

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition

of

JOHN J. HOFF AND KATHLEEN OCORR-HOFF

for Redetermination of a Deficiency or for Refund of
New York State Personal Income Tax under Article 22 of
the Tax Law for the Years 2018 and 2019.

DETERMINATION
DTA NO. 850209

Petitioners, John J. Hoff and Kathleen Ocorr-Hoff, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under article 22 of the Tax Law for the years 2018 and 2019.¹

A formal hearing was held before Barbara J. Russo, Administrative Law Judge, in Albany, New York, on January 31, 2024, at 10:30 a.m., with the final brief to be submitted by July 10, 2024, which date began the six-month period for the issuance of this determination. Petitioners appeared by Woods Oviatt Gilman, LLP (Donald W. O'Brien, Jr., Esq. and Danielle B. Ridgely, Esq., of counsel). The Division of Taxation appeared by Amanda Hiller, Esq. (Peter B. Ostwald, Esq., of counsel).

¹ Although the petition was filed for redetermination of a deficiency or for refund of both New York State and New York City personal income taxes under article 22 of the Tax Law and the Administrative Code of the City of New York, the notice of deficiency at issue was for New York State tax pursuant to article 22 only and no additional tax was assessed under the Administrative Code of the City of New York. As such, there is no issue regarding New York City residency.

ISSUE

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

FINDINGS OF FACT

Pursuant to State Administrative Procedure Act (SAPA) § 307 (1) and 20 NYCRR 3000.15, the Division of Taxation (Division) submitted 43 proposed findings of fact. The Division's proposed findings of fact 2, 4, 9 - 11, 15, 19 - 21, 34 and 40 are supported by the record and have been consolidated, condensed, combined, renumbered and substantially incorporated herein. The Division's proposed findings of fact 3, 5, 7, 8, 12 - 14, 16, 17, 35, 37 - 39, and 41 have been modified to more accurately reflect the record. The Division's proposed findings of fact 1, 33, 42 and 43 are rejected for not referring to the relevant pages of the exhibit cited pursuant to 20 NYCRR 3000.15 (d) (6). The Division's proposed findings of fact 6 and 18 are rejected as not supported by the record. The Division's proposed findings of fact 22 - 31, and 36 are rejected as not supported by the citation provided. The Division's proposed finding of fact 32 is rejected as argument.

1. Petitioners, John J. Hoff and Kathleen Ocorr-Hoff, filed form IT-203, New York State nonresident and part-year resident income tax return, for the year 2018 (2018 return). On the 2018 return, petitioners reported their mailing address as 4031 Gulf Shore Blvd N, Naples, Florida, and reported their New York county of residence as Ontario. Petitioners reported that they were part-year residents, that they moved out of New York State on October 29, 2018, and that they received income from New York sources during the nonresident period. On form IT-203-B, nonresident and part-year resident income allocation and college tuition itemized

deduction worksheet, attached to the 2018 return, petitioners reported a street address of Poplar Beach in Canandaigua, New York, under the section for “Living quarters maintained in New York State by a nonresident,” left the box blank for the line “Mark an X in the box if NYS living quarters were maintained for you or by you for the entire tax year,” and marked the box for schedule B, column E, indicating affirmatively that the living quarters in New York were still maintained by or for them.

2. Petitioners filed form IT-203, for the year 2019 (2019 return). On the 2019 return, petitioners reported their mailing address of Gulf Shore Blvd N in Naples, Florida, and reported their New York county of residence as Ontario. Petitioners reported that they were nonresidents and that they maintained living quarters in New York State in 2019. On form IT-203-B, attached to the 2019 return, petitioners reported a street address of Poplar Beach in Canandaigua, New York, under the section for “Living quarters maintained in New York State by a nonresident,” left the box blank for the line “Mark an X in the box if NYS living quarters were maintained for you or by you for the entire tax year,” and marked the box for schedule B, column E, indicating affirmatively that the living quarters in New York were still maintained by or for them.

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

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

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

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

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

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

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

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

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

12. Petitioners were married in July 2008.

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

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

sold in 2006. He also owned, and then sold, another home on Canandaigua Lake, New York, and Mrs. Hoff owned and then sold a home in Mendon, New York.

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

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

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

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

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

20. Petitioners purchased a condominium located on Gulf Shore Boulevard in Naples, Florida, on July 8, 2014, for \$935,000.00 (the Naples condo). The Naples condo is

approximately 2,560 square feet, has three bedrooms, three bathrooms, a large living area, storage and common areas including a beach front pool.

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

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

23. Petitioners moved their ski equipment and Waterford crystal from the Poplar Beach home to the Naples condo. The Waterford crystal was received by petitioners from their parents over the years and had sentimental value to them. The Waterford crystal was shipped to the Florida residence by UPS in 2014.

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

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

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

27. Based on a review of petitioners' Verizon statements obtained during the audit, the Division determined that petitioners spent 186 days in New York, 131 days in Florida, and 48 days in other locations in 2018. For 2019, the Division determined that petitioners spent 164

days in New York, 153.5 days in Florida, and 47.5 days in other locations. Based on a review of the information obtained during the audit, the Division determined that petitioners spent a majority of their time in Florida during the winter months and a majority of their time in New York during the summer months for the years at issue.

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

	Florida	New York ²	Other
Jan 2018	31		
Feb 2018	23	4	1
March 2018	31		
April 2018	15	5	10
May 2018	5	25	1
June 2018		30	
July 2018		24	7
Aug 2018		29	2
Sept 2018		26	4
Oct 2018 ³	11	18	2
Nov 2018	4	16	10
Dec 2018	12	18	1
Jan 2019	26	4	1
Feb 2019	20		8
March 2019	25		6
April 2019	30		
May 2019	12	19	
June 2019		30	
July 2019		31	
Aug 2019	10	19	2
Sept 2019	2	20	8
Oct 2019	3	26	2
Nov 2019	16	13	1
Dec 2019	11	8	12

² A partial day in New York is counted as a New York day.

³ Petitioners reported on their 2018 return that they moved out of New York on October 29, 2018 (*see* finding of fact 1). They spent October 30 and 31, 2018 in Florida according to the Division's day count. From October 30, 2018 to December 31, 2018, petitioners spent a total of 18 days in Florida, 34 days in New York, and 11 days in other locations.

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

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

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

31. In 2018 and 2019, Mr. Hoff was president of, and held a 100% interest in, an S corporation, Hoff Associates Mfg. Reps., Inc. DBA Global Point Technology (GPT), located at 5815 County Road 41, Farmington, New York. He acquired ownership of GPT in 1989. GPT functions as the distribution, accounting and customer service location for their customer base. GPT imports technology components made overseas and ships them to customers located throughout the country and internationally.

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

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

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

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

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

37. The plan to transfer GPT to Mr. Hoff’s son was terminated in or around June 2018 due to tariffs imposed by the United States on products from China. GPT had many products on

the tariff list and Mr. Hoff was concerned about its impact on the business and did not want his son to take that risk.

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

“in 2018 to early 2019 we worked on business succession planning for Global Point Technology, as well as estate planning for him and his wife.

* * *

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

* * *

My discussions with John about implementing a plan for the transition of ownership in the business were terminated when the US imposed significant import tariffs on products from China and John had the opportunity to assess the financial impact of those tariffs on the company. He decided to put the discussions and implementation of a business succession plan for the company on hold until he could further determine the best course forward. He did not want to ask his son Tyler to give up his work in Chicago to join the company with the instability arising from the China tariffs.”

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

40. As part of plan B, Mr. Hoff transferred some of his responsibilities to Ernie Day, General Manager of GPT. By 2019, Mr. Day assumed responsibility for Mr. Hoff's previous customers. Petitioners introduced into the record the affidavit of Mr. Day, sworn to on January 17, 2024. Mr. Day started working for GPT in 2002 as Director of Engineering and was promoted a year later to Operations Manager. In 2018, he was promoted to the position of

General Manager. Mr. Day stated that “[o]ver the last 13 to 14 years of working for [GPT], I ran the Company. I handled every aspect of the business and every Company customer[.]” As part of Mr. Hoff’s reduction of responsibilities, management of the inside sales team was transferred to Mr. Day. Mr. Hoff also delegated major customer sales accounts to others at GPT during the transition process.

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

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

43. James Kramer, an account manager at GPT, testified that Mr. Hoff remained involved with GPT in 2018 and 2019, but in 2019 his interactions were limited. At the end of 2018 or beginning of 2019, Mr. Kramer became involved with the Hilliard account, which was one of the top ten or fifteen customers at the time. Later in 2019, Mr. Kramer’s interactions with Mr. Hoff were limited, but Mr. Hoff was still about 10% to 15% involved in the Hilliard account, which then became one of the top five to ten customers of GPT. Also in 2019, 99% of oversight of GPT’s factory in China, C.S.T., was transferred to Mr. Kramer.

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

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

46. Mr. Hoff consummated a deal to sell GPT to Trident Motion Technologies (Trident) on or about November 30, 2021.⁴ A press release regarding the sale that was introduced into the record identifies Mr. Hoff as president of GPT.

47. Mr. Hoff agreed to remain with the company for two years, until December 31, 2023, as part of the purchase agreement with Trident, for purposes of transitional change. Mr. Hoff testified that his responsibilities and active participation in the company did not increase as a result of the acquisition and that Trident did not want him to be present every week and was understanding about his reluctance to travel from Florida.

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

49. In response to the Division’s question 6 of the IDR, petitioners stated that Mrs. Hoff worked in graphic design. Petitioners stated that when they moved to Canandaigua, New York, Mrs. Hoff opened a DBA in Ontario County to work part time as a freelance graphic artist and stated further “that [the Ontario County] DBA was closed when [she] opened a Florida DBA in 2018 where [she] continue[d] to work part time in the same capacity.” Petitioners did not present any documentary evidence or testimony that Mrs. Hoff operated a Florida business. Attached to

⁴ Mr. Hoff testified that the name of the company that acquired GPT was H.T.I. However, the documentation in evidence reflects that the company’s name is Trident Motion Technologies, which was formed by combining HTI Technology, American Control Electronics, and Klauber Machine & Gear.

petitioners' 2018 and 2019 federal returns were schedules C, profit or loss from business, for Mrs. Hoff. The schedules C for 2018 and 2019 list the principal business as "commercial artist," business name as "The Mix," and business address as 300 State St, Rochester, New York. The 2018 schedule C reports net profit of \$41,611.00, consisting of gross receipts of \$50,000.00, less expenses of \$8,389.00. The 2019 schedule C reports net profit of \$12,495.00, consisting of gross receipts of \$22,962.00, less expenses of \$10,467.00.

50. Petitioners each signed a Florida Declaration of Domicile on October 30, 2018, declaring that they were domiciled in the State of Florida.

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

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

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

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

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

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

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

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

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

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

61. Mr. Hoff testified that petitioners established checking accounts and a credit card with Florida banks, but did not state when those accounts were opened. Petitioners did not provide documentary evidence of Florida bank accounts. Similarly, the affidavit of Mr. Agostinelli states that petitioners “opened several bank accounts in Florida and closed their New

York bank accounts” and “opened a safety deposit box in Florida and closed their safety deposit box in New York,” but does not state when any New York bank accounts or safe deposit boxes were closed or when Florida accounts or safe deposit boxes were opened and provided no documentary evidence in support.

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

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

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

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

66. Petitioners had medical care providers in both New York and Florida. Mr. Hoff testified that they obtained the services of physicians and surgeons in Florida, including an eye doctor and an otolaryngologist, but were still searching for a dentist. He did not testify as to when these providers were obtained. The documentary evidence shows the following Florida medical care for Mr. Hoff: November 26, 2019, Radiology Regional, Collier County; January 6, 2020, Physicians Regional Pine Ridge, Naples, Florida, outpatient surgery parotidectomy; January 9, 2020, post-op follow-up at Florida Gulf Coast ENT in Naples, Florida; January 5, 2021, shoulder surgery in Naples, Florida and January 2021, physical therapy in Naples, Florida. There is no documentation in the record of Florida medical care for Mrs. Hoff.

67. Mrs. Hoff had spinal surgery in Rochester, New York, on October 16, 2019. Mrs. Hoff testified that prior to the surgery, she had been having neck pain, causing radiating pain and numbness for several years and had tried acupuncture while in Canandaigua, New York, and

physical therapy while in Florida. However, nothing helped, and when she was in Canandaigua during the summer of 2019, she contacted her oncologist who then ordered an MRI. Based on the MRI results, Dr. Pierre Girgis, a neurosurgeon in Rochester, New York recommended that Mrs. Hoff have spinal surgery. The surgery took place at University of Rochester Medical Center, in Rochester, New York. Mrs. Hoff was discharged the following day, October 17, 2019. She was advised by her doctor not to fly until after post-operative appointments scheduled in November 2019. Mrs. Hoff testified that she was in tremendous pain following the surgery and, based on her doctor's advice, she stayed in Canandaigua at the Poplar Beach home during her recovery. Mrs. Hoff had follow-up appointments in Rochester, New York, with a nurse practitioner on November 5, 2019, and with Dr. Girgis on November 12, 2019. Following the appointments, petitioners flew to Florida on November 14, 2019. Mrs. Hoff testified that her doctor was very surprised that she was leaving New York at that time, and that despite being in terrible pain, she just "want[ed] to get home to Florida."

CONCLUSIONS OF LAW

A. Tax Law § 605 (b) (1) (A) and (B), in relevant part, sets forth the definition of a New York State resident individual for income tax purposes as someone:

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

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

The classification of resident versus nonresident is significant, since nonresidents are taxed only on their New York State or City source income, whereas residents are taxed on their

income from all sources. The Division has not raised statutory residency pursuant to subsection (B) as an issue and petitioners do not dispute that they spent more than thirty days in New York State and maintained a permanent place of abode there. As such, the sole question here concerns the first basis, domicile (subsection [A]), upon which resident status is premised.

The Division's personal income tax regulations define "domicile," in relevant part, as follows:

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

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

(3) Domicile is not dependent on citizenship; that is, an immigrant who has permanently established such immigrant's home in New York State is domiciled here regardless of whether such immigrant has become a United States citizen or has applied for citizenship. However, a United States citizen will not ordinarily be deemed to have changed such citizen's domicile by going to a foreign country unless it is clearly shown that such citizen intends to remain there permanently. For example, a United States citizen domiciled in New York State who goes abroad because of an assignment by such citizen's employer or for study, research or recreation, does not lose such citizen's New York State domicile unless it is clearly shown that such citizen intends to remain abroad permanently and not to return

(4) A person can have only one domicile. If a person has two or more homes, such person's domicile is the one which such person regards and uses as such person's permanent home. In determining such person's intentions in this matter, the length of time customarily spent at each location is important but not necessarily conclusive . . .” (20 NYCRR 105.20 [d]).

Domicile is established by physical presence and intent (*see Matter of McKone v State Tax Commn.*, 111 AD2d 1051, 1053 [3d Dept 1985], *affd* 68 NY2d 638 [1986]; *Matter of Adams*, Tax Appeals Tribunal, September 3, 2021). 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, 458 [3d Dept 1976]; 20 NYCRR 105.20 [d] [2]). Whether there has been a change in 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]). Generally, this means that a taxpayer must show a change of lifestyle to prove a change of domicile (*see Matter of Doman*, Tax Appeals Tribunal, April 9, 1992) and “[t]here 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 . . .” (*Matter of Newcomb*, 192 NY at 251).

In order to establish a new 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). “While the standard is subjective, the courts and this Tribunal have consistently looked to certain objective criteria to determine whether a taxpayer’s general habits of living demonstrate a change of domicile” (*Matter of Ingle*, Tax Appeals Tribunal, December 1, 2011, *confirmed* 110 AD3d 1392 [3d Dept 2013]). The Tax Appeals Tribunal considers the following criteria to be of significance in addressing issues of domicile: (1) the retention and use of a permanent place of abode in New York (*Matter of Wechsler*, Tax Appeals Tribunal, May 16, 1991, *confirmed* 194 AD2d 879 [3d Dept 1993]); (2) the location of business activity (*Matter of Kartiganer*, Tax Appeals Tribunal, October 17, 1991); (3) the location of family ties (*Matter of Buzzard*, Tax Appeals Tribunal, February 18, 1993, *confirmed*

205 AD2d 852 [3d Dept 1994]); (4) the location of social and community ties (*Matter of Getz*, Tax Appeals Tribunal, June 10, 1993); and (5) formal declarations of domicile (*Matter of Trowbridge*, 266 NY 283, 289 [1935]; *Matter of Gray*, Tax Appeals Tribunal, May 25, 1995, *confirmed* 235 AD2d 641 [3d Dept 1997]; *Matter of Getz*). While certain formal 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 at 289).

B. As noted above, "[t]o change one's domicile requires an intent to give up the old and take up the new, coupled with an actual acquisition of a residence in the new locality" (*Matter of Bodfish v Gallman*, 50 AD2d at 458; *see also Matter of Newcomb*, 192 NY at 251). "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" (*Matter of Newcomb*, 192 NY at 250). 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, 246 [Sur Ct, Westchester County 1943], *affd* 267 App Div 876 [2d Dept 1944], *affd* 293 NY 785 [1944]); *see also Matter of Bodfish v Gallman*, 50 AD2d at 458).

There is no dispute that petitioners were domiciled in New York in the years preceding the years at issue. As such, they bear the burden of proving, by clear and convincing evidence, that they changed their domicile to Florida (*see Matter of Bodfish v Gallman*, 50 AD2d at 459).

The record is clear that petitioners planned to make Florida their permanent home at some point. The question is, when did their plan finally materialize such that they effectively

changed their lifestyle “to give up the old and take up the new place” (*Matter of Newcomb*, 192 NY at 251). Upon review of the entire record and pursuant to the foregoing standards, it is concluded that petitioners have not proven, by clear and convincing evidence, that they gave up their New York domicile and acquired a new domicile as their fixed and permanent home in Florida as of October 30, 2018.

C. Petitioners historic domicile was their Poplar Beach home in Canandaigua, New York. As Mrs. Hoff explained, when they bought the Poplar Beach home in 2011, they planned to have it as their main property until there was a time that Mr. Hoff could “step away from work[.]” They purchased the Naples condo in 2014, as their second home, and generally spent winters in Florida and summers in New York after its purchase. According to Mr. Hoff, in 2016 and 2017, petitioners started talking about eventually moving their primary residence to Florida but “it was really 2018 before we could, our lives were such that we could really make that permanent move.” Petitioners planned to eventually make Florida their permanent home. However, the record shows that plan did not materialize in 2018 or 2019 due to the continuing demands from Mr. Hoff’s business, GPT. Petitioners’ transition to Florida hinged upon Mr. Hoff’s retirement plan and his ability to slow down at work and come up with an “exit strategy” from GPT. However, his exit plan was not completed in 2018 or 2019. He put steps in place during 2018 and 2019 to reduce his involvement with GPT, so that at some point, petitioners could realize their plan of making Florida their domicile.

Petitioners were not ready to “give up the old and take up the new” domicile until Mr. Hoff’s plans to transition out of GPT were solidly in place. Mr. Hoff initially intended to transfer the company to his son, Tyler, so that he could exit the company and realize the plan of making Florida their new home. However, this plan was thwarted by the new tariffs

imposed on imports in 2018. Petitioners were forced to delay their plans due to concerns over what impact the tariffs would have on the business. As Mr. Hoff testified, he didn't want to put his son in the position of taking on a business risk, and so he moved on to plan B, delegating responsibilities to others in the company so that he would have less involvement with GPT and could spend more time in Florida, and plan C, pursuing third party purchasers for GPT. Mr. Hoff was unable to step away from the business in 2018 and his planning and business activity with GPT continued into 2019.

Contrary to petitioners' argument that their transition to Florida occurred towards the end of 2018, the correspondence from petitioners' trusts and estates attorney, Ms. Schaefer, stated that Mr. Hoff's business succession planning for GPT was still going on in early 2019 and that the planning was then put on hold until he could determine the best course forward due to the tariffs. Thus, in 2018 and 2019, they were still in the planning stage and petitioners did not yet have a definite transition plan in place that would allow Mr. Hoff to exit GPT and fully abandon the old lifestyle and take up the new one in Florida.⁵ Faced with the demands of Mr. Hoff's business, petitioners were not prepared "to give up the old and take up the new place as [their] domicile" (*Matter of Newcomb*, 192 NY at 351; *see also Matter of Ingle*) in 2018 and 2019. Petitioners' argument that they made their "permanent move" to Florida in October 2018 is further contradicted by Mr. Hoff's 2018 form W-2 from GPT, which reported his address in Canandaigua, New York.

Although Mr. Hoff took steps to minimize his business ties with GPT in 2019, including delegating large customer accounts to others within the company and hiring Ms.

⁵ Indeed, under the initial plan to transfer GPT to his son, Tyler, Mr. Hoff's business activity with GPT would have continued to August 2020, when he would then go part time and receive a cash payout plus payments and a portion of the profits for 10 years (*see* finding of fact 36).

Hutchinson as comptroller to assist Mr. Day in his general manager role, Mr. Hoff's involvement with GPT continued until at least 2021, when he sold the company. Indeed, he continued as president of GPT during the years at issue, signed an NDA in his capacity as president of GPT in 2020, and had the sole authority as president and 100% owner of GPT to decide when to sell the business. Mr. Hoff did not relinquish control of GPT until the sale to Trident in August 2021. Further, as part of the sale of GPT to Trident, Mr. Hoff agreed to stay on with the company for an additional two years, until December 31, 2023.

Mrs. Hoff, likewise, had continuing business activities in New York throughout 2018 and 2019. Although petitioners claimed, in response to the Division's question 6 of the IDR that she closed her New York business and opened a Florida one in 2018 where she continued to work part time, this claim was contradicted by the schedule C attached to petitioners' 2018 and 2019 federal returns which show that Mrs. Hoff's business, "The Mix," listed a business address in Rochester, New York, for both years. As such, petitioners' continuing business activities in New York do not support their claim of a change of domicile during the years at issue.

D. The Division argues that petitioners' retention of their home in New York supports the position that they did not give up their New York domicile and acquire a Florida domicile. However, such retention of a New York residence is not conclusive. (*Matter of Angelico*, Tax Appeals Tribunal, March 31, 1994, citing *Matter of Doman*; *Matter of Sutton*, Tax Appeals Tribunal, October 11, 1990). The significance of petitioners' continuing ownership of the New York home is tempered by the facts and circumstances particular to petitioners' situation. "Where a person has two homes . . . his domicile is the one which he considers and uses as his permanent home, and the length of time spent at each location is an important factor in

determining intention in this regard” (*Matter of Angelico*, citing 20 NYCRR former 102.2 [d]). In this case, a review of the time spent at each location shows that petitioners spent more time in New York than Florida during the years at issue.

The record shows that petitioners spent 186 days in New York and 131 days in Florida in 2018, and 164 days in New York and 153.5 days in Florida in 2019. Mr. Hoff testified that petitioners began to spend “more and more time” in Florida every year after they purchased the Naples condo in 2014. However, as there are no day count documents in the record prior to 2018, it is impossible to ascertain how much time they previously spent at the locations in comparison with the years at issue.

A review of the time spent in Florida versus New York for 2018 does not support petitioners’ argument of a domicile change to Florida as of October 30, 2018. While petitioners’ 2018 New York nonresident return reports that they moved out of New York on October 29, 2018, the evidence shows that petitioners spent more time in New York than in Florida for the remainder of 2018, after they purportedly moved out. Indeed, for the remainder of 2018, from October 30, 2018, to the end of that year, petitioners spent only 18 days in Florida, compared to 34 days in New York, and 11 days in other locations. Moreover, petitioners spent both Thanksgiving and Christmas in New York in 2018. Similarly, in 2019, petitioners spent more time in New York than Florida and spent the Christmas holiday in New York.

E. The location of family and near and dear items are also factors in determining domicile (*Matter of Buzzard*; *Matter of Campaniello*, Tax Appeals Tribunal, July 21, 2016, *confirmed* 161 AD3d 1320 [3d Dept 2018], *lv denied* 32 NY3d 913 [2019]). The location of family ties weighs against petitioners’ claim that they changed their domicile on October 30,

2018. Mr. and Mrs. Hoff both have children in New York and Mrs. Hoff's elderly parents lived in New York during the years at issue. Petitioners spent major holidays in New York during the years at issue to be with Mrs. Hoff's parents. Petitioners have no family in Florida. As such, this factor does not support petitioners' argument of a change of domicile.

Regarding near and dear items, petitioners testified that they moved their Waterford crystal and ski equipment to Florida, but there is no evidence of when the ski equipment was brought to Florida and the Waterford crystal was shipped in 2014, prior to the years at issue and well before the purported change of domicile.

F. The next factor to consider, location of social and community ties, shows that while petitioners established ties to Florida over time, their social and community ties to New York continued during the years at issue. Petitioners became members of The Country Club of Naples, Florida, in November or December 2018. However, they continued to maintain their memberships at the Canandaigua Country Club in Canandaigua, New York, and the Oak Hill Country Club in Rochester, New York, during the years at issue. While petitioners argue that their change of membership status to "global" at the Oak Hill Country Club supports their argument that they changed their domicile at the end of 2018, there is no evidence of when such change occurred. Indeed, the letter from Ms. Jones indicates that, as of the date of that correspondence on October 13, 2020, the status change had not yet occurred (*see* finding of fact 57).

Petitioners established new community ties in Florida over time, including Mr. Hoff's position as committee chairman with the Naples condo board in June 2018, and Mrs. Hoff's positions as secretary of the board of directors and chair of the social and covenants committees for the Naples condo association in 2019. Again, these actions point to a change

in lifestyle over time and do not support a change of domicile on the specific date of October 30, 2018, as argued by petitioners.

Petitioners also point to medical care providers obtained in Florida as support for their change of domicile. While Mr. Hoff testified that they obtained the services of physicians and surgeons in Florida, he did not state when these providers were obtained. The documentary evidence does not show any Florida medical treatment in 2018. Rather, it shows that Mr. Hoff obtained medical treatment in Florida beginning November 26, 2019, and then on dates after the years at issue. There is no evidence that Mrs. Hoff had a medical care provider in Florida during the years at issue. Rather, the record shows that she received care from providers in New York.

G. Other than the formal declarations of domicile that petitioners signed on October 30, 2018, which hold little weight (*see Matter of Trowbridge*, 266 NY at 289; *Matter of Silverman; Wilke v Wilke*, 73 AD2d 915, 917 [2d Dept 1980]), there is no evidence to support a change of domicile on that specific date. Instead, the record shows a gradual progression of steps taken by petitioners over time to make Florida their permanent home. While petitioners registered to vote in Florida and obtained Florida drivers' licenses on April 25, 2018, such formal declarations are less persuasive than informal acts demonstrating an individual's "general habit of life" (*Matter of Trowbridge*, 266 NY at 289; *Matter of Silverman*) and have been recognized as self-serving in nature when used as evidence to affirmatively establish a new domicile (*Wilke v Wilke*, 73 AD2d at 917). Additionally, petitioners' formal declarations occurred over a period of time, spanning from April 25, 2018, for their Florida drivers' licenses and voter registrations to July 17, 2019, for the Florida vehicle registration of their Chevy Tahoe. The Florida insurance cards introduced by petitioners were effective as of April

25, 2020 and October 27, 2021, subsequent to the years at issue, and hold no weight.

Additionally, petitioners introduced a New York insurance card for a 1989 Mercedes, effective February 12, 2022, showing that they continued to maintain New York State insurance for this vehicle after their purported change of domicile.

On May 10, 2019, and September 13, 2019, respectively, petitioners signed revocable trusts and executed new wills governed by the laws of Florida. Mr. Hoff obtained a Florida hunting and fishing license on September 29, 2020, after the years at issue. He testified that he “probably” had an earlier one, but there is no documentary evidence to support his assertion. As such, these formal declarations are not persuasive to show that petitioners changed their domicile on October 30, 2018.

H. The evidence shows that while petitioners intended to change their domicile to Florida at some point, their change of lifestyle happened gradually over the course of time such that they have not clearly established that on October 30, 2018, they had “an absolute and fixed intention to abandon [their New York domicile] and acquire another” (*Matter of Newcomb*, 192 NY at 251). As such, petitioners have not met their burden of proof to show that they changed their domicile for the years at issue and that Division’s determination was erroneous (*see Matter of Leogrande v Tax Appeals Trib.*, 187 AD2d 768, 769 [3d Dept 1992], *lv denied* 81 NY2d 704 [1993]; *Matter of Bodfish v Gallman*, 50 AD2d at 459; *see also* Tax Law § 689 [e]).

I. The petition of John J. Hoff and Kathleen Ocorr-Hoff is denied and the notice of deficiency, dated April 13, 2021, is sustained.

DATED: Albany, New York
October 31, 2024

/s/ Barbara J. Russo
ADMINISTRATIVE LAW JUDGE