

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

---

In the Matter of the Petition	:	
	:	
of	:	
	:	
<b>ROBIN R. INGLE</b>	:	DECISION
	:	DTA NO. 822545
for Redetermination of a Deficiency or for Refund	:	
of New York State and City Personal Income Tax	:	
under Article 22 of the Tax Law and the New York	:	
City Administrative Code for the Year 2004.	:	

---

Petitioner, Robin R. Ingle, filed an exception to the determination of the Administrative Law Judge issued on October 14, 2010. Petitioner appeared by Horwood Marcus & Berk Chtd. (Joel M. Friedman, Esq. and David A. Hughes, Esq., of counsel). The Division of Taxation appeared by Mark Volk, Esq. (Peter B. Ostwald, Esq., of counsel).

Petitioner filed a brief in support of her exception. The Division of Taxation filed a brief in opposition. Petitioner filed a reply brief. Oral argument, at petitioner's request, was heard on June 15, 2011 in New York, New York.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

***ISSUE***

Whether petitioner has established that she effected a change of domicile from New York to Tennessee and thus was not taxable as a domiciliary and resident of New York after April 1, 2004.

***FINDINGS OF FACT***

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

Petitioner, Robin R. Ingle, filed Form IT-203 (New York State Nonresident and Part-Year Resident Income Tax Return) for the year 2004 as a nonresident of New York. On the return, petitioner stated that she was a New York State and City resident for the period January 1, 2004 through March 31, 2004. As such, petitioner determined her items of income, loss, gain and deduction allocable to New York upon the basis of the period of time she considered herself a resident of New York.

On January 22, 2008, following an audit, the Division of Taxation (Division) issued to petitioner a Notice of Deficiency, asserting additional New York State and New York City personal income tax due for the year 2004 in the amount of \$255,856.00, plus interest. This Notice was premised upon the assertion that petitioner was a domiciliary of New York State and City until June 30, 2004 and, therefore, was taxable as a resident of New York State and City on that basis. The calculation of the amount asserted as due is not in dispute, and the sole issue presented is whether petitioner effected a change of domicile from New York to Tennessee and was therefore not properly subject to tax as a resident of New York State and City for the period April 1, 2004 through June 30, 2004.

Petitioner was born in, and grew up in, Erwin, Tennessee. Since petitioner was five years old, her parents have lived in, and continue to live in, the same house in Erwin. Petitioner's sister, niece and nephew and their respective families all live in Unicoi, Tennessee. Unicoi is located between Erwin and Johnson City, Tennessee, and it is a 15-minute drive from Erwin to Johnson City.

In the mid-1980s, following her attendance at the University of Tennessee, petitioner moved to Washington, D.C., to begin her career and held positions as a sales representative for several newspapers. She remained in Washington, D.C., until 1993, when she moved to Chicago, Illinois, to begin employment with the Chicago Sun Times, selling travel advertising in the newspaper. In 1996, petitioner began working for Media Passage, an Internet start-up business based in Seattle, Washington, although petitioner continued to live in Chicago. Her employment required her to travel extensively throughout the United States to meet with clients, and, as a result, Ms. Ingle needed only her cell phone and laptop computer to perform her duties.

In 1999, petitioner began working for Access Media, a start-up company located in Massachusetts, but petitioner continued to reside in Chicago. In 2000, petitioner decided to move to New York City to manage Access Media's staff there. On moving to New York, Ms. Ingle rented a one-bedroom apartment on West 57<sup>th</sup> Street, New York. Access Media went out of business in June 2001, and in December 2001, petitioner found a position as vice-president of sales with Trip Advisor, Inc., located in Needham, Massachusetts. Petitioner remained at her West 57<sup>th</sup> Street apartment until April 2002, when she entered into a two-year lease for a two-bedroom apartment located at 21 West Street. Ms. Ingle continued to travel extensively for her job, again requiring only her cell phone and laptop computer. Ms. Ingle's travel often involved multi-city destinations over several days. In 2004, Ms. Ingle became the senior vice-president of advertising for Trip Advisor. Trip Advisor's major clients included Expedia, Hotels.com, Travelocity, Orbitz, Priceline and Hotwire, as well as individual hotels and airlines.

Ms. Ingle was single in 2004, but in a relationship with Michael Veitch. Mr. Veitch lived in Woodland Hills, California, in a corporate apartment paid for by his employer, YouBet.com, an internet gaming company. In New York, petitioner did not own any real property, have a safe

deposit box, have a membership in any clubs, organizations or gyms, belong to any church, have a regular accountant, lawyer, dentist or doctor or own an automobile.

In late February 2004, Ms. Ingle learned that InterActiveCorp (IAC) was to purchase Trip Advisor. The transaction was scheduled to take place sometime in late April or May 2004. As she expected to benefit financially from the sale transaction, petitioner consulted with Mr. Veitch and the law firm of Horwood Marcus & Berk Chtd., as to the steps to take to minimize her tax obligations to New York State and City. Following these conversations, Ms. Ingle decided it would be advantageous to move out of New York City by April 1, 2004 and to move to Tennessee.

Ms. Ingle journeyed to Tennessee to look for an apartment. During these trips, Ms. Ingle would pack an extra suitcase containing some artwork, her father's pocket watch and her clothing, and would store the suitcases at her parents' home. She eventually entered into a one-year lease, from April 1, 2004 through April 1, 2005, for an apartment located in Johnson City, Tennessee. On April 2, 2004, Ms. Ingle registered to vote with the Unicoi County Election Commission and opened a bank account. On April 4, 2004, furniture and household items borrowed from her parents were moved into the apartment. Included in the items borrowed and moved were a bed, sheets, towels, a gas grill and cookware. On April 10, 2004, petitioner and her niece went shopping for towels, a shower curtain, sheets, cookware and glasses for the apartment. On April 13, 2004, she established hard-line telephone service at the apartment. Ms. Ingle did not establish an individual account for electricity until May, although it is alleged that the utilities for her apartment were active as of April 1, 2004 through a master account billed to the apartment complex. Her paycheck from Trip Advisor dated April 15, 2004 contained her parents' address.

On April 16, 2004, Ms. Ingle's parents transferred vacant real estate located in Unicoi, Tennessee, to petitioner and her sister. The property was subdivided so that Ms. Ingle could commence plans to construct a new house. The house was completed in 2009.

In March 2004, a press release was issued regarding the pending sale of Trip Advisor to IAC, which owned Expedia and Hotels.com. The other major clients of Trip Advisor were concerned that a competitor would be in control of the web site, which potential customers would be accessing to determine which travel company to use. Ms. Ingle was required to visit these major clients to alleviate their fears and insure that they remained customers of Trip Advisor. According to Ms. Ingle, this extensive travel, coupled with the need to paint her New York apartment prior to vacating it and the inability of Michael Veitch to assist her in moving until mid-June at the earliest required her to remain in New York City past the end of her lease date of April 30, 2004.

Ms. Ingle contacted her landlord to request a lease extension of two months, until June 30, 2004. It was the landlord's policy not to permit month-to-month leases, but the landlord would allow a one or two-year lease with an option to terminate the lease early. On May 20, 2004, petitioner signed a two-year lease for the period May 1, 2004 through April 30, 2006 with an option to terminate the lease on June 30, 2004, although the landlord actually allowed her to stay in the apartment until July 9, 2004. On July 9, 2004, with the assistance of Mr. Veitch and professional movers, Ms. Ingle moved most of her furniture and personal effects remaining in the New York City apartment to the apartment in Johnson City, Tennessee, with some items, such as kitchenware, going into storage in Boston, Massachusetts, in anticipation of leasing an apartment there. Furniture that was moved on July 9, 2004 included two sofas, two chairs, a glass coffee table, a fully furnished office, a bedroom set, outdoor furniture and a grill.

On April 23, 2004, petitioner executed a letter of transmittal in which she agreed to surrender her shares of common stock in Trip Advisor as part of the merger with IAC. In return for the sale of the shares of Trip Advisor, petitioner received, on April 30, 2004, the amount of \$1,986,916.32, which was wire transferred to her bank account in Tennessee.

***THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE***

The Administrative Law Judge applied the relevant statute, regulations and case law to the facts in the record to determine whether petitioner was a resident of New York after April 1, 2004. The Administrative Law Judge noted that the sole basis upon which petitioner's resident status is premised here is domicile, and that petitioner bears the burden of proving that she changed her domicile from New York to Tennessee.

The Administrative Law Judge found that petitioner's presence in any particular locale, at least for years prior to the period in issue, turned upon the basis of whatever was the most advantageous position with respect to the advancement of her career. The Administrative Law Judge noted that the move from New York City to Tennessee was predicated upon a desire to escape the New York State and City tax consequences of the sale of her shares of stock in Trip Advisor and that for the period at issue, petitioner's lifestyle as it existed prior to April 1, 2004 continued throughout the period April 1, 2004 through July 9, 2004, due to the demands of her employment. During such time, petitioner traveled to various clients of Trip Advisor and then returned to her New York City apartment. The Administrative Law Judge further noted that the record is silent as to how long petitioner was actually in Tennessee during the period in issue, and found that the number of days spent in New York City compared to Tennessee is relevant to the determination of domicile. The Administrative Law Judge concluded that petitioner did not prove, by clear and convincing evidence, that she gave up her New York City domicile and

acquired a new domicile in Tennessee as of April 1, 2004. The Administrative Law Judge found that the record does, however, establish that as of July 9, 2004, petitioner had abandoned her New York City domicile and acquired a new domicile in Tennessee.

***ARGUMENTS ON EXCEPTION***

Petitioner argues that the Administrative Law Judge improperly determined that she failed to prove by clear and convincing evidence that she gave up her New York domicile and acquired a new domicile in Tennessee as of April 1, 2004. Petitioner contends that prior to 2004, petitioner and Mr. Veitch decided that they wanted to create a home together in Tennessee, that petitioner leased an apartment in Tennessee commencing on April 1, 2004, and that petitioner advised her landlord that she was not going to renew the lease on her New York apartment.

Petitioner argues that such factors show a change in lifestyle. Petitioner asserts that she was not able to vacate the New York apartment until July 2004 because she was traveling extensively for work and did not have anyone to help her move. She disagrees with the Administrative Law Judge's finding that she continued to use the New York apartment as her permanent residence, and that instead, she used it as expensive storage until she was able to move her belongings to Tennessee. Petitioner further disputes the Administrative Law Judge's finding that her decision to move from New York to Tennessee was based on her desire to escape taxation of the gain realized on the sale of her shares of stock in Trip Advisor to IAC. Rather, petitioner asserts that her desire to move to Tennessee was based on her desire to be in close proximity to her parents.

The Division argues that the Administrative Law Judge properly determined that petitioner failed to prove by clear and convincing evidence that she intended to abandon her New York domicile and acquire a new domicile as her fixed and permanent home in Tennessee as of April 1, 2004, and as such, the determination should be sustained.

***OPINION***

We affirm the determination of the Administrative Law Judge.

Tax Law § 605(b)(1)(A) and (B) defines “resident individual” as someone:

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

(B) who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than one hundred eighty-three days of the taxable year in this state, unless such individual is in active service in the armed forces of the United States.<sup>1</sup>

Since petitioner spent more than 30 days but less than 184 days in the state and city, there is no dispute that the sole question here concerns the first, or domicile, basis upon which resident status is premised.

Regulation 20 NYCRR 105.20(d) defines “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.

---

<sup>1</sup> The definition of “resident” for City purposes is provided under the New York City Administrative Code § 11-1705(b)(1)(A) and (B) and is identical to the provision for State income tax as indicated above, except for the substitution of the term “city” for “state.”



(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.

An existing domicile continues until a new one is acquired and the party alleging the change bears the burden of proving a change in domicile (*see Matter of Bodfish v. Gallman*, 50 AD2d 457 [1976]). To effect a change in domicile, there must be an actual change in residence, coupled with an intention to abandon the former domicile and to acquire another (*Aetna Natl. Bank v. Kramer*, 142 AD 444 [1911]). The absolute and fixed intention to abandon one domicile and acquire another must be established by clear and convincing evidence (*Matter of Bodfish v. Gallman, supra; Matter of Zinn v. Tully*, 54 NY2d 713 [1981], *rev'd* 77 AD2d 725 [1980]). Moves to other states where permanent places of abode are established do not necessarily provide clear and convincing evidence of intent to change domicile absent other proof (*Matter of Zinn v. Tully, supra*). The importance of a person's intention in determining whether they have effectively changed domicile was expressed by the Court of Appeals in *Matter of Newcomb's Estate* (192 NY 238, 250 [1908]):

Residence means living in a particular locality, but domicile means living in that locality with intent to make it a fixed and permanent home. Residence simply

requires bodily presence as an inhabitant in a given place, while domicile requires bodily presence in that place and also an intention to make it one's domicile.

The existing domicile, whether of origin or selection, continues until a new one is acquired and the burden of proof rests upon the party who alleges a change . . . . 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 . . . . Residence is necessary, for there can be no domicile without it, and important as evidence, for it bears strongly upon intention, but not controlling, for unless combined with intention it cannot effect a change of domicile. There must be a present, definite and honest purpose to give up the old and take up the new place as the domicile of the person whose status is under consideration . . . . Subject to the qualifications named every human being may select and make his own domicile, but the selection must be followed by proper action. Motives are immaterial, except as they indicate intention. A change of domicile may be made through caprice, whim or fancy, for business, health or pleasure, to secure a change of climate, or a change of laws, or for any reason whatever, provided there is an absolute and fixed intention to abandon one and acquire another and the acts of the person affected confirm the intention.

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. "[T]he 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).

For a taxpayer to meet her burden of proof to establish a change of domicile, she must show a change in lifestyle (*see Matter of Doman*, Tax Appeals Tribunal, April 9, 1992). Based upon a review of the record, we agree with the Administrative Law Judge that petitioner has not proven, by clear and convincing evidence, that she gave up her New York City domicile and acquired a new domicile as her fixed and permanent home in Tennessee as of April 1, 2004. Petitioner's conduct and general habits of living establish that she did not abandon her New York City domicile and acquire a new domicile in Tennessee until July 9, 2004.

We find that the Administrative Law Judge correctly determined that while it is clear that petitioner's lifestyle changed in July 2004, the evidence does not establish a change in lifestyle prior to such date, and in fact the evidence points to a continuation of the lifestyle petitioner had up to and including April 2004. Indeed, petitioner conceded that her travel schedule did not change during the period in issue, such that she was traveling to the various clients of her employer and then returning periodically to her New York apartment, and also attended a conference in New York in April. Based on these facts, the Administrative Law Judge properly concluded that due to the requirements of her employment, petitioner did not effect a change in lifestyle until July 9, 2004.

Moreover, the evidence in the record does not establish that petitioner had "an absolute and fixed intention to abandon [her New York domicile] and acquire another" (*Matter of Newcomb's Estate, supra*) as of April 1, 2004, nor do petitioner's acts "confirm the intention" (*Id.*). Petitioner admits that her initial intention was not to move from New York until after her lease expired at the end of April 2004. As the date for the expiration of her lease drew closer, petitioner was faced with a conflict: she was aware that the sale of her stock in Trip Advisor would have tax consequences if she remained in New York at the time of the sale, yet her employment obligations required her to continue her lifestyle of traveling to clients and then returning to her New York apartment, such that she was not ready nor able to effect a change in residence until July 9, 2004. Faced with the demands of her business, petitioner was not prepared "to give up the old and take up the new place as [her] domicile" (*Id.*) and instead chose to extend her lease for a two year period. While petitioner was given the option to end the lease as of June 30, 2004, she chose instead to stay beyond that date, and in fact did not vacate the

New York apartment until July 9, 2004. Such facts indicate that petitioner lacked the requisite intent to abandon her New York domicile prior to July 9.

In addition to her lease extension, other factors that indicate that petitioner did not intend to abandon her New York domicile on April 1 include her purchase of certain duplicate items for the Tennessee apartment, while retaining all of the items she needed to live in the New York apartment because she “knew [such items] weren’t going to be down soon from the New York apartment” (*see* Hearing Transcript, p. 76).

Furthermore, petitioner’s argument that she intended to change her domicile as of April 1, 2004 due to a desire to return to the place where she grew up and to spend more time with her immediate and extended family is contradicted by the evidence in the record. Although petitioner argues that she wanted to move to Tennessee due to concerns over her parents’ health, such argument does not support an intent to accelerate the move to April 1. Petitioner testified that her father’s health “hasn’t been good for a really long time” (*see* Hearing Transcript, p. 53). However, as the Administrative Law Judge properly noted, during the period from 1996 through 2004, while living in Chicago and New York City, and except for the period of approximately one year in which she managed staff in New York, petitioner had the opportunity to return to Tennessee if she so desired, as her employment responsibilities allowed her to live anywhere so long as she had access to her cell phone and laptop computer. Petitioner’s choice to remain in Chicago and later in New York City is consistent with the Administrative Law Judge’s conclusion that not only was New York City her historical domicile, but also that her career advancement and lifestyle, as opposed to returning to Tennessee, continued to be very important factors in her choice of where she chose to live. Indeed, petitioner testified that she originally intended to move to Tennessee after her lease expired. It was not until she learned of the sale of

Trip Advisor to IAC and the resulting tax implications that she considered accelerating the move. Petitioner's decision to try and accelerate her move from New York City to Tennessee by April 1 was based entirely upon her desire to escape taxation of the gain realized on the sale of her shares of stock in Trip Advisor to IAC, a factor that weighs against a change of domicile prior to July 2004 (20 NYCRR 105.20[d][2]). Thus, petitioner's argument that she desired to be closer to her family does not support her claimed intent to change her domicile as of April 1, 2004.

We also reject petitioner's argument that the number of days spent in New York City as compared to the time spent in Tennessee during the period April 1, 2004 through July 9, 2004 is irrelevant. Contrary to petitioner's contention, this Tribunal has held that where a person has two homes, the length of time spent at each location is an important factor in determining intention for purposes of domicile (*Matter of Angelico*, Tax Appeals Tribunal, March 31, 1994, *citing* 20 NYCRR former 102.2[d]; *see also* 20 NYCRR 105.20[d][4]). Petitioner's failure to present evidence regarding the time spent in Tennessee compared to the time spent in New York during the relevant time period weighs heavily against her.

Further, we agree with the Administrative Law Judge that although petitioner registered to vote in Tennessee and obtained a Tennessee driver's license, such formal declarations are less significant than informal acts demonstrating an individual's general habit of life (*Matter of Trowbridge*, 266 NY 283 [1935 ]; *Matter of Silverman*, Tax Appeals Tribunal, June 8, 1989). Courts have recognized the "self-serving nature" of these formal declarations when used as evidence to affirmatively establish new domicile (*Wilke v. Wilke*, 73 AD2d 915, 917 [1980]). As noted above, petitioner's general habit of life did not change after April 1, 2004. Rather, petitioner continued her normal routine of traveling for her employer and then returning to her New York apartment, which she retained until July. The evidence shows that despite petitioner's

formal declarations, she did not intend to abandon her New York domicile and take up her new domicile in Tennessee until July 9, 2004.

Finally, petitioner objects to the Administrative Law Judge's finding that her testimony was evasive. The Administrative Law Judge found that petitioner's credibility was undermined both by the lack of evidence in the record corroborating much of her testimony, and her vague or evasive testimony regarding certain key facts, such as where she spent the time between April 15, 2004 and July 9, 2004, what furniture and other personal belongings were moved to Tennessee, what items remained in New York City until July 9, 2004 and the reasons for the delay in moving out of New York City. Ms. Ingle testified that the move was delayed because Mr. Veitch's employment with YouBet.com continued until the middle of June 2004 and she required his presence to help her pack, paint the apartment and move her heavy furniture. Mr. Veitch testified that his employment ended in early May, but because petitioner needed to be in the New York apartment during the move, it could not take place until early July, when her employment responsibilities were such that she could take the time to pack, paint the apartment and move.<sup>2</sup> Mr. Veitch further testified that professional movers transported Ms. Ingle's belongings out of the New York City apartment and to the Tennessee apartment in July.

In addressing the issue of credibility, we have held that:

the credibility of witnesses is a determination within the domain of the trier of the facts, the person who has the opportunity to view the witnesses first hand and evaluate the relevance and truthfulness of their testimony (see, Matter of Berenhaus v. Ward, 70 NY2d 436, 522 NYS2d 478) (***Matter of Spallina***, Tax Appeals Tribunal, February 27, 1992).

---

<sup>2</sup> Although petitioner argues in her brief in support of the exception that Mr. Veitch mispoke about when he left California, such argument is not supported by the witness's testimony.

While this Tribunal is not absolutely bound by an Administrative Law Judge's assessment of credibility and is free to differ with the Administrative Law Judge to make its own assessment, we find nothing in the record here to justify such action on our part (*see Matter of Stevens v. Axelrod*, 162 AD2d 1025 [1990]; *Matter of Spallina, supra*).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Robin R. Ingle, is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Robin R. Ingle, is denied; and
4. The Notice of Deficiency dated January 22, 2008 is sustained.

DATED:Troy, New York  
December 1, 2011

/s/ James H. Tully, Jr.  
James H. Tully, Jr.  
President

/s/ Charles H. Nesbitt  
Charles H. Nesbitt  
Commissioner