STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition of **SEAN AND FABIANA LYNCH** for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law for the Years 2015 through 2018.	:	DECISION DTA NO. 830686

Petitioners, Sean and Fabiana Lynch, filed an exception to the determination of the Administrative Law Judge issued on June 27, 2024. Petitioners appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Peter B. Ostwald, Esq., of counsel).

Petitioners did not file a brief in support of the exception. The Division of Taxation filed a letter brief in opposition. Petitioners filed a letter brief in reply. Petitioners' request for oral argument was denied. The six-month period for issuance of this decision began on October 25, 2024, the date that petitioners' brief in reply was received.

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

ISSUE

Whether petitioners have met their burden of proving that they qualify as nonresidents pursuant to Tax Law § 605 (b) (1) (A) (ii).

FINDINGS OF FACT

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

1. In November 2019, the Division of Taxation (Division) commenced a field audit of

petitioners, Sean and Fabiana Lynch, for New York personal income tax for the years 2015 through 2018 (years at issue or audit years). At the time of the commencement of the audit, petitioners had not filed New York income tax returns for the years at issue.

2. During the course of the audit, petitioners filed returns for the years at issue as follows:

2015: On January 13, 2020, petitioners each filed nonresident and part-year resident income tax returns for the year 2015 as married filing separate returns. Mr. and Mrs. Lynch both reported their mailing address at their home in Warwick, New York. Mr. Lynch's return listed "NR" for New York State county of residence and school district. Mr. Lynch checked the box indicating he lived outside New York State and received no income from New York State sources during the nonresident period and checked the box indicating that he or his spouse maintained living quarters in New York State in 2015. Mr. Lynch reported federal adjusted gross income of $1,618,282.00 in the federal amount column and zero in the New York State column. He reported no New York taxable income and no New York State tax due.

Mrs. Lynch's return listed "Oran" and Warwick Valley for New York State county of residence and school district, respectively. Mrs. Lynch reported that she moved into New York State on November 1, 2015 and lived in New York State on the last day of the tax year.[1] The section of the return asking if she or her spouse maintained living quarters in New York State for 2015 was left blank. Mrs. Lynch reported federal and New York adjusted gross income of $5,238.00 in both the federal and New York State amount columns, claimed a standard

[1] Although Mrs. Lynch reported on her 2015 return that she moved into New York State on November 1, 2015, Mr. Lynch testified that she moved back to New York on May 25, 2015 and began working in November of that year. Attached to Mrs. Lynch's 2015 – 2018 returns are forms W-2, wage and tax statements, reporting income from Pope John XXIII Regional High School in New Jersey.

deduction of $7,900.00, and reported no taxable income and no New York State tax due for 2015.

2016: On January 13, 2020, Mr. Lynch filed a nonresident and part-year resident income tax return for the year 2016, reporting his filing status as married filing separate return. Mr. Lynch reported a mailing address in Warwick, New York. Mr. Lynch's return listed "NR" for New York State county of residence and school district. Mr. Lynch checked the box indicating he lived outside New York State and received no income from New York State sources during the nonresident period and checked the box indicating that he or his spouse maintained living quarters in New York State in 2016. Mr. Lynch reported federal adjusted gross income of $1,508,706.00 in the federal amount column and zero in the New York State column. He reported no New York taxable income and no New York State tax due.

On January 13, 2020, Mrs. Lynch filed a resident income tax return for the year 2016, reporting her filing status as married filing separate return. Mrs. Lynch reported a mailing address in Warwick, New York, and listed "Oran" and Warwick Valley for New York State county of residence and school district, respectively. Mrs. Lynch reported federal and New York adjusted gross income of $44,038.00, claimed a standard deduction of $7,950.00, reported taxable income of $36,088.00 and reported New York State tax of $1,020.00 for 2016.

2017: On June 22, 2020, Mr. Lynch filed a nonresident and part-year resident income tax return for the year 2017, reporting his filing status as married filing separate return. Mr. Lynch reported a mailing address in Warwick, New York. Mr. Lynch's return listed "NR" for New York State county of residence and school district. Mr. Lynch checked the box indicating he lived outside New York State and received no income from New York State sources during the nonresident period and checked the box indicating that he or his spouse maintained living

quarters in New York State in 2017. Mr. Lynch reported federal adjusted gross income of $1,516,790.00 in the federal amount column and zero in the New York State column. He reported no New York taxable income and no New York State tax due. On June 22, 2020, Mrs. Lynch filed a resident income tax return for the year 2017, reporting her filing status as married filing separate return. Mrs. Lynch reported a mailing address in Warwick, New York, and listed "Oran" and Warwick Valley for New York State county of residence and school district, respectively. Mrs. Lynch reported federal and New York adjusted gross income of $25,572.00, claimed a standard deduction of $8,000.00, reported taxable income of $17,572.00 and reported New York State tax of $260.00 for 2017.

2018: On June 22, 2020, Mr. Lynch filed a nonresident and part-year resident income tax return for the year 2018, reporting his filing status as married filing separate return. Mr. Lynch reported a mailing address in Warwick, New York. Mr. Lynch's return listed "NR" for New York State county of residence and school district. On part G of the return, Mr. Lynch entered February 8, 2018 as the date he moved into or out of New York State. Mr. Lynch checked the box indicating that he or his spouse maintained living quarters in New York State in 2018. Mr. Lynch reported federal adjusted gross income of $1,122,411.00 in the federal amount column, and $238,759.00 in the New York State column. He reported New York taxable income of $1,114,411.00 and New York State tax of $16,237.00.

On June 22, 2020, Mrs. Lynch filed a resident income tax return for the year 2018, reporting her filing status as married filing separate return. Mrs. Lynch reported a mailing address in Warwick, New York, and listed "Oran" and Warwick Valley for New York State county of residence and school district, respectively. Mrs. Lynch reported federal and New York adjusted gross income of $34,483.00, claimed a standard deduction of $8,000.00, reported

taxable income of $26,483.00 and reported New York State tax of $324.00 for 2018.

3. Prior to 2011, petitioners filed New York State resident income tax returns. For 2011, petitioners filed as part-year residents of New York and for 2012 through 2014, they filed as nonresidents.

4. The Division conducted a prior audit of petitioners for the years 2012 and 2013. During that time, Mr. Lynch was abroad on a foreign assignment in London, United Kingdom, for SFM UK Management LLP (SFM UK) and the Division determined that petitioners qualified as part-year residents for 2011 and nonresidents for 2012 and 2013 pursuant to Tax Law § 605 (b) (1) (A) (ii).

5. Petitioners did not sell their home in Warwick, New York, during the time that Mr. Lynch worked in London and continuously maintained their home in Warwick, New York, during the years at issue.

6. Mrs. Lynch returned to New York on May 25, 2015, and did not return to the United Kingdom thereafter.

7. Mr. Lynch worked for SFM UK in London from July 2011 through December 2017. He worked for Key Square Capital Management in New York from March 2018 to April 2019.

8. Mr. Lynch completed a nonresident audit questionnaire during the audit for the years at issue, wherein he stated that he relocated to London July 2011 to December 2017 for work reasons with SFM UK, that Mrs. Lynch left London for New York on May 25, 2015 and did not return to London, that he owned living quarters in Warwick, New York, that he never worked in SFM UK's New York office and that he was physically present in New York for 18 days in 2014, 22 days in 2015, 9 days in 2016, 36 days in 2017 and returned to New York from the United Kingdom on February 21, 2018.

9. Based on information obtained during the audit, the Division determined that petitioners qualified as nonresidents of New York pursuant to Tax Law § 605 (b) (1) (A) (ii) from January 1, 2015, through July 29, 2015, were part-year residents from July 30, 2015, through December 31, 2015 and were full year residents of New York State for 2016 through 2018. The Division determined that beginning July 30, 2015, petitioners no longer qualified as nonresidents pursuant to Tax Law § 605 (b) (1) (A) (ii) because Mrs. Lynch returned to the United States on May 25, 2015 and beginning on July 30, 2015, she was present in New York for more than 90 days.

10. The Division issued petitioners a notice of deficiency, assessment number L-052537719, dated December 14, 2020 (notice), asserting tax of $281,906.00 plus interest for the years 2015 through 2018. The notice applied a payment/credit of $5,122.00.

11. Petitioners filed a request for conciliation conference with the Bureau of Conciliation and Mediation Services (BCMS) protesting the notice. By order dated July 23, 2021 (CMS No. 000326916), the conciliation conferee recomputed the amount of tax due to $263,960.00, plus interest.

12. Petitioners were not legally separated during the years at issue.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge noted that the overarching issue is whether a "separation by fact" should be treated the same as a legal separation for purposes of qualifying as a nonresident under the exclusion to the taxation of domiciliaries contained in Tax Law § 605 (b) (1) (A) (ii). The Administrative Law Judge's determination focused on petitioners' failure to meet the statutory requirements for Mr. Lynch to qualify as a nonresident under Tax Law § 605 (b) (1) (A) (ii). The statute explicitly requires that a taxpayer's spouse must be legally

separated to qualify for the exclusion. Petitioners argued that their "separation by fact" should be treated as equivalent to a legal separation for purposes of statutory interpretation. However, the Administrative Law Judge rejected this argument, emphasizing that the statutory language is clear and unambiguous and reflects that the Legislature did not intend for informal separations to satisfy the requirements. The Administrative Law Judge also noted that petitioners did not dispute the Division's findings regarding their residency status or the number of days spent in New York. Instead, they solely relied on their interpretation of the statute, which the Administrative Law Judge found to be inconsistent with its plain meaning. The Administrative Law Judge further highlighted that petitioners failed to provide evidence to establish that Mr. Lynch qualified as a nonresident, thereby failing to meet their burden of proof.

Accordingly, the Administrative Law Judge denied petitioners' petition, sustaining the notice of deficiency as modified by the conciliation order.

ARGUMENTS ON EXCEPTION

On exception, petitioners raise the same arguments as below, arguing that "separation by fact" should be treated as equivalent to a legal separation for purposes of Tax Law § 605 (b) (1) (A) (ii). Petitioners assert that the Division should not force a legal separation when petitioners have provided facts supporting the finding of a 'separation' while Mr. Lynch was living and working in the United Kingdom.

The Division, on the other hand, argues that the language of the statute at issue is unambiguous and the statute clearly provides that for the exclusion to apply, a taxpayer's spouse may not be present in New York for more than ninety days unless "legally separated." The Division asserts that petitioners' contention that a 'separation by fact' should be treated the same as a legal separation ignores the plain meaning of the words in the statute and must be rejected.

The Division argues that petitioners have failed to sustain their burden of proof and accordingly, the determination of the Administrative Law Judge must be affirmed and petitioners' exception must be denied in all respects.

OPINION

We affirm the determination of the Administrative Law Judge. Pursuant to Tax Law § 605, a resident individual is defined as (in relevant part):

> "an individual: (A) who is domiciled in this state, unless (i) the taxpayer maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this state, or (ii) (I) within any period of five hundred forty-eight consecutive days the taxpayer is present in a foreign country or countries for at least four hundred fifty days, and (II) during the period of five hundred forty-eight consecutive days the taxpayer, the taxpayer's spouse (**unless the spouse is legally separated**) and the taxpayer's minor children are not present in this state for more than ninety days, and (III) during the nonresident portion of the taxable year with or within which the period of five hundred forty-eight consecutive days begins and the nonresident portion of the taxable year with or within which the period ends, the taxpayer is present in this state for a number of days which does not exceed an amount which bears the same ratio to ninety as the number of days contained in that portion of the taxable year bears to five hundred forty-eight[.]" (Tax Law § 605 [b] [1] [emphasis added]).

Here, it is important to note that petitioners did not claim in the hearing below to have changed their domicile from New York to London and it is undisputed that they maintained a home in Warwick, New York, during the years in question.

Pursuant to Tax Law § 605 (b) (1) (A), a New York domiciliary is considered a resident for income tax purposes and is subject to taxation on worldwide income. However, the "548-day rule" under Tax Law § 605 (b) (1) (A) (ii) provides an exception to this general rule. A domiciliary will not be deemed a resident for income tax purposes if three conditions are met: (1) the individual is present in a foreign country for at least 450 days during a 548 consecutive day period; (2) the individual's spouse (unless legally separated) and minor children spend 90 days or

less in New York during the same 548-day period; and (3) the individual is not present in New York for more days during the nonresident portion of the 548-day period than allowed under a specific formula (***see*** Tax Law § 605 [b] [1] [A] [ii]).

Where "the question is whether taxation is negated by a statutory exclusion or exemption, . . . 'the presumption is in favor of the taxing power"' (***Matter of Wegmans Food Mkts., Inc. v Tax Appeals Trib. of the State of N.Y.***, 33 NY3d 587, 592 [2019], quoting ***Matter of Mobil Oil Corp. v Finance Adm'r of City of N.Y.***, 58 NY2d 95, 99 [1983]). This means that any ambiguity or uncertainty in the meaning of the statute must be resolved against the taxpayer and that the taxpayer's interpretation of the statute must be not only plausible, but must be the only reasonable construction (***see Matter of Walt Disney Co.***, Tax Appeals Tribunal, August 6, 2020, ***confirmed*** 210 AD3d 86 [3d Dept 2022], ***affd*** 42 NY3d 538 [2024], ***cert denied*** -- US – [2025]; ***Matter of Charter Dev. Co., L.L.C. v City of Buffalo***, 6 NY3d 578, 582 [2006]). Where the statutory language is clear and unambiguous it should be construed so as to give effect to the plain meaning of the words used (***People ex rel. E.S. v Superintendent, Livingston Corr. Facility***, 40 NY3d 230, 235 [2023], citing ***Patrolmen's Benevolent Assn. of City of N.Y. v City of New York***, 41 NY2d 205, 208 [1976]; ***see also Matter of DaimlerChrysler Corp. v Spitzer***, 7 NY3d 653, 660 [2006], citing ***Majewski v Broadalbin-Perth Cent. School Dist.***, 91 NY2d 577, 583 [1998]).

In this case, the language is unambiguous and the statute clearly provides that for the 548-day exclusion to apply, a taxpayer's spouse may not be present in New York for more than ninety days unless **legally separated** (***see*** Tax Law § 605 [b] [1] [A] [ii] [emphasis added]). Petitioners request that we interpret the statute to allow the 548-day exclusion rule to apply where taxpayers prove a "separation by fact."

Every word in the statute must be given effect and cannot be ignored (***see Matter of Helio, LLC***, Tax Appeals Tribunal, July 2, 2015, ***see also Kuzmich v 50 Murray St. Acquisition LLC***, 34 NY3d 84 [2019], ***rearg denied*** 33 NY3d 1135 [2019], ***cert denied*** 140 S Ct 904 [2020], citing ***Matter of DaimlerChrysler Corp.***). "It is a well-settled principle of statutory construction that every word in a statute is to be given effect and to be presumed to have some meaning" (***Matter of Friss v City of Hudson Police Dept.***, 187 AD2d 94, 96 [3d Dept 1993], ***see also*** McKinney's Cons Laws of NY, Book 1, Statutes § 94 ["… statutory language is generally construed according to its natural and most obvious sense, without resorting to an artificial or forced construction"]).

Petitioners' request to interpret the statute to include the phrase "or proof of separation by fact" is not supported by the language used in Tax Law § 605 (b) (1) (A) (ii) or other legal authority. We conclude that the statutory language does not support the inclusion of "proof of separation by fact" as a basis for determining that petitioner Sean Lynch qualified for the exclusion from New York personal income tax for the periods at issue.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Sean and Fabiana Lynch is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Sean and Fabiana Lynch is denied; and
4. The notice of determination issued on December 14, 2020, is sustained.

DATED: Albany, New York
April 17, 2025

/s/ Jonathan S. Kaiman
Jonathan S. Kaiman
President

/s/ Cynthia M. Monaco
Cynthia M. Monaco
Commissioner

/s/ Kevin A. Cahill
Kevin A. Cahill
Commissioner