

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
SANJIV DAS	:	ORDER
for Redetermination of a Deficiency or for Refund of	:	DTA NO. 850362
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 2016,	:	
2017 and 2018.	:	

Petitioner, Sanjiv Das, filed a petition for a redetermination of 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 2016, 2017 and 2018.

On June 13, 2023, petitioner, by his representative, Hodgson Russ LLP (Andrew W. Wright, Esq., of counsel), brought a motion seeking an order of preclusion or in the alternative for an order compelling the Division of Taxation to provide a more particularized bill of particulars pursuant to section 3000.6 of the Rules of Practice and Procedure of the Tax Appeals Tribunal. On July 20, 2023, the Division of Taxation, appearing by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel), responded to petitioner's motion. On July 25, 2023, petitioner requested and was permitted to file a reply to the Division of Taxation's response and on August 11, 2023, the Division of Taxation in turn responded to petitioner's reply. The 90-day period for issuance of this order commenced on August 11, 2023.

Based upon the motion papers and all pleadings and documents submitted in connection with this matter, Nicholas A. Behuniak, Administrative Law Judge, renders the following order.

ISSUE

Whether petitioner's motion seeking an order of preclusion or, alternatively, an order compelling the Division of Taxation to provide a more particularized bill of particulars should be granted.

FINDINGS OF FACT

1. Petitioner, Sanjiv Das, commenced this proceeding by filing a petition on December 6, 2022 with the Division of Tax Appeals in protest of notices of deficiency L-056973744 and L-056974278, both dated September 14, 2022.

2. On February 22, 2023, the Division of Taxation (Division) filed an answer to the petition. The basis for the asserted deficiencies is whether petitioner was domiciled in New York City during the years of 2016, 2017 and 2018 (audit years) and, thus, was subject to the tax consequences thereof.

3. On March 9, 2023, petitioner filed a reply to the Division's answer.

4. In the petition, petitioner represents that he conceded that he was a statutory resident for the 2017 tax year. Elsewhere in the petition, petitioner asserts he was not a New York City domiciliary for that year, or any of the audit years. In his reply, petitioner represents that he filed both New York and Connecticut resident income tax returns for 2011 through 2015.

5. In its answer, the Division admitted petitioner's assertion that "the [Division] asserted that Petitioner changed his domicile to New York City at some point before the beginning of the [audit years]." In the answer, the Division asserts that petitioner has not clearly and convincingly established that he changed his domicile from New York City.

6. Petitioner served the Division with a demand for a bill of particulars dated April 4, 2023 (demand).

7. The Division served petitioner with its response to the demand on or about May 12, 2023.

8. Petitioner's demand requested, in part, that with regard to paragraph 6 in the petition, the Division "state the precise date on which Petitioner purportedly became domiciled in New York City" (question at issue). The Division's response to this question was:

- "a. From 2011-2015[,] the taxpayers filed IT-201s jointly as NYC residents.
- b. As per taxpayers'¹ records and NYC Real Estate Records (RETT), they purchased 641 5th Avenue Unit:27E, New York, NY, 10022 on 4/4/11.
- c. As per 2008, 2009, and 2010 tax returns and W-2s on file in Empire, they state that Sanjiv Das was working in New York City."

9. Petitioner's demand requested, in part, that the Division "state which party bears the burden of proving that Petitioner changed his domicile into New York City." The Division's response to this question was:

- "a. The [Division's] burden for New York City.
- b. Taxpayer bears the burden to show change of domicile to Dallas, TX."

10. Petitioner's demand also requested that the Division "state whether any of Petitioner's 2011 through 2015 New York tax returns reported a change of domicile into New York City and, if any did, in which tax year Petitioner's New York tax return purportedly reported such a change of domicile." The Division's response to this question was: "[y]es, 2013 IT-203 confirmed change of domicile to New York City. The tax return duly indicated a county and school district as Manhattan."

11. On June 13, 2023, petitioner brought a motion seeking an order of preclusion or in the alternative for an order compelling the Division to provide a more particularized bill of particulars because petitioner contends that the Division's response to the question at issue was

¹ It appears petitioner filed joint State tax returns with his spouse.

inadequate. Petitioner asserts that the Division has already admitted it has the sole burden of proof with regard to establishing that petitioner changed his domicile to New York City and that the Division's response to providing the "precise date" on which petitioner purportedly became domiciled in New York City is inadequate as the Division fails to provide a specific date but rather listed a set of facts that span eight years. Petitioner also argues that the Division has waived any objection to its demand since it did not seek to vacate or modify the demand earlier.

12. The Division argues that it does not agree that it has the sole burden with regard to establishing petitioner's domicile in New York City, but rather is a "dual burden" between the parties. Furthermore, the Division asserts that petitioner's domicile changed "over the course of a year, and may not necessarily have been established on one date," and that "[a]n inquiry into an individual's domiciliary status is determined per annum and is not necessarily date specific," and therefore its response to the question at issue is adequate.

CONCLUSIONS OF LAW

A. The Rules of Practice and Procedure of the Tax Appeals Tribunal (Rules) provide that a party may serve a written notice on the adverse party demanding a bill of particulars within 30 days from the date on which the last pleading was served (*see* 20 NYCRR 3000.6 [a] [1]). The Rules further provide that if the party upon whom a demand is served is unwilling to give such particulars, that party may make a motion to vacate or modify such a demand within 20 days after receipt thereof (*see* 20 NYCRR 3000.6 [a] [2]). Where no such motion is made, the bill of particulars demanded shall be served within 30 days after the demand (*id.*).

B. In this case, petitioner served their demand and the Division responded by delivering a bill of particulars. Accordingly, the Division has waived its opportunity to challenge the demand (*see Hess v Wessendorf*, 102 AD2d 926 [3d Dept 1984], *lv dismissed* 64 NY2d 602 [1984];

Schnarch v Owen, 124 AD2d 372 [3d Dept 1986]).

C. Petitioner subsequently filed the motion seeking an order to require the Division to properly respond to the demand or for an order precluding the Division from providing evidence on the matter for which particulars have not been delivered (*see* 20 NYCRR 3000.6 [a] [3], [a] [4]).

D. In general, a party is only required to serve a bill of particulars on that which the party has the burden of proof, not those matters which it need not prove at trial (*Hydromatics v County Natl. Bank*, 23 AD2d 576 [2d Dept 1965]). The purpose of a demand for a bill of particulars is to enable the party demanding the particulars to know definitively the claims to be defended against (*see Johnson, Drake and Piper v State of New York*, 43 Misc 2d 513 [Ct of Claims 1964]) or to crystallize the issues that will be raised at hearing (*see e.g. Bassett v Bando Sangsa Co., Ltd.*, 94 AD2d 358 [1st Dept 1983], *appeal dismissed* 60 NY2d 962 [1983]). In this case the Division clarified its argument that it does not have the sole burden of proof regarding the issue of domicile. However, the Division's response that it has the "burden for New York City" and petitioner "bears the burden to show change of domicile to Dallas, TX" indicates that the Division concedes its burden of proof with regard to initially establishing petitioner's New York City domicile. Flowing from this concession, petitioner demands to know the precise date petitioner allegedly became a New York City domiciliary. The Division provided a response to this question (*see* finding of fact 8); however, as petitioner correctly points out, the Division's response fails to provide any date, a range of dates or even a time period but rather listed a set of facts that span eight years. In this regard, the Division's response to the question at issue is not sufficient to the question presented.

Furthermore, petitioner advances that the Division must provide a particular date to the

question at issue rather than a range of dates. In this regard, the Division asserts that the determination of whether petitioner was a domiciliary of New York was made “per annum” or on a yearly basis and was not necessarily made as of a specific date. Petitioner cites to the Division’s 2021 nonresident audit guidelines which provides in part “[a]uditors should attempt to be as accurate as possible in determining the date of a [taxpayer’s] change of domicile,” and the New York State Nonresident and Part-Year Resident Income tax return, form IT-203, which requires taxpayers to list a specific date (month, day, and year) that a taxpayer moved into or out of New York State.

The undersigned agrees with petitioner that the Division has in the past provided a specific date for when it has determined a taxpayer is a New York State domiciliary (*see Matter of Holt*, Tax Appeals Tribunal, July 17, 2008).² However, petitioner provides no citation to a compelling authority that this approach is required under the Tax Law in every case. The audit guidelines do advance that the Division’s auditors should attempt to be as accurate as possible in determining the date that a taxpayer changed their domicile, but the guidelines do not require the determination of a specific date or dates, but rather, that an auditor should attempt to narrow down such a time period as best they can. Form IT-203’s requirement that taxpayers provide a specific date that they moved into or out of New York State appears to pertain to State residency and part year residency status. Residency status and domiciliary status are different creatures (*see Matter of Jay*, Tax Appeals Tribunal, September 9, 2004). Thus, the form’s requirements are of limited application in the case at hand. Furthermore, tax forms and instructions are accorded limited weight and are not controlling (*see* 20 NYCRR 2375.8 [c]).

² The blind claim made by the Division in its response that providing a particular date, or range of dates of less than one year, is always “unworkable” in every instance is rejected as the Division has done that in the past.

E. Accordingly, the Division will be precluded from offering evidence at the hearing in relation to the specific date(s), range of dates or time period that petitioner changed his domicile into New York City, unless it provides a supplemental bill of particulars within 30 days of the issuance of this order.

DATED: Albany, New York
November 9, 2023

/s/ Nicholas A. Behuniak
ADMINISTRATIVE LAW JUDGE