

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
GREGORY BLATT : DETERMINATION
 : DTA NO. 826504
for Redetermination of a Deficiency or for Refund of :
New York State and City Income Taxes under Article 22 :
of the Tax Law and the Administrative Code of the City :
of New York for the Years 2009 and 2010. :

Petitioner, Gregory Blatt, filed a petition 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 years 2009 and 2010.

A formal hearing was held before Donna M. Gardiner, Administrative Law Judge, in New York, New York, on April 6, 2016 at 9:15 A.M., with all briefs to be submitted by August 11, 2016, which date commenced the six-month period for issuance of this determination. Petitioner appeared by Hodgson Russ LLP (Joseph N. Endres, Esq., and Mark S. Klein, Esq., of counsel). The Division of Taxation appeared by Amanda Hiller, Esq. (Michelle Helm, Esq., of counsel).

ISSUES

I. Whether petitioner has established that he effected a change of domicile from New York to Texas and, thus, was not taxable as a domiciliary of New York for the years 2009 and 2010.

II. If not, whether petitioner established reasonable cause such that penalties can be abated.

FINDINGS OF FACT

1. Petitioner, Gregory Blatt, filed form IT-203 (New York State Nonresident and Part-Year Resident Income Tax Return) for each of the years 2009 and 2010.

2. The Division of Taxation (Division) sent a letter to petitioner, dated September 26, 2011, informing him that his personal income tax returns for the years 2009 and 2010 (the audit period) were selected for audit.

3. Based on its audit findings that petitioner remained a domiciliary of New York throughout the audit period, the Division issued a Notice of Deficiency, No. L-039500771, dated June 4, 2013, asserting personal income tax due of \$430,065.00, plus interest and penalties, for the years 2009 and 2010.

4. During the course of the audit, the Division did not ask to interview petitioner, nor did petitioner's representatives offer to have petitioner meet with the Division.

5. During the course of the audit, the Division noted various inaccuracies or omissions in the tax returns filed by petitioner. These issues with the returns led the Division to impose penalties on petitioner. At the hearing, Mr. Blatt introduced an affidavit by his accountant in which she affirms that the accounting firm takes full responsibility for each of these inaccuracies and omissions. Petitioner provided his accountants with detailed and complete information necessary to properly complete the returns. Petitioner paid the corresponding tax and interest liability that resulted from these errors.

6. Petitioner was not within New York State or City for more than 183 days during either 2009 and 2010.

7. Petitioner was domiciled in New York City prior to July 2009.

8. Petitioner is originally from Massachusetts. He was raised outside of Boston, in the town of Weston.

9. Petitioner first moved to New York City in August of 1992 to attend law school.

10. During law school, petitioner and two roommates lived in a small rent-stabilized apartment on 83rd Street in New York City. Mr. Blatt remained in the same apartment for a total of 13 years.

11. In late 2005, petitioner was 37 years old. He decided it was time to buy a home and purchased an apartment at 377 West 11th Street in New York City for approximately \$2.4 million. It was the first real estate he ever owned and the only piece of real estate he owned during the audit period.

12. The apartment was located in a warehouse building and petitioner spent the next year and a half renovating it. This included working closely with an architect on the design and essentially gutting the property. Petitioner indicated that the apartment was his own artistic creation.

13. In 2008, roughly one year after the renovations were finished, the New York City real estate market crashed.

14. During the years 2009 and 2010, petitioner owned a car that was located in New York. It was a 2001 Saab that he had owned since 2003.

15. During the audit period, petitioner owned a boat that was located in New York, specifically, in the Hamptons, and used it while on vacation.

16. Petitioner's most cherished possessions during the audit period were his apartment and his dog.

17. Petitioner had no family in New York during the audit period.

18. In 2003, petitioner began working for InterActiveCorp (IAC) as General Counsel. IAC was a public company that owned multiple large consumer internet businesses.

19. In 2006, petitioner and IAC executed an employment agreement (2006 Employment Agreement) that had an effective date of November 21, 2006. Petitioner's title was "Executive Vice President, General Counsel & Secretary" of IAC and specified that his principal place of employment was at the company's offices located in New York City.

20. The term of his employment pursuant to the 2006 Employment Agreement was one year, however, it would automatically be renewed for successive one-year periods in perpetuity, unless either IAC or petitioner elected otherwise.

21. As Executive Vice President, General Counsel and Secretary of IAC, petitioner was the principal inside lawyer at IAC. He handled mergers and acquisitions, securities work, and managed a legal department of about 50 people.

22. Petitioner enjoyed his work at IAC.

23. In August of 2008, IAC underwent a significant restructuring and the company split into five pieces.

24. When the restructuring was completed, IAC was a fraction of its former size, having gone from a \$27 billion company to roughly a \$2 billion company.

25. As a result of IAC's restructuring, the scope of petitioner's job had become much smaller and less prestigious to him. Petitioner began looking for other job opportunities.

26. Petitioner began interviewing for outside jobs, including a position in Los Angeles, California.

27. In the fall of 2008, petitioner told his boss, Barry Diller (IAC's Chairman and CEO), of his reservations about continuing to work for IAC and also informed Mr. Diller that he was starting to consider other opportunities.

28. Mr. Diller was understanding but also wanted petitioner to remain with the company. Mr. Diller suggested to petitioner that he take an operating role at one of IAC's subsidiaries, Match.com (Match).

29. As of 2008, Match's growth had been flat and Mr. Diller wanted petitioner to oversee the business and determine what IAC could make of the company, i.e., whether or not to sell it.

30. The prospect of running Match was a significant change for petitioner who had always functioned as a lawyer, rather than as a business executive.

31. These events in petitioner's professional life coincided with a significant change in his personal life: toward the end of 2008, petitioner and his girlfriend, with whom he was living, ended their long-term relationship.

32. By the close of 2008, petitioner was newly single and dissatisfied with his career and was eager to begin a new chapter. He felt that he had been in New York for a long time without anything really keeping him there. At that point, for the right opportunity, petitioner was willing to leave New York.

33. By late December of 2008, petitioner agreed to take the helm at Match. This was a radical change for petitioner, both in terms of career direction and geography.

34. In February 2009, petitioner formally accepted the CEO position and began running Match.

35. The terms of petitioner's new role were formalized in a term sheet dated February 18, 2009 (Term Sheet). The parties to the Term Sheet were petitioner, IAC and Match.

36. Initially, upon becoming CEO, petitioner retained his corporate titles at IAC. Thus, the Term Sheet reflected three titles: (1) Executive Vice President of IAC, (2) member of the Office of the Chairman and (3) Chief Executive Officer of Match. However, he was no longer IAC's General Counsel or Secretary.

37. Retaining the corporate titles at IAC, in addition to being CEO of Match, was an important condition of petitioner's acceptance of his new role. Petitioner simply refused to give up his corporate position at IAC.

38. Though Match was based in Dallas, petitioner negotiated to continue to be based in New York City. He committed to spend time in Dallas; however, the Term Sheet made clear that the expectation was that his time in Dallas would be limited to between one-third and one half of his working time. In other words, petitioner negotiated for the right to be able to spend the majority of his work time in New York.

39. When petitioner took the Match job in early 2009, he had no intentions of selling or renting out his New York City apartment.

40. Effectively, petitioner took the following three actions in order to construct a comprehensive "safety net" that allowed him to explore the new job at Match without having to commit to a move to Texas: (1) he retained his corporate positions with IAC, (2) he negotiated to work principally from IAC's New York office, and (3) he maintained his New York apartment. While petitioner was open to a new location and a new career outside the law, he was not yet prepared to surrender his home in New York.

41. Since Match was headquartered in Dallas, petitioner's role as CEO required him to spend significant time there. Even so, he remained based in New York in early 2009 and traveled regularly between New York and Texas and split his time between offices in Dallas and IAC's offices in New York City.

42. On March 10, 2009, petitioner signed a one-year lease for a one-bedroom apartment in Dallas. The lease term was March 14, 2009 to March 13, 2010.

43. Petitioner leased a 2009 Porsche convertible in Texas.

44. Prior to July 2009, petitioner was reimbursed for his business travel, as well as his automobile and living expenses (including rent) in Dallas, which were required to be given to him on a nontaxable basis, and were in fact treated as ordinary business travel expenses.

45. Despite petitioner's initial hesitation over fully committing to Match and living in Dallas, he quickly fell in love with both his new position and living in Dallas.

46. Petitioner loved his job at Match. In his new management role, petitioner enjoyed being the one to make the decisions, rather than advising people on making decisions.

47. Petitioner also fell in love with the Dallas area. Petitioner determined that his preconceived stereotypes about Dallas were unfounded. Petitioner stated that he found the people were uncommonly friendly and that Dallas was very cosmopolitan. Petitioner immediately began making friends and started dating.

48. A few months into his tenure as Match's CEO, petitioner shared his assessment of the company with Mr. Diller. Petitioner reported that he saw incredible growth potential in Match and was committed to running it.

49. In May of 2009, petitioner began having specific discussions with Mr. Diller and IAC's Vice Chairman, Victor Kaufman, regarding the potential he saw in Match and his future with the company. Around that time, petitioner communicated his intent to remain with Match in Dallas to Mr. Kaufman, who then relayed the substance of their conversations to Mr. Diller by email.

50. Mr. Kaufman's email to Mr. Diller stated, in pertinent part, that:

“GBlatt is now ready to ‘further commit’ to Match in a variety of ways – which has caused him to raise certain economic issue [sic] under his employment arrangement.

GB is ready to relinquish all corporate direct reports by the end of the year; make all termination provisions relate[d] to Match alone; revisit participating in OC after the end of the year; not participate in Board meetings; and have his principal place of business be Dallas, Tx.”

Mr. Kaufman's email also described the economic impact of petitioner relinquishing his IAC title, including that (1) petitioner would no longer be entitled to receive his expense reimbursements relating to Texas on a nontaxable basis, and (2) his bonus would be based solely on his role at Match, and not on any corporate role at IAC. Under this arrangement, Mr. Kaufman estimated that petitioner's bonus would decrease by around \$600,000.00. According to the email, these reductions could be offset by a change to petitioner's stock options, in which a small portion of his options that would previously only vest if Match was taken public, would not vest with the passage of time.

51. Petitioner testified that the most important thing in his life at this point was his career. Petitioner had high hopes for the future of Match and thought it would likely go public.

52. In order to formalize this revised arrangement, IAC, Match and petitioner executed an Amended and Restated Employment Agreement with an effective date of November 6, 2009

(Match Employment Agreement). The Match Employment Agreement referenced both the 2006 Employment Agreement and the Term Sheet.

53. Under the Match Employment Agreement, petitioner had only one title: CEO of Match. This was a significant change from the Term Sheet, executed approximately eight months earlier, which included the titles of Executive Vice President of IAC and member of the Office of the Chairman (in addition to CEO).

54. The Match Employment Agreement listed petitioner's principal place of employment as Match's offices in Dallas, Texas. This, too, was a significant change from the Term Sheet, which specified that petitioner was based in New York, New York.

55. Petitioner fully embraced his transition from being a lawyer to being an executive. Following his move to Texas, petitioner ceased completing required continuing legal education courses for practicing attorneys. He also did not renew his New York State Bar membership.

56. Petitioner declined a typical relocation package for an executive, which would have required him to sell his apartment quickly and, instead, arranged for Match to pay his living expenses for three years. This meant petitioner would ultimately bear all the costs of relocation when his apartment was sold, but he would not be penalized for maintaining two apartments while he attempted to find a viable price for the sale of his apartment in a depressed market. Unlike before July 2009, when his automobile expenses and rent in Texas were treated as ordinary travel expenses, and not as income, from July 2009 forward, the value of the reimbursements was included as ordinary income for petitioner, as reflected in his form W-2, and subject to tax. Thus, petitioner paid additional tax under this arrangement.

57. Petitioner listed his New York City apartment for sale in the fall of 2009, but was prepared for it to take a while to sell given the weak state of the real estate market.

58. With the elimination of petitioner's IAC corporate titles, the new Dallas principal place of employment in the Match Employment Agreement, and the listing of his New York apartment, petitioner had eliminated the pillars of the safety net that he had so carefully constructed only months before.

59. Three of petitioner's colleagues prepared affidavits that were introduced at the hearing: one from Barry Diller; one from Mandy Ginsberg, the President of Match during the audit period; and one from Gregg Winiarski, petitioner's replacement as General Counsel at IAC. Each of these individuals affirmed to the fact that petitioner was based in Dallas and considered him to be living in Texas.

60. Petitioner initially rented an apartment at the Ashton. Although it was small, it was situated in one of the city's nicest apartment buildings, close to the trendy restaurants and night club district. As a single professional, he found this location to be ideal.

61. One of petitioner's closest friends since childhood, Steven Becker, was also living in Dallas with his family. Petitioner was the godfather of Mr. Becker's son.

62. Petitioner would often go to Mr. Becker's home and spend time with him and his family. Mr. Becker introduced petitioner to his circle of friends, and petitioner dated women in Texas, entering into two relatively serious relationships during his time there.

63. Petitioner enjoyed certain aspects of his life in Dallas, including joining and going to the gym (which he had not done in New York), experiencing the great restaurants and his ability to easily drive to places where he wanted to go.

64. In April 2009, he joined a Dallas gym and began having his prescriptions filled by Dallas pharmacies. Petitioner began using Dallas doctors, including weekly chiropractor appointments. He spent over \$10,000.00 to furnish his Dallas home between March and June. In April 2010, petitioner obtained a driver's license issued in Texas. In May 2010, he registered to vote in Texas and, then, voted there on November 2, 2010.

65. Petitioner took ski vacations in Colorado, due to its close proximity to and inexpensive direct flights from Dallas. During the winters of 2009-2010 and 2010-2011, petitioner rented a ski house in Vail, Colorado.

66. In November 2009, petitioner moved his dog to Dallas. The significance of this is reflected in an email that he sent to a friend in October 2009 in which he stated: "Dog is the final step that I haven't been able to come to grips with until now. So Big D is my new home." Petitioner's dog, which he had rescued from the ASPCA, was a large, senior dog. Petitioner believed that moving her to Texas was a serious undertaking.

67. In December 2009, petitioner changed his address online with the United States Postal Service.

68. Petitioner notified banks and credit card companies of his Dallas address. The statements for his corporate American Express and Chase accounts began to reflect the new address in late-2009. The statements for his personal American Express and Citibank checking accounts began to reflect the new address in early-2010.

69. On February 6, 2010, rather than waiting for his current lease term to expire as scheduled on March 13, 2010, petitioner entered into a one-year lease for a larger apartment in

the same building. Petitioner had not yet sold his apartment in New York and, thus, was not in a position to purchase another apartment.

70. In early-2010, petitioner received an offer to purchase his New York City apartment and the parties entered into a contract. However, that sale eventually fell through due to financing issues on the buyer's part. A second offer was made by another party and accepted by petitioner. In October 2010, after about a year on the market, the sale of petitioner's New York City apartment closed.

71. Petitioner spent a few more days within Texas during the audit period than within New York.

72. Petitioner spent an appreciable portion of the summer months in the Hamptons. He rented a house there each summer of the audit period from Memorial Day to Labor Day (as he had done for many years previously). He would spend most weekends in the Hamptons, often working in the New York office for several days in between, and would spend an extended amount of time in the Hamptons during the month of August.

73. Every year, Barry Diller takes a summer vacation where he tries to clear his head, recharge and identify a new strategy for the year ahead. In early September 2010, Mr. Diller returned from vacation and informed members of his management team that he wanted to step down as CEO of IAC, if he could find a suitable replacement. The news was shocking to petitioner and the rest of the management team since Mr. Diller was IAC's founder and had been the company's Chairman, CEO and controlling stockholder for nearly 20 years.

74. In a revealing lack of action that evidenced, inter alia, petitioner's mind set at the time that he viewed Texas as his home, he did not even consider himself a candidate for, or in any

way pursue, the CEO position. In fact, petitioner was concerned about someone new coming in and being his boss. After learning about Mr. Diller's "big idea," petitioner was skeptical it would materialize and he returned to Dallas.

75. A few weeks after learning of Mr. Diller's big idea, Jack Welch, an advisor to IAC, set up a luncheon meeting with petitioner to inform him that Mr. Diller was perplexed as to why petitioner had shown no interest in the position.

76. Petitioner was surprised to learn from Mr. Welch that Mr. Diller viewed him as a viable candidate to replace him given that petitioner had only run a business for a little less than two years. Over lunch, petitioner explained his doubts and Mr. Welch endeavored to convince him otherwise. According to Mr. Welch, Mr. Diller was impressed with how petitioner had turned Match around over the preceding year and a half and Mr. Diller believed that petitioner was the right person to take over IAC.

77. On a personal level, petitioner was extremely happy with the life he had built in Dallas since moving there. He was developing strong social ties in Dallas and was exceedingly pleased with his current situation. He did not want to throw away the two years of social foundation that he had established in Dallas.

78. On the professional side, petitioner questioned whether he would enjoy his work as CEO of IAC, which he knew would be fundamentally different from running Match. As CEO of Match, petitioner had a great deal of autonomy, which was one of the things that he most enjoyed about the position. He knew that as CEO of IAC, he would essentially run the company in partnership with Mr. Diller, who was by no means stepping back from the company and would remain his boss. Having worked with Mr. Diller for many years, petitioner believed that despite

the change in positions, it would be difficult for Mr. Diller to relinquish control and petitioner feared that the position could be mired in conflict.

79. Petitioner shared his concerns with Mr. Diller, and the two spent considerable time over the next few months discussing the prospect and terms of petitioner running IAC.

80. In late 2010, the possibility of the IAC CEO position was becoming more solid. Petitioner decided to rent a small, roughly 700 to 800 square foot, apartment in New York City as a hotel substitute while the details of the CEO position were being sorted out. He was in the final stages of selling his New York apartment at that point. He rented this apartment at 666 Greenwich Street for just a few short months before giving it up and petitioner testified that he would not have rented the apartment were it not for the IAC opportunity.

81. The affidavits of Barry Diller, Mandy Ginsberg, and Gregg Winiarski collectively affirm that the creation of the CEO job at IAC, as well as it being offered to petitioner, were completely unexpected.

82. Ultimately, petitioner set his reservations aside and accepted the IAC CEO position. He did so, in part, based on Mr. Diller's agreement that petitioner would have no geographic restrictions in his employment agreement that would require him to work out of IAC's New York office. Petitioner made his intentions clear to Mr. Diller that he wanted to retain Dallas as his home base. Match would continue to be IAC's most important business, and petitioner did not intend to replace himself as CEO of Match. In other words, a large part of his work as CEO of IAC would be continuing to run Match, which would remain based in Dallas. Petitioner also thought that geographic distance would help avoid the conflict with Mr. Diller that he feared and

afford him additional autonomy as he stepped into his new role. Mr. Diller supported petitioner's effort to base himself in Dallas while taking the IAC CEO job.

83. On December 22, 2010, petitioner and IAC executed an Employment Agreement with an effective date of December 1, 2010 (IAC Employment Agreement).

84. The IAC Employment Agreement stated that petitioner would have three offices: at the Company's headquarters in New York, at the office of Match.com in Dallas, TX, and at the Company's office in Los Angeles, CA.

85. Petitioner initially attempted to run IAC from Dallas, just as he intended. In an affidavit, Mr. Diller affirms that petitioner's intent at the time was to try to do his new job from his home base in Dallas, though it was understood it would require more frequent travel to New York.

86. Petitioner took actions consistent with his intent to remain in Dallas. He did not replace himself as CEO of Match and he continued to run the company from Dallas.

87. In January 2011, the registration was due to expire on the boat that petitioner owned in New York. He renewed the registration using his Dallas address.

88. In February 2011, petitioner renewed the lease for his Dallas apartment for another one-year term despite the fact that the lease would otherwise automatically renew on a month-to-month basis.

89. In time, petitioner determined that jointly running IAC with Mr. Diller created problems when he spent too much time away from the New York headquarters. By mid-2011, petitioner realized that he could not adequately run IAC from Dallas.

90. Petitioner ultimately moved back to New York City in 2011 and, by that summer, he was working primarily from IAC's offices in New York City, although he continued to travel to Dallas periodically.

91. On May 16, 2011, petitioner used the proceeds from his New York City apartment sale to purchase a house in the Hamptons. While petitioner now had the proceeds from his apartment sale to use in connection with a real estate purchase, his experience with having to sell his New York apartment at a loss far sooner than he had anticipated soured him on the idea of purchasing his primary residence, given what he now took to be a fair amount of unpredictability in his life. Accordingly, he opted to purchase a vacation home instead, in a location that he had been able to frequent both from New York and Texas, confident that it could also accommodate the family he might have one day. He rented the house to third parties several times thereafter and in fact, never purchased a primary residence until August of 2015.

Petitioner submitted 114 proposed findings of fact which have been substantially incorporated, summarized and renumbered where necessary except for facts 3, 4, 5, 12, 13, 14, 18, 56, 66, 73, 74, 75, 76, 80, 81 and 82 which were clarified to more accurately reflect the record and facts 57, 85 and 108 which were deleted as unsupported by the record. Proposed finding of fact 114 was deleted as irrelevant. Proposed findings of fact 83, 84, 87, 88, 100 and 101 involved detailed information regarding days spent within and without both Texas and New York as well as full days and travel days. Generally speaking, it is determined that the time spent in these two locations were generally the same with perhaps a few more days spent within Texas. The exact locations and characterization of days as travel days versus full day counts were not

necessary for a resolution of this matter since statutory residency is not an issue before me. Thus, the detailed day counts proposed in the facts have not been adopted herein.

CONCLUSIONS OF LAW

A. Tax Law § 605(b)(1)(A) and (B) and New York City Administrative Code § 11-1705(b)(1)(A) and (B) set forth the definition of a New York State and New York City resident individual for income tax purposes.

A resident individual means an individual:

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

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

B. As set forth above, there are two bases upon which a taxpayer may be subjected to tax as a resident of New York State or city, namely (A) the domicile basis or (B) the statutory residence basis, i.e., the maintenance of a permanent place of abode in the state or city and physical presence in the state or city on more than 183 days during a given taxable year. This case involves the sole issue of domicile.

C. There is no dispute that the New York apartment was a permanent place of abode. Furthermore, there is no dispute that petitioner spent more than 30 days within New York during each of the years at issue. Therefore, this matter devolves to whether petitioner has established that he gave up his domicile in New York City and effected a change to Dallas, Texas.

The Division's regulations define "domicile," at 20 NYCRR 105.20(d), in relevant part, as follows:

(1) Domicile, in general, is the place which an individual intends to be such individual's permanent home - - the place to which such individual intends to return whenever such individual may be absent.

(2) A domicile once established continues until the person in question moves to a new location with the bona fide intention of making such individual's fixed and permanent home there. No change of domicile results from a removal to a new location if the intention is to remain there only for a limited time, this rule applies even though the individual may have sold or disposed of such individual's former home. The burden is upon any person asserting a change of domicile to show that the necessary intention existed. In determining an individual's intention in this regard, such individual's declarations will be given due weight, but they will not be conclusive if they are contradicted by such individual's conduct. The fact that a person registers and votes in one place is important but not necessarily conclusive, especially if the facts indicated that such individual did this merely to escape taxation.

* * *

(4) A person can have only one domicile. If such person has two or more homes, such person's domicile is the one which such person regards and uses as such person's permanent home. In determining such person's intentions in this matter, the length of time customarily spent at each location is important but not necessarily conclusive.

D. It is well established that an existing domicile continues until a new one is acquired and the party alleging the change bears the burden to prove, by clear and convincing evidence, a change in domicile (*see Matter of Bodfish v. Gallman*, 50 AD2d 457 [1976]). Whether there has been a change of domicile is a question "of fact rather than law, and it frequently depends upon a variety of circumstances which differ as widely as the peculiarities of individuals" (*Matter of Newcomb*, 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 258

[1943], *affd* 267 App Div 876 [1944], *affd* 293 NY 785 [1944]); *see also Matter of Bodfish v. Gallman*). While certain declarations may evidence a change in domicile, such declarations are less persuasive than informal acts which demonstrate an individual's "general habit of life" (*Matter of Silverman*, Tax Appeals Tribunal, June 8, 1989, *citing Matter of Trowbridge*, 266 NY 283, 289 [1935]).

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

Residence means living in a particular locality, but domicile means living in that locality with the intent to make it a fixed and permanent home. Residence simply requires bodily presence as an inhabitant in a given place, while domicile requires bodily presence in that place and also an intention to make it one's domicile.

* * *

In order to acquire a new domicile there must be a union of residence and intention. Residence without intention, or intention without residence, is of no avail. Mere change of residence although continued for a long time does not effect a change of domicile, while a change of residence even for a short time, with the intention in good faith to change the domicile, has that effect. . . . Residence is necessary, for there can be no domicile without it, and important evidence, for it bears strongly upon intention, but not controlling, or unless combined with intention it cannot effect a change of domicile There must be a present, definite, and honest purpose to give up the old and take up the new place as the domicile of the person whose status is under consideration

F. While the standard is subjective, the courts and the Tax Appeals Tribunal have consistently looked to certain objective criteria to determine whether a taxpayer's general habits of living demonstrate a change of domicile. "The taxpayer must prove his subjective intent based upon the objective manifestation of that intent displayed through his conduct" (*Matter of Simon*, Tax Appeals Tribunal, March 2, 1989). Among the factors that have been considered are: the retention of a permanent place of abode in New York, the location of business activity,

the location of family ties, the location of social and community ties and formal declarations of domicile.

G. With respect to the factor regarding the retention of a permanent place of abode, there is no question that petitioner maintained his apartment on West 11th Street during the audit period. The Division states that this is an extremely significant factor since petitioner was extensively involved in the renovations made to this apartment after he purchased it, that these renovations lasted over 18 months and that, in comparison to his apartments in Dallas, the New York City apartment was owned by him rather than leased.

Although the retention of his New York City apartment is a factor to consider, it is necessary to review the totality of the factors coupled with petitioner's intentions at the time of the audit period. When viewing the circumstances surrounding petitioner's lifestyle and employment during the audit period, it is determined that his retention of his New York City apartment did not outweigh his overall intention to change his domicile to Dallas.

H. Petitioner's decision regarding where to live revolved around his employment opportunities. Petitioner was born and raised in the metropolitan Boston area. He moved to New York to pursue his education. Petitioner, as a single man, did not have any family ties to New York. Petitioner originally moved to New York City in August of 1992, when he was enrolled in law school at Columbia University. In fact, he remained in the same apartment where he lived as a student for over 13 years.

In late 2005, at the age of 37, petitioner decided it was time to purchase a home and did so. At this time, he had been working for IAC as general counsel. His employment was a major component of his lifestyle. By November of 2006, petitioner's job title was Executive Vice

President, General Counsel & Secretary of IAC and his principal place of employment was at the company's offices in New York City. He handled mergers and acquisitions, securities work and managed a legal department of roughly 50 people.

However, by August of 2008, IAC underwent a significant restructuring and the company split into five pieces, which reduced IAC into a fraction of its former size. This restructuring altered the scope of petitioner's job. Petitioner testified that his job became much smaller and less prestigious to him. Therefore, he began to look for other job opportunities.

Petitioner testified that he was offered the job of running Match in Dallas just prior to the beginning of the audit period. At this time, petitioner had recently ended a long-term personal relationship and the changes at IAC left him professionally unfulfilled. Petitioner testified that he was ready for a change and the opportunity presented by employment as CEO of Match was too good to pass up.

In negotiating the terms of the job at Match, petitioner retained a corporate role with IAC and retained the right to have New York City be his primary work location. Petitioner explained that he had some preconceived notions regarding life in Texas and wanted to ensure that he had a safety net in case the job was not all he hoped for. Soon after his arrival at Match, petitioner embraced both the job at Match and life in Dallas.

I. By the fall of 2009, petitioner began a process by which he gave up his titles and responsibilities at IAC and to designate Dallas as his principal place of employment. Petitioner put his New York City apartment up for sale. He began dating and enjoying the social scene in Dallas. He spent significant time with his close, childhood friend, Steven Becker, who also lived

in Dallas and Mr. Becker's son, who was petitioner's godchild. Petitioner joined a gym and utilized doctors in Texas.

Following the summer of 2009, petitioner took the final step in his relocation to Dallas by moving his dog there. Petitioner testified to the difficulty surrounding the decision to move his large, senior dog to Dallas due to her size and advanced age, coupled with the extreme heat and humidity of Dallas. Petitioner waited until the timing was appropriate. In reviewing the factors of a change in domicile, historically, the move of items near and dear tend to demonstrate a person's intention. As borne out by the evidence in this case, petitioner's dog was his near and dear item which reflected his ultimate change in domicile to Dallas.

Soon thereafter, petitioner broke his original apartment lease in Texas in order to rent a larger apartment in the same building. He obtained a Texas driver's license and registered to vote in Texas.

Petitioner's transition to Dallas took place over several months. Petitioner was, at first, hesitant about moving to Dallas. However, it is clear that once he began his employment at Match and his residence in Dallas, he loved his new job and new city. The steps taken to effectuate a change in domicile occurred in a logical and reasonable sequence of events. As demonstrated by a contemporaneous email regarding his move, petitioner stated that his change in domicile to Dallas was complete once his dog was moved there. Accordingly, based upon the documentation and credible testimony, it is determined that petitioner demonstrated a change in domicile to Dallas in November of 2009.

J. It is noted that petitioner vacationed in the Hamptons both before, during and after the audit period. The Division emphasized that petitioner eventually bought a home there after the

sale of the New York City apartment and that petitioner owned and maintained a boat there. Petitioner testified that he vacationed in the Hamptons for years and will continue to do so. The maintenance of a permanent place of abode in the Hamptons is not dispositive to this case. Petitioner testified that he visited the Hamptons on the weekends in the summer and spent most of August there. After purchasing a home there, after the audit period, his pattern of use did not change and he rented out his home. Therefore, this factor does not impact petitioner's change of domicile from New York City to Texas.

K. Upon review of the entire record, and pursuant to the foregoing standards, it is concluded that petitioner has proven, by clear and convincing evidence, that he intended and did change his domicile to Dallas. Given this conclusion, the issue regarding the imposition of penalties is rendered moot.

L. The petition of Gregory Blatt is granted and the Notice of Deficiency, Assessment No. L-039500771, dated June 4, 2013 is canceled.

DATED: Albany, New York
February 2, 2017

/s/ Donna M. Gardiner
ADMINISTRATIVE LAW JUDGE