

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
THOMAS CAMPANIELLO : DECISION
 : DTA NO. 825354
for Redetermination of a Deficiency or for Refund :
of New York State and City Personal Income Taxes :
under Article 22 of the Tax Law and the Administrative :
Code of the City of New York for the Year 2007. :

Petitioner, Thomas Campaniello, filed an exception to the determination of the Administrative Law Judge issued on June 25, 2015. Petitioner appeared by Lewin & Lewin LLP (Nathan Lewin, Esq., of counsel). The Division of Taxation appeared by Amanda Hiller, Esq. (Peter B. Ostwald, Esq., of counsel). Petitioner filed a brief in support of his exception. The Division of Taxation filed a brief in opposition. Petitioner filed a reply brief. Oral argument was heard in New York, New York on January 21, 2016, which date began the six-month period for the issuance of this decision.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision. Commissioner Scozzafava took no part in the consideration of this matter.

ISSUE

Whether the Division of Taxation properly determined that petitioner was a domiciliary of New York City during the year 2007.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. Those facts are set forth below.

1. On November 14, 2011, following a field audit, the Division of Taxation (Division) issued to petitioner, Thomas Campaniello, a notice of deficiency asserting additional New York State and New York City personal income taxes due for the year 2007 in the amount of \$488,781.00, plus negligence penalty pursuant to Tax Law § 685 (b) and interest. This deficiency resulted from the Division's conclusion that petitioner remained a domiciliary of New York City during tax year 2007 and thus was properly subject to tax as a New York State and City resident for the year 2007.¹

2. Petitioner was born in 1930 in Vieste, Italy, a small resort town on the Adriatic Sea. He received a doctoral degree (with honors) in agronomic engineering from the University of Bari, Italy. After receiving his doctoral degree, for about five years, petitioner worked for a chemical company in Milan, Italy.

3. In November 1953, while on vacation in Rome, petitioner met his future wife, Sandra, an American touring Italy. Following years of correspondence, petitioner came to the United States and he and Sandra married in New York City in 1963, where they made their home. At the time of their marriage, Mrs. Campaniello, a New York City native, was working as a schoolteacher in the New York City public school system. Mrs. Campaniello continued teaching in the New York City public school system until 1979.

¹ Petitioner executed a consent extending period of limitation for assessment of income tax(es) under article(s) 22, 30, 30A and 30B of the Tax Law for the year 2007 until any time on or before April 15, 2012.

4. Petitioner and his wife have been married for 51 years. They have one child, a daughter Michele, born in 1966. Michele was raised in New York City and continues to live there with her husband and minor child, a son born in July 2007.

5. In late 1979, petitioner purchased a condominium apartment located at Douglas Avenue, Bronx, New York (Douglas Avenue apartment), where petitioner, his spouse and daughter resided. The Douglas Avenue apartment consists of 1,955 square feet, three bedrooms and two bathrooms. As of the date of the hearing, Mrs. Campaniello continues to reside in the Douglas Avenue apartment that petitioner continues to own, maintain and use.

6. Immediately after coming to the United States, petitioner took an intensive English language course at the New School for Social Research to learn the basics of the language. Thereafter, he applied for jobs in his field; however, his applications were rejected because he was not proficient in English. From 1967 until sometime in 1975, petitioner was the agent for the Lamborghini Company, promoting tractors to distributors throughout the United States. In addition, from 1971 to 1975, petitioner acted as a consultant for Lamborghini automobiles regarding its United States dealerships.

7. In or about November 1975, following a meeting in the United States with a representative of Saporiti Italia, an Italian “high end” contemporary furniture manufacturer, petitioner opened his first Campaniello-owned retail furniture showroom² in New York City on the eighth floor of the Rolex Building, located on 53rd Street and Fifth Avenue. Petitioner was Saporiti Italia’s exclusive agent for the United States, Canada and South America. At that time,

² Petitioner did not disclose the name of any corporation he may have formed related to the Campaniello-owned retail furniture showroom that opened in 1975.

petitioner formulated a program to be developed, in about ten years, to build retail furniture showrooms from New York to Los Angeles.

8. After renovations were completed in late 1979, petitioner moved the retail furniture showroom to its present location, 225 East 57th Street, between Second and Third Avenues (East 57th Street showroom). At that time, Mrs. Campaniello stopped teaching and joined the Campaniello furniture business. Since 1980, Mrs. Campaniello has managed the East 57th Street showroom and its staff. The business was extremely profitable.

9. The second part of petitioner's program was to open a retail furniture showroom in Miami. In 1981, after renovations, petitioner opened a retail furniture showroom, with an onsite manager and staff, in the Miami Design District. The Miami retail furniture showroom was very successful because petitioner created an image and destination for designers and their wealthy clients from South America, Texas, Canada, and the Bahamas, who wanted "European look" furniture.

10. While personally supervising the last 20 days of renovation of the Miami showroom, petitioner became ill from the hotel food and, as a result, decided to purchase an apartment located a short distance from the hotel in which he was staying. Subsequently, on April 2, 1981, Campaniello Imports, Ltd., (Campaniello Imports) purchased a condominium apartment located at 201 Crandon Boulevard, Key Biscayne, Florida (Key Biscayne apartment). Overlooking the Atlantic Ocean, this 1,800 square foot Key Biscayne apartment contains two bedrooms and two bathrooms, and has access to and use of a swimming pool and the beach. It is located in The Tidemark at Key Colony, one of four buildings in the Key Colony development. By deed dated December 11, 1996, Campaniello Imports, by its president, Thomas Campaniello, conveyed the

Key Biscayne apartment to petitioner. Since its purchase in April 1981, whenever petitioner is in Florida, he stays at the Key Biscayne apartment.

11. Subsequently, in 1989, petitioner opened a retail furniture showroom, with an onsite manager and staff, in the Design Center of the Americas (DCOTA), located in Dania Beach, Florida. In or about February 2002, petitioner purchased property located at 2850 North 28th Terrace, Hollywood, Florida, which opened in October 2004, after renovations and development, as a Campaniello Enterprises, Inc., (Campaniello Enterprises) retail furniture showroom, with an onsite manager and staff. On an unknown date in 2003, petitioner purchased property located at 301 Miracle Mile, Coral Gables, Florida, which opened in 2005, after renovations, as another Campaniello Enterprises retail furniture showroom, with an onsite manager and staff.

12. Petitioner also had a retail furniture showroom in the Chicago Merchandise Mart. According to petitioner, his furniture business had a Chicago retail furniture showroom from at least 2003 until an unknown date in about 2007 when it closed and he settled with the Chicago Merchandise Mart. Petitioner further indicated that his New York office controlled the operation of the Chicago showroom.

13. In August 2006, petitioner purchased co-op shares in 136 Greene Street, New York, New York, a historic building located in Soho (136 Greene Street). After the 136 Greene Street location underwent “two years of elaborate renovation,” it opened as a Campaniello Soho, Inc. (Campaniello Soho) retail furniture showroom in June 2008, with an onsite manager and staff. At some point prior to the date of the hearing, the 136 Greene Street retail furniture showroom closed.

14. Parallel to the retail furniture business, petitioner started to invest in rental real estate in New York. At some point, petitioner bought interests in 225 East 57th Street, i.e., the location of the East 57th Street showroom.³ On unknown dates, petitioner also bought a warehouse located at 1040 45th Street, New York, New York, that he rents to third parties, and a warehouse located at 3240 43rd Avenue, Long Island City, New York, that he rents to his furniture business.

15. Over time, petitioner also began investing in rental real estate in Florida. In May 1984, petitioner purchased a luxurious apartment in Palm Beach. In or about January 1985, petitioner bought a two-story structure containing stores and a restaurant on the first floor and residential apartments on the second floor, located at 290 South Country Road, in Palm Beach (the Palm Way building). In November 1985, petitioner purchased an office building located at 204-210 Royal Palm Way, in Palm Beach (Royal Palm office building). In or about August 1992, petitioner purchased a 70% interest in the Phipps Plaza, located in Palm Beach. Sometime in 1994, petitioner purchased a one-story building on South Country Road, in Palm Beach. In or about May 2003, petitioner also purchased an office building located at 15165 NW 77th Avenue, in Miami Lakes. In addition, from 2007 to 2010, petitioner's limited liability company, Palmway Associates, LLC,⁴ operated the Palmway Restaurant located in the Palm Way building that he owned.

16. Since 1975, the administrative and bookkeeping functions for petitioner's retail furniture business have been handled in New York City. Over the years, petitioner has formed a

³ The record includes extremely vague information about petitioner's rental properties located at 225 East 57th Street.

⁴ Palmway Associates, LLC, a Florida limited liability company, was voluntarily dissolved on March 11, 2010.

number of corporations in Florida. Maintenance of those corporations' book and records, and performance of all their administrative functions takes place at petitioner's East 57th Street office and showroom. Tax filings for each of the Florida corporations list the East 57th Street, New York, New York, address. Petitioner's New York City bookkeeper processes all receipts from the showrooms and the rental properties. Petitioner made all administrative, operational, and financial decisions related to his furniture businesses,⁵ his New York and Florida rental real estate investments, and his Florida corporations at his East 57th Street office and showroom.

17. Petitioner and his wife have different interests in life. Mrs. Campaniello has traveled for pleasure all over the world by herself, and in the company of her daughter, Michele, or close personal friends. Petitioner has no interest in pleasure travel. Rather, his main interest has always been work, i.e., selling, and then, taking a "moment of enjoyment" in sports.

18. Petitioner enjoys sailing catamaran sailboats.⁶ However, he found the waters in New York to be too cold and too rough for the types of boats he sails. In 1985, petitioner purchased a catamaran sailboat that he docked at Key Biscayne and used "regularly." Around the year 2000, petitioner gave that sailboat to a friend. After a February 1998 regatta from Key Biscayne to Cape Hatteras, petitioner purchased the professional catamaran that won first place in the regatta. Thereafter, he sailed the catamaran in the Key Biscayne area. It is unclear whether petitioner still

⁵ It is unclear from the record which corporate entity or entities operated the East 57th Street showroom, and the Miami and the DCOTA showrooms in the early years. However, it appears that Campaniello Enterprises operated the East 57th Street showroom, the warehouse located in Long Island City, New York, and the Florida showrooms from June 26, 1996, the date of its formation, until August 7, 2007, the date of its dissolution (*see* Findings of Fact 39 and 47). After August 7, 2007, Campaniello Soho appears to have operated the East 57th Street showroom and the warehouse located in Long Island City, New York, and Campaniello Design Collection, Inc. (Campaniello Design Collection) appears to have operated the four Florida showrooms (*see* Finding of Fact 39).

⁶ The type of catamaran sailboat that petitioner sails requires two people, the skipper who controls the sail and the tiller, and the crew member who stands on the trampoline outside to create balance for the boat when it tilts.

owns that catamaran. Petitioner also purchased a sailboat from a manufacturer in Sweden that was shipped to Florida sometime in 2002 or 2003. He continues to own and use that catamaran for wind surfing and sailing. Petitioner joined the Key Biscayne Yacht Club in 2002 to be able to dock his boat there, but subsequently gave up that membership on an unknown date, and docks his boat on the sand near the Hotel Sonesta. Petitioner also enjoys swimming in the ocean and in the Key Colony pool.

19. For business and personal use, petitioner has maintained a Citi Advantage Visa credit card since 1998, and continues to do so, as it provides him with “points” towards airline mileage upgrades. Petitioner uses the airline mileage points to fly first class to attend the Milan International Furniture Fair. There are two cards on this account, one for petitioner, and one for Mrs. Campaniello. Billing statements for this Citi Advantage Visa credit card are sent to petitioner at the Douglas Avenue, Bronx, address.

20. Long before the year at issue, petitioner’s established travel pattern generally consisted of flying to Florida on Friday, and returning to New York on Tuesday. While in Florida, he would visit his showrooms and meet with his managers; look at potential investment properties; and go to the beach on Sundays, where he would bring out the boat and go sailing. When in New York, petitioner would commute by automobile from his Douglas Avenue apartment to his East 57th Street office and showroom, where he managed and controlled all administrative, operational, and financial aspects related to his furniture businesses, his New York and Florida rental real estate investments, and his Florida corporations.

21. Petitioner’s primary doctor and his family’s physician, Murray R. Rogers, M.D., is located in New York City. In early 2004, petitioner developed kidney stones and an enlarged

prostate. Dr. Rogers referred petitioner to a specialist, who operated on petitioner in February 2004. Following the surgery, petitioner was hospitalized for about a week. Post-discharge, petitioner recuperated primarily for a period of time in New York, then continued to recuperate in Florida.

22. After a couple of months of post-surgery recuperation in Florida, petitioner again resumed his pattern of flying to Florida on Friday and returning to New York on Tuesday. When in Florida, petitioner resumed his routine of visiting his showrooms and meeting with his managers; looking at potential investment properties; and going to the beach and sailing his boat on Sundays. Petitioner continued to manage and control all aspects of his furniture businesses (Campaniello Enterprises), his New York and Florida rental real estate investments, and his Florida corporations at his East 57th Street office and showroom.

23. Up to and through the year 2005, petitioner and Mrs. Campaniello jointly filed forms IT-201, New York State and New York City resident income tax returns that bore the Douglas Avenue, Bronx, address. In April 2007, petitioner and Mrs. Campaniello jointly filed a form IT-370, application for automatic six-month extension of time to file for individuals, for the year 2006 that bore the Douglas Avenue, Bronx, address. Subsequently, Mrs. Campaniello filed a form IT-201, New York State and New York City resident income tax return, for the year 2006 bearing the Douglas Avenue, Bronx, address, and claiming the filing status of married filing separate return.

24. In 2007, petitioner received an unsolicited purchase offer for the Royal Palm office building.⁷ Petitioner sold the Royal Palm office building for a sale price of \$6,593,300.00. A

⁷ The purchase and sale contract is not part of the record.

U.S. Department of Housing and Urban Development (form HUD-1) settlement statement lists the seller as 1031 Exchange Corporation as Qualified Intermediary for Thomas Campaniello, and the settlement and disbursement date of the sale as November 19, 2007. Petitioner realized a long-term capital gain of \$5,392,445.00 on the sale of the Royal Palm office building.

25. On or after December 7, 2007, petitioner filed a form IT-203, nonresident and part-year resident income tax return, for the year 2006 claiming the filing status of married filing separate return and indicating his address as Crandon Blvd., Key Biscayne, Florida, his county of residence as the "Bronx," and his school district as the "Bronx." On this return, the "No" box was checked in response to the question, "Did you or your spouse maintain living quarters in NYS in 2006?" Petitioner did not file a form IT-360.1, change of city resident status, reporting his change in status as a New York City resident for the year 2006.

26. On his 2006 nonresident income tax return, petitioner reported the following items as part of his federal adjusted gross income of negative \$81,258.00: taxable interest income in the amount of \$50,575.00; and schedule E rental real estate and S corporation losses in the amount of \$131,833.00. The following amounts were reported in the New York State amount column: on line 18 - federal adjusted gross income of zero; on line 31 - New York State adjusted gross income of zero; and zero tax due.

27. On April 18, 2008, petitioner filed a form IT-370, application for automatic six-month extension of time to file for individuals, for the year 2007 that listed his mailing address as Crandon Blvd., Key Biscayne, Florida, and reported a total payment of zero.

28. On October 15, 2008, petitioner filed a form IT-203, nonresident and part-year resident income tax return, for the year 2007 claiming the filing status of married filing separate return

and indicating his address as Crandon Blvd., Key Biscayne, Florida. On this return, the “No” box was checked in response to the question, “Did you or your spouse maintain living quarters in NYS in 2007?”

29. On the 2007 nonresident return, petitioner reported the following items as part of his federal adjusted gross income of \$4,686,546.00: taxable interest income of \$49,916.00; a schedule C business loss of \$223,906.00 from a restaurant run by Palmway Associates, LLC; a capital gain of \$5,392,445.00 from the sale of the Royal Palm office building; schedule E rental real estate and S corporation loss totaling \$462,404.00; taxable amount of social security benefits of \$17,903.00; and other losses from a net operating loss carryover to 2007 of \$87,408.00. The New York State amount reported the following: schedule E - S corporation loss of \$49,002.00, consisting of a nonpassive loss of \$49,002.00 from the entire disposition of Campaniello Enterprises; New York adjusted gross income of negative \$49,002.00; and zero tax due.

30. For the year 2007, petitioner reported federal schedule E rental income totaling \$64,482.00 from 13 rental properties located in New York State and Florida (five properties located in New York, and eight properties located in Florida). Petitioner also reported the following schedule K-1 items of income or loss on his federal schedule E: a nonpassive loss of \$413,402.00 from the entire disposition of Campaniello Imports of Florida, Inc. (Campaniello Imports of Florida),⁸ an S corporation; a nonpassive loss of \$49,002.00 from the entire disposition of Campaniello Enterprises, an S corporation; passive income of \$108,245.99 from Campaniello Realty, Inc. (Campaniello Realty), an S corporation; a passive loss of \$105,473.00

⁸ The record is silent as to the type of business activity in which Campaniello Imports of Florida engaged.

from Campaniello Design Collection, an S corporation; and a passive loss of \$67,254.00 from Campaniello Soho, an S corporation.

31. For the year 2007, Mrs. Campaniello filed a form IT-201, New York State and New York City resident income tax return, that bore the Douglas Avenue, Bronx, address.

32. On February 12, 2010, the Division commenced an audit of petitioner's nonresident and part-year resident income tax return for the year 2007. Petitioner completed a nonresident audit questionnaire for the year 2007 pursuant to the Division's audit requests. On this nonresident questionnaire, dated March 19, 2010, petitioner indicated that he last filed a New York State resident income tax return for the year 2005, and claimed to have "relocated to Florida to be closer to [his] businesses and to avoid the severe weather in New York." Petitioner, on this questionnaire, stated that his employer was Campaniello Enterprises, 225 East 57th Street, New York, New York; he was associated with Campaniello Soho, 136 Greene Street, New York, New York, whose business activity was furniture showroom; and he was present in New York State for 150 work days and 10 nonworking days in 2007. Petitioner, on this questionnaire, also stated that, "I own a condominium apartment in the Bronx where my wife lives. I stay there when I am in New York."

33. The auditor sent an information document request (IDR) dated April 7, 2010 to petitioner's representative, Robert W. Slater, CPA, requesting documentation to substantiate petitioner's whereabouts and day count for the year 2007. Specifically, the auditor requested the closing statement or lease agreement for the Florida address, a listing of specific days spent in and out of New York, expense reports, hotel receipts, transportation records (airline tickets, Amtrak, limo, taxi), copies of petitioner's passport for any foreign travel, monthly credit card

statements, bank statements, and itemized cellular phone bills containing the origination and destination of the calls.

34. On May 24, 2010, in response to the IDR, Mr. Slater provided, among other things, a two-page noncontemporaneous summary document entitled “Trips from Dec 22, 2006 through Jan 3, 2008;” a ten-page noncontemporaneous summary document entitled “Thomas Campaniello Florida Daily Log For the Year 2007” (daily log) that reconstructed day counts from January 1, 2007 through January 4, 2008; a copy of pages from petitioner’s passport showing “4/18/07” and “4/22/07” stamps for petitioner’s foreign travel to Milan for the International Furniture Fair; copies of petitioner’s Citi Advantage Visa Signature credit card statements for the period November 21, 2006 through January 20, 2008; copies of a Bank United saving account’s quarterly statements for the year 2007; copies of petitioner’s Cingular Wireless cellular phone statements for the period December 4, 2006 through July 3, 2007; and copies of petitioner’s T-Mobile cellular phone statements for the period June 26, 2007 through November 18, 2007.

35. Three of the Bank United saving account’s quarterly statements for the year 2007 were sent to petitioner at the East 57th, New York, New York, address, and the last quarterly statement was sent to petitioner at a Change Lane, New York, New York, address. Petitioner’s T-Mobile cellular phone statements for the period June 26, 2007 through November 18, 2007 were sent to petitioner at the Douglas Avenue, Bronx, address.

36. After reviewing the information provided, the auditor sent another IDR, dated September 21, 2010, requesting detailed phone records showing the origination of the cellular phone calls, additional documentation regarding the users of the Visa Advantage credit card, any additional credit card statements, and a copy of the contract for the sale of the Florida property.

37. On October 14, 2010, in response to the September 21, 2010 IDR, Mr. Slater submitted copies of the two Visa Advantage credit cards issued on the account, and a copy of the HUD-1 closing statement, dated November 19, 2007, for the sale of the Florida property. Mr. Slater also indicated that petitioner used the Visa Advantage credit card for all his credit card purchases. However, he was unable to provide any further documentation regarding the origination of the cellular phone calls for petitioner's cellular phone number.

38. After reviewing the additional documentation provided, the auditor found it to be insufficient to complete her audit review. On November 10, 2010, the auditor called Mr. Slater and left a message requesting airline tickets or the history of petitioner's airline flights to and from Florida during the year 2007.

39. Mr. Slater did not provide the airline tickets, any history of airline flights or expense reports documenting petitioner's airline flights to and from Florida during the year 2007. However, Mr. Slater faxed a letter, dated December 2, 2010, to the auditor, in which he claimed that the information supplied to date supported petitioner's assertion that he was in fact a Florida resident for the year 2007, "and actually even the previous few years." Mr. Slater, in his letter, summarized the voluminous information already supplied regarding petitioner's residency status for the year 2007, and supplied the following information regarding petitioner's business interests and the duties he performs relative to his business interests:

"13) Total Business Interest in Partnerships, LLC and Corporations:

- 1 Palmway Associates LLC - Florida - Restaurant - 100 percent owner
- 2 Campaniello Realty Inc. - Florida - Real Estate - 100 percent owner
15165 NW 77th Ave, Lehigh, Florida
- 3 Campaniello Design Collection, Inc. - Florida - Retail - 100 percent
owner runs four store locations in Florida, Miami, DCOTA,
Hollywood, Coral Gables

- 4 Campaniello Enterprises, Inc. - Florida and New York - Retail - 100 percent owner was closed in 2007 and split into Campaniello Soho Inc. (NY), and Campaniello Design Collection, Inc. (FL)
- 5 Campaniello Soho, Inc. - New York - Retail - 100 percent owner has 2 locations in NY - 136 Green [sic] Street, Soho, 225 E 57th Street, NYC

14) Duties Performed by Mr. Campaniello Relative to his Business Interests:

Mr. Campaniello performs all administrative and operational decision making and policy making aspects of each business, as well as supervisory control and management control over support personnel. Entering into, as well as negotiating contracts, along with the authorizing and approval of most non ministerial financial aspects of the business operations are also under his control.”

40. The auditor reviewed the daily log submitted by petitioner for the year 2007. Based upon this log, the auditor determined that petitioner was present in New York for 169 days during 2007. The auditor created a summary based upon the information supplied by petitioner that indicated significant weekly travel between New York and Florida during 2007. Her summary showed that petitioner returned to his historic domicile in New York City for a portion of nearly every week in 2007. The auditor found that petitioner’s pattern of travel was to spend weekends in Florida, usually being in Florida from Saturday to Monday, then return to New York during the week. The auditor further found that in July, August and September 2007, petitioner stayed in New York City 11 consecutive days in each of those months.

41. On March 10, 2011, the auditor and her team leader called Mr. Slater and discussed the audit findings to date on the issue of domicile. Mr. Slater, in response to that conference call, sent a letter dated March 16, 2011 to the team leader and the auditor, in which he asserted, among other things, as follows:

“4 Mr. Campaniello’s income allocation for 2007 shows that the income was allocated as follows, which again shows the dominance of Florida income:

	<u>Total</u>	<u>Florida</u>	<u>New York</u>
Interest	49,916	49,916	0
Schedule C	(223,906)	(223,906)	0
Schedule D	5,392,445	5,392,445	0
Campaniello Imports [of Florida]		(413,402)	
Campaniello Enterprises	(462,404)		(49,002)
Campaniello Realty		108,245	
Campaniello Soho			(67,254)
Campaniello Collection	(64,482)	(105,473)	
Passive Real Estate - NY			143,813
Passive Real Estate - FL	64,482	(79,331)	
Taxable Social Security	17,903		
NOL Carryover [sic]	(87,408)		
As Computed above	4,686,546	4,728,494	27,557
Taxable Income Per Return	4,686,546		

Additionally, there was some discussion relative to the Schedule E properties, which are treated as passive, and for which the total gross receipts are as follows: A breakdown of these Schedule E properties is also attached for your review.

Gross Revenue Passive Real Estate - NY	911,144
Gross Revenue Passive Real Estate - FL	940,161”

42. The breakdown attached to Mr. Slater’s March 16, 2011 letter listed the gross receipts, expenses and deductible income or loss for each of the 13 rental properties reported as schedule E rental properties for the year 2007. The breakdown included the following eight Florida rental properties and their respective gross receipts: “208-10 ROYAL PALM WAY” - gross receipts \$16,800.00; “280-90 S COUNTY ROAD” - gross receipts of \$91,720.00; “302-06 GRIFFIN” - gross receipts of \$247,133.00; “330 S OCEAN DR” - gross receipts of \$0.00; “PHIPPS PLAZA” - gross receipts of \$554,508.00; “285 ON [sic] 28TH TERRACE” - gross receipts of \$0.00; “301 CORAL WAY” - gross receipts of \$30,000.00; and “15165 NW 77TH AVE” - gross receipts of \$0.00. The breakdown included the following five New York rental properties and their respective gross receipts: “225 E 57TH STREET NY” - gross receipts of \$60,000.00; “136 GREEN [sic] ST NYC” - gross receipts of \$0.00; “1040 45TH ST, NYC” - gross receipts of

\$151,658.00; “3240 43RD AVE, LIC” - gross receipts of \$34,000.00; and “225 E 57TH, NYC” - gross receipts of \$665,486.00. At the hearing, when asked about each of the schedule E rental properties listed as 225 E 57th Street, New York, New York, petitioner responded to each question with the description “the showroom.”

43. After reviewing all documents provided, the auditor determined that petitioner continues to maintain his historic domicile located at Douglas Avenue, Bronx, where his wife still continues to live and where he stays when he is in New York. The auditor also determined that petitioner has numerous businesses located in New York City and Florida, and maintains multiple New York and Florida rental properties. She found that petitioner continued to retain ownership interest in his New York State businesses and continued to play an active role in the business’ day-to-day operations, and was actively involved in his multiple New York and Florida rental properties. Based upon the daily log submitted by petitioner, the auditor determined that petitioner was present in New York 169 days in 2007, and that 150 of those days were work days in New York, as stated by petitioner on the nonresident audit questionnaire. The auditor determined that, except for a few items, petitioner’s near and dear items continue to be in his historic Douglas Avenue, Bronx home. The auditor also determined that petitioner’s wife, daughter and grandchild live in New York along with other relatives and close friends. The auditor concluded that petitioner failed to prove by clear and convincing evidence that he abandoned his historic New York domicile and acquired a new domicile in Florida for the year 2007.

44. The auditor recomputed petitioner’s New York State and New York City personal income tax liability for the year 2007 using a filing status of married filing separately on separate

forms. To the corrected federal adjusted gross income of \$4,686,546.00, the auditor subtracted \$21,978.00, the net New York State adjustments reported in the federal amount column of the nonresident return, and determined corrected New York State adjusted gross income of \$4,664,568.00. From this amount, the auditor subtracted the New York standard deduction of \$7,500.00, and determined corrected New York State taxable income to be \$4,657,088.00, recomputed New York State tax to be \$319,009.00 and recomputed New York City tax to be \$169,772.00. After allowing no state or city credits, the auditor determined the additional New York State tax liability to be \$319,009.00 and the additional New York City tax liability to be \$169,772.00, for a total New York State and City tax liability due in the amount of \$488,781.00, for the year 2007.

45. On June 28, 2011, the Division sent petitioner's representative a form AU-251, consent to field audit adjustment, and supporting schedules detailing the proposed audit adjustments for the year 2007. The consent to field audit adjustment set forth additional New York State and New York City income taxes due in the total amount of \$488,781.00, plus penalties in the amount of \$89,841.00 and interest in the amount of \$139,807.00, for a total amount due of \$709,429.00. Negligence penalties were imposed on the additional New York State and New York City tax liabilities determined to be due pursuant to Tax Law § 685 (b) (1) [the 5% negligence penalty] and Tax Law § 685 (b) (2) [penalty equal to 50% of any interest due]. The consent for field audit adjustment contained the following explanation for the year 2007: "[t]he taxpayer failed to provide clear and convincing evidence that the taxpayer changed his domicile from NYS to Florida. His [sic] being held as a NYS and NYC resident."

46. The record does not include any tax filings for Campaniello Imports of Florida for the year 2007. However, as noted in finding of fact 30, petitioner reported a schedule K item of nonpassive loss in the amount of \$413,402.00 from the entire disposition of Campaniello Imports of Florida, an S corporation, on his federal income tax return for the year 2007.

47. Documents in the record indicate that Campaniello Enterprises was incorporated in Florida on June 26, 1996, and was dissolved on August 7, 2007. The record does not include any tax filings for Campaniello Enterprises for the year 2007. However, as noted in finding of fact 30, petitioner reported a schedule K item of nonpassive loss in the amount of \$49,002.00 from the entire disposition of Campaniello Enterprises, an S corporation, on his federal income tax return for the year 2007, as well as in the New York column of his nonresident income tax return for the year 2007 (*see* finding of fact 29).

48. The 2007 schedule K-1 for Campaniello Realty, 225 East 57th Street, New York, New York, lists the 100% shareholder of the S corporation as Thomas Campaniello, Douglas Avenue, Bronx, New York. The 2007 schedule K-1 for Campaniello Design Collection, 225 East 57th Street, New York, New York, lists the 100% shareholder of the S corporation as Thomas Campaniello, Douglas Avenue, Bronx, New York.

49. Documents in the record indicate that Campaniello Soho was incorporated in Florida on May 23, 2007. The articles of incorporation of Campaniello Soho state that the street address of the initial principal office of the corporation is 136 Greene Street, New York, New York; the names and addresses of its officers are Thomas Campaniello, President, 136 Greene Street, New York, New York, and Sandra Campaniello, Vice President, 136 Greene Street, New York, New York.

York; and the name and street address of the person signing the articles of incorporation is Thomas Campaniello, 136 Greene Street, New York, New York.

50. The unsigned copy of form 1120S, U.S. income tax return for an S corporation filed by Campaniello Soho for the year 2007 lists its address as 225 East 57th Street, New York, New York. The 2007 schedule K-1 for Campaniello Soho, 225 East 57th Street, New York, New York, lists the 100% shareholder of the S corporation as Thomas Campaniello, Douglas Avenue, Bronx, New York. The CT-3-S New York S corporation franchise tax return filed by Campaniello Soho, 225 East 57th Street, New York, New York, for the year 2007, was signed by petitioner, as president, on September 12, 2008. The 2007 CT-34-SH New York S corporation shareholder's information schedule B for Campaniello Soho lists the 100% shareholder as Thomas Campaniello, Douglas Avenue, Bronx, New York.

51. At the hearing, petitioner submitted a two-page noncontemporaneous summary document entitled "Trips from Dec 22, 2006 through Jan 3, 2008" that he prepared in conjunction with Mr. Slater and submitted to the auditor during the audit. Each line of this 40-entry document listed a beginning date, an end date and the number of days. The first and last entries on this summary document listed the beginning and ending dates as "Dec 22, 2006 - Jan 3, 2007," and "Dec 21, 2007 - Jan 3, 2008," respectively, and the number of days as "13 days" and "13 days, respectively. There is also an entry of "April 18, 2007 - April 22, 2007," and "Trip to Milano furniture fair." According to petitioner, this document allegedly reflected his airline travel during the year 2007, and was prepared from the airline ticket charges appearing on the Visa Advantage Signature credit card statements for the period November 21, 2006 through January 20, 2008. The purchase and posting dates, the ticket number and purchase amount for

each ticket purchased from American Airlines, and the ticket purchased from United Airlines appears as a charge on the Visa Advantage Signature credit card statements submitted into the record. However, no flight information, i.e., passenger name, date, time, departure location and destination, appears as part of any of these airline ticket charges. Petitioner did not submit any airline tickets or expense reports reflecting his airline travel during the year 2007.

52. At the hearing, petitioner submitted an 11-page noncontemporaneous summary document entitled “Thomas Campaniello Florida Daily Log for the year 2007” that reconstructed summary day counts from November 21, 2006 to January 4, 2008, and included a “Recap” page. Petitioner explained that this daily log of his alleged whereabouts in 2007 was made by him and Mr. Slater, based upon the Visa Advantage Signature credit card statements for the period November 21, 2006 through January 20, 2008. Each of the first 10 pages of this reconstructed summary document has 6 columns headed “Seq,” “Date,” “Day,” “State,” “Expenditure,” and “Verification Document,” and sequentially numbered date entries from November 21, 2006 through January 4, 2008, a total of 410 dates listed on the 10 pages. On this reconstructed summary daily log, only 44 of the full Florida days listed a specifically identified expenditure and the verification document as “Visa,” while each of the remaining full Florida days listed only the notation “Log” as the verification document, and nothing listed in the expenditure column. Almost all of the “Florida/NY” State column days listed on the reconstructed summary daily log for the year 2007 have only the notation “log” listed in the verification document column, and nothing listed in the expenditure column. Page 11 of this daily log contains a “Recap” for the year 2007 that listed 191 Florida full days; 76 Florida/NY joint days; 3 Foreign full days; 2 Foreign/state joint days; and 93 NY full days. Petitioner claimed that the 76 Florida/New York

joint days were days on which he traveled from New York to Florida during 2007.

53. Petitioner regularly attended the Milan International Furniture Fair where he would purchase furniture pieces and lighting from Italian manufacturers to sell in all his showrooms. Petitioner's April 2007 international travel to the Milan International Furniture Fair originated and ended in New York. Petitioner did not include the "2 Foreign/state joint days" listed on the "Recap" page of the reconstructed daily log for 2007 as New York days.

54. The record does not include any airline tickets, expense reports or any airline flight information for petitioner for the year 2006, Visa Advantage credit card statements for the period November 21, 2005 through November 20, 2006, or any log or record of petitioner's whereabouts on each day of 2006.

55. When he was in New York during the year 2007, petitioner used his Douglas Avenue, apartment where he had personal belongings and clothing. Petitioner also used an automobile in New York during that year. On occasion when he was in New York during the year 2007, petitioner spent time with his daughter, son-in-law, and only grandchild, a boy who was born in July 2007.

56. During 2007, when he was in New York, petitioner commuted to his East 57th Street office and showroom where he managed and controlled all administrative, operational and financial aspects of his furniture businesses (Campaniello Enterprises [New York, Florida and Chicago showrooms] until its dissolution on August 7, 2007 and then Campaniello Soho [New York showroom] and Campaniello Design Collection [four Florida showrooms]); his New York and Florida rental real estate investments; and his Florida corporations.

57. Since his surgery in 2004, petitioner continues to regularly see the New York specialist who performed the surgery. He also continues to regularly see his primary care physician, Dr. Rogers, and his New York dentist.

58. The record includes an invoice, dated April 29, 2002, issued to Campaniello Imports of Florida, Crandon Blvd., Key Biscayne, Florida, by ITALBAR Espresso, Orlando, Florida, for the sale of a professional espresso machine at a total cost (including sales tax of 6%) of \$5,045.60, after a "Multi Unit Discount" of 30% was given, i.e., \$2,040.00. This invoice was stamped "PAID" by "Ck No. 4712" on "Date 5-1-02." Although the invoice indicates that the item was to be shipped via "UPS-Ground," the "SHIP TO:" box is blank. According to petitioner, this large coffee machine was installed in the Key Biscayne apartment's kitchen around May 2002 and he uses it "all the time." The record does not include any pictures of petitioner's Key Biscayne apartment's kitchen or the professional espresso machine.

59. Petitioner thought he moved his Italian doctoral diploma and a classic concert guitar, made by the luthier Manuel Velazquez, to Florida "about 2004, 2005." The record includes a copy of a photograph of the diploma hanging on the living room wall in petitioner's Key Biscayne apartment. It also includes a copy of a photograph of a classic guitar sitting on a chair in the Key Biscayne apartment's living room.

60. At the hearing, petitioner claimed that he first obtained a Florida driver's license in 1998. The record includes petitioner's Florida driver's license, issued on November 10, 2008 and expiring on November 12, 2016, which lists his Key Biscayne apartment address.

61. Petitioner renewed the Florida vehicle registration for a 1988 Ferrari on March 1, 2006. The Ferrari's Florida vehicle registration, with an expiration date of November 12, 2006, listed

the tag (plate) number, petitioner's Florida driver's license number,⁹ and his Key Biscayne apartment address. On November 7, 2006, petitioner renewed the Florida vehicle registration for the 1988 Ferrari. The Ferrari's Florida vehicle registration, with an expiration date of November 12, 2007, listed the tag number, petitioner's Florida drivers license number, and his Key Biscayne apartment address. Petitioner also renewed the Florida vehicle registration for a 2004 Lexus on November 7, 2006. The Lexus's Florida vehicle registration, with an expiration date of November 12, 2007, listed the tag number, petitioner's Florida driver's license number, and his Key Biscayne apartment address. The audit file includes copies of the Florida vehicle registrations, issued on November 7, 2006, for both vehicles. The record does not include any evidence of the initial Florida registration and plate issuance dates for either the Ferrari or the Lexus.

62. Petitioner testified extensively about his 1988 Ferrari that he claimed to have purchased in New York in 1988 and shipped to Florida in 2006. The record does not contain any evidence of any automotive shipping invoices or bills. Petitioner did not offer any testimony regarding his 2004 Lexus.

63. Petitioner stated that he registered to vote in Florida and has voted in Florida. He submitted an "Official Absentee Balloting Material, Miami-Dade County Election Department" packet for the November 6, 2012 election that included a Voter Information Card issued to petitioner on February 1, 2012 that listed his Key Biscayne apartment address, a voter registration

⁹ Petitioner's driver's license number listed on this vehicle registration is identical to the number listed on his Florida driver's license issued on November 10, 2008.

date of October 25, 2008 and political party affiliation. The record does not contain petitioner's voter history or record of actual voting in Florida.

64. Petitioner did not submit a Florida declaration of domicile. He did not submit Florida homestead exemption filings for a primary Florida residence.

65. The record includes a copy of petitioner's March 2010 Social Security check issued to him bearing the Crandon Blvd., Key Biscayne, Florida, address. The record is silent as to when he began receiving his Social Security checks at that address.

66. Petitioner's cellular phone statements continue to be sent to him at the Douglas Avenue, Bronx, address.

67. After 2007, petitioner's pattern of regularly traveling to Florida on Thursday or Friday and returning to New York on Tuesday or Wednesday continued.

68. Petitioner continues to have an active bank account in New York State.

69. The DCOTA showroom shut down in October 2011 and the Miami Design District showroom shut down at the end of 2012. As of the date of the hearing, petitioner has two retail furniture showroom locations, Campaniello Soho located at 225 East 57th Street, New York, New York, and Campaniello Loft, Inc.,¹⁰ (Campaniello Loft) located at 2850 North 28th Terrace, Hollywood, Florida. In addition, Campaniello Imports Warehouse continues to be located at 3230 43rd Avenue, Long Island City, New York.

70. All administrative and bookkeeping functions for petitioner's furniture businesses, his New York and Florida rental real estate investments, and Florida corporations continue to be

¹⁰ Campaniello Loft, Inc., was formed in Florida on October 28, 2011. Campaniello Design Collection was voluntarily dissolved effective October 31, 2011.

handled in New York. Petitioner continues to review the books and records, and handle all administrative, operational and financial matters related to his furniture businesses, his New York and Florida rental real estate investments and Florida corporations at his East 57th Street office and showroom when he is in New York.

71. Petitioner submitted a letter dated July 30, 2013, from Murray R. Rogers, M.D., F.A.C.C.P., New York, New York. Dr. Rogers, in that letter, stated that:

“My patient Thomas Campaniello had undergone a major surgical procedure in 2004.

When I saw him thereafter he seemed depressed, anxious and as cold weather arrived he was most distressed.

I recognized his depressed state and strongly urged that he spend most of his time in a warmer climate (Florida) and consider his removing himself from the stress of work.

He took my advice, spends most of his time in Florida and has improved his physical health.”

DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge determined that petitioner did not meet his burden of proof to show that he changed his domicile from New York City to Florida as of the year at issue. In support of this conclusion, the Administrative Law Judge cited the following factors: petitioner’s continuing business ties to New York; his continuing ownership and use of the Bronx apartment where he and his wife had maintained their domicile since 1979; the continuation of the same general lifestyle pattern by petitioner both prior to and after the purported 2006 change of domicile; the continuation of petitioner’s pattern of travel to New York both prior to and after the purported 2006 change of domicile; his continuing use of the Bronx apartment as a mailing address; his continuing use of New York medical professionals; and his family ties to New York.

The Administrative Law Judge acknowledged facts in the record that supported petitioner's claimed domicile change. She specifically noted petitioner's business ties to Florida; his Florida driver's license and vehicle registration; and the presence of some near and dear items in Florida. The Administrative Law Judge determined, however, that such facts were offset by other facts in the record that indicated a retention of petitioner's New York City domicile. The Administrative Law Judge also found that petitioner's testimony regarding his intent to make Florida his domicile during the years 2006 and 2007 was not credible.

The Administrative Law Judge sustained the imposition of penalties because petitioner failed to state any rationale for the abatement of penalties and also because of petitioner's denial on his 2007 return that either he or his spouse maintained living quarters in New York during that year.

ARGUMENTS ON EXCEPTION

Petitioner first argues that the Administrative Law Judge's determination is unconstitutional because it denies petitioner his constitutionally protected right to a "living apart together" marriage. Petitioner notes the many references to the Bronx apartment in the determination as petitioner's "historic domicile" and his "historic marital domicile." Petitioner discerns from such language that he and his spouse would be required to sell their Bronx apartment in order to prove petitioner's abandonment of his New York City domicile. Petitioner asserts that this perceived requirement is an impermissible penalty on married couples who choose to live apart.

Next, petitioner asserts that his acquisition of a Florida domicile was a continually developing process over a period of almost two decades and was finalized in 2006. He thus

contends that he did not change his residency to avoid New York income tax on the 2007 sale of his Florida real property. Petitioner asserts that he and his spouse made a decision in 2001 to “live apart together,” with petitioner residing in Key Biscayne and his wife residing in the Bronx apartment. Petitioner asserts that, over the years, his New York business interests diminished and his Florida business interests grew. As of 2006, petitioner contends, both his business interests and his personal interests were principally located in Florida. Petitioner also contends that objects near and dear to him were in Florida. In sum, petitioner contends that he was a domiciliary of Florida in 2007, the year at issue.

Petitioner seeks to distinguish certain court and Tribunal decisions, cited in the determination, that found a failure to establish a change of domicile. Petitioner also compares his circumstances favorably with former State Tax Commission decisions that found a change of domicile. Petitioner further contends that the facts in the present matter compare favorably with certain administrative law judge determinations that found that the petitioners therein had established a change in domicile. Petitioner asserts that the Administrative Law Judge improperly “ignored” such determinations.

Petitioner seeks abatement of penalties on the ground that he has acted in good faith at all times relevant. He attributes the incorrect answer on his 2007 New York nonresident return that neither he nor his spouse maintained living quarters in New York to a mistake made by his accountant.

The Division contends that petitioner did not carry his burden of proving by clear and convincing evidence that he intended to abandon his New York City domicile and acquire a new domicile in Florida. The Division notes that petitioner continued to maintain and use his New

York City residence; he spent a significant amount of time in New York in 2007, returning weekly after spending long weekends in Florida; he had significant business ties to New York; and he had significant family ties to New York. The Division contends that there is no evidence in the record to establish that petitioner's general pattern of conduct and lifestyle changed in 2006 when he first declared on his New York tax return that he was no longer a New York City resident. The Division also contends that negligence penalties are properly imposed herein.

OPINION

New York State imposes a personal income tax on resident individuals pursuant to Tax Law § 601. Tax Law § 605 (b) (1) defines such a resident individual, in relevant part, as someone:

“(A) who is domiciled in this state . . . or

(B) 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”

New York City also imposes a personal income tax on its residents pursuant to the Administrative Code of the City of New York § 11-1701. The City's definition of a resident individual is identical to that for State income tax purposes, except for the substitution of the term “city” for “state” (*see* Administrative Code of the City of New York § 11-1705 [b] [1] [A] and [B]).

The classification of resident versus nonresident is significant because nonresidents are taxed only on their New York State source income, whereas residents are taxed on their income from all sources (*compare* Tax Law § 611 [a] *with* § 631 [a]).

The Division's regulations¹¹ 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 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]).

With respect to the domicile or domiciles of a husband and spouse, the regulations provide that "[g]enerally, the domicile of a husband and wife are the same. However, if they are separated in fact, they may each, under some circumstances, acquire their own separate domiciles even though there is no judgment or decree of separation" (20 NYCRR 105.20 [d] [5] [i]).

¹¹ 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).

As we have stated many times, 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, 458 [1976]; 20 NYCRR 105.20 [d] [2]). 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*, 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 AD 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]).

While the standard is subjective, the courts and this 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). We have consistently considered the following objective criteria to be of significance in addressing issues of domicile: (1) the retention and use of a permanent place of abode in New York (*Matter of Wechsler*, Tax Appeals Tribunal, May 16, 1991); (2) the location of business activity (*Matter of Kartiganer*, Tax Appeals Tribunal, October 17, 1991, *confirmed sub nom Kartiganer v Koenig*, 194 AD2d 879 [1993]); (3) the location of family ties (*Matter of*

Buzzard, Tax Appeals Tribunal, February 18, 1993, *confirmed sub nom Matter of Buzzard v Tax Appeals Trib. of State of N.Y.* 205 AD2d 852 [1994]); and (4) the location of social and community ties (*Matter of Getz*, Tax Appeals Tribunal, June 10, 1993).

We first address petitioner's constitutional argument. The Tax Law does not require a husband and his spouse to have the same domicile. To the contrary, and as cited above, the Division's regulations expressly provide that a husband and spouse may have separate domiciles if they are "separated in fact" (20 NYCRR 105.20 [d] [5] [i]). There is no question, therefore, that petitioner and his wife had the right to "live apart together" if they so desired. What is in question is whether petitioner has established that he acquired a Florida domicile within the meaning of the Tax Law. Accordingly, given its faulty premise, we reject this argument.

In making his constitutional argument, petitioner appears to misconstrue the references in the determination to petitioner's "historic domicile" and his "historic marital domicile." In our view, such language merely acknowledges the undisputed fact that the Bronx apartment was petitioner's long-time domicile prior to the period in dispute. It does not mean, as petitioner appears to contend, that he could not acquire a new domicile without selling the Bronx apartment (*cf. Matter of Moed*, Tax Appeals Tribunal, January 26, 1995 ["statutory" residency case where husband and wife were "separated in fact" and had established separate domiciles and wife lived in the apartment where the two had previously resided together]).

We turn now to a consideration of the various objective indicators of domicile, as noted above.

Petitioner's continuing ownership and frequent use of his Bronx apartment that he owned and where he had lived since 1979 supports a finding of a New York City domicile (*see Matter*

of Wechsler). The record shows that petitioner was present in New York and thus used the apartment on at least 171 days in 2007.¹² Petitioner maintained personal belongings and clothing at the Bronx apartment (*see* finding of fact 55). Also, an automobile was available for his use in New York (*id.*). Petitioner also continued to receive mail concerning his cellular phone service and credit cards at his Bronx address in 2007 (*see* findings of fact 19 and 35).

Petitioner's continuing family ties to New York also support a finding of a New York domicile (*see Matter of Buzzard*). Petitioner's wife of 51 years continued to reside in the Bronx apartment in 2007. Also, his daughter, son-in-law and only grandchild, born in 2007, reside in New York. Petitioner spent time with his daughter and grandchild when he was in New York in 2007 (*see* finding of fact 55). Petitioner had no family in Florida.

Petitioner's substantial business ties to New York in 2007 also support a finding of a New York domicile (*see Matter of Kartiganer*). Specifically, with respect to his furniture businesses, petitioner had the East 57th Street furniture showroom, which had an office for his use, and from which he managed and controlled all administrative and financial aspects related to his furniture businesses, his New York and Florida rental real estate investments, and his Florida corporations (*see* finding of fact 20). There was also a furniture warehouse in New York. Additionally, during 2007, the Soho property was undergoing renovation and would be opened as a furniture showroom in 2008. Further, the administrative and bookkeeping functions for petitioner's furniture businesses continued to be handled in New York. Also, maintenance of all of petitioner's corporations' books and records, including those formed in Florida, and performance

¹² 171 days is the total of petitioner's self-reported 93 "NY full days," 76 "Florida/NY joint days" and 2 "foreign/state joint days" (*see* findings of fact 52 and 53).

of all their administrative functions continued to occur in New York. In 2007, petitioner worked in New York on 150 days, or the equivalent of 30 five-day weeks (*see* finding of fact 32).

Petitioner also continued to have significant New York rental real estate investments in 2007. He owned the 57th Street furniture showroom and the Long Island City warehouse that he rented to his furniture business (*see* finding of fact 14). He owned a warehouse on 45th Street in New York that he rented to third parties (*id.*). He also invested in a building in Soho, New York that would later become another furniture showroom (*see* finding of fact 13).

Additionally, there is little evidence in the record to establish that petitioner's general travel pattern changed in 2006, the year of his asserted changed of domicile. That is, petitioner's general pattern of traveling to Florida on Friday, staying at his Key Biscayne apartment on Saturday, Sunday and Monday, and returning to New York City on Tuesday was established long before the year at issue (*see* finding of fact 20). Such a lack of evidence of a change in lifestyle is inconsistent with a change in domicile (*see Matter of Taylor*, Tax Appeals Tribunal, June 23, 1994).

Furthermore, the Administrative Law Judge found that petitioner's testimony regarding his intent to make Florida his domicile during the years 2006 and 2007 was not credible. The Administrative Law Judge based this finding on petitioner's 2006 and 2007 nonresident returns, each of which indicated, contrary to fact, that neither he nor his spouse maintained living quarters in New York during those years. This Tribunal has consistently deferred findings of witness credibility to the Administrative Law Judge (*see Matter of Balkany*, Tax Appeals Tribunal, October 28, 2015). Moreover, we have previously determined that a similarly incorrect nonresident return, i.e., wrongly reporting the maintenance of living quarters in New York,

undermines a witness's credibility on the issue of residency (*see Matter of Varzar*, April 2, 2015). A finding of a lack of credibility with respect to petitioner's stated intent to acquire a Florida domicile is significant because the intent to make a place one's permanent home is a necessary prerequisite to a finding of a change of domicile (*see Matter of McKone v State Tax Commn. of State of N.Y.*, 111 AD2d 1051, 1053 [1985]), *affd sub nom Matter of McKone v State Tax Commn.*, 68 NY2d 638 [1986]).

As petitioner correctly observes, however, there are facts in the record supportive of his claim of a domicile change to Florida. Specifically, petitioner has used his Key Biscayne apartment since 1981, nearly as long as he has owned the Bronx apartment, and he bought it in 1996. Furthermore, petitioner spent more time in Florida than New York in 2007 (*see* finding of fact 52), a fact that the Division's regulations deem "important" in determining a taxpayer's domicile (*see* 20 NYCRR 105.20 [d] [4]).

Petitioner also had significant active business ties to Florida. He had four furniture showrooms in Florida that he actively managed, as opposed to one showroom in New York in 2007 that was managed by his wife. He also had investments in eight Florida rental properties, as opposed to five properties in New York. In addition, in 2007, one of petitioner's companies operated a restaurant in Florida.

Also, sailing was an important social activity for petitioner and he participated in that activity while in Florida. He also kept some near and dear items in Florida, such his doctoral diploma, his guitar, and his Ferrari.¹³

¹³ Although a relatively minor point, we conclude that petitioner's expensive espresso machine is not properly considered a near and dear item. It does not seem to be the sort of item to which one would normally attach sentiment.

Petitioner also acquired a Florida driver's license, although such a formal declaration is generally less important in a domicile case than facts indicative of a person's "general habits of life" (*see Matter of Silverman*). Another such formal declaration, petitioner's 2008 Florida voter registration, is of little relevance because it occurred after the period at issue.

Upon review of the entire record, we agree with the Administrative Law Judge and conclude that petitioner has not proven by clear and convincing evidence that he gave up his Bronx, New York domicile and acquired a Key Biscayne, Florida domicile as of the year at issue. While, as the record shows, petitioner had many ties to Florida, he also continued to maintain many ties to New York City. These retained New York ties, coupled with our finding of a lack of credibility with respect to petitioner's stated intent to acquire a Florida domicile, compel a finding against petitioner herein.

We are unpersuaded by petitioner's efforts to distinguish certain Tribunal and court decisions, cited in the determination, that also found a failure to establish a change of domicile. As noted previously, domicile is a question of fact that "frequently depends upon a variety of circumstances, which differ as widely as the peculiarities of individuals" (*Matter of Newcomb*, 192 NY at 250). Upon review, while acknowledging that each of the cited cases presents unique facts and circumstances, we conclude that such cases are consistent with our decision herein.

We also find that the former State Tax Commission decisions cited by petitioner in support of his position are distinguishable.¹⁴ Specifically, in *Matter of Rosenthal* (State Tax Commn., August 21, 1987), the taxpayer's move from New York to Florida was prompted by a

¹⁴ As decisions of a body of coordinate jurisdiction, decisions of the former State Tax Commission are not binding precedent but are entitled to respectful consideration (*Matter of Racal Corp.*, Tax Appeals Tribunal, May 13, 1993).

marital separation and contemplation of divorce. No such circumstances are present here. In *Matter of Wills* (State Tax Commn., July 3, 1986), the taxpayer left New York to take a job elsewhere. Unlike petitioner, he had no remaining business or employment ties to New York.

As noted, petitioner cites several Administrative Law Judge determinations as precedent in support of his position. This was inappropriate, however, because such determinations are not precedential:

“Determinations issued by administrative law judges shall not be cited, shall not be considered as precedent nor be given any force or effect in any other proceedings conducted pursuant to the authority of the division or in any judicial proceedings conducted in this state” (Tax Law § 2010 [5]).

We have not considered, therefore, any of the determinations cited by petitioner in reaching our decision in this matter. We note also that the Administrative Law Judge properly did not cite any such determinations in her determination below.

The Division asserts penalty pursuant to Tax Law § 685 (b). This provision requires the imposition of penalty if any part of a deficiency is due to negligence or intentional disregard of Article 22 of the Tax Law or the regulations promulgated thereunder. Petitioner asserts that he acted in good faith in filing nonresident returns beginning with the 2006 tax year and that, therefore, negligence penalty should be abated. We disagree. Good faith alone is insufficient to establish reasonable cause for abatement of penalty (*see Matter of Auerbach v State Tax Commn.*, 142 AD2d 390 [1988]). Additionally, under the facts herein, petitioner’s denial on his 2006 and 2007 nonresident returns that he or his spouse maintained living quarters in New York (*see* findings of fact 25 and 28) is contrary to the notion of good faith and thus supports the imposition of negligence penalty. Accordingly, we reject petitioner’s assertion that his errors

regarding the maintenance of living quarters should be excused and we sustain the imposition of penalty.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Thomas Campaniello is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Thomas Campaniello is denied; and
4. The notice of deficiency, dated November 14, 2011, is sustained.

DATED: Albany, New York
July 21, 2016

/s/ Roberta Moseley Nero
Roberta Moseley Nero
President

/s/ James H. Tully, Jr.
James H. Tully, Jr.
Commissioner