

STATE OF NEW YORK  
TAX APPEALS TRIBUNAL

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In the Matter of the Petition :  
of :  
**RICHARD E. AND JEAN M. GRAY** : DECISION  
for Redetermination of a Deficiency or for Refund of : DTA No. 808982  
Personal Income Tax under Article 22 of the Tax Law for :  
the Years 1987 and 1988. :

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Petitioners Richard E. and Jean M. Gray, 2 Railroad Vine, Amelia Island, Florida 32034, filed an exception to the determination on remand of the Administrative Law Judge issued on September 15, 1994. Petitioners appeared by Kaye, Scholer, Fierman, Hays and Handler, Esqs. (Peter L. Faber, Esq., of counsel). The Division of Taxation appeared by William F. Collins, Esq. (Michael J. Glannon, Esq., of counsel).

Petitioners submitted a brief in support of their exception. The Division of Taxation filed a brief in opposition. Petitioners filed a reply brief which was received on December 27, 1994 and began the six-month period for the issuance of this decision. Petitioners' request for oral argument was denied.

Commissioner Dugan delivered the decision of the Tax Appeals Tribunal. Commissioner Koenig concurs.

***ISSUE***

Whether petitioners were domiciled in New York in 1987.

***FINDINGS OF FACT***

We find the facts as determined by the Administrative Law Judge in her determination on remand. These facts are set forth below.

Petitioners, Richard E. Gray and Jean M. Gray, were domiciled in New York State until at least September 1985.

In 1987 and 1988, petitioners filed New York State nonresident personal income tax returns. The returns filed for those years show Florida State mailing addresses. Upon audit of those returns, the Division of Taxation ("Division") determined that petitioners were domiciliaries of New York in 1987 and 1988; therefore, they were required by the Division to file personal income tax returns as residents of New York, calculating their income tax accordingly. The Division issued statements of audit adjustment to petitioners recalculating their 1987 and 1988 New York income and tax due thereon in accordance with this determination.

Based on the results of its audit, the Division issued to petitioners a Notice of Deficiency dated November 26, 1990, asserting deficiencies in income tax in the amounts of \$779,360.50 for 1987 and \$60,400.13 for 1988.

As a child, Mr. Gray moved with his family to Fayetteville, New York and later moved to Syracuse. Except for periods of schooling and military service, he lived in the Syracuse area most of his life. He is a graduate of Syracuse University and an avid supporter of the Syracuse football team. In 1952, Mr. Gray went to work for a company started by his father called Gray-Syracuse, Inc.

Gray-Syracuse is a precision casting corporation which focuses primarily on the aerospace industry. Before 1985, Mr. Gray owned 80 percent of the common stock and was the chairman of the board of Gray-Syracuse. The remainder of the stock was owned by key employees hired by Mr. Gray to run the corporation. The corporation has manufacturing facilities in Manlius and Chittenango, New York. It also acquired two industrial plants, one in Troy and one in Oriskany, New York. Mr. Gray personally owned the property upon which Gray-Syracuse's primary facilities were located. He also purchased 48 acres of land as a site for a proposed manufacturing plant. The land was never zoned for industrial purposes, however, so the plant was never built. It remains vacant land and is still held by Mr. Gray.

In about 1970, Mr. Gray began relinquishing direct control over the operations of the corporation, appointing Robert Barbero as president. Over time, he handed over the day-to-day management of the corporation to Mr. Barbero. As his participation in the corporation declined so did his compensation until Mr. Gray was compensated less for his services than was Mr. Barbero. In the 1970's, Mr. Gray rented a separate office for himself in Manlius, New York to remove himself from the plant premises because he believed his presence would undermine Mr. Barbero's authority. In his personal office, he conducted business connected with Gray-Syracuse and with two other corporations in which he had an ownership interest: Alcumet, Inc., a New Hampshire foundry specializing in aluminum and copper base metal, and Finite Tools, a tool company formed in Georgia in 1983.

Mr. Gray has suffered severe health problems for some time, especially respiratory and heart ailments. In 1981, he was diagnosed as having arrhythmia, a heart condition which can cause sudden blackouts and, if untreated, can lead to death. In May 1981 he was involved in a minor automobile accident after falling unconscious behind the wheel. After that, he continued to experience episodes of lightheadedness. In June 1983, he experienced a loss of consciousness while sitting at his office desk. Because of these experiences, Mr. Gray stopped driving an automobile for a period of about five years.

Also in 1981, Mr. and Mrs. Gray were involved in an almost fatal automobile accident while driving from Sacramento to San Francisco. Following this accident, key employees of Gray-Syracuse approached Mr. Gray and asked him what would happen to them in the event of Mr. Gray's death. Prompted by concerns for his own health and for the well-being of his employees, Mr. Gray began planning for retirement and for the orderly transition of the corporation to new ownership.

In the early 1980's, the Grays began visiting different locations looking for a place with a suitable climate that would allow Mr. Gray to exercise year round. They visited California, New Mexico, North and South Carolina, Georgia and Florida. Initially, they decided to settle on Skidway Island in Georgia. In January 1984, they purchased a residential plot with the

intention of building a home there; however, their home design was rejected by the local architectural review committee. By August of 1985, the Grays realized that they would need to rent housing until they were able to resolve their differences with the review committee. They elected to rent on Amelia Island, Florida because there is a major airport nearby which would allow them to commute to Skidway Island on a regular basis to negotiate their differences with the review committee.

In August 1985, Mrs. Gray met with George Dahl, a realtor, who showed her available housing on Amelia Island. Eventually, they settled on a three-bedroom condominium located at 2201 Linkside Villa, Amelia Island. They executed a one-year lease from November 1985 through November 1986 with an option to renew. At some point in the fall of 1985, petitioners realized that they would never resolve their differences with the architectural review board of Skidway Island, and they then began searching for a permanent residence on Amelia Island.

Letters from two realtors confirm that by the fall of 1985 petitioners began looking for a home to purchase on Amelia Island. By the fall of 1986, the Grays still had not found what they were looking for. On October 3, 1986, the Grays signed an agreement to acquire Lot No. 44, Railroad Vine, Amelia Island Plantation, with the intention of building a new home. The acquisition of Lot No. 44 was completed on November 4, 1986, and the Grays immediately began planning for the design of the new house.

In the meantime, the Grays continued to rent housing on Amelia Island. When the lease at Linkside ended, they did not exercise the option to renew because of a disagreement with the owner of the property. Instead, they leased a second three-bedroom condominium at 2095 Beachwood, Amelia Island Plantation from December 1986 through May 1987. The term was for less than a year because the owner had a prior arrangement to rent it to other tenants.

The Grays spent the summer of 1987 in Syracuse, New York and leased no property in Florida from June through September 15, 1987. They leased a three-bedroom apartment at 22 Wax Myrtle, Amelia Island Plantation from September 15, 1987 through October 1988. The Grays spent the summer of 1988 in Florida. Mr. Gray found the Florida heat and humidity to be

extremely oppressive and determined not to repeat the experience.

The design, planning and construction of the Grays' new house stretched from November 1986 through at least December 1988. The original architectural design was rejected by the Amelia Island Plantation Architectural Review Board in December 1986 and had to be revised. The final plans were not approved until June 1987. The construction contract was then let out for bid. A final contract was signed in October 1987. The Grays actively participated in overseeing the design and construction of their new home. They moved into their new residence on December 15, 1988, although the house was only partially complete and swaddled in scaffolding.

When the Grays began planning to move to a warmer climate, they initially thought they would sell their Fayetteville home. They changed their minds for two reasons. One of their children was (and continues to be) unable to keep a steady job because of physical ailments and addictions to drugs. The Grays felt obligated to maintain a home for her, at least until she was able to care for herself. In addition, the Grays decided, as part of their estate planning, that it would be prudent to turn the Fayetteville house over to their children, allowing them to hold it as an investment.

The Grays have five children. Mr. Gray has three children by a prior marriage: Christina, who lives near Syracuse; Stephen who lives in Colorado; and Andrea, who lives in Vermont. Mrs. Gray has two children, also by a prior marriage, Warren and Susan Murphy. Only Susan remains in Syracuse. Late in 1986, legal preparations were begun to effectuate the transfer of the Fayetteville house to the five children. On January 26, 1987, the children formed the partnership Gra-Mur Real Estate Co. ("Gra-Mur"). At that time, the home was valued at approximately \$240,000.00. In February 1987, the Grays gave each child an 8-1/3 percent interest in the Fayetteville house. They gave an additional eight and one-third percent interest to each child in November 1988. The remaining interest was transferred to the children in May 1989. The Grays elected to transfer the property to their children in this manner in order to take advantage of Federal and New York State gift tax exemptions. Had they transferred the

property without thought to the tax consequences, they would have transferred the property to their children all at once.

The Grays rented (and continue to rent) the Fayetteville house from Gra-Mur on a year-round basis. They do so in order to provide themselves with a summer home away from the oppressive Florida heat. During part of the period in issue, the Grays also provided year-round housing for one of their daughters.

The Fayetteville house was appraised again in March 1987 and had a value at that time of approximately \$300,000.00. It has approximately 3,200 square feet. It is furnished with rather heavy antique furniture, appropriate to a northern climate. When the Grays moved to their newly-built house in Florida, they purchased all new furniture suitable for the Florida climate and the style of the new house. The Florida house has approximately 3,400 square feet. Glass windows are used throughout the structure, including ceilings and walls, and there are extensive plantings. Construction costs were approximately \$619,000.00.

In 1981, when he first began thinking about retirement, Mr. Gray entertained several plans for extricating himself from Gray-Syracuse. He initially considered having his son, Stephen Gray, assume ownership and management control of the corporation. When Stephen expressed no interest, Mr. Gray considered a sale to the employees through a stock option plan, but this proved not to be feasible. Finally, Mr. Gray considered a sale to third-party buyers.

In about 1984, Mr. Gray retained the Geneva Corporation, a business consulting firm, to establish a price for the business and later that year he consulted the firm of Peat, Marwick & Mitchell about his plans. Mr. Gray had definite ideas about the type of purchaser he was looking for. He was interested in finding a company that would share his views as to how the corporation would be managed. It was important to him that the corporation not be merged into another business, that it remain in New York State and that his key employees be offered the opportunity to purchase stock. Mr. Gray was approached by many companies interested in purchasing including, Steele Heddle, Waukesha Foundry, Chromalloy, and Sturm Ruger.

In late 1986, ESCO Corporation ("ESCO"), a Portland, Oregon corporation, expressed an

interest in purchasing Mr. Gray's interest in Gray-Syracuse. Serious negotiations were begun late in 1986 after Mr. Gray determined that ESCO would be a suitable buyer. On August 12, 1987, Mr. Gray announced to the employees that ESCO was going to purchase Gray-Syracuse by September 15, 1987. Mr. Gray agreed to sell to ESCO his 80 percent stock ownership in the corporation and the real property and manufacturing facilities owned by him. He hoped that 20 percent of the common stock would continue to be owned by the corporation's key personnel. Towards that end, Mr. Gray retained some of his holdings until other key employees became eligible to be shareholders. The shares retained by Mr. Gray were intended to create a pool from which key personnel could purchase shares, with ESCO always retaining 80 percent of the outstanding common stock. Some Gray-Syracuse employees elected to sell shares of stock they already owned, and in the end, Mr. Gray retained eight or nine percent of the common stock as a minority shareholder. Mr. Gray was asked by ESCO to serve on the Gray-Syracuse board of directors, and he did so without compensation until sometime in 1990.

Although Mr. Gray was not actively involved in the day-to-day management of Gray-Syracuse, he participated in running the corporation up until its sale in September 1987. As he stated:

A. "That is correct. However, I would say we were talking '84 and '85; I was still the responsible executive for Gray-Syracuse. Even though I was not operating the business on a daily basis, I was the motivator of the business; I was the extender of the business; I was the one that took the comparable risks and had my house and everything else on the line to buy equipment and build buildings and all of that stuff. So I was deeply, deeply involved, but not on an operating level. So therefore, in the time frame of until 1987, I had to maintain bank relations and relations within the business community of Syracuse; it was vital to the health of the company.

"I was telling them at noon that in 19-- what year was it? -- 1950 we could set up one man to melt metal for \$15,000. Just before I left, one man to melt and pour metal was a million and a half dollars. And therefore, it was very vital that I have the resources to go out and get the money to buy the equipment to keep that business technically advanced."

Q. "And that would be through the sale in September of 1987?"

A. "Up until the sale in September of 1987."

(Tr., pp. 139-140).<sup>1</sup>

In 1987, Mr. Gray received salary and wages from Gray-Syracuse in the amount of \$160,994.57. In 1988, he received wages and salary from Gray-Syracuse in the amount of \$59,790.00. Mr. Gray described this as a bonus earned in 1987 but paid in 1988. The wage and tax statements issued to Mr. Gray show a Florida address, and he credibly testified that he sometimes conducted business related to Gray-Syracuse from his residence in Florida.

Throughout 1987 and 1988, Mr. Gray retained his office in Manlius, New York, where he conducted business in connection with Alcumet and Finite Tools and looked after his personal financial interests. Until Gray-Syracuse was sold in 1987, he also conducted business on behalf of that corporation from the Manlius office.

As a life-long resident of the Syracuse area and a successful businessman, Mr. Gray had extensive business, social and civic ties in the Syracuse community. He was the treasurer of the Manufacturers Association of Central New York for approximately 10 years and also served as president of that organization. He was a member and past president of the Citizen's Foundation and a member of the Metropolitan Development Association and the Employer's Support for the Guard and Reserve. By the end of 1986, Mr. Gray had resigned from all of these organizations. He rejected invitations to serve on the boards of several community organizations in New York because he knew that he was moving to Florida. In 1987 and 1988, Mr. and Mrs. Gray continued their memberships in two Syracuse social organizations, the Onondaga Golf Club and the Century Club. In addition, Mr. Gray continued his membership in the Orange Pack, an organization for boosters of the Syracuse University football team.

Beginning in 1985, Mr. and Mrs. Gray's pattern of charitable contributions shifted from

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Finding of Fact "22" of the original Determination included only a portion of this quoted passage and omitted the word "until," as highlighted above. The quotation appearing in original Finding of Fact "22" was as follows:

"I was deeply, deeply involved, but not on an operating level. So therefore, in the time frame of 1987, I had to maintain bank relations and relations within the business community of Syracuse; it was vital to the health of the company." (Tr., p. 140.)"



New York to Florida. In 1985, the Grays made no contributions to Florida charitable organizations, while making substantial donations to organizations in New York and elsewhere. By 1988, the Grays' New York contributions were confined primarily to Syracuse University and the Orange Pack. The bulk of their charitable contributions were made to Florida organizations. Mrs. Gray became a member of St. Michael's, a Florida church, in 1985 and began making contributions to that church in 1986. In 1986, the Grays began contributing to the United Way of Northeast Florida, and by 1988 they were contributing to six different Florida organizations.

On September 9, 1985, Mr. Gray executed a Declaration of Domicile and Citizenship in Nassau County, Florida, stating, in part:

"I have changed my domicile to and am . . . a bonafide resident of the State of Florida since NINTH day of SEPTEMBER, 1985, and I reside at 2201 BEACHWOOD ROAD, FERNANDINA, NASSAU County, Florida . . . ."

Mrs. Gray registered a motor vehicle in Florida on November 26, 1985. Both of the Grays were issued Florida driver's licenses on November 27, 1985. The Grays registered to vote in Florida on February 20, 1986. By separate letters dated March 11, 1986, Mr. and Mrs. Gray requested that the Onondaga, New York Board of Elections remove their names from the voter records. On March 10, 1986, Mr. Gray executed a living will declaring the Fernandina address as his residence. A Florida Vessel Certificate of Title was issued to Jean M. Gray on October 7, 1988. Mr. and Mrs. Gray obtained passports issued in Miami on December 4, 1986.

In the years after 1986, the Grays joined several Florida organizations. Mrs. Gray joined the Plantation Ladies Association in 1986, and Mr. and Mrs. Gray became members of the Pelican Club of Fernandina Beach, Florida early in 1987. Mr. Gray has been an active member of a discussion group called The Breakfast Club since October of 1985. Membership in the group is limited to 25 men who must be permanent residents of Amelia Island, Florida in order to participate. In June 1988, the Grays joined the Council of 100 in Nassau County, Florida, a group dedicated to establishing and supporting an active Republican Party in that part of Florida. The Grays renewed their membership in a Florida branch of the American Automobile

Association in June 1987, indicating that they were members before that time.

Beginning in March 1986, Mr. Gray began writing to Florida elected officials on both the state and Federal level to communicate his opinion with regard to issues of concern to him. He consistently identified himself as a Florida resident.

The Grays started seeing a Florida dentist in 1986. Beginning in 1987, they also established ties with Florida doctors. All of their medical records were transferred to Dr. Farid Ullah of Fernandina Beach, Florida in 1987. Mr. Gray consulted with an athletic physician when he was in New York in 1986, but he has not returned to New York for medical treatment of his heart condition since before 1987. The Grays still maintain a relationship with a doctor in Syracuse.

In September 1985, Mr. Gray opened a brokerage account at Merrill Lynch's Fernandina Branch. In November 1985, he opened a checking account with the Barnett Bank of Florida with an initial deposit of \$10,000.00. Shortly thereafter, he obtained a Visa card from the Fernandina Branch of the Barnett Bank. Throughout 1987 and the greater part of 1988, Mr. Gray also maintained accounts with Prudential-Bache of Syracuse and the Seneca Federal Savings and Loan Association of Manlius, New York. He also had brokerage accounts with Wright Investors' Service of Bridgeport, Connecticut, Bear Stearns of New York and New Mexico Capital Management in Albuquerque, New Mexico. He had investments in limited partnerships located in Salt Lake City, Utah.

Mr. Gray continues to own a 48-acre parcel in the Syracuse area which he purchased with the thought of someday building a manufacturing plant. Mrs. Gray has a first mortgage on a house located in the Syracuse area originally owned by herself and her former husband.

By Mr. Gray's count, the Grays spent 183 days in Florida and 145 days in New York in 1987; in 1988, they spent 266 days in Florida and 67 days in New York. Days in and out of New York were substantiated by voluminous records including: telephone bills, credit card receipts, bank withdrawal receipts, doctor and dentist bills, Amelia Island Plantation Club charges and expense accounts. In addition, Mr. Gray offered in evidence a contemporaneous

log showing his whereabouts on a daily basis. Mr. Gray completed the log, usually on a weekly basis, although some entries are made daily and some every few days. Mr. Gray credibly testified as to his whereabouts on days not accounted for by documentation other than the log. Primarily, these were days spent in Florida, and documentary evidence was offered to establish the Grays' presence in Florida on the day immediately preceding and the day following the day for which testimony was offered.

The Grays spent more time in New York in 1987 than they would have liked. One of their daughters had legal and medical problems which forced the Grays to return to Syracuse on several occasions.

Sometime in December of 1983 or January of 1984, the Grays consulted with their attorney regarding the appropriate steps to take to carry out their intention to change their domicile from New York. At that time, they intended to change their domicile to Georgia. When they moved to Amelia Island, they were prepared to execute formal declarations in order to change their domicile to Florida, and they did so.

#### ***ADDITIONAL FINDING OF FACT***

Mr. Gray was Chairman of the Board of Directors of Gray-Syracuse until that company was sold. In that capacity, he attended meetings of the Board of Directors on March 31, 1987 (conducted by telephone), July 2, 1987 and August 28, 1987.

#### ***OPINION***

In her determination of May 27, 1993, the Administrative Law Judge found that the Grays finally abandoned their New York domicile on September 15, 1987 with the sale of Gray-Syracuse. Specifically, the Administrative Law Judge stated that:

"the record clearly establishes that the Grays had formed an intention to establish a Florida domicile late in 1985 and took numerous concrete steps towards fulfilling that intention. Under these circumstances, it is difficult to select a precise date when intention and action came together. Considering all of the facts in the record, I find that with the sale of Gray-Syracuse on September 15, 1987, the Grays finally abandoned their New York domicile. By that time, most of the Grays' ties with New York were severed. Mr. Gray was no longer actively involved in Gray-Syracuse. He

held no compensated position;<sup>2</sup> his stockholdings were less than 10 percent of the shares outstanding; and he was no longer actively involved in the company's financial affairs. Mr. Gray resigned from membership in most of the New York organizations he had previously belonged to. The Grays had rented a residence in Florida from September 15, 1987 through November 15, 1988, at which time they intended to move into their new home which was then in the process of construction. In short, by September 15, 1987 the Grays had severed their most substantial ties with New York and moved to Florida with the intention of remaining" (Determination, conclusion of law "D").

The Administrative Law Judge held that petitioners proved by clear and convincing evidence that they did not spend more than 183 days in New York in either 1987 or 1988.

On June 30, 1994, this Tribunal issued a decision which denied petitioners' exception to the determination of the Administrative Law Judge except with respect to the issue of whether petitioners were domiciliaries of New York for the calendar year 1987 (Matter of Gray, Tax Appeals Tribunal, June 30, 1994). Our decision was based on petitioners' assertion and our finding that the Administrative Law Judge misquoted a portion of the hearing transcript in her findings of fact. In brief, the Administrative Law Judge quoted the transcript of Mr. Gray's testimony to the effect that he was involved in the business "in the time frame of 1987." Petitioners correctly pointed out that Mr. Gray testified that he was involved in the business "in the time frame of until 1987." Petitioners asserted that this statement indicated Mr. Gray was involved in Gray-Syracuse before 1987 and not during 1987, as the Administrative Law Judge concluded. Under the circumstances, we concluded that it would be inappropriate for the Tribunal to attempt to determine whether the Administrative Law Judge would find credible the meaning ascribed to the misquoted statement by petitioners. We remanded the matter to the Administrative Law Judge for a supplemental determination based on a corrected meaning of the transcript on the issue of whether petitioners changed their domicile for the year 1987.

On remand, petitioners requested and were granted the opportunity to file a brief on remand.

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Mr. Gray was paid a bonus in 1988, but the bonus was earned in 1987 and payable in 1988.

In her determination on remand, the Administrative Law Judge concluded that:

"[u]pon review of the entire record, including the misquoted passage of Mr. Gray's testimony, I conclude that petitioners have not demonstrated that their change of domicile occurred before September 15, 1987. Mr. Gray had a substantial proprietary interest in Gray-Syracuse, holding 80 percent of the stock until its sale in September 1987; he had significant responsibilities as a director and chairman of the board of Gray-Syracuse; and he received substantial compensation for his efforts, earning \$160,994.57 in 1987 and a bonus of \$59,790.00 which was paid in 1988, although earned in 1987. These facts show that Mr. Gray's role in Gray-Syracuse was more than that of a passive investor. I do not find it significant that Mr. Gray's role in Gray-Syracuse was that of a director and majority shareholder rather than a manager or chief operating officer. What is significant is that he maintained a substantial tie to New York through his activities with Gray-Syracuse.

"[My] original determination points to other factors which weigh against petitioners' claim of a change of domicile before 1987. They will not be repeated here, except to note that although Mr. Gray's business and financial ties to Gray-Syracuse were considered a significant factor in determining the domicile issue, they were not the only facts supporting the determination that petitioners did not effect a change of domicile from New York to Florida until sometime in the fall of 1987" (Determination on Remand, conclusion of law "B").

On exception, petitioners argue that the facts in the case clearly establish that the Grays shifted their domicile from New York to Florida before 1987 and were domiciliaries of Florida throughout 1987. Petitioners assert that they had shifted the focus of their lives to Florida by the end of 1986 and that the connections with Florida established by the Grays far outweighed their remaining contacts with New York. Petitioners assert that:

"[t]his can be illustrated vividly in chart form.

<u>"Factor</u>	<u>Comparison before 1987</u>
Statements of intent.	Declaration of domicile filed in Florida. Florida address used in legal documents and correspondence.
Bank accounts.	Principal bank accounts were in Florida. New York accounts used for small amounts on summer visits or for special purposes (e.g., sale proceeds).
Social clubs.	Joined numerous year-round clubs in Florida. Memberships in New York athletic clubs used only for summer visits.

Voting.	Voted in Florida only.
Civic affairs.	Wrote to elected officials in Florida but not in New York.
Doctors.	Principal doctors and dentists were in Florida. Saw Syracuse doctors and dentists only in the summer.
Time.	Spent much more time in Florida than in New York.
Passports.	Issued in Florida and showed Florida address.
Automobiles.	Registered in Florida. Florida drivers licenses.
Estate planning.	Florida wills. Revocable living trust with Florida bank.
Interest in current events.	Read Florida newspapers. Cancelled subscriptions to New York newspapers.
Civic organizations.	Resigned from Board and other positions with civic organizations in New York.
Charitable contributions.	More substantial in Florida than in New York. <sup>3</sup>
Business activities.	Not involved in day-to-day operations of business, and much of what Mr. Gray did he did in Florida"

(Petitioners' Brief, pp. 31-32).

Petitioners urge further that: 1) under the decisions of the courts and this Tribunal, a change in domicile will be found if the facts show a shift in the focus of a taxpayer's life notwithstanding the retention and part-time use of a New York house and 2) Mr. Gray's involvement with Gray-Syracuse does not indicate a retention of New York domicile. By the start of 1987, Mr. Gray was no longer involved in the day-to-day operations of the business. He was involved only as an investor.

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"Contributions to Syracuse University should not be regarded as New York contributions. They were made because Mr. Gray was an alumnus, not because he lived there."

Petitioners urge that the Administrative Law Judge gave too much weight to Mr. Gray's business activities and this Tribunal should reconsider the importance that has been given to continued business activities in New York in making determinations of domicile.

We affirm the determination on remand of the Administrative Law Judge.

The narrow issue on remand is whether a corrected reading by the Administrative Law Judge of the hearing transcript concerning Mr. Gray's business activities in New York would alter her determination that for the year 1987 petitioners did not change their domicile before September 15, 1987.

The Administrative Law Judge's determination on remand makes it clear that, in gauging the level of Mr. Gray's business activities in New York in 1987, she did not rely on the misquoted testimony of Mr. Gray but rather on the actions he undertook in 1987 with respect to the business. Mr. Gray's business activities, while a significant factor, were but one of the several factors weighed by the Administrative Law Judge in reaching her determination. As she stated in her original determination:

"[t]here are several factors that weigh against the Grays' assertion of a change of domicile by January 1, 1987.

"The Grays spent almost as much time in New York in 1987 as they did in Florida (by their own accounting 145 days in New York versus 183 in Florida days). The Grays still held a majority interest in their Fayetteville home. From the end of May 1987 through September 15, 1987, petitioners were not leasing a residence in Florida. Their actual, and only, residence for June, July and August 1987 was in New York. The construction contract on their new home in Florida was not signed until October 1987. The Grays had severed many of their ties to New York by January 1987, but not one of the most significant links, Mr. Gray's association with Gray-Syracuse. Mr. Gray remained deeply involved in the affairs of Gray-Syracuse until its sale in September 1987. He was the chairman of the board and the majority stockholder. He negotiated the sale of Gray-Syracuse and continued to represent the corporation to the business community and financial institutions. He maintained an office in Manlius, New York where he actively conducted business on behalf of Gray-Syracuse. Mr. Gray was an employee of Gray-Syracuse and received a significant salary from Gray-Syracuse in 1987. All of these factors, especially Mr. Gray's continuing ties to his New York business, establish that the Grays did not abandon their New York domicile by January 1, 1987 (see, Matter of Kartiganer, Tax Appeals Tribunal, October 17, 1991)" (Determination, conclusion of law "D").

What is clear from the original determination and the determination on remand is that the

Administrative Law Judge weighed all factors relevant to the issue of whether the Grays had abandoned their New York domicile and established a new domicile in Florida. The fact that the Administrative Law Judge found Mr. Gray's continued business activities in New York to be a "significant factor" in deciding what she observed was "an extraordinarily difficult case to decide" does not amount to an unfair or improper weighing of those activities as asserted by petitioners. In fact, the Administrative Law Judge's observation can be taken as an indication that petitioners did not meet their burden of proving, by clear and convincing evidence, that they established a new domicile in Florida (Matter of Kartiganer v. Koenig, 194 AD2d 879, 599 NYS2d 312).

We, thus, reject petitioners' assertion that the Administrative Law judge placed too much weight on the business activities of Mr. Gray in reaching her conclusion that they did not change their domicile until September 15, 1987.

Finally, with regard to petitioners' request that this Tribunal reconsider the importance given to Mr. Gray's continued business activities in New York in making our decision regarding domicile, we would point out that the Tribunal has indicated clearly that continued business activities in New York is but one of several factors to be considered in determining whether a change in domicile has been effected (Matter of Erdman, Tax Appeals Tribunal, April 6, 1995; Matter of Angelico, Tax Appeals Tribunal, March 31, 1994).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Richard E. and Jean M. Gray is denied;
2. The determination on remand of the Administrative Law Judge is affirmed;
3. The petition of Richard E. and Jean M. Gray is granted to the extent that it is held that they were not resident individuals of New York State after September 15, 1987 and the deficiency calculated for the year ended December 31, 1988 shall be cancelled, but in all other respects the petition is denied; and



4. The Division of Taxation is directed to modify the Notice of Deficiency for the year ended December 31, 1987 in accordance with paragraph "3" above, but such Notice is otherwise sustained.

DATED: Troy, New York  
May 25, 1995

/s/John P. Dugan  
John P. Dugan  
President

/s/Francis R. Koenig  
Francis R. Koenig  
Commissioner