

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
DEREK S. JETER : ORDER
for Redetermination of a Deficiency or for Refund of : DTA NO. 821646
Personal Income Tax under Article 22 of the Tax Law :
and the Administrative Code of the City of New York :
for the Years 2001 through 2003. :
:

Petitioner, Derek S. Jeter, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law and the Administrative Code of the City of New York for the years 2001 through 2003.

Petitioner, appearing by Maria T. Jones, Esq., and Ronald S. Greenberg, Esq., filed a Motion to Compel a Further Bill of Particulars and supporting memorandum of law dated September 27, 2007 pursuant to section 3000.6(a)(4) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. The Division of Taxation, appearing by Daniel Smirlock, Esq. (Herbert M. Friedman, Esq., and Michelle M. Helm, Esq., of counsel), filed an affirmation and memorandum of law in opposition to petitioner's motion dated October 17, 2007, which date began the 90-day period for the issuance of this order. Based on the motion papers, petitioner's Revised Demand for a Bill of Particulars dated July 31, 2007, the Division's Bill of Particulars dated August 23, 2007, and the pleadings in this matter, Timothy J. Alston, Administrative Law Judge, renders the following order.

FINDINGS OF FACT

1. Petitioner commenced this proceeding by filing a petition with the Division of Tax Appeals in protest of a Notice of Deficiency dated February 22, 2007, which asserted additional New York State and City personal income tax due, plus interest, for the years 2001 through 2003.

2. The basis for the asserted deficiency is the Division of Taxation's ("Division") audit determination that petitioner acquired and maintained a New York domicile during the years at issue and is therefore subject to tax as a New York resident.

3. Petitioner filed New York nonresident returns for the years at issue.

4. The Division acknowledges that petitioner was domiciled in Florida during the years immediately preceding the period at issue.

5. As the party asserting a change in domicile, the Division bears the burden of proof to show that petitioner was domiciled in New York during the period at issue (*see* 20 NYCRR 105.20[d][2]).

6. Petitioner served the Division with a Demand for a Bill of Particulars dated July 12, 2007. After discussions among the parties, petitioner served the Division with a revised Demand for a Bill of Particulars dated July 31, 2007.

7. In response to the revised demand, the Division served petitioner with its Bill of Particulars dated August 23, 2007.

8. Petitioner contends that certain responses in the Division's bill are inadequate and seeks an order directing the Division to provide further particulars with respect to certain demands.

9. Specifically, petitioner takes issue with the Division's responses to the following demands in the revised bill:

(a) Petitioner's Demand ¶ 8:

Identify any and all specific facts supporting NYS's denial that Mr. Jeter has considered Tampa, Florida to be his home since 1994.

The part of the Division's Response to Demand ¶ 8 to which petitioner objects states:

. . . holidays spent in jurisdictions other than Florida, business ties in jurisdictions other than Florida, . . . community involvement in jurisdictions other than Florida, . . . and public statements regarding his desire to be in New York.

(b) Petitioner's Demand ¶ 20:

Identify any and all facts that support NYS's denial that Mr. Jeter was domiciled in Tampa, Florida for the entire year of 2001.

The part of the Division's response to Demand ¶ 20 to which petitioner objects states:

. . . He keeps items near and dear in his New York apartment. He became immersed in the New York community.

(c) Petitioner's Demands ¶¶ 21, 22, 25, 27, 28, 30 and 31 make demands similar to Demand ¶ 20, but refer to other years. The Division's responses to those demands also include references to "items near and dear" in petitioner's New York apartment and the Division's claim that petitioner was or became "immersed in the New York community." Petitioner raises the same objections to these responses as the response to Demand ¶ 20.

(d) Petitioner's Demand ¶ 24:

State with particularity the date on which NYS contends that Mr. Jeter established his domicile in New York in 2001.

The Division's response to Demand ¶ 24 states:

The Petitioner established his domicile in early 2001.

The Division's memorandum of law submitted in opposition to the instant motion states that "if a specific date is required" petitioner's domicile changed to New York as of January 1, 2001, or alternatively, February 9, 2001.

(e) Petitioner's Demand ¶ 33:

Identify any and all facts that support NYS's denial that Mr. Jeter was domiciled in Tampa, Florida in each year from 2003 to the present.

The part of the Division's response to Demand ¶ 33 to which petitioner objects states:

The Petitioner's domicile for the years 2004 to the present is not at issue in this case and is therefore irrelevant.

(f) Petitioner's Demand ¶ 44:

Identify any and all facts that support NYS's contention that Mr. Jeter considers his New York apartment to be his home.

The part of the Division's Response to Demand ¶ 44 to which petitioner objects states:

He keeps certain personal items in his home. . . He has immersed himself in the New York community. Additionally, he has made numerous public statements professing his love for New York.

(g) Petitioner's Demand ¶ 47:

Identify any and all facts that support NYS's denial that Mr. Jeter is actively planning to construct a new home in Tampa, Florida.

The Division's response to Demand ¶ 47 states:

The Petitioner's current construction plans are irrelevant to the issue in this case.

10. With respect to the Division's Response to Demand ¶ 8, petitioner contends that the allegations regarding "holidays," "business ties," "community involvement," and "public statements" are vague and fail to inform petitioner of the specific acts that purportedly caused his domicile to change from Florida to New York.

11. With respect to the Division's Response to Demand ¶ 20, petitioner contends that the reference to "items near and dear" and the phrase "became immersed in the New York community" are insufficiently vague and do not specify any particular acts. As noted, petitioner

makes the same objections to the Division's response to Demands ¶¶ 21, 22, 25, 27, 28, 30 and 31.

12. With respect to the Division's Response to Demand ¶ 24, petitioner asserts that he is entitled to know the exact date on which the Division claims he changed his domicile.

13. With respect to the Division's Response to Demands ¶¶ 33 and 47, petitioner contends that the Division's claim of relevancy is improper under the Rules of Practice and Procedure.

14. With respect to the Division's Response to Demand ¶ 44, petitioner contends that the responses "personal items in his home," "immersed himself in the New York community," and "made numerous public statements" are so vague as to be almost meaningless.

15. The Division contends that all of its responses are sufficient to apprise petitioner of the nature of its position in the instant matter.

CONCLUSIONS OF LAW

A. The Rules of Practice and Procedure of the Tax Appeals Tribunal provide that a party may serve a demand for a bill of particulars upon an adverse party in order "to prevent surprise at the hearing and to limit the scope of the proof" (20 NYCRR 3000.6[a][1]). Generally, under the CPLR, a party need particularize only those matters upon which it has the burden of proof (*see Holland v. St. Paul Fire & Marine Ins. Co.*, 101 AD2d 625, 475 NYS2d 156, 157 [1984]). As noted previously, as the party asserting a change in domicile, the Division has the burden in this matter to show that petitioner was domiciled in New York during the period at issue.

B. The function of the bill of particulars is to enable the party demanding the particulars to know definitely the claim which he or she must defend against (*Johnson, Drake and Piper v. State of New York*, 43 Misc 2d 513, 251 NYS2d 500, 503 [1964]). A demand for a bill of

particulars may be used to amplify the pleadings, prevent surprise and limit the issues, but may not be used to gain disclosure of evidentiary detail that adverse parties will rely on to prove their claim (*Bassett v. Bondo Sangsa Co., Ltd.*, 94 AD2d 358, 464 NYS2d 500, 501 [1983], *lv dismissed* 60 NY2d 962, 471 NYS2d 84 [1983]; *State of New York v. Horsemen's Benevolent and Protective Assoc.*, 34 AD2d 769, 311 NYS2d 511 [1970]).

C. With respect to petitioner's objections to the Division's Response to Demand ¶ 8:

(1) The Division is directed to furnish a further bill specifying petitioner's "community involvement in jurisdictions other than Florida" and his "public statements regarding his desire to be in New York." The phrase "community involvement" is vague and, considering petitioner's status as a public figure, it is reasonable for the Division to specify the public statements to which it refers in its response.

(2) The responses "holidays spent in jurisdictions other than Florida" and "business ties in jurisdictions other than Florida" are sufficient and no further particulars are required. The meaning of the term "holidays" is not difficult to discern and it is not unduly burdensome for petitioner to be aware of his business ties to New York and elsewhere.

D. With respect to petitioner's objections to the Division's Response to Demand ¶ 20:

(1) The Division is directed to furnish a further bill providing specifics as to the Division's vague claim that petitioner became "immersed in the New York community."

(2) The Division's reference to "items near and dear" in its Response to Demand ¶ 20 is sufficient to satisfy the purpose of a bill of particulars, i.e., to amplify the pleadings and prevent surprise at the hearing. Moreover, it is noted that the Division's responses to Demands ¶¶ 36, 36, and 44 do list certain personal items in petitioner's New York apartment. Accordingly, no further particulars are required with respect to "items near and dear."

E. Consistent with Conclusion of Law “D(1)” the Division is directed to provide further particulars with respect to its claim that petitioner was or became “immersed in the New York community” with respect to its responses to Demands ¶¶ 21,22, 25, 27, 28, 30 and 31.

F. With respect to petitioner’s objections to the Division’s Response to Demand ¶ 24, the Division’s assertion, made in its memorandum of law submitted in opposition to the instant motion, that “if a specific date is required” the Petitioner’s domicile changed to New York as of January 1, 2001, or alternatively, February 9, 2001, is deemed a sufficient response to petitioner’s demand. No further particulars are required.

G. The Division’s claims that Demands ¶¶ 33 and 47 are irrelevant provides no basis for its failure to respond to such demands. The Division may make an objection as to relevance at the hearing when evidence on this point is offered. The Division is directed to provide a further bill responding with particularity to these demands.

H. With respect to petitioner’s objections to the Division’s Response to Demand ¶ 44:

(1) The Division is directed to furnish a further bill providing specifics as to the Division’s claim that the petitioner “has immersed himself in the New York community” and has “made numerous public statements professing his love for New York.”

(2) The Division’s response that petitioner “keeps certain personal items in his home” is sufficient and no further particulars are required.

I. Petitioner’s Motion to Compel a Further Bill of Particulars is granted to the extent indicated in Conclusions of Law “C(1),” “D(1),” “E,” “G” and “H(1).” The motion is in all other

respects denied. The Division is directed to serve upon petitioner a further Bill of Particulars consistent with such Conclusions of Law within 10 days of the date of this Order.

DATED: Troy, New York
November 8, 2007

/s/ Timothy J. Alston
ADMINISTRATIVE LAW JUDGE