

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
	:	
of	:	
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<b>JOHN J. HOFF AND KATHLEEN OCORR-HOFF</b>	:	DECISION
	:	DTA NO. 850209
for Redetermination of a Deficiency or for Refund of	:	
New York State Personal Income Tax under Article 22 of	:	
the Tax Law for the Years 2018 and 2019.	:	
	:	

Petitioners, John J. Hoff and Kathleen Ocorr-Hoff, filed an exception to the determination of the Administrative Law Judge issued on October 31, 2024. Petitioners appeared by Woods Oviatt Gilman, LLP (Donald W. O'Brien, Jr., Esq. and Danielle B. Ridgely, Esq., of counsel). The Division of Taxation appeared by Amanda Hiller, Esq. (Peter B. Ostwald, Esq., of counsel).

Petitioners filed a brief in support of their exception. The Division of Taxation filed a brief in opposition. Petitioners filed a reply brief. Oral argument was heard on June 25, 2025, in Albany, New York, which date began the six-month period for issuance of this decision.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

***ISSUE***

Whether petitioners established that they changed their domicile from New York to Florida in 2018 and, thus, were not taxable as domiciliaries of New York State after October 29, 2018.

### ***FINDINGS OF FACT***

Except as noted, we find the facts as determined by the Administrative Law Judge.

Findings of fact 66 and 67 have been summarized into a single finding of fact. The findings of fact as so modified are set forth below.

1. Petitioners, John J. Hoff and Kathleen Ocorr-Hoff, filed form IT-203, New York State nonresident and part-year resident income tax return, for the year 2018 (2018 return). On the 2018 return, petitioners reported their mailing address as 4031 Gulf Shore Blvd N, Naples, Florida and reported their New York county of residence as Ontario. Petitioners reported that they were part-year residents, that they moved out of New York State on October 29, 2018 and that they received income from New York sources during the nonresident period. On form IT-203-B, nonresident and part-year resident income allocation and college tuition itemized deduction worksheet, attached to the 2018 return, petitioners reported a street address of Poplar Beach in Canandaigua, New York under the section for “Living quarters maintained in New York State by a nonresident,” left the box blank for the line “Mark an X in the box if NYS living quarters were maintained for you or by you for the entire tax year” and marked the box for schedule B, column E, indicating affirmatively that the living quarters in New York were still maintained by or for them.

2. Petitioners filed form IT-203, for the year 2019 (2019 return). On the 2019 return, petitioners reported their mailing address of Gulf Shore Blvd N in Naples, Florida and reported their New York county of residence as Ontario. Petitioners reported that they were nonresidents and that they maintained living quarters in New York State in 2019. On form IT-203-B, attached to the 2019 return, petitioners reported a street address of Poplar Beach in Canandaigua, New York under the section for “Living quarters maintained in New York State by a nonresident,” left

the box blank for the line “Mark an X in the box if NYS living quarters were maintained for you or by you for the entire tax year” and marked the box for schedule B, column E, indicating affirmatively that the living quarters in New York were still maintained by or for them.

3. Prior to the years at issue, petitioners filed New York State income tax returns as residents of New York State.

4. On August 3, 2020, the Division commenced an audit of petitioners’ 2018 and 2019 returns.

5. During the course of the audit, the Division sent an information documents request (IDR) to petitioners and petitioners provided a response.

6. Based on information obtained during the audit, the Division determined that petitioners remained domiciled in New York State during the years 2018 and 2019.

7. The Division issued to petitioners a notice of deficiency (notice), assessment identification number L-053133063, dated April 13, 2021, asserting tax in the amount of \$59,648.00 plus penalty and interest, for the years 2018 and 2019.

8. Petitioners requested a conciliation conference with the Bureau of Conciliation and Mediation Services (BCMS) in protest of the notice. BCMS issued a conciliation order, CMS No. 000329696, dated May 13, 2022, sustaining the amount of tax determined due by the Division and cancelling the penalty.

9. On July 27, 2022, petitioners timely filed a petition with the Division of Tax Appeals in protest of the conciliation order.

10. Mr. Hoff received a B.A. degree from Colgate University in Hamilton, New York, and moved to Rochester, New York, from Chicago in 1979. He lived in Rochester, New York, then in Pittsford, New York and then moved to Canandaigua, New York, in 2006.

11. Mrs. Ocorr-Hoff worked and lived in New York since 1978.

12. Petitioners were married in July 2008.

13. Petitioners each have adult children from previous marriages. Mr. Hoff has a son who is married, has a child and lives in China; another son who is married, has a child and lives in Illinois and a daughter who lives in Pittsford, New York. Mrs. Ocorr-Hoff has an adult son who lives in Pittsford, New York and an adult daughter who lives in Brooklyn, New York. Mrs. Ocorr-Hoff has elderly parents who live in New York.

14. Petitioners owned and sold a couple of homes in New York after they met. They purchased a home together on Poplar Beach, Canandaigua, New York (the Poplar Beach home), in February 2011. Prior to their purchase of the Poplar Beach home, petitioners resided in Honeoye Falls, New York. Mr. Hoff previously owned a home in Pittsford, New York, which he sold in 2006. He also owned, and then sold, another home on Canandaigua Lake, New York and Mrs. Ocorr-Hoff owned and then sold a home in Mendon, New York.

15. Mrs. Ocorr-Hoff testified that when they bought the Poplar Beach home in 2011, their plan was to have it “as our main property until there was a time that [Mr. Hoff] could step away from work[.]”

16. Petitioners continued to own and maintain the Poplar Beach home during and subsequent to the years at issue.

17. The Poplar Beach home is a lakefront house with approximately 2,144 square feet and has three bedrooms, two and a half baths, central air conditioning and hot air heat. In 2022, it had an assessed value of \$907,000.00. Mr. Hoff testified that the Poplar Beach home was their primary residence when they purchased their home in Florida.

18. Petitioners reported income from rental real estate on schedule E, supplemental income and loss, attached to their 2018 and 2019 federal income tax returns, from the following New York properties: a “self-rental” property in Farmington, New York; a commercial property at 81 Victor Heights Pkwy, Victor, New York and a single-family residence on Sandy Beach Road in Canandaigua, New York.

19. Mr. Hoff testified that in 2014, petitioners wanted to establish a second home in a warm climate. They considered many different locations and thought Florida would be the last place they would choose. However, when they visited some friends and Mrs. Ocorr-Hoff’s parents, who had been renting a place in Florida, petitioners “fell in love with the Naples area.”

20. Petitioners purchased a condominium located on Gulf Shore Boulevard in Naples, Florida on July 8, 2014 for \$935,000.00 (the Naples condo). The Naples condo is approximately 2,560 square feet, has three bedrooms, three bathrooms, a large living area, storage and common areas, including a beach front pool.

21. Petitioners executed a fixed/adjustable rate note (note), dated July 8, 2014, with Fifth Third Mortgage Company for their purchase of the Naples condo. Attached to the note is a second home rider signed by petitioners. The second home rider states that petitioners shall occupy and only use the Naples condo as their second home.

22. Petitioners did not move their furniture from New York to the Naples condo. Rather, they furnished the Naples condo when they acquired it in 2014 with furniture from stores in Naples, Florida. Petitioners also purchased a baby grand piano in Naples, Florida for the Naples condo.

23. Petitioners moved their ski equipment and Waterford crystal from the Poplar Beach home to the Naples condo. The Waterford crystal was received by petitioners from their parents

over the years and had sentimental value to them. The Waterford crystal was shipped to the Florida residence by UPS in 2014.

24. Petitioners made improvements to the Naples condo after its purchase, including the installation of hurricane rated windows in 2018, at a cost in excess of \$200,000.00.

25. In 2020, the Naples condo had an estimated value of \$1,343,800.00 and, in 2023, the value was listed on a Collier County property appraiser tax roll as \$1,638,250.00.

26. Mr. Hoff testified that after they purchased the Naples condo, they began spending more and more time there every year.

27. Based on a review of petitioners' Verizon statements obtained during the audit, the Division determined that petitioners spent 186 days in New York, 131 days in Florida and 48 days in other locations in 2018. For 2019, the Division determined that petitioners spent 164 days in New York, 153.5 days in Florida and 47.5 days in other locations. Based on a review of the information obtained during the audit, the Division determined that petitioners spent a majority of their time in Florida during the winter months and a majority of their time in New York during the summer months for the years at issue.

The Division's tally of daily locations based on petitioners' Verizon statements indicates the following number of days spent in Florida, New York and other locations:

	Florida	New York <sup>1</sup>	Other
Jan 2018	31		
Feb 2018	23	4	1
March 2018	31		
April 2018	15	5	10
May 2018	5	25	1
June 2018		30	
July 2018		24	7
Aug 2018		29	2

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<sup>1</sup> A partial day in New York is counted as a New York day.

Sept 2018		26	4
Oct 2018 <sup>2</sup>	11	18	2
Nov 2018	4	16	10
Dec 2018	12	18	1
Jan 2019	26	4	1
Feb 2019	20		8
March 2019	25		6
April 2019	30		
May 2019	12	19	
June 2019		30	
July 2019		31	
Aug 2019	10	19	2
Sept 2019	2	20	8
Oct 2019	3	26	2
Nov 2019	16	13	1
Dec 2019	11	8	12

28. Mr. Hoff testified that the Division’s breakdown of time spent in New York, Florida and other locations (*see* finding of fact 27) is “relatively close” to the numbers he calculated based on his review of his calendars.

29. The affidavit of Michael D. Agostinelli, CPA, introduced by petitioners, states that “[f]rom 2014 through 2018, the Taxpayer had a pattern of staying in Florida during the months of January, February, March, part of April, October, November and December, such that by 2019 the Taxpayer only spent 164 days in New York.”

30. Petitioners spent Christmas holidays in New York during the years at issue. They spent Thanksgiving in New York in 2018 and in Florida in 2019.

31. In 2018 and 2019, Mr. Hoff was president of and held a 100% interest in an S corporation, Hoff Associates Mfg. Reps., Inc. DBA Global Point Technology (GPT), located in

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<sup>2</sup> Petitioners reported on their 2018 return that they moved out of New York on October 29, 2018 (*see* finding of fact 1). They spent October 30 and 31, 2018, in Florida according to the Division’s Day count. From October 30, 2018, to December 31, 2018, petitioners spent a total of 18 days in Florida, 34 days in New York, and 11 days in other locations.

Farmington, New York. He acquired ownership of GPT in 1989. GPT functions as the distribution, accounting and customer service location for their customer base. GPT imports technology components made overseas and ships them to customers located throughout the country and internationally.

32. In response to the Division's question 10 of the IDR, Mr. Hoff stated that "[m]y sole role with the company is Sales. I do not involve myself with any of the day-to-day operations. I have never had any role other than sales with GPT." Mr. Hoff further stated in response to question 10 that "[w]hether I reside in New York for the summer or Florida for a majority of the non-summer months, my role with the company remains in sales on a part time basis."

33. Petitioners' 2018 and 2019 forms 1040, U.S. Individual Income Tax Return, report Mr. Hoff's occupations as "MGR/Salesman."

34. Mr. Hoff received wage income from GPT in 2017, 2018 and 2019. The 2017 and 2018 forms W-2, wage and tax statements, Mr. Hoff received from GPT report his address in Canandaigua, New York. The 2019 form W-2 reports his address in Naples, Florida. The forms W-2 show that Mr. Hoff received wage income from GPT in the amount of \$270,330.92 in 2017, \$262,282.92 in 2018 and \$127,264.23 in 2019.

35. Mr. Hoff testified that in 2016 and 2017, petitioners started talking about eventually moving their primary residence to Florida, and "it was really 2018 before we could, our lives were such that we could really make that permanent move." According to Mr. Hoff, their transition to Florida was part of his retirement plan; petitioners wanted to maximize their time in Florida and he wanted to slow down at work and come up with an "exit strategy" from GPT and turn the business over to others or sell it.



36. Mr. Hoff's initial "exit strategy" plan from GPT was to transfer the business to his son, Tyler, who worked in the financial industry in Chicago, Illinois. Petitioners introduced into the record an outline created by Mr. Hoff for this plan, indicating that in August 2018, he would cut his salary to \$250,000.00 a year, plus 70% of profit, and Tyler would receive \$150,000.00 a year, plus 30% of profit, plus commission plan and in August 2020, Mr. Hoff would go part time, receive a cash payout of \$500,000.00 and receive \$125,000.00 a year, plus 15% of GPT's profit for 10 years. The outline further stated that starting in August 2020, Tyler would receive a salary of \$300,000.00 a year, plus 51% of the GPT's profit and Mr. Hoff's other two children would each receive 17% of the business' profit.

37. The plan to transfer GPT to Mr. Hoff's son was terminated in or around June 2018 due to tariffs imposed by the United States on products from China. GPT had many products on the tariff list and Mr. Hoff was concerned about its impact on the business and did not want his son to take that risk.

38. Correspondence from petitioners' trusts and estates attorney, Karen Schaefer, dated December 15, 2020, describes discussions she had with Mr. Hoff regarding his business succession planning concerns. The correspondence states, in part, that:

"[I]n 2018 to early 2019 we worked on business succession planning for Global Point Technology, as well as estate planning for him and his wife.

\* \* \*

John was interested in developing an exit strategy for the business as well as a retirement plan for himself.

\* \* \*

My discussions with John about implementing a plan for the transition of ownership in the business were terminated when the US imposed significant import tariffs on products from China and John had the opportunity to assess the financial impact of those tariffs on the company. He decided to put the

discussions and implementation of a business succession plan for the company on hold until he could further determine the best course forward. He did not want to ask his son Tyler to give up his work in Chicago to join the company with the instability arising from the China tariffs.”

39. After the plan to transfer ownership of GPT to his son was discontinued, Mr. Hoff moved on to “plan B” of his exit strategy, which was to diminish his role at GPT and transfer responsibilities to others in the company. He also began pursuing “plan C,” which was to investigate opportunities to sell GPT to third parties.

40. As part of plan B, Mr. Hoff transferred some of his responsibilities to Ernie Day, General Manager of GPT. By 2019, Mr. Day assumed responsibility for Mr. Hoff’s previous customers. Petitioners introduced into the record the affidavit of Mr. Day, sworn to on January 17, 2024. Mr. Day started working for GPT in 2002 as Director of Engineering and was promoted a year later to Operations Manager. In 2018, he was promoted to the position of General Manager. Mr. Day stated that “[o]ver the last 13 to 14 years of working for [GPT], I ran the Company. I handled every aspect of the business and every Company customer[.]” As part of Mr. Hoff’s reduction of responsibilities, management of the inside sales team was transferred to Mr. Day. Mr. Hoff also delegated major customer sales accounts to others at GPT during the transition process.

41. Mr. Hoff testified that, in 2018, when he was in New York, he would go into the GPT office “most every day.”

42. Mr. Hoff testified that, in 2019, he initiated “probably zero” meetings and, when he was in Florida, he would seldomly make telephone calls to people from GPT.

43. James Kramer, an account manager at GPT, testified that Mr. Hoff remained involved with GPT in 2018 and 2019, but in 2019 his interactions were limited. At the end of 2018 or beginning of 2019, Mr. Kramer became involved with the Hilliard account, which was one of the

top ten or fifteen customers at the time. Later in 2019, Mr. Kramer's interactions with Mr. Hoff were limited, but Mr. Hoff was still about 10% to 15% involved in the Hilliard account, which then became one of the top five to ten customers of GPT. Also in 2019, 99% of oversight of GPT's factory in China, C.S.T., was transferred to Mr. Kramer.

44. Rhonda Hutchinson was hired in July 2019 as Comptroller of GPT to support Mr. Day in his general manager role as part of the transition. Ms. Hutchinson's duties included, among other things, preparing all financial statements, establishing and maintaining budgetary controls, directing and performing accounts receivable, accounts payable and general accounting functions, managing and processing cash receipts, cash disbursements and making appropriate cash management decisions, ensuring tax compliance, overseeing and approving payroll and managing human resource functions.

45. On October 24, 2019, Mr. Hoff received an unsolicited communication on behalf of Premier Precision Components (Premier) that expressed interest in buying GPT. Mr. Hoff entered into discussions in Florida with the owner of Premier, which included sharing financial information and entering into a nondisclosure agreement (NDA) in January 2020. Mr. Hoff signed the NDA as "President" of GPT. Ultimately, a deal with Premier did not come to fruition.

46. Mr. Hoff consummated a deal to sell GPT to Trident Motion Technologies (Trident) on or about November 30, 2021.<sup>3</sup> A press release regarding the sale that was introduced into the record identifies Mr. Hoff as president of GPT.

47. Mr. Hoff agreed to remain with the company for two years, until December 31, 2023, as part of the purchase agreement with Trident, for purposes of transitional change. Mr. Hoff

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<sup>3</sup> Mr. Hoff testified that the name of the company that acquired GPT was H.T.I. However, the documentation in evidence reflects that the company's name is Trident Motion Technologies, which was formed by combining HTI Technology, American Control Electronics, and Klauber Machine & Gear.

testified that his responsibilities and active participation in the company did not increase as a result of the acquisition and that Trident did not want him to be present every week and was understanding about his reluctance to travel from Florida.

48. Petitioners reported the Naples condo as their home address on their 2018 and 2019 federal returns.

49. In response to the Division's question 6 of the IDR, petitioners stated that Mrs. Ocorr-Hoff worked in graphic design. Petitioners stated that when they moved to Canandaigua, New York, Mrs. Ocorr-Hoff opened a DBA in Ontario County to work part time as a freelance graphic artist and stated further "that [the Ontario County] DBA was closed when [she] opened a Florida DBA in 2018 where [she] continue[d] to work part time in the same capacity." Petitioners did not present any documentary evidence or testimony that Mrs. Ocorr-Hoff operated a Florida business. Attached to petitioners' 2018 and 2019 federal returns were schedules C, profit or loss from business, for Mrs. Ocorr-Hoff. The schedules C for 2018 and 2019 list the principal business as "commercial artist," business name as "The Mix," and business address as 300 State St, Rochester, New York. The 2018 schedule C reports net profit of \$41,611.00, consisting of gross receipts of \$50,000.00, less expenses of \$8,389.00. The 2019 schedule C reports net profit of \$12,495.00, consisting of gross receipts of \$22,962.00, less expenses of \$10,467.00.

50. Petitioners each signed a Florida Declaration of Domicile on October 29, 2018, declaring that they were domiciled in the State of Florida.

51. Petitioners registered to vote in Collier County, Florida on April 25, 2018.

52. Petitioners obtained Florida drivers' licenses on April 25, 2018.

53. Petitioners introduced into the record the following documentation regarding their vehicles: a Florida vehicle registration, issued July 17, 2019, for a 2016 Chevy Tahoe; Florida insurance cards for a 2013 BMW (effective October 27, 2021), a 2016 Chevy Tahoe (effective April 25, 2020 and October 21, 2021) and a 2016 Mercedes (effective October 27, 2021) and a New York insurance card for a 1989 Mercedes (effective February 12, 2022).

54. Petitioners introduced into the record a Florida hunting and fishing license for Mr. Hoff dated September 29, 2020. Mr. Hoff testified that he “probably” had an earlier one “when [he] first moved down there.”

55. On May 10, 2019, petitioners each signed revocable trusts that list their Florida address and are administered, construed and governed by the laws of Florida.

56. On September 13, 2019, petitioners each executed a new Last Will and Testament subject to Florida estate laws.

57. Petitioners continue to be long time members (since 1979) of Oak Hill Country Club in Rochester, New York. Mr. Hoff testified that they changed their status at Oak Hill Country Club to “global” membership. As a result of the status change, petitioners gave up their voting rights and were limited to 20 rounds of golf per year at that location. The record is unclear as to when petitioners changed their status at Oak Hill Country Club, but based on correspondence from petitioners’ accountant, Jennifer R. Jones, CPA, it was after 2020. According to the correspondence from Ms. Jones to the Division, dated October 13, 2020, “John is considered a 25-year senior at Oak Hill Country Club. He was planning on changing his status but if he changed his status at this country club, his dues would increase. For 2020, his monthly dues under the 25-year senior membership are \$435. If he changed his membership to Global II, his dues would increase to \$499.”

58. Petitioners continued to be members of the Canandaigua Country Club in Canandaigua, New York, during and subsequent to the years at issue.

59. Petitioners joined The Country Club of Naples, Florida in November or December 2018.

60. Petitioners became involved with the Naples condo board during the years at issue. Minutes, from the Allegro Condominium Association Finance Committee, dated June 4, 2018, list Mr. Hoff as Committee Chairman. Mrs. Ocorr-Hoff was the secretary of the board of directors and chair of the social and covenants committees for the Naples condo association in 2019.

61. Mr. Hoff testified that petitioners established checking accounts and a credit card with Florida banks, but did not state when those accounts were opened. Petitioners did not provide documentary evidence of Florida bank accounts. Similarly, the affidavit of Mr. Agostinelli states that petitioners “opened several bank accounts in Florida and closed their New York bank accounts” and “opened a safety deposit box in Florida and closed their safety deposit box in New York,” but does not state when any New York bank accounts or safe deposit boxes were closed or when Florida accounts or safe deposit boxes were opened and provided no documentary evidence in support.

62. Petitioners’ 2018 and 2019 federal income tax returns show interest from Canandaigua National Bank and Trust on schedule B, interest and ordinary dividends.

63. Petitioners’ form 1099 composite from their Charles Schwab brokerage account, dated February 8, 2019, lists their address in Naples, Florida.

64. Petitioners used New York accountants during the years at issue.

65. Petitioners used attorneys admitted to practice in both New York and Florida during the years at issue.

66. Petitioners had medical care providers in both New York and Florida. Petitioners obtained medical care in both New York and Florida during the tax years at issue. Medical care obtained by petitioner Kathleen Ocorr-Hoff on October 17, 2019 in New York resulted in a period of recuperation that, on the advice of her physician, prevented her from traveling for approximately one month, until November 14, 2019. In addition to travel limitations, during that time petitioner Kathleen Ocorr-Hoff had follow up appointments in New York on November 5 and November 12, 2019. Two days after that appointment, on November 14, petitioners flew to Florida. Mrs. Ocorr-Hoff testified that her doctor was very surprised that she was leaving New York at that time, and that despite being in terrible pain, she just “want[ed] to get home to Florida.”

#### ***THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE***

The Administrative Law Judge determined that while petitioners had the intention to change their domicile to Florida at some point, their change of lifestyle happened gradually such that they have not clearly established to have done so as of October 29, 2018. Accordingly, the Administrative Law Judge concluded that petitioners have not met their burden of proof to show, that they changed their domicile for purposes of the Tax Law for the years at issue, or that the Division’s notice was erroneous. The Administrative Law Judge denied the petition and sustained the notice of deficiency.

#### ***ARGUMENTS ON EXCEPTION***

Petitioners assert that the conclusion of the Administrative Law Judge was incorrect and

that evidence clearly established a change of domicile as of October 29, 2018, coinciding with their filing of a certificate of domicile with the State of Florida. The Division argues that the determination of the Administrative Law Judge was correct and that the facts do not support a finding that petitioners completed a change of domicile in either 2018 or 2019.

### ***OPINION***

It has been well-established both by this Tribunal and the courts of this state, that notices issued by the Division of Taxation are presumed correct (*see e.g. Matter of Clifton*, Tax Appeals Tribunal, January 4, 2018). Parties challenging such notices bear the burden of proving them to be incorrect and without a rational basis (*see Matter of Leogrande v Tax Appeals Trib.*, 187 AD2d 768, 769 [3d Dept 1992], *lv denied* 81 NY2d 704 [1993]). It is well-established that the party claiming a change of domicile is obligated to prove it by “clear and convincing evidence” (*Matter of Bodfish v Gallman*, 50 AD2d 457 [3d Dept 1976]). Every case involving proof of domicile rests upon its specific facts (*Matter of Newcomb*, 192 NY 238 [1908]). Where a party considers to be its domicile is a question of subjective intent (*Matter of Simon*, Tax Appeals Tribunal, March 2, 1989). However, proof of that intent is derived from the examination of objective criteria and other verifiable information (*Matter of Ingle*, Tax Appeals Tribunal, December 1, 2011, *confirmed* 110 AD3d 1392 [3d Dept 2013]). Individuals are free to establish a domicile for whatever reason they choose (*Matter of Newcomb*), and minimizing tax exposure does not negate that choice (*Gregory v Helvering*, 293 US 465 [1935]). Still, for purposes of the Tax Law, proof of the change must be clear to manifest the intention to permanently establish a new domicile at a specific point in time. We start our analysis with the governing statute. Tax Law § 605 (b) states that the definition of a New York State resident individual for income tax purposes is someone:



“(A) who is domiciled in this state, unless (i) the taxpayer maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this state . . . , or (B) who 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, whether or not domiciled in this state for any portion of the taxable year, unless such individual is in active service in the armed forces of the United States.”

Though the term “domicile” is not set forth in statute, the Division’s personal income tax regulations 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 individual 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 indicate that such individual did this merely to escape taxation . . . (4) A person can have only one domicile. If a 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 legal definitions as a background, this Tribunal is charged with deciding whether the Administrative Law Judge incorrectly determined that petitioners have not demonstrated that they ended their domicile in New York and established a new domicile in Florida as of October 29, 2018. Establishing a new domicile is only effected when a taxpayer establishes that they have abandoned their former domicile (*see Matter of Bodfish v Gallman*, 50 AD2d at 458; 20 NYCRR 105.20 [d] [2]).

The standard of review necessitates an examination of objective factors to determine a taxpayer's subjective intent to maintain or change domicile. These categories are generally, home, time, business ties, social ties, family ties and other evidence (*see e.g. Matter of Wiesen*, Tax Appeals Tribunal, September 13, 2018), with no single factor being dispositive.

In examining each of the factors, we agree that while petitioners did intend at some point to change their domicile from New York to Florida, the manifestation of that intention is not evident during the period in issue. The record before us reflects that petitioners' homes in both places were permanent, full-time residences. Indeed, prior to the years in issue, petitioners do not dispute that their New York residence was their domicile. In examining the home and time factors, nothing about the New York residence changed to make it less suitable as such, and, during the years in issue, petitioners continued to spend time in both residences, significantly, with more time in the New York residence (*Matter of Angelico*, Tax Appeals Tribunal, March 31, 1994, citing 20 NYCRR former 102.2 [d]; *see also* 20 NYCRR 105.20 [d] [4]). Thus, petitioners have failed to demonstrate that the determination of the Division was without a rational basis regarding the factors of "home" and "time."

We move now to the questions of associations with one place or another. First, petitioners point to their active participation on the board of their Florida homeowner's association. Petitioners did not establish, however, whether that was a function of their home ownership or whether membership was restricted to full-time residents. Further, while petitioner John Hoff made it perfectly and indisputably clear that he was transitioning his role with his New York business for several years, for several reasons, some of which appear to be outside the control of petitioners, he was ultimately unsuccessful in doing so during the two years in issue. Eventually, and notably after the audit period, petitioner John Hoff did sell his New York

business, and leading up to that point took steps to reduce his role in its day-to-day operations. However, in 2018 and 2019 he continued to collect a significant salary from the business, maintained the business's accounts and, in 2019, continued to travel on behalf of the company. Likewise, although petitioner Kathleen Ocorr-Hoff indicated that she started a business in Florida, there was no proof offered to that end. Instead, tax returns indicate that petitioner Kathleen Ocorr-Hoff continued her business in New York for each of the years in issue. It is noted that petitioners themselves offered statements that their goal was to transition to Florida when business ties in New York so permitted (*see* finding of fact 15). Though it remains undisputed that petitioners were following a process, it was not irrational or without basis for the Division to determine that petitioners continued to maintain strong ties to their businesses in New York.

The same is true of their social ties. While it is so that petitioners joined a country club in Florida sometime in 2018, they also continued full memberships in not one, but two country clubs in New York. Again, even though it appears that sometime after the audit period, petitioner John Hoff amended his membership in one of the clubs (finding of fact 57), that is not relevant to the period in issue. Further, there is no evidence whatsoever that petitioners changed their membership in the other New York country club in which they were members (*see* finding of fact 58). Membership in a Florida country club has been dismissed as a factor to establish a change of domicile, particularly when petitioners continued to be members of New York country clubs (*Matter of Wiesen*).

That brings us to the last factor to be considered, whether petitioners manifested their intention to change their domicile through other evidence. Petitioners offered that they registered to vote and changed their driver licenses to the State of Florida on April 25, 2018 and

that in October of 2018, they filed a statement of domicile with the State of Florida. Again, precedent can guide us. So-called “formal declarations” of domicile, such as voter registration or motor vehicle registration, have lost their importance in recent years as courts have recognized their self-serving nature, while “informal declarations” and acts of the person have been given greater recognition in resolving the question of domicile” (*Wilke v Wilke* 73 AD2d 915, 917 [2d Dept 1980]). Notably, even the sworn documents filed with the State of Florida, as formal declarations, are less significant than informal acts demonstrating an individual’s general habit of life (*see Matter of Trowbridge*, 266 NY 283 [1935]; *Matter of Silverman*, Tax Appeals Tribunal, June 8, 1989). Had other manifestations, such as a comparison of homes, business and social ties and the amount of time spent in each place been more consistent with a change of domicile, these offers of documentary proof might be more persuasive. Instead, they tend to only show the undisputed trend toward eventually relocating to Florida, while not negating the indicia that petitioners had yet to abandon New York as the place to which they intended to return, (i.e., their domicile).

Petitioners contend that motor vehicles registered and insured in Florida, that petitioner John Hoff obtaining a Florida hunting and fishing license, that petitioners maintained Florida bank accounts, and that petitioner Kathleen Ocorr-Hoff’s declaration that she started a business in Florida are proof that they effectively changed their domicile from New York to Florida. We disagree that any of these factors are persuasive here, as each is unsubstantiated, not established to have occurred during the period in issue or contrary to the record. For example, petitioner John Hoff offered a Florida hunting and fishing license that was issued on September 29, 2020 (*see* finding of fact 54). Proof of Florida registration for only one of petitioners’ four cars was within the audit period and that was in July of 2019, while two others showed dates in 2020 and

2021, and another showed New York insurance as late as February of 2022 (*see* finding of fact 53). Petitioners' New York tax returns reflect that petitioner Kathleen Ocorr-Hoff continued to receive income from her New York business and did not reflect any income derived from the Florida business she asserted to have established (*see* finding of fact 49). Those same tax returns showed interest received from a New York bank and Charles Schwab brokerage account, but did not show any information regarding a bank in Florida (*see* finding of fact 60).

Additionally, petitioners assert that the relocation of personal effects, particularly items of personal or sentimental value should be considered. They point to the shipping of their ski equipment and Waterford crystal received from petitioners' parents over the years as proof that Florida, and not New York, was their domicile. It is noted that petitioners acknowledged that the Waterford crystal was shipped to the Florida home in 2014, fully four years prior to the period in question, and no explanation has been offered regarding why, when or the significance of moving ski equipment to Florida (*see* finding of fact 23).

Petitioners have failed to establish by clear and convincing evidence that any of the six factors generally considered to determine a change of domicile have been met. Their property in New York was not a vacation cottage, but a substantial property which petitioners used as their "main home" for several years prior to the period in issue. The time spent in each location followed similar patterns as in previous years and, in fact, for the years in issue, petitioners spent more time in New York than in Florida. Both petitioner John Hoff and petitioner Kathleen Ocorr-Hoff continued to have substantial ties to their New York businesses for each of the years in issue. While they also joined a Florida country club, petitioners maintained full membership in two country clubs in New York, changing membership in just one of them *after* the period in

question. Petitioners also spent three of four significant holidays in their New York home throughout 2018 and 2019.

Other documentation offered, a Declaration of Florida Domicile, Florida voter registration, and Florida driver licenses are not sufficient in the absence of other factors establishing domicile. The significance of securing those pieces of documentation is further diminished in view of other changes that took place a year or more later. For example, the creation of revocable trusts under Florida law and the execution of new Last Wills and Testaments, subject to Florida law, took place on May 10, 2019 and September 13, 2019, respectively (*see* finding of facts 55 and 56). While other indicia may have occurred to establish a change of domicile, petitioners chose to offer proof of those changes occurring after the period in issue.

The Division did not dispute that petitioners intended to change their domicile at some point, merely that petitioners had not sufficiently manifested that intent as of the end of October 2018. The Administrative Law Judge also concluded that, for the years in issue, petitioners failed to establish that they accomplished that change. We agree.

Petitioners have thus failed to establish any of the necessary points and have, in every respect, failed to meet their burden of presenting clear and convincing evidence that the notice of deficiency is erroneous or that the determination of the Administrative Law Judge is incorrect (*see Matter of Strachan*, Tax Appeals Tribunal, June 28, 2018).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of John Hoff and Kathleen Ocorr-Hoff is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of John Hoff and Kathleen Ocorr-Hoff is denied; and

4. The notice of deficiency dated April 13, 2021 is sustained.

DATED: Albany, New York  
October 9, 2025

/s/ Jonathan S. Kaiman  
Jonathan S. Kaiman  
President

/s/ Cynthia M. Monaco  
Cynthia M. Monaco  
Commissioner

/s/ Kevin A. Cahill  
Kevin A. Cahill  
Commissioner