

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
JEREMIAH H. AND JUNG J. YIM :
for Redetermination of a Deficiency or for Refund of : DETERMINATION
New York State and City Income Taxes under Article 22 : DTA NO. 827687
of the Tax Law and the Administrative Code of the City :
of New York for the Year 2010. :

Petitioners, Jeremiah H. and Jung J. Yim, 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 year 2010.

A formal hearing was held before Donna M. Gardiner, Administrative Law Judge, in New York, New York, on July 13, 2018 at 10:00 a.m., with all briefs to be submitted by January 4, 2019, which date commenced the six-month period for issuance of this determination.

Petitioners appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Michele W. Milavec, Esq., and Charles Fishbaum, Esq., of counsel).

ISSUE

Whether petitioner¹ Jeremiah H. Yim has established that he effected a change of domicile from New York to Michigan and, thus, was not taxable as a domiciliary of New York for the year 2010.

¹This proceeding relates to the residency status only of Jeremiah H. Yim. Jung J. Yim is a New York City domiciliary. Both names are listed on the petition since petitioners' filing status was married filing jointly. References to petitioner will refer to Jeremiah H. Yim.

FINDINGS OF FACT

1. For the tax year 2010, petitioners, Jeremiah H. and Jung J. Yim, filed form IT-203 (New York State nonresident and part-year resident income tax return) and form 1040 (U.S. individual income tax return). Both returns listed a Flushing, New York, address for petitioners.

2. The Division of Taxation (Division) sent a letter to petitioners, dated August 6, 2012, informing them that their personal income tax return for the year 2010 was selected for audit to verify their residency status and allocation of income. The Division asked petitioner to provide documentation showing that a change of domicile was made from New York to Michigan.

3. At the conclusion of the audit, the Division determined that petitioner remained a domiciliary of New York throughout the audit period, and issued to petitioners a notice of deficiency, No. L-042993413, dated June 2, 2015, asserting additional State and City personal income tax due of \$14,752.00, plus interest and penalties, for the year 2010.

4. Petitioners requested a conciliation conference with the Bureau of Conciliation and Mediation Services. A conciliation order was issued, on March 11, 2016, that sustained the notice. Thereafter, petitioners filed a timely petition with the Division of Tax Appeals.

5. Both petitioners were present at the hearing. However, only petitioner testified.

6. Petitioner testified that he had been domiciled in New York since approximately 1970. Petitioner purchased the Flushing, New York, home in 1990 and filed as a resident at that address from 1990 through 2009. His home located in Flushing has been maintained by him since 1990 to the present.

7. Petitioner graduated from medical school in 1987. He began a residency in pediatrics in Philadelphia in July of 1988. After a year or so, petitioner returned to New York where his

mother was a nurse. He began working in New York at Mount Sinai for a three-year residency and then he accepted a fellowship at Yale University. Petitioner is a neurologist who trained in multiple areas of medicine including pain management and strokes.

8. Petitioners have two sons. The older son, Joshua, was born in 1988 and attended Cornell University. After graduation, and during the audit period, he remained at Cornell doing research. The younger son, Isaiah, was born in 1992 and was studying at the University of Michigan in 2010. Petitioner applied for in-state tuition for his son, but was denied. His son lived in the dormitory.

9. In July of 2009, petitioner accepted a position as Chief of Neurology with the Veterans Administration (VA) located in Iron Mountain, Michigan. When petitioner initially moved to Michigan, he was living at VA-owned housing. At some point, the VA converted this living space into office space and petitioner signed a lease for an apartment in Iron Mountain. This lease was for a 12-month period from July 1, 2010 through June 30, 2011.

10. Petitioner obtained a Michigan driver's license and purchased a Toyota Camry when he relocated. Petitioner registered to vote in Michigan and he and his wife joined the Trinity United Methodist Church located in Iron Mountain.

11. Petitioner moved to Michigan due to the fact that his new employment offered a substantial increase in salary. Petitioner testified that his pattern was to move to wherever a job provided the best financial opportunities.

12. At some point in 2011, petitioner returned to New York to accept employment at the Bronx Lebanon Hospital Center. Upon his return to New York, petitioner obtained his New York State driver's license through a reciprocity arrangement with Michigan and he filed his

personal income tax return for the year 2011 as a resident of New York. Thereafter, he moved to Sioux Falls, South Dakota, and then to Atlanta, Georgia, for employment opportunities that existed in those locations.

13. When asked what items he brought from New York when he moved to Michigan, petitioner testified that he only brought a backpack. Petitioner testified that he left all his belongings in New York. He joked that, according to his wife, a lot of his belongings were trash, but they were dear to him and he kept them in New York.

14. Petitioner explained that, in his culture, the husband assumed the responsibility of providing for his family. He testified that better job opportunities motivated him to accept lucrative positions outside of New York. He explained that “we have certain ties to families and we go back no matter how long you try to cut.”

15. Petitioner’s wife is employed full time with JFC International. She has been employed by them for 17 years. Petitioner explained that his wife’s job is unique in that it is with a Japanese company and she is able to speak in her native language at her employment. Petitioner states that his wife does not speak English and, as such, cannot move and find new job opportunities as easily as he can.

16. Petitioner was not within New York State or City for more than 183 days during 2010. Although there appeared to be a question regarding the number of days spent within New York during 2010, petitioner did not address this fact either within the petition or at hearing. The Division determined that petitioner was within New York for approximately 70 days.

17. At the conclusion of the hearing, the parties were given the opportunity to file briefs in this case. Petitioner did not file either a brief in support of the petition or a brief in reply to the Division.

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 solely involves the issue of domicile.

C. There is no dispute that the Flushing, New York, home was a permanent place of abode. Furthermore, there is no dispute that petitioner spent more than 30 days within New York during 2010. Therefore, this matter devolves to whether petitioner has established that he gave up his domicile in New York City and effected a change to Iron Mountain, Michigan.

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 [3d Dept 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 238 [Surr. Co. West. Co. 1943], *affd* 267 App Div 876 [2d Dept 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 that 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 as evidence, for it bears strongly upon intention, but not controlling, for unless combined with intention it cannot effect a change of domicile There must be a present, definite, and honest purpose to give up the old and take up the new place as the domicile of the person whose status is under consideration."

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 residence in Flushing throughout 2010.

Although the retention of the New York residence 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.

Unfortunately, petitioner failed to introduce the evidence necessary to demonstrate that he changed his domicile to Michigan. In fact, petitioner testified that his sole motivation for moving was to earn enough money to support his family. Clearly, his intention to move wherever the job opportunities took him in order to sustain his family in Flushing militates against the finding that he changed his domicile.

Petitioner testified he left New York with only a backpack while his belongings that were dear to him remained in New York. His wife remained in New York. Petitioner explained that he always returned to New York after the end of a job opportunity. Clearly, his move to Michigan was never intended to be permanent, but only for the length of his employment there.

H. Petitioner purchased an automobile and registered it in Michigan, he obtained a driver's license in Michigan and joined a church. However, none of these formal declarations indicate his clear intention to permanently move to Michigan and abandon his New York domicile. There was no evidence that petitioner intended to make Michigan a permanent home with the "range of sentiment, feeling and permanent association" which indicate the establishment of a new domicile (*Matter of Bourne*, 181 Misc at 246; *see Matter of Bodfish v Gallman*). The fact that petitioner left Michigan at the end of his employment contract,

established no personal ties which would keep him in Michigan and did not seek subsequent employment in Michigan after his employment contract ended are factors indicating that he lacked the requisite intent to make Michigan his permanent home. In contrast, petitioner specifically explained that it is his family ties that dictated his return to New York.

I. The petition of Jeremiah H. and Jung J. Yim, is denied and the notice of deficiency, assessment No. L-042993413, dated June 2, 2015, is sustained.

DATED: Albany, New York
June 27, 2019

/s/ Donna M. Gardiner
ADMINISTRATIVE LAW JUDGE