

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
EILEEN J. TAYLOR : DECISION
DTA NO. 822824
for Redetermination of a Deficiency or for Refund :
of New York State and New York City Personal :
Income Taxes under Article 22 of the Tax Law and :
the New York City Administrative Code for the :
Years 2002 through 2004. :

Petitioner, Eileen J. Taylor, filed an exception to the determination of the Administrative Law Judge issued on July 8, 2010. Petitioner appeared by Ernst & Young LLP (Kenneth T. Zemsky, CPA and Yud Harrindranauth, CPA). 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 London, England, and thus was not taxable as a domiciliary and resident of New York for the years 2002 through 2004.

FINDINGS OF FACT

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

Petitioner, Eileen J. Taylor, filed Form IT-203 (New York State Nonresident and Part-Year Resident Income Tax Return) for each of the years 2002, 2003 and 2004 as a nonresident of New York. As such, petitioner determined her items of income, loss, gain and deduction allocable to New York upon the basis of the number of days she worked in New York compared to her total number of working days. This allocation, in turn, allowed calculation of petitioner's New York income percentage by which petitioner determined her New York State personal income tax liability for the years 2002, 2003 and 2004 in the respective amounts of \$14,111.00, \$13,351.00, and \$18,153.00.

On December 26, 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 years 2002, 2003 and 2004 in the aggregate amount of \$298,812.00, plus interest. This notice was premised upon the assertion that petitioner was a domicilliary of New York State and City and was therefore 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 the United Kingdom and, therefore, was not properly subject to tax as a resident of New York State and City from the year 2002 forward.

Petitioner is a native of New York, an alumna of Manhattanville College in Purchase, New York, and, until the years in issue, does not contest her status as a domiciliary of New York

State and City who was taxable as a resident of New York State and City. Prior to and until June 1999, petitioner was employed by Bankers Trust Company (Bankers) as a business manager operating Bankers' FX Prime Brokerage business.

In November 1998, the acquisition of Bankers by Deutsche Bank, a German-based financial institution with significant operations in the United Kingdom and in the United States, including New York City, was announced. At the time of this announcement, petitioner was working for Bankers in Singapore under a one-year assignment, which had commenced as of March 1, 1998. Petitioner returned from Singapore to New York in December 1998 to work on the integration of Bankers into Deutsche Bank. On June 4, 1999, Bankers was formally acquired by Deutsche Bank.

Petitioner had intimate knowledge of Bankers through her work experiences and was asked to continue working in New York City on the post-acquisition integration of the two banks. Petitioner accepted this offer and was employed by Deutsche Bank Trust Company, located at 60 Wall Street, New York, New York.

Shortly after the summer of 1999, and in light of petitioner's work on the integration of the two banks, Deutsche Bank as the new owner of the combined banking operations offered petitioner the newly created position of Chief Operating Officer (COO) for global foreign exchange operations. Petitioner's Deutsche Bank home office was designated as Deutsche Bank Securities, Inc., New York, New York. However, the new COO position was with Deutsche Bank Trust Company's associated corporation, DB Group Services (UK) Limited, and was a "host" location position based in London. Although petitioner was required to come to New York for business meetings, the COO position had to be staffed in London and could not be

handled from the New York office.

Petitioner viewed this as an excellent opportunity for career advancement and, after closing personal affairs in New York, she relocated to London on August 26, 1999, and has lived in London since that time.

When petitioner moved to London in 1999, she anticipated that this would be a short-term three-year rotation to the United Kingdom, which would end in 2002. However, in 2002, petitioner and her employer agreed to extend her employment through August 31, 2003, with petitioner advancing to the position of COO of the institutional client group, a significantly larger position in terms of supervisory responsibilities (*see* Finding of Fact herein). Petitioner's term of employment was thereafter again extended for an additional one-year period, from September 1, 2003 through August 31, 2004 (the 2003 Extension), and was again extended for an additional one-year period, spanning September 1, 2004 through August 31, 2005 (the 2004 Extension).

Petitioner's employment contract extensions, the 2003 Extension and the 2004 Extension, are set forth in separate letters and accompanying attachments. They contain very similar, if not identical, "Terms and Conditions" and "Legal and Procedural Conditions of Assignment" in each instance. Under the "Terms and Conditions," petitioner's "Category of Assignment" is as an "Expatriate" (the 2003 Extension) and "Volunteer Expatriate" (the 2004 Extension). As noted above, petitioner's "Home Location" is "Deutsche Bank Securities, Inc., New York, NY," and her "Host Location" is "DB Group Services (UK) Limited, London, UK," with "Global Markets" as the "Host Division." Petitioner's "Assignment Duration" under each of the extension contracts is for a one-year period. Her Social Security Jurisdiction, Pension Fund Participation and

Contribution, Health Insurance, Accident Insurance and Home Benefits Plan (flex benefits, pension and 401[k]) all remain with or are governed by the applicable rules of the Home Location, i.e., New York. Petitioner's "Permanent Accommodation," a housing allowance or stipend in the host location paid by her employer (*see* Finding of Fact herein), was set at 67% on petitioner's leased apartment in London, was reduced to 35% pursuant to the 2003 Extension upon petitioner's purchase of a house, and was apparently eliminated or "N/A" as of September 1, 2004 (the 2004 Extension).

The "Legal and Procedural Conditions of Assignment" provide additional detail with respect to petitioner's assignment, in relevant part, as follows:

Part 1: Employer: Your employment with your home country employing entity will be suspended for the duration of your assignment.

Part 2: Duration: After a maximum assignment period of up to the country category limit all assignment benefits will cease to apply although for three year countries they may be phased out over the following two years at the Bank's discretion. After this period the bank will transfer you to local terms and conditions subject to Business approval and in accordance with the policy.

In the event that you voluntarily apply for, and are granted permanent resident status in the host country, the host and home entities reserve the right to review the terms and conditions of the assignment accordingly, including the possibility of localisation.

Part 6: Sponsorship: It is currently envisaged that, at the end of this assignment, you will return to work in your sponsoring division.

You are expected to maintain your links with your home location whilst on assignment.

Part 7: End of Assignment with Host Location: Your home country employing entity reserves the right to terminate this assignment at any time and reassign you to another position within Deutsche Bank Group in the home country or abroad, although no such assignment would take place without prior consultation.

Part 8: Termination of Employment: Whilst on assignment, you will continue to

be bound by the notice, dismissal for cause and confidentiality provisions governing your employment agreement with your home country employing entity.

Part 9: Recognition of Service: The duration of your assignment will count towards your years of service with the home entity for pension and anniversary qualification purposes.

Part 11: Permanent Accommodation: The lease for the property will be taken out in the host entity's name and the host entity will pay any deposits, agent fees and legal costs associated with the renting of the property. As the lease will be a corporate lease, you will be required to sign a letter of indemnity in favour of the Bank. Further details and procedures will be provided.

If you decide to purchase accommodation in the host country, you will be paid an allowance monthly in cash which will be limited to 35% of your stated housing allowance. Any tax on this portion will be borne by you. Furthermore, neither the host nor the home entity will bear any of the additional risks or expenses associated with the purchase or sale of a property.

You will be responsible for the cost of all utilities.

Part 16: Relocation Back Home: At the end of your assignment – or in case Deutsche Bank Group should terminate your employment for any reason other than for cause (for a reason you are not liable for) during or at the end of your assignment – the Bank will bear the cost of one-way airfares for you at business class rate back to your home location. The Bank will also pay for one shipment for your personal effects back to your home location, provided that such relocation is made within 60 days after of the end of your assignment.

Should your employment be terminated for any other reason (e.g. voluntary resignation, dismissal for cause) whilst on assignment, you will be responsible for all costs related to your relocation.

Part 19: Supplementary Employment Conditions: Your employment with the home entity remains at will whilst on assignment.

Petitioner had periodic meetings in New York after the relocation. The she time spent in New York during each of the years spanning 1999 through 2001 exceeded 30 days, and petitioner continued to file New York resident personal income tax returns during these years.

In early 2002, petitioner was offered a larger, enhanced role as the COO for the

institutional client group, where she would have direct supervisory responsibility over approximately 750 people, as opposed to her previous position as COO of global foreign exchange operations where she had direct supervisory responsibility over approximately 200 people. As with her previous position, petitioner's new position had to be staffed in London and could not be handled from another location. Her new position was much more visible and prestigious within Deutsche Bank and enhanced petitioner's career at the bank.

While petitioner's work responsibilities were primarily centered in London, she was required to and did travel abroad. She described the COO position she had accepted in 2002 as involving an "immense amount of travel," including business trips to Singapore, Japan, Australia, South Africa, Denmark, Italy, Ireland, Ecuador and Germany, as well as trips to New York. On most occasions, petitioner's trips would last a week or more in duration. Petitioner often coupled vacation days with her business trips, and would sometimes utilize her business travel to New York in combination with personal time so as to attend a family member's wedding or other events. For example, petitioner would participate in year-end planning meetings in New York City in December and would stay on for Christmas.

The Division determined that petitioner was physically present in New York on 78 days in 2002, 96 days in 2003, and 97 days in 2004. Petitioner maintains a contemporaneous electronic diary of her whereabouts and did so during the years in question. Petitioner asserts, based upon this diary, that she was physically present in New York for slightly fewer days in each of the years in issue, including specifically 69 days in 2002, 94 days in 2003 and 87 days in 2004. Petitioner further asserts that of her New York days, she was present in New York for work purposes on 39 days in 2002, 44 days in 2003 and 53 days in 2004.

From the time of her initial assignment to London, petitioner had rented living quarters in London, apparently under a corporate lease in the name of her host entity pursuant to Part 11 of the Legal and Procedural Conditions of Assignment (*see* Finding of Fact herein). According to petitioner, when she was offered the larger role with the institutional clients group, she believed that her assignment to London was not going to be a temporary one but rather that she would be in London for the remainder of her career.¹ Petitioner stated that as of 2002, she had come to enjoy life in the UK, and claimed that she permanently relocated to London because “I love it there.”

In 2002, petitioner began looking to purchase a residence in London. She was successful in finding a suitable residence and, on or about March 14, 2003, petitioner purchased what is described as a “terrace house,” including three floors and a garden patio, located in Kensington, London, for approximately two million dollars.² After completing some renovations, including painting inside and outside, redoing the wiring and restoring the wood floors, installing a completely new kitchen with new appliances, installing a new bathroom, installing custom cabinetry in the dining room and living room, and new shades and curtains for all the windows, petitioner moved into this residence in June 2003.

Petitioner owns two residences in New York State. The first, considered her “historic”

¹ Petitioner did continue to advance through the Deutsche Bank hierarchy, being promoted to a larger role in the UK in January 2007. In January 2009, apparently after experiencing some personal dissatisfaction with the position she had accepted in 2007, petitioner was offered a different position within Deutsche Bank. This position had been staffed by her predecessor in New York. While petitioner could have chosen to move back to New York when she accepted this position in 2009, she requested to be allowed to work out of the London office and the Bank acceded to her request. Petitioner’s direct superior is based in London.

² The contracts for the London house were completed in October 2002. However, the seller was unable to depart the premises at that time and the actual closing and move did not occur until March 2003 and June 2003, respectively.

domicile, is a cooperative apartment purchased in 1994 at a cost of approximately \$410,000.00 and located on Riverside Drive, New York, New York. Petitioner's Riverside Drive cooperative apartment consists of 1,700 square feet, and includes two bedrooms and a maid's room. The second residence is a farm house purchased in 1997 at a cost of approximately \$245,000.00 and located in Valatie, Columbia County, New York. Petitioner's Valatie, New York, residence, described as a "vacation house," consists of a four-bedroom farm house with a barn situated on 11 acres of land. The combined cost of these two residences was approximately \$655,000.00.³

While petitioner furnished the Riverside Drive cooperative apartment upon its acquisition, there is no evidence in the record of any renovations or significant furniture additions to this residence. Petitioner did undertake some repair and renovation work at the Valatie residence, including stabilizing the barn and renovating the kitchen. These renovations were undertaken because the Valatie premises were somewhat "run down" and, allegedly, with an aim toward renting the property.⁴ Petitioner decided to keep her two New York residences, partly upon the recommendation of her investment advisor to retain these properties for investment purposes as part of her portfolio diversification. In testimony, petitioner described the London residence as a "home." Petitioner's financial circumstances and wherewithal are such that the ownership and maintenance of the two New York properties do not constitute an inconvenience

³ Petitioner's New York tax returns state "No" in response to the disclosure question of whether petitioner maintained a New York abode during the years in question. Petitioner's paid tax preparer testified that petitioner disclosed to him the maintenance of the New York abodes, but that the tax return preparation software he used automatically suppressed the disclosure of such abodes since petitioner's returns were prepared upon the conclusion that petitioner was a "primary resident" of the UK. Disclosure would thus have required an affirmative "override" of the preparation software default "No" answer by the preparer, the failure of which was described as an "erroneous oversight" by the preparer.

⁴ Petitioner's Valatie, New York property was not rented until 2009, significantly after the years in question.

or burden.

The London residence has considerably more living space than the Riverside Drive cooperative apartment. After purchasing and moving into the London residence, petitioner spent approximately \$350,000.00 on renovations, including the purchase of a custom-made table for a room in the house, a built-in cabinet, custom cabinetry made for the dining room and living room and a stereo system that is wired throughout the whole house. Petitioner enjoys cooking as a hobby and purchased a large cooking stove for this residence. Petitioner also added a safe to the London residence, which contains her late grandmother's wedding ring described by petitioner as her most prized sentimental possession. Petitioner has made additional upgrades to the London residence in subsequent years (i.e., after the years in issue), including installing a new heating system with new radiators, renovating the second bathroom, installing new patios in the back garden and replacing the garden wall and trellis. Much more recently, petitioner has replaced all the windows in the house and the doors to the garden and roof terrace.

The bulk of petitioner's charitable activities are in London, and include the East London Business Alliance, serving as chairwoman of the London Legacy 20/20 Youth and Sport Board, and as chairwoman of the Hackney Forum working on economic regeneration of a depressed area of London. Petitioner is also active in her local opera company, volunteers for the Underhill Park, and has contributed generously to other charitable institutions in the United Kingdom. At the same time, petitioner also made charitable contributions to entities in the United States, including National Public Radio, WNET, and her alma mater, Manhattanville College.

Petitioner's religious affiliation is St. Francis of Assisi church in London. She regularly attends this church, and also assists the elderly to and from church once a month on Saturday

evenings. She attends the theater in London on a regular basis.

Petitioner belongs to a health club and tennis club in London, and her doctors are located in London.

Petitioner's remaining blood relatives consist of a brother and two sisters. Her brother and one sister live with their families in Orange County, New York, and her other sister and family live outside of Boston, Massachusetts. Petitioner also is godmother to three children (ages 18, 13 and 8), all of whom live in London and with whom petitioner spends a considerable amount of time.

There is a five-year physical presence requirement before one can apply for citizenship in the United Kingdom. Petitioner satisfied this requirement in August 2004, and applied for and was granted such United Kingdom citizenship thereafter in 2005. There is no requirement that United States or other citizenship be renounced, and petitioner retained her United States citizenship.

Petitioner pays taxes to the United Kingdom on a resident basis. During the years in issue, she paid \$400,000.00 to \$500,000.00 in such taxes each year. She also filed returns and paid \$50,000.00 to \$100,000.00 in total taxes to the United States Treasury, and filed returns and paid taxes to New York (on a nonresident basis) for each of such years as set forth in the Finding of Fact herein.

Petitioner is registered to vote in New York and has voted in national elections in the United States. She has also voted regularly in British elections. Petitioner has a driver's license in the United Kingdom. She has also retained and renewed (in 2004) her New York driver's license, and stated that she has done so primarily to facilitate the rental of automobiles when she

is in the United States. Petitioner does not have a burial plot, but stated that her will contains a provision pursuant to which her ashes are to be scattered in London.⁵

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge reviewed the entire record and observed the relevant statutes, regulations and case law. The Administrative Law Judge concluded that petitioner failed to prove by clear and convincing evidence that she relinquished her long-time New York domiciliary and acquired a new domicile in London during the years at issue. The Administrative Law Judge specifically cited to regulations, which provide that a New York domiciliary who goes abroad because of a work assignment does not lose “his New York domicile unless it is clearly shown that the intent is to remain abroad permanently and not to return” (20 NYCRR 105.20[d][3]).

The Administrative Law Judge found that the facts of this case and the circumstances of petitioner’s employment do not compel a conclusion that petitioner was, at least up to and during the years in question, committed to staying in London as her domicile and home. Petitioner’s eventual decision to permanently move to London appeared to have been fostered over a period of years. The Administrative Law Judge concluded that during the years in question, petitioner failed to adequately prove that she had made her permanent residence in London (or elsewhere) without any intent to return to New York where petitioner continued to retain two residences, including her historic place of domicile. Accordingly, the Administrative Law Judge sustained the subject Notice of Deficiency.

⁵ Petitioner’s will was not submitted in evidence.

ARGUMENTS ON EXCEPTION

Petitioner argues that the determination should be reversed because, for the years at issue, petitioner “clearly and convincingly abandoned her New York domicile and established a new domicile in the United Kingdom.” (Petitioner’s Brief in Support, pg. 2). Petitioner contends that she met all of the primary factors in the Division’s audit guidelines indicating a change of domicile. Petitioner asserts that, while she retained some ties to New York, that fact that: she spent a large amount of time in the United Kingdom; her main employment office was located in the United Kingdom; she has paid substantial taxes to the United Kingdom; she had strong emotional ties to her god-children who were located in the United Kingdom; she engaged in charitable and religious activities in the United Kingdom; and, her home in the United Kingdom was purchased during the period at issue and is significantly more valuable than her two homes located in New York, are (among other factors) sufficient evidence to establish that she had changed her domicile to the United Kingdom. Petitioner further asserts that the Administrative Law Judge failed to consider all of the facts and circumstances in arriving at his decision and “fell into the trap of looking at each one in isolation and did not consider the entire picture;”⁶ that the Administrative Law Judge misunderstood the petitioner’s applicable employment contracts because the terms of such were “boiler plate and not specific and should be given minimal evidentiary weight” (Petitioner’s Reply Brief, p. 5); and the fact that during the period in question, petitioner’s applicable employment contracts were of a temporary nature and the Administrative Law Judge incorrectly based his decision primarily on the short term nature of the contracts.

⁶ Petitioner’s statement at oral argument before the Tribunal on June 15, 2011.

The Division asserts that the Administrative Law Judge correctly determined that petitioner failed to carry the burden of proving that during the years at issue she had changed her domicile from New York to London. The Division argues that during the period at issue, petitioner continued to maintain two homes in New York and her historic domicile was in New York City. Further, the Division contends that petitioner's home office for business purposes was the Deutsche Bank in New York City, where she could be expected to return, and where various benefit plans were maintained. In all, the Division argues that petitioner has not met her burden of proof.

The Division argues that the Administrative Law Judge correctly determined that petitioner's retention and continued regular use of her historic New York City domicile and her second residence in Valatie, New York is indicative of petitioner's failure to abandon her domicile. It is further argued that petitioner spent substantial time in New York during the years in question, and that a large percentage of petitioner's remaining time was spent outside of London on business trips. Moreover, the Division asserts that petitioner's employment agreements and arrangements significantly associate petitioner with New York.

OPINION

We affirm the determination of the Administrative Law Judge.

Tax Law § 605(b)(1)(A) and (B) and New York City Administrative Code § 11-1705(b)(1)(A) and (B) set forth the definition of a New York State and New York City resident individual for income tax purposes. These provisions are essentially identical, save for the use of the term state or city in each, as relevant, and provide as follows:

Resident individual. A resident individual means an individual:

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

(B) who is not domiciled in this state [city] but maintains a permanent place of abode in this state [city] and spends in the aggregate more than one hundred eighty-three days of the taxable year in this state [city], 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.

Since petitioner spent more than 30 days but less than 184 days in the State and city, the sole question here concerns the first, or domicile (subsection A), basis upon which resident status is premised.

The Division's regulations define "domicile," at 20 NYCRR 105.20(d), 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 indicated 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 such 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 . . . (emphasis added).

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 [1976]). Whether there has been a change of 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]). 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 [1943], *affd* 267 AD 876 [1944], *lv denied* 267 AD 961 [1944], *affd* 293 NY 785 [1944]); *see also Matter of Bodfish v. Gallman, supra*). While certain declarations may evidence a change in domicile, such declarations are less persuasive than informal acts that demonstrate an individual's "general habit of life" (*Matter of Silverman*, Tax Appeals Tribunal, June 8, 1989, *citing Matter of Trowbridge*, 266 NY 283, 289 [1935]).

The concept of intent was addressed by the Court of Appeals in *Matter of Newcomb*

(supra):

Residence means living in a particular locality, but domicile means living in that locality with the 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.

* * *

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. Mere change of residence although continued for a long time does not effect a change of domicile, while a change of residence even for a short time, with the intention in good faith to change the domicile, has that effect Residence is necessary, for there can be no domicile without it, and important 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

In *Matter of McKone v. State Tax Commn.* (111 AD2d 1051 [1985], *affd* 68 NY2d 638 [1986]), the Court favorably quoted the following treatise on the intent necessary to establish domicile:

The intention necessary for acquisition of a domicile may not be an intention of living in the locality as a matter of temporary expediency. It must be an intention to live permanently or indefinitely in that place. But it need not be an intention to remain for all time; it is sufficient if the intention is to remain for an indefinite period (25 Am Jur 2d Domicil, § 25, at 19 [1966]).

“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). The Courts and this Tribunal consistently look to certain objective criteria to determine whether a taxpayer's general habits of living demonstrate a change of domicile. Among the factors that have been considered are: (1) the retention of a permanent place of abode in New York (*see e.g. Matter of Gray v. Tax Appeals Trib.*, 235 AD2d 641 [1997], *Matter of*

Silverman, supra); (2) the location of business activity (*Matter of Erdman*, Tax Appeals Tribunal, April 6, 1995; *Matter of Angelico*, Tax Appeals Tribunal, March 31, 1994); (3) the location of family ties (*Matter of Gray, supra*; *Matter of Buzzard*, Tax Appeals Tribunal, February 18, 1993, *confirmed* 205 AD2d 852 [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, supra*; *Matter of Gray, supra*; *Matter of Getz, supra*).

Our review of the record supports the conclusion that before and during the years at issue, petitioner's presence in London was initiated by the demands of her career; moreover, petitioner has failed to prove by clear and convincing evidence that she relinquished her long-time New York domiciliary and acquired a new domicile in London during the years at issue. For the years at issue, it appears that petitioner's presence in London remained sufficiently tenuous and contingent upon her employer's desire to keep her there, as opposed to elsewhere. In August 1999, she accepted a work assignment that required her presence in London. During her first year there, she stayed at an apartment substantially paid for by her employer, which was a New York entity hosting her in London. It is an uncontested finding of the Administrative Law Judge that petitioner's initial assignment to London was anticipated to only be a short-term rotation ending in 2002.

In 2002, petitioner was promoted to the position of Chief Operating Officer with significant responsibilities that required her to be headquartered in London as the "host location," but her "home location" for purposes of employment remained in New York. From 2002 through the period at issue, petitioner's employment contracts were year-to-year options, with significant ties remaining with New York as petitioner's "home location." Petitioner's assignment duration in London was for a one-year period under each contract extension, and

petitioner's social security jurisdiction, pension, health insurance, accident insurance and other benefits all remained with the home location (i.e., New York). Moreover, under the terms of petitioner's employment contracts, petitioner's employer reserved the right to terminate petitioner's assignment in London and reassign her to the home location in New York or elsewhere.

We are not persuaded by petitioner's arguments that we should ignore the clear terms and implications of the relevant contracts because there is nothing in the record that indicates that the terms of the contracts were either unenforceable or otherwise void. The Administrative Law Judge correctly and appropriately analyzed the contract terms. These terms show that during the period at issue, petitioner did not intend to completely abandon her New York domicile and make London her fixed and permanent home, but instead that she resided in the location as required by each one-year contract extension, subject to relocation at the discretion of her employer.

It is also significant that petitioner received an "accommodation," or housing stipend, upon her move and continuing through her stay in London. Until the purchase of her residence in London, this accommodation (67% of her housing allowance) applied to the lease of an apartment, which itself was taken in the name of petitioner's host location employer and not in petitioner's name. We find this to be less consistent with a claim of a permanent move and the establishment of domicile and more aptly construed as an employer compensating an employee for the additional costs associated with working outside of her domicile and home. Interestingly, though apparently consistent with the terms of the Legal and Procedural Conditions of Assignment, this accommodation continued when petitioner purchased a home, albeit at a lower rate (35% of her housing allowance), until the same was eliminated toward the end of the period

in issue, upon petitioner's execution of the 2004 extension (covering the period September 1, 2004 through August 31, 2005). Petitioner performed her work duties in London and in many other places during the years in issue, and traveled extensively and to many varied locales on business matters during the years in issue. These travels included trips to New York. In addition to work time in New York, petitioner spent approximately one month in 2002, seven weeks in 2003, and one month in 2004 in New York for personal reasons. The activities in London in which petitioner participated outside of work commitments, such as attending church, patronizing the theater, joining a health club, and the like are consistent with activities one might ordinarily be expected to undertake while on a work assignment, when in any given locale for an extended period of time, without regard to whether one is considered a domiciliary of the locale.

We find that petitioner later developed a personal life in and ties to London over the course of her stay and, as noted by the Administrative Law Judge, we find that petitioner eventually adopted London as her domicile and home subsequent to the period at issue. Petitioner applied for British citizenship in 2004 and became a British citizen in 2005. The record clearly indicates that, at some point beyond the period at issue, what started out as a temporary requirement of her employer became her personal choice of commitment. However, we conclude, as did the Administrative Law Judge, that the evidence in the record fails to clearly and convincingly prove that petitioner changed her domicile to London during the period at issue.

Accordingly, we find that petitioner was a domiciliary of New York State and City during the periods at issue.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Eileen J. Taylor is denied;

2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Eileen J. Taylor is denied; and
4. The Notice of Deficiency dated December 26, 2008 is sustained.

DATED: Troy, New York
December 8, 2011

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

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