

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition
of
IRENEE D. MAY

DETERMINATION
DTA NO. 825173

for Redetermination of a Deficiency or for Refund
of Personal Income Tax under Article 22 of the
Tax Law for the Years 2006, 2007 and 2008.

Petitioner, Irene D. May, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 2006 through 2008.

A hearing was held before Herbert M. Friedman, Jr., Administrative Law Judge, in Albany, New York, on April 3, 2014 at 10:00 A.M., with all briefs to be submitted by July 24, 2014, which date commenced the six-month period for issuance of this determination. Petitioner appeared by Withers Bergman, LLP (David J. Moise, Esq., and Jill E. Misener, Esq., of counsel). The Division of Taxation appeared by Amanda Hiller, Esq. (Peter B. Ostwald, Esq., of counsel).

ISSUES

I. Whether petitioner has established that he was not taxable as a domiciliary of New York State during the years 2006 through 2008.

II. Whether penalties asserted against petitioner should be abated.

FINDINGS OF FACT

1. Petitioner, Irene D. May, filed New York State nonresident and part-year resident income tax returns (Form IT-203) for the 2006, 2007 and 2008 tax years under the filing status “married filing separate return.” On the 2006 and 2007 returns, petitioner listed his address as 85

Holland Park, London, United Kingdom. Petitioner's 2008 return listed his address as 3 Huntziger Drive, Greenwich, Connecticut. Prior to 2006, petitioner filed as a New York State resident residing at 25 Archer Road, Harrison, New York.

2. On May 11, 2012, following an audit, the Division of Taxation (Division) issued to petitioner Notice of Deficiency number L-037837087-8, which asserted additional New York State income tax due of \$251,413.00 for the years 2006, 2007 and 2008. The Division determined that petitioner was liable for additional New York State personal income tax as he was domiciled in New York State and, therefore, taxable as a resident for those years. The Notice of Deficiency also asserted interest and penalties for negligence pursuant to Tax Law § 685(b) for each tax year.

3. Petitioner was born in 1954 in Kentucky and moved frequently as a child, also living in Delaware, West Virginia, California and Massachusetts prior to college. His parents and extended family are native to Delaware and have no material residential ties to New York State.¹

4. After graduating from the University of Virginia in 1978, petitioner lived in Delaware for four years before attending graduate school at his alma mater. He earned a Masters in Business Administration from Virginia in 1984.

5. In 1985, petitioner began working as a trainee at J.P. Morgan & Co. (JP Morgan) in New York City and quickly worked his way to success with the company. He initially worked trading foreign exchange and interest rates and helped manage the asset liability portion of the company's portfolio. Within two years, petitioner began working in Hong Kong for JP Morgan on a temporary assignment as a proprietary trader.

¹ Petitioner is a member of the prestigious DuPont family, which has a long association with the State of Delaware.

6. On a visit to the United States in 1987, petitioner met his future wife, Lynn Ginter, at a party in Delaware. They were married the next year in the military chapel in Valley Forge, Pennsylvania. Mrs. May and her family are native to Pennsylvania and they had no ties to New York. After their wedding, Mrs. May moved with petitioner to Hong Kong.

7. Petitioner's first child, Madeleine (Maddie), was born in 1992 while he and his wife were living in Hong Kong. Shortly thereafter, petitioner and Mrs. May began renting, and eventually purchased, a home at 25 Archer Road, Harrison, New York (Harrison property), where they soon resided. In 1993, petitioner returned to work in New York City to manage and develop JP Morgan's hedge fund business.

8. In 1996, the May's second child, Irene D. May III (Sam) was born and joined his family at the Harrison property.

9. Upon reaching school age, both Maddie and Sam attended private schools in Greenwich, Connecticut, up until the years at issue.

10. In 2002, the Mays purchased petitioner's grandparents' historical home in Delaware (Delaware property). The Delaware property has 60 acres of land and is bordered on all sides by property owned by petitioner's extended family. Petitioner and his family spent many holidays and vacations at the Delaware property both before and during the years at issue.

11. Petitioner was extremely successful in his role developing JP Morgan's hedge fund business. When he started in 1993, JP Morgan had approximately 20 hedge fund clients and revenues of about \$20 million. During his time in that capacity, petitioner oversaw growth of the company's hedge fund clientele to over one thousand, with estimated revenues of \$1.5 billion.

12. Based on his success, petitioner developed a strong reputation in the New York investment banking community during the period between 1993 and 2002. He associated and

worked with many of the most prominent hedge fund managers in the city. As a result, petitioner's work, social and family lives were tightly intertwined. Mrs. May often accompanied petitioner to various functions, and petitioner also frequently entertained colleagues at the Harrison property. In short, petitioner's career with JP Morgan was a significant part of his identity and consumed his everyday life.

13. In 2000, JP Morgan merged with The Chase Manhattan Corp. to form JP Morgan Chase & Co.² Slowly thereafter, petitioner's work environment and the general nature of the hedge fund business changed drastically for the worse. In addition, petitioner was appointed new supervisors, further complicating matters for him.

14. In December 2004, at age 50, with 20 years of service, petitioner was informed that his employment with JP Morgan would be terminated, effective January 2005. The termination came as a great surprise to petitioner, leaving him "shocked, angry, hurt, and embarrassed." In order to save face in the investment banking community, however, petitioner's termination was disguised as a retirement. The disguise was so effective that several of petitioner's closer clients actually threw a retirement party for him.

15. Based on the abruptness and severity of his termination, petitioner felt "jaded" by the New York investment world and did not have a particular intention of looking for new employment in that city once he left JP Morgan. Petitioner, however, did not have a definite plan with regard to his career options or location. He considered teaching or perhaps working for a hedge fund itself.

² Petitioner testified that the JP Morgan/Chase merger occurred in 2002. That date was repeated in petitioner's brief. In fact, the merger occurred in 2000. Consequently, official notice is taken of the correct date pursuant to State Administrative Procedure Act § 306(5).

16. Petitioner's last day with JP Morgan was January 5, 2005. The following week, a headhunter from the United Kingdom (UK) called him to gauge his interest in working for the Royal Bank of Scotland (RBS) in London. Petitioner was intrigued by the opportunity to work in London and live overseas again. Petitioner's wife, a self-described Anglophile, was also interested in a move to London with their family.

17. After two successful preliminary interviews in the United States, petitioner entered into contract negotiations for a position with RBS in its London office, and he and his family flew to that city in July 2005 to begin a search for a home and schools for the children. In addition, petitioner and his family members, including their nanny, obtained five-year work permit visas to facilitate a move. Petitioner understood that after five years, they could apply for permanent residency in the UK, and intended to do so.

18. In September 2005, petitioner finalized his employment contract and became Managing Director, Head of Hedge Fund Relationship Management at RBS. Petitioner was extremely excited at the opportunity to build the global hedge fund sector for RBS, as that was an area with room for significant growth and one with which he was intimately familiar. The contract was for "at will" employment, without a limited duration or term.³ Additionally, petitioner would receive greater compensation in his new position than he had at JP Morgan. That compensation came in the form of British pounds and was directly deposited into a UK bank account. He was not treated by RBS as an expatriate, but as a UK-based employee. Along those lines, petitioner did not receive a corporate housing stipend as part of his compensation.

³ The contract states that "[t]he normal retiring age for all staff is 60." Nonetheless, petitioner was aware of other employees with RBS that were older than 60.

Finally, employment with RBS in London allowed him to escape the New York investment world that had disappointed him so severely.

19. Petitioner and Mrs. May looked at various neighborhoods in and around London in search of a home, finally settling on the rental of a large residence at 77 Holland Park, London (77 Holland Park), close to Kensington Palace. 77 Holland Park was an unfurnished flat with enough bedrooms for everyone in petitioner's family, including a nanny, and three and one-half baths. It came with a beautiful garden that was particularly pleasing to Mrs. May. It was petitioner's intention to eventually furnish 77 Holland Park with the furniture from the Harrison property, but given Mrs. May's background in interior decorating, "there was no lack of opportunity for what to do with the pallet," according to petitioner. Both petitioner and Mrs. May were excited about this property and they both signed the lease agreement, which had a one-year term commencing August 15, 2005 that was extendable. Petitioner felt that 77 Holland Park gave his family an excellent starting point to become familiar with the London real estate market and search for a home to eventually purchase. It also was close to petitioner's office, public transportation, and potential schools for his children. Correlatively, Mrs. May consulted with a realtor to begin the process of the sale of the Harrison property.

20. The hunt for schools for petitioner's children was not as successful as the search for a home, however. Sam, in particular, did not receive immediate acceptance into the school of his choice, the American School in London. Consequently, Mrs. May, Maddie, and Sam returned to Harrison for the fall of 2005, with the intent to try again in London for the spring semester in 2006. Both children attended excellent schools in Greenwich, Connecticut, for the time being, which was comforting to petitioner. Mrs. May and the children joined petitioner for Thanksgiving 2005 in London, and in December of that year, Maddie moved to 77 Holland Park.

She began attending Queen's Gate School in London in January 2006. In June 2006, the family celebrated Maddie's birthday at 77 Holland Park.

21. Unfortunately for Sam, the American School continued to have no openings for the spring of 2006, and Mrs. May preferred his then-current school in Connecticut to the other available choices in London. As a result, the two of them remained at the Harrison property, which, because of the change in plans with Sam, was not listed for sale as originally planned. Although petitioner was disappointed at this turn of events, he felt that he had "built a beachhead" in London and was confident that, eventually, his wife and son would join Maddie and him.

22. Although Sam was accepted at the Eaton Square School and the International School of London for the fall 2006 semester, he again remained in Harrison with his mother because she believed it would be best for him to finish lower school (Sam was entering fourth grade at that time) in Connecticut. Moreover, Maddie decided after completing the spring 2006 semester to return to Harrison to live with her mother and brother. Thus, in the fall of 2006, petitioner was again disappointed that his family move had not entirely been completed, but felt it was only a matter of time before they would all be reunited and living together in London. This belief was bolstered by the fact that Sam had finally been accepted at the American School for fifth grade beginning in the fall of 2007.

23. The failure of petitioner's family to join him in London by the fall of 2006 caused him to face an unexpected financial strain resulting from supporting the Harrison property, the Delaware property, and 77 Holland Park. As it turned out, petitioner and Mrs. May had decided not to list the Harrison property for sale until the entire family's move was complete. Hence, despite Mrs. May's objections, petitioner moved from 77 Holland Park to a smaller, less

expensive flat at 85 Holland Park, London (85 Holland Park) under a one-year lease commencing November 2006. The lease for 85 Holland Park was entered into by petitioner on his own, without Mrs. May's approval or involvement. Petitioner identified 77 Holland Park as his address when executing the new lease. Despite the reduction in size from 77 Holland Park, 85 Holland Park was large enough to accommodate petitioner's entire family, with each member having his or her own bedroom.

24. Meanwhile, petitioner's professional career was progressing very well during the period 2005 through 2007. His initial goal was to increase RBS's hedge fund business, then in its fledgling state, to the point where it was a top five competitor worldwide. Because of the increasingly regulatory atmosphere in the United States after September 11, 2001, investors began moving their business to Europe and the UK. Petitioner, with the opportunity to be a leader in this environment, created a team of four UK-based individuals at RBS. Their focus was on blending RBS's existing global foreign exchange capability, securities business in Asia, and mortgage-backed business in the United States to create a product to be offered to the European client base. He also was given funding to develop various technologies and documentation to support their endeavor. Immediately, he and his team saw significant growth in hedge fund revenues. Unquestionably, petitioner enjoyed his new professional opportunity and success, his fellow employees, and the responsibilities given to him at RBS.

25. Petitioner's social and recreational life in London also thrived during this period. As was the case in New York during his earlier time there, a large portion of petitioner's social life revolved around work. He attended various functions with clients or co-workers, often accompanied by Mrs. May, who had flown over for the event, or Maddie, while she lived there. Petitioner enjoyed bicycling around London, and joined a golf club. Moreover, petitioner joined

a church, Holy Trinity Brompton, and was enamored with its congregation and excellent music program. He became deeply involved in its activities, including a theological center. He was excited to have his family become part of the church. In sum, petitioner was happily ensconced in London.

26. Petitioner spent approximately 280 days in London in each of 2006 and 2007. In 2008, that figure was estimated at 236.

27. Petitioner spent approximately 25 days in 2006, 27 days in 2007, and 40 days in 2008 in New York. When petitioner would travel to the United States to join his family for holidays, it was often to the Delaware property and not New York.

28. By the end of 2006 and early 2007, Mrs. May began having serious second thoughts about a move to London. The effort of constantly traveling to and from London, in conjunction with the issues surrounding the children's schooling caused her great tension. Additionally, Sam was assigned what his mother deemed an excellent teacher for fifth grade at his school in Connecticut, and Maddie did not want to leave her brother. Petitioner, on the other hand, demonstrated no desire to move from London back to the Harrison property despite enquiry from Mrs. May and the absence of his family. In fact, the delays with his family's arrival never caused petitioner to feel that he had made a mistake by living in London. On the contrary, his London lifestyle became more entrenched. Consequently, petitioner and Mrs. May's marital relationship deteriorated.

29. In September 2007, while living in New York, Maddie missed a deadline for an application for admission to a school in London. As a result, out of frustration from yet another impediment, petitioner came to the Delaware property in early-October 2007, and awaited the arrival from New York of Mrs. May and the children in order to meet with them about joining

him in London. In essence, it was to be a family summit; however, Mrs. May and the children never arrived. Instead, Mrs. May had petitioner served with papers suing him for divorce.

30. The divorce complaint, dated October 5, 2007, alleged abandonment by petitioner, among other causes of action, as grounds for the divorce. In particular, the complaint stated that since August 2005, petitioner had abandoned Mrs. May and their children by insisting on living in London and that he “repeatedly stated his intention not to return to New York and reside with [them].”

31. In response to the complaint, petitioner had a brief and fruitless discussion about reconciliation with Mrs. May at the Harrison property and then returned to London.

32. In October 2007, RBS merged with ABN AMRO. Following the merger, in February 2008, petitioner was promoted to a position on the company’s management committee, further cementing his status with RBS.

33. In November 2007, petitioner and Mrs. May executed a stipulation, subsequently ordered by the Westchester County Supreme Court, granting her exclusive use and occupancy of the Harrison property.

34. Petitioner and Mrs. May concluded that they initially would not inform extended family members or friends about the divorce in case a reconciliation occurred. Petitioner sincerely hoped Mrs. May would reconsider and agree to join him in London, while she expected him to return to Harrison. Eventually, when no progress was made, petitioner and Mrs. May informed their parents in August 2008 about the divorce. At that point, petitioner had to make a difficult decision. He loved his life and career in London. At the same time, he felt a strong obligation to his children to help them through this trying period.

35. Consequently, petitioner decided to seek an opportunity to return to the United States and work for RBS out of its Greenwich, Connecticut, office to allow him to address his divorce in person. Initially, he was granted approval to professionally relocate to that office for a three-month period. Petitioner was given such a limited period because of the importance of his presence in London in his role with RBS as global Head of Hedge Fund Relationship Management. With this approval, petitioner went to Connecticut in October 2008 and signed a seven month lease for property at 3 Huntzinger Drive in Greenwich (Huntzinger Drive property). When executing the new lease, petitioner listed his address as 85 Holland Park, London.

36. In September 2008, Lehman Brothers filed for Chapter 11 bankruptcy protection. This filing sent the financial markets into chaos. By October 2008, RBS felt the ramifications of the situation and suffered a significant workforce reduction. One of the casualties was the supervisor who had originally given petitioner permission to temporarily work out of Connecticut. The replacement did not approve of petitioner's temporary relocation to Greenwich and supplanted him with someone else as global Head of Hedge Fund Relationship Management in London. Despite living and working in Connecticut through the remainder of 2008, petitioner remained a UK-based employee, working pursuant to his original contract, and continued to be paid in British pounds.

37. Petitioner and Mrs. May finalized their divorce in 2011. The Harrison property was eventually sold in 2013.

38. Petitioner maintained a New York State driver's license and registered vehicle during the years at issue.

39. Petitioner filed his 2006 through 2008 federal income tax returns claiming married filing jointly status. The 2006 return was filed using the Harrison property address. The 2007

return used the 85 Holland Park address. The 2008 return was filed using the 3 Huntzinger Drive property address.

40. On petitioner's New York State income tax returns for each of the years at issue, he responded "no" to the question of whether he or his spouse maintained living quarters in New York State for that particular year.

41. Petitioner filed 2006 and 2007 HM Revenue & Customs tax returns (UK returns).⁴ On both returns, petitioner indicated his residence status for the year as "resident in the UK," but stated that he was "not domiciled in the UK." Petitioner's 2006 through 2008 UK returns were prepared by an accountant in London to whom he had provided all of his documentation and completely relied upon to file accurate returns. Petitioner did not review the returns, which he believes were submitted electronically by his accountant.

42. Petitioner submitted unnumbered proposed findings of fact in narrative form in his brief. In accordance with State Administrative Procedure Act § 307(1), petitioner's proposed findings of fact have been substantially adopted and incorporated herein.

SUMMARY OF THE PARTIES' POSITIONS

43. Petitioner asserts that based on the documents and testimony presented, he established by clear and convincing evidence that it was his intent in September 2005 to move to London with his family and never return to New York. Moreover, he claims that his general habits of life from that date through 2008 point to a life that was totally centered in London with no connection to New York. Thus, petitioner maintains, the Division's notice was in error as he had abandoned his New York domicile by the years at issue.

⁴ The UK returns have a tax year of April 6 to April 5 of the following year, e.g., the 2006 tax year is April 6, 2006 through April 5, 2007.

44. Petitioner credibly testified at the hearing in this matter. He insisted that it was fully his intention to move to London in 2005, along with his family, in order to start his new career with RBS. He stated he and Mrs. May had created a plan to effectuate the move. Moreover, petitioner said that there was never an intention on his part to live in London for a finite period and related the entire account of the search for a new home and schools for the children. Moreover, petitioner insisted that even when Mrs. May and the children did not arrive as originally planned, he never waived in his intention to make London his new home, testifying “[a]gain, I was waiting for the gang to come so that we could get on with real life.” On the other hand, he repeatedly and vehemently asserted that he had no desire to relocate back to New York. He emotionally testified about his severe disappointment at the failure of his family to join him and the eventual loss of his career and lifestyle in London in 2008.

45. Mrs. May also credibly testified at the hearing, echoing her former husband’s statements with regards to his intentions. She described the excitement at the formation of the plan to move the family, the initial joy at finding 77 Holland Park, which she described as an “amazing” home, and the ensuing inability to find proper schooling for Sam. Mrs. May spoke unhappily about petitioner’s eventual love of 85 Holland Park and his growing distance from his family. Subsequently, she candidly spoke about her frustration at the inability to force petitioner to abandon the London lifestyle he was clearly enjoying, a fact that led to her filing for divorce.

46. Meanwhile, the Division maintains that petitioner failed to carry his burden of proving by clear and convincing evidence that he intended to abandon his historic New York domicile and effectuate a change of domicile to London with the intent to stay there permanently. Furthermore, the Division states that petitioner has not shown a basis for the abatement of penalties.

CONCLUSIONS OF LAW

A. Tax Law § 605(b)(1)(A) sets forth the definition of a New York State resident individual for income tax purposes.

“Resident individual. A resident individual means an individual:

(A) who is domiciled in this state, unless (1) 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.”

This matter solely involves the issue of petitioner’s domicile during the years at issue.

B. The Division’s regulations define “domicile” in relevant part as follows:

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

(2) A domicile once established continues until the person 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 (20 NYCRR 105.20 [d])."

C. It is well established that 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's Estate*, 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 App Div 876 [1944], *affd* 293 NY 785 [1944]); *see also Matter of Bodfish v. Gallman*). While certain declarations may evidence a change in domicile, such declarations are less persuasive than informal acts which demonstrate an individual's "general habit of life" (*Matter of Silverman*, Tax Appeals Tribunal, June 8, 1989, citing *Matter of Trowbridge*, 266 NY 283, 289 [1935]).

D. In *Matter of McKone v. State Tax Commission* (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 Domicile § 25, at 19 [1966].)

E. While the standard is subjective, the courts and the Tax Appeals 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). Among the factors that have been considered are: (1) the retention of a permanent place of abode in the claimed domicile (*see e.g. Gray v. Tax Appeals Tribunal*, 235 AD2d 641 [1997] *confirming Matter of Gray*, Tax Appeals Tribunal, May 25, 1995; *Matter of Silverman*, Tax Appeals Tribunal, June 8, 1989); (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*; *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*; *Matter of Gray*; *Matter of Getz*).

F. Applying these standards to the record at hand, petitioner has demonstrated, by clear and convincing evidence, that he abandoned his New York domicile in favor of a domicile in London as of the years at issue.

First, petitioner credibly and unequivocally testified about his intent to make London his and his family's new home beginning in 2005, and for an indefinite period. As he described, his life changed significantly following his forced departure from JP Morgan in January of that year. He convincingly explained his excitement at his new opportunity with RBS and his focus on the move to London. He also described in detail the efforts made to find a new home suitable for his entire family and excellent schools for his children. Subsequently, he compellingly testified about the development and enjoyment of his new lifestyle in London, including his tremendous success at work and involvement with his church, which he described as extremely important to him. In addition, he emotionally testified about the difficulty of uprooting from his new London home, abandoning what he had achieved, and returning to the United States when faced with an imminent divorce. On the other hand, his testimony exuded his unhappiness and contempt for life in New York after his dismissal from JP Morgan. Undoubtedly, petitioner's testimony persuasively demonstrated his absolute and fixed intention in 2005, and through the years at issue, to abandon one domicile and acquire another (*see Matter of Bodfish v. Gallman*).

Additionally, Mrs. May's credible testimony bolstered petitioner's case. Having no tax benefit to gain from her testimony based on the filing status on the returns at issue, Mrs. May nevertheless corroborated petitioner's singularly focused efforts to move to and remain in London. She emotionally related her evolving split from his plan to move the family and the eventual divorce because of his failure to return to New York. Her candid testimony evinced a petitioner that had made London his new fixed and permanent home. Without a doubt, the credible testimony of both petitioner and Mrs. May serves as extremely potent evidence in this matter (*see Matter of Avildsen*, Tax Appeals Tribunal, May 19, 1994).

G. Petitioner's actions and "general habit of life" also support his claimed change of domicile. Upon investigating and then accepting a prominent position with RBS in 2005, he excitedly began a search for a new home in London for not only himself, but his family as well. That search culminated in the rental of a significant property, 77 Holland Park, which he leased and paid for on his own, rather than from a company stipend. He obtained visas for the entire family, including a nanny, which would facilitate a move. At the same time, petitioner and his wife also began an earnest search for schools for their children. Eventually, one of his children, Maddie, attended school in London. These actions are consistent with petitioner's stated effort to relocate to a new domicile.

H. Petitioner's business ties during the years 2006 through 2008 further point to a London domicile. After starting with RBS in 2005, petitioner achieved instantaneous success in his position as global Head of Hedge Fund Relationship Management, a position that required his constant presence in the London office. Additionally, petitioner's contract with RBS was indefinite, rather than an assignment for a particular term, and treated him as a UK-based employee, rather than an expatriate. Meanwhile, petitioner severed his business ties to New York by 2006. In fact, petitioner reveled in the fact that he was no longer a part of the New York investment banking world. He certainly did not have a business presence there. When petitioner returned to live and work in the United States in October 2008, it was to Connecticut, and not New York.

I. Furthermore, petitioner's social and community involvement during the relevant time centered in London. He was deeply involved with his church, Holy Trinity Brompton, and participated in many of the activities that membership afforded. Additionally, the nature of his work gave rise to many social engagements that took place in the London area. Indeed, Mrs.

May occasionally traveled to London to join petitioner at some of these events. Conversely, the record shows that petitioner rarely attended social events in New York during the years at issue. His social life prior to 2006 had primarily consisted of his associates at JP Morgan, relationships that ended with his departure in 2005.

J. Where an individual has two residences, such as petitioner did, the length of time spent at each location is also an important factor to be considered in determining domicile (*see Matter of Angelico*, Tax Appeals Tribunal, March 31, 1994; *see also* 20 NYCRR 105.20[d][4]). In this case, the time petitioner spent in London was overwhelmingly greater than that spent in New York. In each of the years at issue, petitioner spent over 230 days in London, while averaging about 30 days a year in New York. Accordingly, the significant amount of petitioner's time spent in London during the years at issue is further indicative of his domicile, especially when considered with the record as a whole.

K. Petitioner correctly distinguishes his case from that of *Matter of Taylor* (Tax Appeals Tribunal, December 8, 2011), where the Tribunal found that a taxpayer who moved from New York to London for employment did not demonstrate a change of her domicile for the years at issue. As petitioner points out, the taxpayer in *Matter of Taylor* was a lifelong native of New York who received a work assignment to London of a fixed term by her then-current company. Additionally, she was designated an expatriate and received a housing stipend as part of her compensation. In short, the taxpayer in *Matter of Taylor* was assigned to temporarily work in London and her move there was with the anticipation of a return to New York after a limited term. Meanwhile, in the instant case, petitioner was starting fresh with a new company, and was operating under a contract of unlimited duration. Petitioner was treated as a UK-based employee and not as an expatriate. Additionally, he was not a native New

Yorker and had no expectation of returning to New York. Finally, petitioner obtained 77 Holland Park in his own name (and that of his wife), with his own funds, and did not receive a housing stipend. Thus, many of the facts that caused the Tribunal to decide against the taxpayer in *Matter of Taylor* are directly opposite here.

L. The primary thrust of the Division's case is the assertion that petitioner failed to abandon his New York home. The Division highlights several facts in the record showing continuing ties to New York that weigh against petitioner's claim of a change in domicile to London. It is well established, however, that a taxpayer may change his or her domicile without severing all ties with the prior domicile (*Matter of Sutton*, Tax Appeals Tribunal, October 11, 1990). In this matter, such continuing ties are insufficient to overcome the other evidence, discussed above, which prove petitioner's London domicile.

In particular, the Division points to petitioner's continuing maintenance of the Harrison property and the presence of his family there during the years at issue. As petitioner correctly points out, however, the Tribunal has recognized that the continued maintenance of a dwelling in New York is not determinative of an individual's domicile (*see Matter of Doman*, Tax Appeals Tribunal, April 9, 1992). The evidence in the record shows that petitioner initially attempted to sell the Harrison property in conjunction with his move to London. It was only after the failed attempt to find schools for their children that petitioner and Mrs. May decided to temporarily retain the Harrison property until the entire family could join petitioner. Of course, that plan eventually changed with the dissolution of petitioner's marriage. Meanwhile, as discussed, petitioner's presence in New York, and his use of the Harrison property, diminished significantly after he left for London in 2005. This contrasts sharply with petitioner's constant presence in London between 2006 and 2008.

Additionally, some of the most compelling evidence of petitioner's intent to abandon his New York domicile arises from the divorce proceedings brought by Mrs. May. Clearly, petitioner's intent to leave New York and reside in London was of such an obvious and deep-rooted nature that Mrs. May chose to use petitioner's abandonment of her and his Harrison home as a primary ground for her divorce complaint. To further confirm petitioner's intent to abandon New York, shortly after receiving the divorce complaint, he entered a stipulation that provided that Mrs. May would have exclusive use and occupancy of the Harrison property. Thus, he voluntarily agreed to be legally prohibited from living in that house. Moreover, even in the face of a pending divorce, petitioner did not immediately return to live in the United States, and never returned to New York. Instead, he maintained his life in London and hoped that his family would join him. This evidence demonstrates the strong attachment and sentiment petitioner had for his new home and his concurrent disdain for and abandonment of New York.

M. The Division also places undue weight on 20 NYCRR 105.20(d)(3), which requires that in order for a United States citizen to evidence change of their domicile by going to a foreign country, he or she must clearly show an intent to remain permanently. The Division describes this regulation as creating a "stronger than general" regulatory presumption. The regulation, however, does no such thing. It simply provides the same standard as required for those claiming interstate, and not international changes of domicile. In this case, as discussed above, petitioner has clearly shown that it was his intention to make London his home for an indefinite period, thereby meeting the standard set in 20 NYCRR 105.20(d)(3).

N. In addition, the Division points to several entries on petitioner's federal and UK tax returns and other secondary actions on his part that indicate a failure to abandon his New York

domicile. In particular, petitioner filed his 2006 federal income tax return under the status “married filing jointly” from the Harrison property address. Moreover, petitioner indicated on his 2007 and 2008 UK returns that he was not domiciled in the UK for that year. Finally, petitioner retained his New York driver’s license and a vehicle that was registered in New York.

Although these factors certainly mitigate against petitioner’s claimed change, they do not overcome the convincing evidence to the contrary. The record in its entirety leads to the conclusion that these entries may have been in error, or at least not well considered given petitioner’s lifestyle. Moreover, a complete review of petitioner’s Federal returns shows that his 2007 return was filed using the 85 Holland Park address, a fact that actually bolsters his claim.

O. It is well settled that “[t]o 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” (*Matter of Ingle*, Tax Appeals Tribunal, December 1, 2011, quoting *Aetna Natl. Bank v. Kramer*, 142 AD 444 [1911]). In this case, it is obvious from petitioner’s statements and conduct that he intended to move the focus of his life from New York to London. After his difficult departure from JP Morgan, petitioner found a renewed professional excitement with the new opportunity at RBS. At the same time, he saw this as a chance for him and his family to start, as he put it, an “exciting adventure” and to be “a good change for us.” Unfortunately for petitioner, the plan to move his entire family with him never finalized. Nevertheless, the record in total makes clear that petitioner’s own “general habit of life” became centered and based in London, that he considered it home, and that he had abandoned Harrison (*see Matter of Silverman*). As a result, during the years at issue, petitioner was a domiciliary of London and not New York.

P. As the domicile issue for the years 2006 through 2008 is decided in petitioner's favor, the issue of penalties is moot.

Q. The petition of Irene D. May is hereby granted and the notice of deficiency dated May 11, 2012 is canceled.

DATED: Albany, New York
January 8, 2015

/s/ Herbert M. Friedman, Jr.
ADMINISTRATIVE LAW JUDGE