STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition of **DAVID AND KAREN SOBOTKA** for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law and the New York City Administrative Code for the Year 2008.	ORDER DTA NO. 826286

Petitioners, David and Karen Sobotka, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law and the New York City Administrative Code for the year 2008.

On April 24, 2015, petitioners, appearing by Hodgson Russ LLP (Timothy P. Noonan, Esq., of counsel), filed a motion seeking summary determination in their favor pursuant to 20 NYCRR 3000.5 and 3000.9(b). Accompanying the motion was the affidavit of Timothy P. Noonan, Esq., dated March 27, 2015, and annexed exhibits in support of the motion. On May 24, 2015, the Division of Taxation, appearing by Amanda Hiller, Esq. (Michelle M. Helm, Esq., of counsel), filed a responding brief in opposition to the petitioners' motion. Petitioners requested and received permission, pursuant to 20 NYCRR 3000.5(b), to submit a reply to the Division's response, and did so on June 2, 2015, which date commenced the 90-day period for issuance of this order. After due consideration of the affidavit and documents submitted in support of the motion, the response thereto, the reply to the response, and all pleadings filed in this matter, Dennis M. Galliher, Administrative Law Judge, renders the following order.

ISSUE

Whether, because petitioners were domiciliaries of New York State and New York City and were thus taxable as residents thereof for a portion of the year 2008, the Division of Taxation (Division) is precluded pursuant to the terms of Tax Law § 605(b)(1)(B) from holding petitioners subject to taxation as "statutory" residents of New York State and New York City for the remaining portion of the year 2008.

FINDINGS OF FACT[1]

1. For the year 2008, petitioners, David and Karen Sobotka, jointly filed a New York State and New York City Nonresident and Part-Year Resident Income Tax Return (Form IT-203). Thereafter, they filed an Amended Nonresident and Part-Year Resident Income Tax Return (Form IT-203-X) for such year. On such returns petitioners reported a change of domicile to New York State and City as of August 18, 2008.

2. On March 20, 2014, the Division issued to petitioners a Notice of Deficiency (L-040851299) asserting additional New York State and New York City personal income tax in the amount of $1,063,803.00 for the year 2008, plus interest.

3. The foregoing Notice of Deficiency was issued under the assertion that petitioner David Sobotka became domiciled in New York State and New York City beginning in October of 2007, and was both a statutory resident and a domiciliary of New York State and New York City for the year 2008.

---

[1] Petitioner Karen Sobotka's name appears herein by virtue of the fact that she filed a joint part-year resident personal income tax return with her husband, petitioner David Sobotka, for the year 2008. While both Mr. and Mrs. Sobotka are petitioners herein, the Division has taken the position that only petitioner David Sobotka was subject to tax as a full-year resident for the year 2008. Unless otherwise specified or made necessary by context, references to petitioner or to petitioners herein shall mean petitioner David Sobotka.

4. The Division has since concluded and the parties agree that petitioner was only domiciled in New York State and New York City from August 18, 2008 to December 31, 2008, as reported on his returns. As a consequence, the deficiency is now based solely on the Division's assertion that petitioner was also subject to tax as a statutory resident of New York State and New York City during the 2008 calendar year.

5. Petitioners filed a timely petition, challenging the foregoing notice and alleging that David Sobotka cannot be subjected to tax as a "statutory" resident because:

> a) he did not maintain a "permanent" place of abode in New York State or New York City, i.e., that his relationship to a hotel room maintained by his employer while he was assigned to New York on a temporary basis was impermanent by its very nature and lacked the "permanence" required under the Tax Law, and
>
> b) the "statutory" resident provision in the Tax Law (Tax Law § 605[b][1][B]) only applies to taxpayers who are "not domiciled in New York," and since it is undisputed that Mr. Sobotka was domiciled in New York during 2008, one of the three requirements of the statutory resident test is not met.

6. Petitioners acknowledge that the first argument set forth above, at Finding of Fact 5(a), is not part of the subject motion for summary determination, given the factual questions inherent in such argument. Thus, petitioners' motion pertains only to the second argument set forth above, at Finding of Fact 5(b), with respect to which there are no facts in dispute.

CONCLUSIONS OF LAW

A. Tax Law § 605(b) defines the terms "resident," "nonresident," and "part-year resident."[2] Pursuant to Tax Law § 605(b), a resident individual is defined as follows:

---

[2] The noted terms are defined in identical manner for both New York State and New York City purposes, save for the substitution of the term "City" for "State" in each case (***compare*** Tax Law § 605[b]; Administrative Code of City of New York § 11-1705[b]). Unless otherwise specified or required by context, statutory citations for New York State purposes herein shall also include New York City (without reference or parallel citation to the New

> "(1) Resident individual. A resident individual means an individual:
>
> (A) who is domiciled in this state, unless (i) he 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 is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than one hundred eighty-three days of the taxable year in this state, unless such individual is in the active service in the armed forces of the United States."

The latter portion of the foregoing statutory language, Tax Law § 605(b)(1)(B), is commonly referred to as the "statutory resident" provision.

B. A nonresident individual is defined as an individual who is not a resident or a part-year resident (Tax Law § 605[b][2]).

C. A part-year resident is defined as individual who is not a resident or a nonresident for the entire taxable year (Tax Law § 605[b][5]).[3]

D. Petitioner's filing position is that he was a resident for only a part of 2008, and specifically that he was taxable as such only for the portion of 2008 commencing when he established his domicile in New York (August 18, 2008) and continuing through the end of 2008 (hereinafter "the later period"). In turn, and by his filings, petitioner claims he was a nonresident for the preceding portion of 2008 (from January 1, 2008 through August 17, 2008), upon the position that he did not meet all three of the criteria for being a statutory resident for such period (hereinafter "the earlier period"). The Division agrees that petitioner was properly taxable as a

---

York City Administrative Code).

[3] The classification of resident versus nonresident is significant, since nonresidents are taxed only on their New York State or City (as relevant) source income, whereas residents are taxed on their income from all sources (***see Matter of Tamagni v. Tax Appeals Tribunal of State***, 91 NY2d 530 [1998], ***cert denied*** 525 US 931; ***Matter of Robertson***, Tax Appeals Tribunal, September 23, 2010).

resident on the basis of his New York domicile for the later period. However, the Division challenges petitioner's claim of nonresident status for the earlier period, maintaining that petitioner was subject to tax as a "statutory resident" pursuant to Tax Law § 605(b)(1)(B). If correct, the Division's position negates petitioner's claim of being a part-year resident, and results in petitioner being a resident, for tax purposes, for the entire year 2008, albeit on two differing bases, i.e., statutory resident basis (for the earlier period) and domicile basis (for the later period).

E. Petitioner's position on this motion is succinct. Petitioner maintains that: a) because a statutory resident is directly defined as an individual who is *not* domiciled in New York, and b) because the Division has agreed that he *was* domiciled in New York for a portion of the year 2008, then the Division is precluded from subjecting him to taxation as a statutory resident for that same year (and thereby taxing him as a resident for the entire year). Thus, according to petitioner, even if the evidence were to show that he spent more than 183 days in New York and maintained a permanent place of abode in New York in 2008, he still may not be subjected to New York tax as a statutory resident for any part of that year because the first of the three criteria for statutory resident status (that the taxpayer is *not* a domicilliary of New York) has not been met.

F. Tax Law § 605(b)(5) anticipates circumstances where a taxpayer may be taxable as a resident for only a portion of a given year, i.e., a "part-year resident," and defines a part-year resident to be an individual who is not a resident or a nonresident for the entire year. Petitioner claims this status. The question, as framed on this motion, is whether an individual who files and claims part-year resident status may nonetheless be held taxable as a resident for each of two separate periods during a single year, and thus be subject to tax as a resident for that entire year.

G. To answer the foregoing question, one must determine the propriety of a taxpayer's claimed split status as a part-year resident and as a part-year nonresident by reviewing the

particular facts for each of the discrete periods during which such differing status is claimed. Here, the parties agree that petitioner is subject to tax as a resident, on the basis of domicile, for the later period. For the earlier period, however, the parties disagree over whether petitioner met each of the *three* statutory criteria for being subjected to taxation as a statutory resident during such period. Since there is no claim by either party that petitioner was a domiciliary of New York during the earlier period, it follows that petitioner may indeed, as a nondomiciliary for such discrete period, be subjected to tax as a resident *if* the evidence adduced at hearing shows that he maintained a permanent place of abode in New York and was present in New York for the requisite number of days during such discrete period. As a consequence, petitioner would be taxable as a resident for the entire year, notwithstanding his filing claim to the contrary. That is, for each of the discrete claimed periods involved, petitioner would meet the defined status of "resident" under Tax Law § 605(b)(1)(A) and (B), respectively. As a result, he would not meet the definition of "nonresident" (Tax Law § 605[b][2] ["an individual who is not a resident or a part-year resident"]). Further, having met the criteria for being a "resident" for each of the two discrete periods (comprising together the entire year), he would not meet the definition of "part-year resident" (Tax Law § 605[b][5] ["an individual who is not a resident or a nonresident for the entire year"]). While the statutory definition of "resident" is phrased in the disjunctive (i.e., either a domicile-based resident [Tax Law § 605(b)(1)(A)] *or* a "statutory" based resident [Tax Law § 605(b)(1)(B)],) such definition does not result in mutual exclusion in the context of analyzing taxable status where a taxpayer claims a different taxable status for each of two separate and discrete portions of the same year, as is the case here. Instead, and as outlined above, the statutory definitions are to be applied separately to each of such claimed discrete portions within the year. In sum, if the evidence shows that petitioner met the criteria for being a statutory resident for the earlier portion of 2008, then

under the statutory framework and by process of elimination, he will be taxable as a resident for the entire year.

H. As noted, for 2008 petitioner admittedly meets the literal definition of a resident individual under Tax Law § 605(b)(1)(A), i.e., one who is domiciled in this state, though only for the latter period beginning as of August 18, 2008. Under prior law, petitioner would have simply been subject to tax as a resident for the entire year because he resided in New York during the last six months of the calendar year (***see*** Tax Law former § 350[7]). Deeming this result "too drastic," the Legislature amended the Tax Law in 1922, effectively providing for "part-year resident" status (***see*** Tax Law former 357-a [L 1922, ch 425]). Under this amendment, and in cases such as the present where a taxpayer became domiciled in New York and thus became subject to tax as a resident partway through the year, he could file two tax returns so as to be taxable as a resident only for the part of the year after he took up his New York domicile (***see*** Recommendation of Approval, Bill Jacket, L 1922, ch 425, at 5).[4] The purpose of the foregoing amendment was to "make it possible to adjust equitably and ratably the tax upon persons changing their residence, allowing them to be taxed as residents for the time they actually were residents, and as nonresidents, for the time they were nonresidents" (Assembly Mem In Support, Bill Jacket, L 1922, ch 425, at 3). After such amendment, a taxpayer could (and here does) claim the status of a nonresident and thus be taxable only to the extent allowed under such status for the non-New York-domiciled balance of the year (here the earlier period). Such a *claim* of nonresident status for part of a year is clearly not immune to challenge by the Division, however, and the challenge question here devolves to whether, *for such claimed nonresident period*, the taxpayer (despite his

[4] This manner of filing would likewise be available in instances where a taxpayer leaves New York, abandons his New York domicile and establishes a new domicile in another state partway through the year.

claim to the contrary) fulfills the three criteria upon which he would be properly subject to taxation as a statutory resident for such nondomiciled period.

I. The foregoing conclusion is consistent with Tax Law § 605(b)(1)(A) and (B), and its "either/or" disjunctive definition of "resident," as well as with the Legislative aim and intent to enable "equitable" (or ratable) taxation based upon a person's "actual" connection with New York. Under the reasoning advanced by petitioner herein, one could effectively eliminate the Division's right to challenge a claimed nonresident filing status for a portion of a year. A taxpayer could, for example, frustrate the Legislature's aim and intent by the simple expedient of changing domicile to New York late in the year (or out of New York early in the year), thereby relegating the balance of the same year beyond scrutiny due to the simple fact that the taxpayer had been domiciled in New York for some portion of the year. Petitioner's premise that being a domicile-based resident for any portion of a year precludes one from being a "statutory" resident for any other portion of the same year is thus rejected as inconsistent with the concept of being entitled to claim part-year resident and part-year nonresident status. That is, the preclusion part of petitioner's claim is based on a "full-year" view and, as such, effectively ignores the separate and discrete periods of his claimed filing status. Correctly viewed, petitioner's taxable status turns on a review of his claimed two part status, such that he may be, for tax purposes, a resident for the entire year and taxable as such, albeit as a statutory resident for the earlier period (if the evidence adduced at hearing supports such status) and as a domiciliary for the later period (as here admitted). At the same time, and based on the evidence, it may be that petitioner did *not* maintain a permanent place of abode and/or did *not* spend more than 183 days in New York during the earlier period, and would thus be taxable as a resident only for the later period during which he was domiciled in New York. That determination, as noted, will turn on the facts adduced at hearing.

J. Petitioner finds support for his position in ***Marks v. Commissioner of Revenue*** (2014 Minn Tax LEXIS 71 [Minn. Tax Ct Oct. 23, 2014]). The ***Marks*** case is similar to the matter at issue, both with respect to the statutory language by which a taxpayer's resident, nonresident or part-year resident income tax status is determined (***see*** Minn Stat § 290.01[7]), and with respect to the facts (taxpayers maintained a place of abode in Minnesota and spent in the aggregate more than 183 days in Minnesota during the year in issue [2007], but were domiciled outside of Minnesota [in Florida] until they moved back to Minnesota and became domiciled there in 2007). Of critical importance, however, is that the taxpayers in ***Marks*** had *not* been physically present in Minnesota for 183 or more days *at the point in time when they moved back into Minnesota and became Minnesota domiciliaries*. The Minnesota Tax Court granted petitioners' motion for partial summary determination, concluding that petitioners were part-year domicile-based residents of Minnesota, but were not statutory residents. In so doing, the Court held that in applying the day count for statutory residence purposes, the only days that may be counted are those spent in state while the taxpayers are domiciled *outside* of the state.[5] The ***Marks*** case thus supports the specific conclusion that one cannot count days spent in the state during a period when a taxpayer is domiciled in the state, for purposes of determining whether that taxpayer meets the physical presence test for statutory resident status. Contrary to petitioner's claim here, the ***Marks*** case does not stand for the broader proposition that a taxpayer who is domiciled in a

[5] As noted, the petitioners had not been physically present in Minnesota for 183 or more days, as required for statutory resident purposes, when they became domiciled in Minnesota, and hence did not (and could not) meet the day count requirement for statutory resident status. The Court noted that the phrase "in the aggregate" within the context of the statutory residence day count means nothing more than that the days spent in-state need not be *consecutive* days. The Court remanded the matter for an evidentiary hearing on the question of precisely when the petitioners became Minnesota (part-year domicile based) residents, presumably for purposes of apportionment and allocation of petitioners' income as such part-year residents.

state, even if for only part of the year, simply cannot be a statutory resident. Rather, under the facts of the case, the Court held that Mr. and Mrs. Marks could not be held taxable as statutory residents because they lacked the requisite number of days (physical presence) during the period of claimed statutory residence (i.e., during their non-domiciled period). In contrast to ***Marks***, and noting that 2008 was a leap year, there were a total of 230 days during the earlier period in this case (January 1, 2008 through August 17, 2008), and thus it is clearly possible that petitioner herein may meet the physical presence requisite for being subjected to tax as a "statutory" resident for such period.

K. The parties discuss at some length in their motion papers the Division's perceived ambiguity in the interplay of the resident, nonresident and part-year resident provisions of the Tax Law. Review of such provisions leaves no such ambiguity apparent. The Tax Law provides definitions for an individual's status as: 1) a full-year resident (based on either domicile in New York or on stated statutory requirements [not domiciled in New York but maintaining an abode plus physical presence]); 2) a full-year a nonresident; or 3) a part-year resident. Under the third such possible status, the Tax Law and relevant regulations anticipate and address the required filing of separate returns for each of the claimed part-year periods (***see*** Tax Law § 651[a][3]; 20 NYCRR 154.1, 151.6), and provide extensive guidance and rules concerning the apportionment and allocation of items between the two periods (***see generally*** 20 NYCRR 112, 132).[6] This statutory (and regulatory) framework is fully consistent with the legislative aim of achieving equitably ratable taxation where factually appropriate, and avoiding or curtailing the actual or

[6] Though the Tax Law previously called for "separate" filings (***see*** Tax Law former § 654[a]), the same is now accomplished on a single return, Form IT-203 with appropriate required attachments (***see*** Tax Law § 651[a][3]).

perceived inappropriate manipulation of an individual's tax status (***see*** Assembly Mem In Support, Bill Jacket, L 1922, ch 425, at 3). Such statutory framework points clearly to discrete periods where one's claimed taxable status for each of such periods will rise or fall on the basis of the defined criteria (domicile-based or statutory-based resident status, nonresident status or part-year resident status) for each of the claimed separate periods, a result consistent with the legislative aim of taxing those individuals as residents for the period of time during which they "actually were residents" as defined. By contrast, adopting petitioner's "all or nothing" argument runs afoul of the part-year statutory language, requires ignoring the concept of two separate taxable periods with separate filings resulting therefrom, and curtails the Division's right and ability, upon review, to challenge the correctness of each of those filings both as to personal taxable status and as to the reporting, allocation and apportionment of items and amounts thereon. Notwithstanding a filing position claiming part-year nonresident status, a taxpayer may indeed have no period of part-year *non*resident status during a given year, regardless of the fact that each of such resident periods (encompassing together the entire year) results from different statutory standards and calculations specific to each of such separate and discrete periods within the same year. Thus, a taxpayer claiming part-year domicile-based resident status may also be a statutory resident for the other part of that same year (as a nondomiciliary who, for such period, maintained a permanent place of abode and [where the claimed part-year nonresident period includes, as here, more than 183 available days] was present on at least 183 of such [available] days). Conversely, and consistently, since the physical presence "day count" is not necessary or

determinative for domicile-based resident status,[7] a taxpayer may be taxable only as a part-year resident if he meets the burden of establishing the fact and date on which he became a New York domiciliary, and further establishes (for example) that his claimed part-year nonresident period is not sufficiently long to encompass the requisite number of days for statutory resident status (with whatever consequent perceived tax benefits or detriments may flow therefrom).[8]

L. The Division argues, in general, that petitioner's position, if adopted, would serve to preclude New York from taxing the "very individuals that the [1922] legislation sought to tax." The Division further specifically argues that "[i]f the state is unable to count the number of days an individual was actually domiciled within New York State in its determination of whether an individual was a statutory resident, then it would be more challenging (and in some situations impossible) for New York State to fully tax those individuals who, 'for all intents and purposes,' were residents of the state." The Division is correct in its first argument. That is, petitioner's broad claim that if a taxpayer is a domiciliary for any part of the year, then that taxpayer may not be subject to tax as a statutory resident during the same year, is not supported by the statutory framework and such claim has been rejected herein. At the same time, while the Division might prefer an interpretation that allows it to count and include days during the domicile period as available days for statutory resident purposes, this interpretation and result fails to respect the

---

[7] Though not determinative for domicile-based resident status purposes (i.e., domicile based resident status does not concern itself, per se, with a specific day count), the number of days spent in a particular jurisdiction is relevant as in indicator of intent vis-a-vis one's habit or pattern of life and hence may be indicative of their domicile (***see*** 20 NYCRR 105.20[d][4]; ***Matter of Silverman***, Tax Appeals Tribunal, June 8, 1989 ***citing Matter of Trowbridge*** 266 NY 283, 289 [1935]).

[8] A taxpayer could claim and establish domicile in New York at a point in time during the year early enough to eliminate the possibility of being taxable as a statutory resident for want of a sufficient aggregate number of available days during the non-domicile period, a result that is entirely consistent with the statute. To the extent this possible "planning opportunity" may be viewed as an unintended negative or unduly beneficial consequence, the remedy therefor, if any, rests within the purview of the Legislature.

language whereby statutory resident status is determined upon *three* conditions, to wit, nondomicile status during the possible statutory residence period, coupled with physical presence and maintenance of an abode. In order to properly analyze and determine whether one is, as claimed, a nonresident as opposed to a statutory resident for a portion of a given year, it is necessary to examine *all* of the criteria concerning statutory resident status, though only for the period during which such status is claimed or challenged. The Division's argument that days within the domicile-based resident period may be counted for purposes of the statutory resident physical presence requirement effectively ignores the first of the foregoing three conditions necessary for statutory resident status. Thus, the Division may not count days during the part-year domicile period as available or applicable days for purposes of imposing statutory resident status for the claimed nonresident part-year period.

M. Further support for the foregoing (day count) conclusion may be found by comparing the definition of "resident" under Tax Law former Article 16, § 350(7), with the current definitions of "resident," "nonresident" and "part-year resident" under Tax Law Article 22 (***see*** Conclusions of Law A, B and C).[9] Under Tax Law former Article 16, § 350(7), the definition of a "resident" was set forth in one paragraph and included both a person who was domiciled in New York, and a person who (in current parlance) would be a "statutory" resident, with the latter described therein as

> "any person "who maintains a permanent place of abode within the state and spends in the aggregate more than one hundred eighty-three days of the taxable year within the state, *whether or not domiciled in the state during any portion of*

[9] Former Article 16 was replaced by Article 22, effective and applicable to short taxable years ending in 1960 and to taxable years ending on or after December 31, 1960. Former Article 16 was repealed by Laws of 1987 (ch 267, § 10, effective July 20, 1987).

> *said period*, and such person shall be taxed the same as though he had been domiciled in the state during the entire taxable year" (italics added).

There was no separate definition of a "nonresident" provided under Tax Law former § 350(7).

In contrast, Tax Law Article 22, former § 605(a)(1), (2) and (b) provided separate definitions for a "resident individual," including specifically (in separate paragraphs) both a person who was domiciled in New York (Tax Law former § 605[a][1)]), and a person who would be a "statutory" resident (Tax Law former § 605[a][2]), and for a "nonresident individual" (Tax Law former § 605[b]). In 1987, the Legislature added Tax Law § 605(b)(5), specifically defining a "part-year resident individual" (L 1987, ch 28, effective April 20, 1987, and applicable to taxable years beginning after 1986). The foregoing definitions of resident and nonresident individuals, though renumbered in connection with the 1987 addition of the definition of a "part-year resident individual," carry through to the present.[10] Of particular and significant relevance here, the current definition of a "statutory" resident, as set forth in Tax Law § 605(b)(1)(B), did not carry forward and include the italicized language ("whether or not domiciled in the state during any portion of said [183 day] period") notwithstanding that such language had been in the very definition of a statutory resident under Tax Law former § 350(7). This distinction strongly supports the conclusion that for purposes of determining statutory resident status during a portion of a given year, one may not count days that fall within the domicile-based resident portion of that same year.

---

[10] The definitions, formerly set forth at Tax Law § 605(a), now appear at Tax Law § 605(b).

N. Finally, the conclusion reached herein imposes no stricture on the Division's authority to challenge a taxpayer's claimed filing status of resident, nonresident or part-year resident, including specifically its ability to assert that a taxpayer claiming nonresident or part-year resident status is, in fact, a full year resident, taxable as such *either* on the basis of being a full year domiciliary or alternatively (and if the proof fails to support such assertion of full-year domicile-based resident status), on the basis of being a full-year statutory resident. The Division has cited cases concerning arguments made in the alternative, i.e., that taxpayers were domicile-based residents for the full year and, even if proof of the same failed, they were nonetheless statutory residents for the full year (***see Matter of Hero***, Tax Appeals Tribunal, September 11, 2013; ***Matter of Kornblum***, Tax Appeals Tribunal, January 16, 1992, ***confirmed*** 194 AD2d 882 [1993]; ***Matter of Veeder***, Tax Appeals Tribunal, January 16, 1992; ***Matter of Edward L. Smith v. State Tax Commn.*** 68 Ad2d 993 [1979]). Those cases dealt with the proposition that all days may be counted in the context of determining physical presence for statutory resident purposes on a full-year basis, but are not controlling for purposes of determining statutory resident status for only a portion of a year. To the extent such cases appear to indicate otherwise, they are viewed as expressing dicta, noting that the arguments raised in such cases effectively dealt with full-year analysis of taxable status under alternative bases.

O. Petitioners' motion for summary determination is hereby denied and the matter shall proceed to hearing in due course as scheduled.[11]

DATED: Albany, New York
August 20, 2015

/s/ Dennis M. Galliher
ADMINISTRATIVE LAW JUDGE

[11] At hearing, and consistent with the conclusions reached herein, evidence may be presented as to petitioner's whereabouts (i.e., presence in or absence from New York) for statutory resident "day count" purposes, during the earlier (claimed nonresident) period. In addition, evidence may also be presented as to petitioner's whereabouts during the later (domicile-based resident period), so as to create a complete record for purposes of any appeal that may be taken with respect to the conclusions reached herein.