

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
ROBIN R. INGLE	:	DETERMINATION
	:	DTA NO. 822545
for Redetermination of a Deficiency or for Refund	:	
of New York State and City Personal Income Tax	:	
under Article 22 of the Tax Law and the New York	:	
City Administrative Code for the Year 2004.	:	

Petitioner, Robin R. Ingle, filed a petition for redetermination of a deficiency or for refund of New York State and City personal income tax under Article 22 of the Tax Law and the New York City Administrative Code for the year 2004.

A hearing was held before Thomas C. Sacca, Administrative Law Judge, at the offices of the Division of Tax Appeals, 500 Federal Street, Troy, New York, on October 22, 2009 at 10:00 A.M., with all briefs to be submitted by April 30, 2010, which date commenced the six-month period for issuance of this determination. Petitioner appeared by Horwood Marcus & Berk Chtd. (C. Eric Fader, Esq., of counsel). The Division of Taxation appeared by Daniel Smirlock, Esq. (Peter B. Ostwald, Esq., of counsel).

ISSUE

Whether petitioner has established that she effected a change of domicile from New York to Tennessee and thus was not taxable as a domiciliary and resident of New York after April 1, 2004.

FINDINGS OF FACT

1. Petitioner, Robin R. Ingle, filed Form IT-203 (New York State Nonresident and Part-Year Resident Income Tax Return) for the year 2004 as a nonresident of New York. On the return, petitioner stated she was a New York State and City resident for the period January 1, 2004 through March 31, 2004. As such, petitioner determined her items of income, loss, gain and deduction allocable to New York upon the basis of the period of time she considered herself a resident of New York.

2. On January 22, 2008, following an audit, the Division of Taxation (Division) issued to petitioner a Notice of Deficiency asserting additional New York State and New York City personal income tax due for the year 2004 in the amount of \$255,856.00, plus interest. This notice was premised upon the assertion that petitioner was a domiciliary of New York State and City until June 30, 2004 and was therefore taxable as a resident of New York State and City on that basis. The calculation of the amount asserted as due is not in dispute, and the sole issue presented is whether petitioner effected a change of domicile from New York to Tennessee and was therefore not properly subject to tax as a resident of New York State and City for the period April 1, 2004 through June 30, 2004.

3. Petitioner was born in, and grew up in, Erwin, Tennessee. Since petitioner was five years old, her parents have lived in, and continue to live in, the same house in Erwin. Petitioner's sister, niece and nephew and their respective families all live in Unicoi, Tennessee. Unicoi is located between Erwin and Johnson City, Tennessee, and it is a 15-minute drive from Erwin to Johnson City.

4. In the mid-1980s, following her attendance at the University of Tennessee, petitioner moved to Washington, D.C., to begin her career and held positions as a sales representative for

several newspapers. She remained in Washington, D.C., until 1993, when she moved to Chicago, Illinois, to begin employment with the Chicago Sun Times, selling travel advertising in the newspaper. In 1996, petitioner began working for Media Passage, an Internet start-up business based in Seattle, Washington, although petitioner continued to live in Chicago. Her employment required her to travel extensively throughout the United States to meet with clients, and, as a result, Ms. Ingle needed only her cell phone and laptop computer to perform her duties.

5. In 1999, petitioner began working for Access Media, a start-up company located in Massachusetts, but petitioner continued to reside in Chicago. In 2000, petitioner decided to move to New York City to manage Access Media's staff there. On moving to New York, Ms. Ingle rented a one-bedroom apartment on West 57th Street, New York. Access Media went out of business in June 2001, and in December 2001, petitioner found a position as vice-president of sales with Trip Advisor, Inc., located in Needham, Massachusetts. Petitioner remained at her West 57th Street apartment until April 2002, when she entered into a two-year lease for a two-bedroom apartment located at 21 West Street. Ms. Ingle continued to travel extensively for her job, again requiring only her cell phone and laptop computer. Ms. Ingle's travel often involved multi-city destinations over several days. In 2004, Ms. Ingle became the senior vice-president of advertising for Trip Advisor. Trip Advisor's major clients included Expedia, Hotels.com, Travelocity, Orbitz, Priceline and Hotwire, as well as individual hotels and airlines.

6. Ms. Ingle was single in 2004, but in a relationship with Michael Veitch. Mr. Veitch lived in Woodland Hills, California, in a corporate apartment paid for by his employer, YouBet.com, an internet gaming company. In New York, petitioner did not own any real property, have a safe deposit box, have a membership in any clubs, organizations or gyms, belong to any church, have a regular accountant, lawyer, dentist or doctor or own an automobile.

7. In late February 2004, Ms. Ingle learned that InterActiveCorp (IAC) was to purchase Trip Advisor. The transaction was scheduled to take place sometime in late April or May 2004. As she expected to benefit financially from the sale transaction, petitioner consulted with Mr. Veitch and the law firm of Horwood Marcus & Berk Chtd., as to the steps to take to minimize her tax obligations to New York State and City. Following these conversations, Ms. Ingle decided it would be advantageous to move out of New York City by April 1, 2004 and to move to Tennessee.

8. Ms. Ingle journeyed to Tennessee to look for an apartment. During these trips, Ms. Ingle would pack an extra suitcase containing some artwork, her father's pocket watch and her clothing, and would store the suitcases at her parent's home. She eventually entered into a one-year lease, from April 1, 2004 through April 1, 2005, for an apartment located in Johnson City, Tennessee. On April 2, 2004, Ms. Ingle registered to vote with the Unicoi County Election Commission and opened a bank account. On April 4, 2004, furniture and household items borrowed from her parents were moved into the apartment. Included in the items borrowed and moved were a bed, sheets, towels, a gas grill and cookware. On April 10, 2004, petitioner and her niece went shopping for towels, a shower curtain, sheets, cookware and glasses for the apartment. On April 13, 2004, she established hard-line telephone service at the apartment. Ms. Ingle did not establish an individual account for electricity until May, although it is alleged that the utilities for her apartment were active as of April 1, 2004 through a master account billed to the apartment complex. Her paycheck from Trip Advisor dated April 15, 2004 contained her parent's address.

On April 16, 2004, Ms. Ingle's parents transferred vacant real estate located in Unicoi, Tennessee, to petitioner and her sister. The property was subdivided so that Ms. Ingle could commence plans to construct a new house. The house was completed in 2009.

9. In March 2004, a press release was issued regarding the pending sale of Trip Advisor to IAC, which owned Expedia and Hotels.com. The other major clients of Trip Advisor were concerned that a competitor would be in control of the web site, which potential customers would be accessing to determine which travel company to use. Ms. Ingle was required to visit these major clients to alleviate their fears and insure they remained customers of Trip Advisor. According to Ms. Ingle, this extensive travel, coupled with the need to paint her New York apartment prior to vacating it and the inability of Michael Veitch to assist her in moving until mid-June at the earliest required her to remain in New York City past the end of her lease date of April 30, 2004.

10. Ms. Ingle contacted her landlord to request a lease extension of two months, until June 30, 2004. It was the landlord's policy not to permit month-to-month leases, but the landlord would allow a one or two-year lease with an option to terminate the lease early. On May 20, 2004, petitioner signed a two-year lease for the period May 1, 2004 through April 30, 2006 with an option to terminate the lease on June 30, 2004, although the landlord actually allowed her to stay in the apartment until July 9, 2004. On July 9, 2004, with the assistance of Mr. Veitch and professional movers, Ms. Ingle moved most of her furniture and personal effects remaining in the New York City apartment to the apartment in Johnson City, Tennessee, with some items, such as kitchenware, going into storage in Boston, Massachusetts, in anticipation of leasing an apartment there. Furniture that was moved on July 9, 2004 included two sofas, two chairs, a glass coffee table, a fully furnished office, a bedroom set, outdoor furniture and a grill.

11. On April 23, 2004, petitioner executed a letter of transmittal in which she agreed to surrender her shares of common stock in Trip Advisor as part of the merger with IAC. In return for the sale of the shares of Trip Advisor, petitioner received, on April 30, 2004, the amount of \$1,986,916.32, which was wire transferred to her bank account in Tennessee.

CONCLUSIONS OF LAW

A. Tax Law § 605(b)(1)(A) and (B) and New York City Administrative Code § 11-1705(b)(1)(A) and (B) set forth the definition of a New York State and New York City resident individual for income tax purposes. These provisions are essentially identical, save for the use of the term state or city in each, as relevant, and provide as follows:

Resident individual. A resident individual means an individual:

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

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

The classification of resident versus nonresident is significant, since nonresidents are taxed only on their New York State or City (as relevant) source income, whereas residents are taxed on their income from all sources.

B. As set forth above, there are two bases upon which a taxpayer may be subjected to tax as a resident of New York State or City, namely (A) the “domicile” basis or (B) the “statutory” basis with its dual predicates being (1) the maintenance of a permanent place of abode in the state or city and (2) physical presence in the state or city on more than 183 days during a given taxable

year. Since petitioner spent more than 30 days but less than 184 days in the state and city, the sole question here concerns the first, or domicile, basis upon which resident status is premised.

C. The Division's regulations define "domicile," at 20 NYCRR 105.20(d), 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 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.

(3) Domicile is not dependent on citizenship; that is, an immigrant who has permanently established such immigrant's home in New York State is domiciled here regardless of whether such immigrant has become a United States citizen or has applied for citizenship. However, a United States citizen will not ordinarily be deemed to have changed such citizen's domicile by going to a foreign country unless it is clearly shown that such citizen intends to remain there permanently. For example, a United States citizen domiciled in New York State who goes abroad because of an assignment by such citizen's employer or for study, research or recreation, does not lose such citizen's New York State domicile unless it is clearly shown that such citizen intends to remain abroad permanently and not to return

(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.

D. 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 [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 [1943], *affd* 267 App Div 876 [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]).

E. The concept of intent was addressed by the Court of Appeals in *Matter of Newcomb’s Estate*:

Residence means living in a particular locality, but domicile means living in that locality with the 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.

* * *

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 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 . . . (*id.* at 250-251).

In *Matter of McKone v. State Tax Commission* (111 AD2d 1051 [1985], *affd* 68 NY2d 638 [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.)

F. 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. "The 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 New York (*see e.g. Matter of Gray v. Tax Appeals Tribunal*, 235 AD2d 641 [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 [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*).

G. Upon review of the entire record and pursuant to the foregoing standards, it is concluded that petitioner has not proven, by clear and convincing evidence, that she gave up her New York City domicile and acquired a new domicile as her fixed and permanent home in Tennessee as of April 1, 2004. The record does establish that as of July 9, 2004, petitioner had abandoned her New York City domicile and acquired a new domicile in Tennessee. The overriding sense is that petitioner's presence in any particular locale turned, at least for years prior to the period in issue, upon the basis of whatever was the most advantageous position with respect to the advancement of her career. Once having located in either Washington, D.C., Chicago or New York City, petitioner would remain until a better opportunity presented itself. It is also apparent that the lifestyles offered by the cities of Chicago and New York were important factors in petitioner's choice of domicile, as she chose on several occasions to remain in these cities despite the location of her employer in other states. Furthermore, the move from New York City to Tennessee was predicated not upon an overwhelming desire to return to the place where she grew up or to spend more time with her immediate and extended family, but to escape the New York State and City tax consequences of the sale of her shares of stock in Trip Advisor to IAC. As to the period at issue, it appears her lifestyle as it existed prior to April 1, 2004 simply continued throughout the period April 1, 2004 through July 9, 2004 due to the demands of her employment, during which time she traveled to the various clients of Trip Advisor and then, after each trip, returned to her apartment in New York City.

H. Following college, Ms. Ingle moved to Washington, D.C., to begin her career working as a sales representative for several newspapers. She moved to Chicago for employment with the Chicago Sun Times, selling travel advertising. In 1996, Ms. Ingle began employment with an internet start-up business based in Seattle, Washington, although she remained in Chicago. Due to

the nature of her employment and the extensive travel involved, she required only a cell phone and laptop computer to perform her responsibilities. Ms. Ingle again changed employers in 1999, working for Access Media, a start-up company based in Massachusetts. Again, due to the employment responsibilities, petitioner was able to perform her duties from Chicago. In 2000, petitioner moved to New York City to manage Access Media's staff in New York, but the business failed in June 2001. Petitioner remained in New York City, finding employment in December 2001 with Trip Advisor, which was based in Massachusetts. Petitioner was able to remain in New York City as the employment responsibilities again required only a cell phone and laptop computer. During the period from 1996 through 2004, while living in Chicago and New York City, and except for the period of managing staff in New York for an approximately one-year period, Ms. Ingle had the opportunity to return to Tennessee if she so desired, as her employment responsibilities allowed her to live anywhere so long as she had access to her cell phone and laptop computer. That she chose to remain in Chicago and later New York City is consistent with the conclusion that not only was New York City her historical domicile, but also that career advancement and lifestyle as opposed to returning to Tennessee continued to be very important factors in her choice of where she chose to live. Most importantly, her decision to move from New York City to Tennessee was based entirely on her desire to escape taxation of the gain realized on the sale of her shares of stock in Trip Advisor to IAC, a factor which weighs against a change of domicile prior to July 2004 (20 NYCRR 105.20[d][2]).

I. Petitioner points to several acts in an effort to establish a change of domicile from New York City to Tennessee as of April 1, 2004, including the renting of an apartment, registering to vote, obtaining a drivers license, moving borrowed furniture into the apartment, changing her address with her employer and shopping for household items. All of these events occurred in the

first two weeks of April. The record is silent as to how long she was actually in Tennessee during this two-week period. Except for these ministerial acts, petitioner was unable or unwilling to provide any details as to her whereabouts during the period April 15, 2004 through July 9, 2004. Contrary to petitioner's position, the number of days spent at her domicile in New York City as compared to the time spent in Tennessee during the period April 1, 2004 through July 9, 2004 is relevant to the determination of Ms. Ingle's domicile where, as here, petitioner had two residences during the period at issue. Where a person has two homes, her domicile is the one which she considers and uses as her permanent home, and the length of time spent at each location is an important factor in determining intention in this regard (*Matter of Angelico*, citing 20 NYCRR former 102.2[d]). Here, petitioner offered no documentation or testimony as to the time spent in Tennessee during the critical period in issue, and this lack of presence in Tennessee outweighs the mere ministerial acts and declarations of intent to change her domicile.

As noted previously, the Division's regulations provide that where an individual has two residences, the length of time the individual customarily spends at each location is a factor in determining domicile (*see* 20 NYCRR 105.20[d][4]). In this case, however, the record lacks any evidence of petitioner's historic pattern of use of her New York or Tennessee residences. Further, the record lacks any sense of the "sentiment, feeling and permanent association" with which petitioner regarded either her Tennessee or New York residences (*see Matter of Bourne* at 246), especially during the critical period at issue. The nature and extent of continuing business ties is also a factor in determining domicile (*see Matter of Kartiganger v. Koenig* 194 AD2d 879, 599 NYS2d 312 [1993]). Here, such factor does not point toward a Tennessee domicile, for it appears petitioner continued to work out of her New York City apartment and continued to use her New York apartment as her base of operation. In effect, she continued to use this apartment as her

permanent residence. The number of days petitioner spent in New York City during the period at issue leads to the conclusion that her “general habit of life” was centered in New York City between April 1, 2004 through July 9, 2004 (*Matter of Silverman, citing Matter of Trowbridge*).

Also, while the record shows that petitioner registered to vote in Tennessee in early April and that she obtained a Tennessee driver’s license at the same time, as noted previously, such formal declarations are less significant than informal acts demonstrating an individual’s general habit of life (*Matter of Silverman*). Moreover, the significance of the voter registration is undermined by the lack of any evidence in the record regarding petitioner’s subsequent voting history. Additionally, the weight to be accorded the Tennessee driver’s license is undermined by the absence of evidence of whether petitioner had such a license prior to 2004. Finally, except for a few personal items, petitioner kept almost all of her personal belongings and all of her furniture in her New York City apartment until her move in July 2004.

It is noted that for a taxpayer to meet her burden of proof to establish a change of domicile, she must show a change in lifestyle (*see Matter of Doman*, Tax Appeals Tribunal, April 9, 1992). In this case, while it is clear that petitioner’s lifestyle changed in July 2004, there is little or no evidence to establish a change in lifestyle prior to such date, and in fact the evidence points to a continuation of the lifestyle Ms. Ingle had up to and including April 2004. What remains is the conclusion that Ms. Ingle, due to the requirements of her employment, did not effect a change in lifestyle until July 9, 2004. The evidence in the record is thus insufficient to show that petitioner changed her domicile to Tennessee prior to July 9, 2004. Taken together these facts and circumstances suggest that petitioner lacked the intent “to give up the old and take up the new place as [her] domicile” (*Matter of Newcomb’s Estate*, 192 NY at 250), until July 2004.

J. It is further noted that the testimony of Ms. Ingle and Mr. Veitch is insufficient to show that Ms. Ingle intended to change her domicile as of April 1, 2004. The key to this conclusion is the lack of evidence in the record corroborating much of petitioner's testimony. Ms. Ingle's credibility is further undermined by her vague or evasive testimony regarding certain key facts, such as where she spent the time between April 15, 2004 and July 9, 2004, what furniture and other personal belongings were moved to Tennessee, what items remained in New York City until July 9, 2004 and the reasons for the delay in moving out of New York City. Ms. Ingle testified that the move was delayed because Mr. Veitch's employment with YouBet.com continued until the middle of June 2004 and she required his presence to help her pack, paint the apartment and move her heavy furniture. Mr. Veitch testified that his employment ended in early May but because petitioner needed to be in the New York apartment during the move, the move could not take place until early July, when her employment responsibilities were such that she could take the time to pack, paint the apartment and move. Mr. Veitch further testified that professional movers transported Ms. Ingle's belongings out of the New York City apartment and to the Tennessee apartment. Accordingly, Ms. Ingle's and Mr. Veitch's testimony and Ms. Ingle's declarations of domicile in Tennessee are insufficient to establish that Ms. Ingle changed her domicile prior to July 9, 2004.

K. The petition of Robin R. Ingle is denied, and the Notice of Deficiency dated January 22, 2008 is sustained.

DATED: Troy, New York
October 14, 2010

/s/ Thomas C. Sacca
ADMINISTRATIVE LAW JUDGE