed, petitioners spent more time in Florida.

Upon the sale of their Buffalo home in 1981, petitioners put their furniture in storage. Petitioners intended to use this furniture in whatever residence they would later acquire in the Buffalo area. Petitioners used this furniture in their rented condominium during the summer of 1983. Petitioners later gave most of this furniture to their children, including the dining room and bedroom furniture. Petitioners retained and presently use the living room furniture from

their former Buffalo home in their present Buffalo home.

CONCLUSIONS OF LAW

A. Tax Law § 605 (former [a]),³ in effect for the years at issue, provided, in pertinent part, as follows:

"Resident individual. A resident individual means an individual:

(1) who is domiciled in this state, unless (A) he maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this state, or...

(2) who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than one hundred eighty-three days of the taxable year in this state, unless such individual is in active service in the armed forces of the United States."

B. While there is no definition of "domicile" in the Tax Law (compare, SCPA 1103[15]), the Division's regulations (20 NYCRR 102.2[d]) provide, in pertinent part:

"(d) Domicile. (1) Domicile, in general, is the place which an individual intends to be his permanent home -- the place to which he intends to return whenever he 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 his 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 his 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, his declarations will be given due weight, but they will not be conclusive if they are contradicted by his conduct. The fact that a person registers and votes in one place is important but not necessarily conclusive, especially if the facts indicate that he did this merely to escape taxation in some other place.

* * *

(4) A person can have only one domicile. If he has two or more homes, his domicile is the one which he regards and uses as his permanent home. In determining his intentions in this matter, the length of time customarily spent at each location is important but not necessarily conclusive. As pointed out in subdivision (a) of this section, a person who maintains a permanent place of abode in New York State and spends more than 183 days of the taxable year in New York State is taxable as a resident even though he may be domiciled elsewhere."

³Pursuant to Laws of 1987 (ch 28), said section was amended and renumbered Tax Law § 605(b).

Permanent place of abode is defined in the regulations at 20 NYCRR 102.2(e)(1) as:

"a dwelling place permanently maintained by the taxpayer, whether or not owned by him, and will generally include a dwelling place owned or leased by his or her spouse."

C. To effect a change in domicile, there must be an actual change in residence, coupled with an intent to abandon the former domicile and to acquire another (Aetna National Bank v. Kramer, 142 App Div 444, 445, 126 NYS 970). Both the requisite intent as well as the actual residence at the new location must be present (Matter of Minsky v. Tully, 78 AD2d 955, 433 NYS2d 276). The concept of intent was addressed by the Court of Appeals in Matter of Newcomb (192 NY 238, 250-251):

"'Residence means' living in a particular locality, but domicile means living in that locality with intent to make it a fixed and permanent home. 'Residence' simply requires bodily presence as an inhabitant in a given place, while 'domicile' requires bodily presence in that place and also an intention to make it one's domicile. 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 a change. The question is one of fact rather than law, and it frequently depends upon a variety of circumstances, which differ as widely as the peculiarities of individuals.... 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.... There must be a present, definite, and honest purpose to give up the old and take up the new place as the domicile of the person whose status is under consideration.... [E]very human being may select and make his own domicile, but the selection must be followed by proper action. Motives are immaterial, except as they indicate intention. A change of domicile may be made through caprice, whim, or fancy, for business, health, or pleasure, to secure a change of climate, or change of laws, or for any reason whatever, provided there is an absolute and fixed intention to abandon one and acquire another, and the acts of the person affected confirm the intention.... No pretense or deception can be practiced, for the intention must be honest, the action genuine, and the evidence to establish both clear and convincing. The animus manendi must be actual with no animo revertendi.... This discussion shows what an important and essential bearing intention has upon domicile. It is always a distinct and material fact to be established. Intention may be proved by acts and by declarations connected with acts, but it is not thus limited when it relates to mental attitude or to a subject governed by choice."

D. The test of intent with respect to a purported new domicile has been stated as "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 Bodfish v. Gallman, 50 AD2d 457, 378 NYS2d 138, 140). Moves to other states in which permanent residences are established do not necessarily provide clear and convincing evidence of an intent to change one's domicile (Matter of Zinn v. Tully, 54 NY2d 713, 442 NYS2d 990). The Court of Appeals articulated the importance of establishing intent, when, in Matter of Newcomb (*supra*) it stated, "No pretense or deception can be practiced, for the intention must be honest, the action genuine and the evidence to establish both clear and convincing."

E. In this case there is no dispute that petitioners were domiciliaries and residents of New York from the time they moved to the Buffalo area in 1963 until November 1981 when they sold their residence at 54 Carriage Circle, Amherst, New York. It is at this point, petitioners contend, that they abandoned their New York domicile and acquired a Florida domicile at their residence located at 3655 Royal Tern Circle, Boynton Beach, Florida.

F. Petitioners' sale of their Buffalo residence in 1981 is certainly the most significant factor in the record in support of their position in this matter. It is, however, but one factor to be considered, for the fact that one sells his residence and moves elsewhere does not prove, without more, a change in domicile (Matter of Chrisman, 43 AD2d 771, 350 NYS2d 468, 470). Additionally, petitioners have made numerous formal declarations of Florida as their domicile or principal residence (*see* Findings of Fact "24" through "32"). Such declarations, however, are generally less persuasive than petitioners' "general habit of life" (*see*, Matter of Trowbridge's Estate, 266 NY 283).

G. Upon review of petitioners' "general habit of life" as detailed in the record, I conclude that petitioners have not proven an intent to abandon their New York domicile upon the sale of their Buffalo residence in 1981, and have thus failed to prove a subsequent establishment of a Florida domicile.

The record herein clearly shows that petitioners retained deep and substantial ties to the Buffalo area, notwithstanding the sale of their residence in 1981. Strongest of these ties is petitioners' close relationship with their children and grandchildren. As noted herein,

petitioners had always intended to spend as much time as possible with their children and grandchildren in the Buffalo area. From petitioners' testimony regarding their desire to spend time with their children and grandchildren, it must be concluded that such time spent is a central part of petitioners' lives.

Petitioners' family ties to Buffalo may also be seen in their dissatisfaction with their living arrangements during the summer of 1982. The apartment rented during the summer of 1982 was not suitable for petitioners because, as noted previously, "it was someone else's home" and placed restrictions on what their grandchildren could and could not do there. Petitioners therefore chose to build a home in Buffalo. By making this decision, petitioners chose more than to simply build a summer home and clearly chose to retain rather than to abandon their ties to Buffalo. Petitioners thus enabled themselves to return to Buffalo at any time of the year and, during the years 1985 through 1988, petitioners had frequent short stays in Buffalo throughout the year and consistently spent two to three weeks in Buffalo during December.

Petitioners also retained strong business ties to Buffalo following the 1981 sale of their home. Although his two oldest sons had assumed major responsibilities within the corporation as of 1981, petitioner Clay E. Buzzard remained president of MAWDI with an office in Buffalo until June 1983. While the record does not reflect precisely what Mr. Buzzard's day-to-day responsibilities were during the 1981 through 1983 period, it does reflect that he was winding down his involvement in such areas and that, it was not until June 1983, when his son became president, that Mr. Buzzard had ceased to be involved in the day-to-day activities of the Buffalo operation. Therefore, at the time of the sale of petitioners' home in 1981, although winding down his involvement, Mr. Buzzard did have some day-to-day responsibilities with MAWDI. Additionally, he received a substantial salary and continued to receive such a salary during subsequent years and throughout the years at issue. Further, Mr. Buzzard maintained ownership of a substantial majority of MAWDI stock throughout the relevant period.

Also significant is petitioners' retention of memberships in two country clubs in Buffalo. While such memberships facilitate Mr. Buzzard's golfing activities, they also demonstrate that

petitioners had an active social life independent of their children in Buffalo. Petitioners played golf and had dinner with friends at the country clubs. Mr. Buzzard stated that he participated in a member-guest golf tournament each May at the Country Club of Buffalo. Petitioners thus regularly participated in social events in Buffalo and this participation did not diminish following November 1981.

The foregoing factors reveal that, while petitioners' lifestyle underwent a substantial change when they sold their Buffalo residence in November 1981, such a change was not sufficient to establish an abandonment of their New York domicile and an establishment of a Florida domicile. Petitioners' familial, business and social ties to Buffalo remained strong notwithstanding the sale of their home. Accordingly, in contrast to petitioners' express declarations, petitioners' general pattern of life appears since 1981 to have been more rooted in Buffalo than in Florida and therefore a change in domicile cannot be found.

H. Petitioners contend that petitioner Clay E. Buzzard's business ties to New York compared favorably with the petitioner in Matter of Elliot and Ghislaine Sutton (Tax Appeals Tribunal, October 11, 1990). The petitioner in Sutton owned a sole proprietorship and was part-owner of two corporations each of which was engaged in the retail sale of cameras or electronics. Mr. Sutton had no involvement in the day-to-day operations of his business. The Tribunal determined that such business interests were properly characterized as "passive" and that, considering all relevant circumstances, Mr. Sutton established that he had changed his domicile. Here, by contrast, petitioner was still involved in the operations of MAWDI at the time of the sale of petitioners' home in Buffalo in 1981. Petitioner continued this involvement, gradually winding down, until June 1983. Petitioner's involvement at least through June 1983 must be characterized as "active" (see, Matter of Herbert L. and Marjorie N. Kartiganer, Tax Appeals Tribunal, October 17, 1991). More importantly, petitioners' family and social ties to New York remained strong throughout the period at issue. Matter of Sutton (*supra*) is thus unresponsive of petitioners' position.

I. The petition of Clay E. and Rita M. Buzzard is denied and the Notice of Deficiency,

dated October 10, 1989 is sustained.

DATED: Troy, New York

ADMINISTRATIVE LAW JUDGE