STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
STEPHEN C. PATRICK	:	
for Redetermination of a Deficiency or for Refund of New York State and City Income Taxes under Article 22 of the Tax Law and the Administrative Code of the City of New York for the Years 2011 and 2012.	:	
	:	DETERMINATION DTA NOS. 826838
In the Matter of the Petition	:	AND 826839
of	:	
CLARA SCURATI-MANZONI PATRICK	:	
for Redetermination of a Deficiency or for Refund of New York State and City Income Taxes under Article 22 of the Tax Law and the Administrative Code of the City of New York for the Years 2011 and 2012.	:	
	:	

Petitioners, Stephen C. Patrick and Clara Scurati-Manzoni Patrick, filed petitions for redetermination of deficiencies or for refund of New York State and City personal income taxes under Article 22 of the Tax Law and the Administrative Code of the City of New York for the years 2011 and 2012.

A hearing was held before Kevin R. Law, Administrative Law Judge, in New York, New York, on June 28 and 29, 2016, with all briefs to be submitted by December 23, 2016, which date commenced the six-month period for issuance of this determination. Petitioners appeared by

Morrison & Foerster, LLP (Craig B. Fields, Esq. and Irwin Slomka, Esq., of counsel). The Division of Taxation appeared by Amanda Hiller, Esq. (Peter B. Ostwald, Esq., of counsel).

ISSUES

I. Whether petitioner[1] has established that he changed his domicile from New York City to Paris, France, on March 2, 2011.

II. If not, whether petitioner established reasonable cause such that penalties can be abated.

FINDINGS OF FACT

1. Petitioner, Stephen C. Patrick, was born in Connecticut in 1949. He moved to Mamaroneck, New York in 1962, where he attended high school.

2. While in high school, petitioner met Clara Scurati-Manzoni Patrick (Clara or Mrs. Patrick), who was, during 2011 and 2012, and currently is, his wife.

3. Mr. Patrick and Clara (collectively petitioners) met each other at a dance as high school teenagers in the summer of 1965. For the next two years, they dated each other exclusively.

4. In 1966, petitioner gave Clara a gold-plated heart necklace inscribed with the words "Clara 1966, Steve " as a token of his love.

5. Petitioner and Clara dated until shortly after they graduated high school. At that time, petitioner was inducted into the army to go to West Point Prep and later West Point, and Clara's parents sent her to Italy, where she had been born, to attend a religious boarding school.

6. After graduation from high school, petitioner and Clara kept in touch, mainly by letter

[1] All references to "petitioner" shall mean petitioner Stephen C. Patrick.

and occasionally by telephone, but due in part to Clara's placement in a boarding school in Italy that was also a nunnery, keeping in touch was particularly difficult.

7. Approximately a year and a half after she left for Italy, Clara informed petitioner that she was going to marry someone else. At that point, they broke off all communications.

8. Petitioner was upset about Clara's pending marriage, and he destroyed the letters and mementos he had from her, but retained her high school graduation photo, which he kept for the next 40 years. Meanwhile, Clara saved the gold-plated heart necklace that petitioner had given her, along with photographs of them together in high school, newspaper clippings and other mementos of their time together, also for the next 40 years.

9. In 1974, petitioner met and married his first wife.

10. Shortly after getting married, petitioner and his first wife moved to Kingston, Rhode Island where he earned an MBA in accounting from the University of Rhode Island.

11. In 1977, after receiving his MBA, petitioner was hired by Price Waterhouse's Stamford, Connecticut office and moved with his first wife to Norwalk, Connecticut.

12. In 1982, petitioner left Price Waterhouse and started working for Colgate-Palmolive Company (Colgate) in its New York City headquarters. He and his wife continued to reside in Connecticut, but moved from Norwalk to Greenwich.

13. Except for a few, temporary, overseas assignments, petitioner lived continuously in Connecticut for the next 30 years. All four of his children were raised in Connecticut and attended elementary and high school there.

14. Petitioner became a member of the Burning Tree County Club, located in Connecticut, in 1990.

15. For most of his professional career, petitioner worked at Colgate. Starting as a manager of financial reporting, he worked his way up to the position of CFO, a role which he held from 1996 until December 31, 2010. Petitioner assumed the role of Vice Chairman of Colgate on January 1, 2011 until he retired on March 1, 2011.

16. Petitioner's position as CFO of Colgate was immensely demanding. He worked very long hours and frequently traveled for work. When he was not traveling, petitioner typically arrived at work by 7:00 a.m. and did not leave the office until after 7:00 p.m. Petitioner testified that the job "took all of me."

17. During his nearly 15 years as CFO, petitioner never took more than five or six consecutive vacation days.

18. In 2007, petitioner underwent emergency surgery in Connecticut to have two stents put in as the result of a near total blockage of his arteries.

19. After undergoing this serious medical procedure, petitioner began to reevaluate his life, including his first marriage, in which he had been unhappy for several years. Petitioner told his wife that he wanted a divorce, and shortly after the surgery, he and his first wife separated.

20. As a result, in January 2008, petitioner moved out of the Greenwich, Connecticut home he had shared with his first wife and rented an apartment in Manhattan to be closer to his job.

21. Petitioner joined a gym near his apartment, the Equinox Club, in Manhattan. In his testimony, petitioner noted that the Equinox Club allows members to put their memberships on hold if they are not using them.

22. He and his first wife finalized their divorce in January 2009.

23. After moving to Manhattan, petitioner hoped he could find someone with whom he could spend his life.

24. His thoughts soon turned to his high school sweetheart, Clara, and in March, 2008, he began to search for her. Eventually, petitioner was able to track down her 85-year old uncle and give him his contact information, who in turn passed it on to Clara, who was then married and had been living in Paris for many years.

25. On April 4, 2008, petitioner and Clara finally spoke on the telephone for the first time in nearly 40 years.

26. During that initial call, they made plans to meet on April 26, 2008 in New York City.

27. When they met on April 26, 2008, Clara brought with her the gold-plated, heart-shaped necklace that Petitioner had bought for her many years before, along with all of the letters he sent her and photographs of them that she had saved since high school.

28. Clara testified about that meeting on April 26, 2008:

> "We met, and we opened the door, we looked at each other, we just knew it was us again. We just recognized each other, we knew the love that we had came back again."

29. Petitioner asked Clara to marry him at that eventful first meeting. She immediately accepted. She went back home to Paris and told her husband four days later.

30. Petitioner and Clara met again about one month later in Paris, and a month after that, in New York City.

31. On Clara's next trip to New York City, petitioner bought her a heart-shaped necklace, almost identical to the one he had given her in 1966, except made of solid gold and inscribed: "Clara 2008, Steve."

32. When petitioner leased his apartment in New York City in January 2008, it was the first time he had ever lived in there.

33. Following his move from Connecticut, petitioner's Greenwich home was sold. There is no indication that petitioner had any subsequent residences in Connecticut.

34. Petitioner did not have any friends or family in New York City, but moved there because of his position as CFO at Colgate.

35. Petitioner testified about his intent with respect to the New York City apartment as follows:

> "I never considered my true home to be New York. . . . It was a residence for me to sleep near my work, particularly when I was going through transition from divorce . . .. If domicile means permanent home, I never considered . . . New York my domicile. Never."

36. Rather than buy new furniture, he bought the furniture that was on display in the apartment, which had previously been used as a model, because it was "the easiest way to move in."

37. At the time that petitioner and Clara committed to marry each other in April 2008, neither of them was yet divorced, and neither knew how long it would take to receive a final divorce decree. Clara, in particular, was not sure whether she would be subject to Italian laws, under which a divorce could take five years, or French laws, which could take as little as a few months.

38. Shortly before petitioner's lease on his first New York City apartment expired at the end of 2008, he decided to purchase an apartment, in part, so that Clara would be comfortable when she visited him in New York, but also as an investment. Clara helped petitioner look for an apartment to purchase in New York City.

39. In late October 2008, petitioner purchased an apartment on the Eastside of Manhattan for approximately $3.8 million. He did not make any changes to the apartment upon purchasing it other than painting the interior. Petitioner testified that: "I was living in New York because I was working in New York. So I bought the apartment as a place to stay when I wasn't traveling around the world." Petitioner also considered the apartment as an investment.

40. Petitioner had no "near and dear items" in New York City other than a watch collection, so he did not have his apartment or its contents insured, nor did he have a safe in that apartment.

41. Clara stayed at the apartment when she visited New York City.

42. Petitioner's children also visited his New York City apartment if they were in New York City.

43. By early 2009, both petitioner and Clara had finalized their divorces from their respective spouses. They were married in New York City in July 2009. Petitioner testified: "[w]e both wanted to keep it quiet and I could do it quietly in New York. I also wanted to make sure that she was recognized as my wife. For no other reason, as my wife, she got some financial benefits that she wouldn't have got if we just lived together, it's one of the reasons why we married."

44. The Certificate of Marriage Registration listed petitioner as residing in New York City.

45. At the time of their marriage, petitioner was still CFO of Colgate, working long hours, and residing in his New York City apartment. Clara continued to live in Paris with her teenage son.

46. At the time of their marriage, petitioner told Clara that his plan was to continue working until at least February 2012, but that in the meantime, they would try to visit each other as often as they could.

47. In early 2009, less than a year after purchasing the New York City apartment, petitioner and Clara began looking for a home to eventually share in Paris.

48. In October 2010, they purchased an apartment in the 16th Arrondissement of Paris for approximately $3.2 million, with an expansive terrace and a view of the Eiffel Tower.

49. They spent an additional $210,000.00 making renovations, which were completed in January 2011.

50. Petitioner took out extensive insurance on the Paris home.

51. In March 2011, petitioner purchased a safe for his and Clara's valuable possessions, which was permanently affixed to the floor of the Paris home.

52. Colgate did not have a mandatory retirement age for its executives.

53. Initially, petitioner planned to stay on as CFO until at least February 2012, in part because he felt a responsibility to Colgate to ensure a smooth transition.

54. However, petitioner ultimately decided to retire before February, 2012 for two reasons. First, he had been suffering from a serious medical condition that was finally diagnosed in 2010 after almost a decade of misdiagnosis. Second, and more importantly, he found it very hard to be apart from Clara, who was unable to spend more time in New York because of her own medical issues and the fact that she lived with her son in Paris.

55. Petitioner ended his role as CFO of Colgate on December 31, 2010. However, in order to help with the transition, be agreed to stay on with Colgate as Vice Chairman until March 1, 2011.

56. At the close of business on March 1, 2011, petitioner fully retired from Colgate, and thereafter had no further involvement with the company.

57. Petitioner's decision to retire early had significant financial consequences to him. By retiring a year earlier than he had planned, petitioner gave up not only a generous ongoing compensation package, but also a retention bonus worth approximately $1.6 million and the opportunity to earn additional stock worth almost $1.4 million as part of his performance-based bonus package.

58. Petitioner has not been employed anywhere since retiring from Colgate. Since that time, his business activities have been limited to sitting on the board of directors of Arrow Electronics, Inc., which is based in Colorado, and Rothschild, which is based in London. During 2011, petitioner attended five in-person meetings of the Board of Directors of Arrow Electronics, Inc., three of which were held in Denver, Colorado, one of which was held in New York, New York, and one of which was held in Munich, Germany.

59. During 2012, petitioner attended six in-person meetings of the Board of Directors of Arrow Electronics, Inc., five of which were held in Denver, Colorado, and one of which was held in New York, New York.

60. On March 2, 2011, the day after he retired from Colgate, petitioner moved from New York City to Paris to live with Clara in their Paris apartment.

61. Petitioner brought with him the only valuable personal item he retained after his divorce from his first wife, his antique watch collection.

62. He immediately moved into their newly-renovated Paris home, which Clara moved into with him, upon his arrival on March 3, 2011.

63. Following his move to Paris, petitioner changed his membership at Burning Tree County Club, becoming a nonresident member.

64. Petitioner had friends in Connecticut, Highland Park, New York, and in Paris during the years in issue. Petitioner and a group of friends from Connecticut attended Notre Dame football games once each year. Petitioner described Connecticut as where his heart was.

65. Petitioner's four children from his first marriage were raised in Connecticut.

66. During 2011 and 2012, petitioner's adult son, Liam, was married and lived in Massachusetts with his wife and son while one of petitioner's adult daughters, Eileen, lived in Maine with her family. Another of petitioner's adult daughters, Meagan, was a teacher at the university in Bodrun, Turkey, for twelve months (from August 2011 through July 2012), and otherwise lived in Suffolk County, New York, with petitioner's former wife. Petitioner's third adult daughter, Mary, was a student at Colorado College until June 2012, and then taught at the University of Madrid until June 2013.

67. During 2011 and 2012, petitioner visited and stayed with his friend, Russell Julian, at Mr. Julian's home located in Highland, New York, for purposes of offering his support to Mr. Julian, whose wife had been in a tragic accident in 2010.

68. During 2011 and 2012, Petitioner also visited friends who lived in Connecticut and played golf at the Burning Tree Country Club.

69. Petitioner generally spends Christmas with his children in Rhode Island while Clara spends Christmas with her children.

70. Following his arrival in France, Petitioner immediately sought the French equivalent of permanent residency by applying for a titre de sejour, which he obtained in July 2011.

71. Petitioner obtained the longest version of a titre de sejour (five years) available to a first-time applicant.

72. As a holder of titre de sejour, petitioner paid French income taxes and wealth taxes as a full-time resident of France.

73. Petitioner timely paid and filed all taxes due in France in 2011 and 2012 and for all years since.

74. As part of permanently settling in Paris, petitioner also obtained a French driver's license, a lengthy and difficult process.

75. According to petitioner, following his move to Paris, his life changed dramatically.

76. Instead of living alone and spending long days at the office, petitioner now lived with his wife and was able to enjoy life in Paris in ways he could never enjoy New York City.

77. Petitioner also began to travel the world and "do the things that [he] had never been able to do" before he retired. He began taking vacations with Clara to places like Germany, Portugal, and St. Barts. He also fulfilled long-standing dreams to become a certified master scuba diver and to climb Mount Kilimanjaro in Tanzania.

78. In 2001, petitioner began experiencing serious health issues of an unknown cause. His condition caused his tongue, lips, and throat to swell up, and he frequently needed emergency room treatment in order to bring down the swelling to prevent him from suffocating.

79. Although he consulted with many doctors, none were able to diagnose his condition.

80. After nine years of these episodes and emergency room visits, finally, in September 2010, petitioner consulted with Dr. Robert D. Willix, Jr., a Florida-based doctor, who diagnosed his life-threatening illness.

81. Dr. Willix started petitioner on a course of treatment for his serious illness, treatment which he continues to oversee to the present day.

82. On Dr. Willix's recommendation, petitioner saw Dr. Reid L. Winick, a New York-based dentist, to have dental work performed in connection with Petitioner's serious illness.

83. Because of the nature of the procedure, not all of the dental work could be performed in one visit. In fact, petitioner needed to make eight separate visits to Dr. Winick in 2011.

84. Dr. Willix also recommended that petitioner seek medical treatment from Dr. Jeffrey A. Morrison, another New York-based doctor.

85. Dr. Morrison treated petitioner on six different dates in 2011, and on five different dates in 2012.

86. The treatments that Petitioner received were highly invasive, and both Dr. Morrison and Dr. Willix recommended that petitioner rest for a minimum of three days after each treatment. Petitioner described being “devastated for a week” after going through Dr. Morrison's treatments.

87. Despite Petitioner's move to Paris, Dr. Willix was unable to recommend any doctors in France who performed the treatments administered by Dr. Morrison.

88. In addition, after having gone undiagnosed for nearly 10 years, petitioner felt strongly that he wanted to continue treatment under the supervision of Dr. Willix, the one doctor who

accurately diagnosed him. Therefore, petitioner continued to be treated by Dr. Willix and Dr. Morrison even after he moved to Paris in March 2011.

89. As a result of these treatments, petitioner's serious illness has significantly improved.

90. Aside from his treatment for his serious illness, petitioner seeks medical and dental treatment in France.

91. Petitioners filed joint federal income tax returns for the tax years 2011 and 2012,

92. Petitioners timely filed joint nonresident New York State and City income tax returns (Form IT-203) for each year.

93. Clara signed the 2011 nonresident income tax return, but not the 2012 return.

94. Petitioner timely signed and filed a Form IT-203-C certifying that Clara had no New York source income for the tax years 2011 and 2012.

95. Form IT-203-C states:

> "[A] spouse with no New York source income cannot be required to sign the joint return and cannot be held liable for any tax, penalty, or interest that may be due. This form will allow the Tax Department to properly process your return."

96. The Division audited petitioners' 2011 and 2012 New York State nonresident returns.

97. The Division assessed additional personal income tax against petitioners based on the auditor's belief that petitioner was a resident of New York State and City in 2011 and 2012.

98. The Division also imposed penalties for substantial understatement of tax liability.

99. Petitioner's Verizon bills and American Express statements for 2011 and 2012 are addressed to petitioner at his New York City address.

100. Petitioner's W-2 from Colgate and W-2 from JP Morgan Chase (as agent for Colgate) for tax year 2012 are addressed to petitioner at his New York City address.

101. Petitioner's 1099 from Arrow Electronics and 1099 from Rothchild for tax year 2012 are addressed to petitioner at his New York City address.

102. Petitioner credibly testified that he received the aforementioned tax documents and bills electronically.

103. Petitioner is registered to vote in New York and his current voter status is “active.”

104. During 2011 and 2012, petitioner was in New York City on Election Day, although petitioner never voted in New York and only registered because he was interested in voting in the 2012 presidential election.

105. Beginning in the mid-1980's and continuing to date, including during tax years 2011 and 2012, petitioner has retained the services of his accountant, Jim Arata, located in Stamford, Connecticut.

106. The Division's auditor was the its sole witness at the hearing in this matter.

107. During the course of the audit petitioner supplied the Division’s auditor with his contemporaneous calendars, including itineraries and travel receipts for tax years 2011 and 2012.

108. During tax year 2011, the Division concluded that petitioner spent 168 days in New York; 82 days in Paris; and a total of 189 days (inclusive of New York days) in the United States.

109. During tax year 2012, the Division concluded that petitioner spent 183 days in New York; 92 days in Paris; and a total of 230 days (including New York days) in the United States.

110. During tax year 2011, the Division concluded that petitioner spent 22% of his time in Paris, 46% of his time in New York and 51% (including New York days) in the United States.

111. During tax year 2012, the Division concluded that Petitioner spent 25% of his time in Paris, 50% of his time in New York and 63% (including New York days) of his time in the United States.

112. At the hearing in this matter, petitioner submitted day count schedules he prepared using the same documentation that the Division used in preparing its determination of days, except that petitioner's day count schedule started with March 2, 2011, the day of his asserted change of domicile. Unlike the Division, petitioner's schedules were broken down by fractions of day. For example, on March 2, 2011, the day of his asserted change of domicle, petitioner recorded being in New York for 0.9 of a day and in Paris for 0.1 day whereas the Division treated this day as a New York day for domicile purposes. Petitioner's day count for March 2, 2011 through December 31, 2011 is summarized as follows:

LOCATION	TIME
New York City	52.7
New York City Medical	24.7
New York City Transit	15.4
Paris	80.0
Other[2]	132.2
With Clara	131.2

Petitioner's day count for the year 2012 is summarized as follows:

LOCATION	TIME
New York City	110.2

[2] "Other" represents the total of petitioner's time in Turkey, Maine, Roatan, Colorado, Florida, London, Massachusetts, Chicago, Germany, Portugal, and Tanzania during that ten month time period.

New York City Medical	24.7
New York City Transit	18.3
Paris	90.3
Other[3]	122.5
With Clara	166.0

113. Petitioner's day count schedules also differ from the Division's in that travel days into or out of New York City are listed as New York transit days. Petitioner also denotes which days he is in New York for medical treatment. For example, petitioner's schedule lists him as leaving Portland, Maine for New York City at 7:30 pm on April 4, 2011 to obtain medical treatment on April 7, 2011. Petitioner records .2 days as a New York City transit day on April 4, 2011 and .8 day in Maine. He records a full New York City day for April 5, 2011, and a New York City medical day for April 6, 2011. Petitioner also records days in all locations when he was with Clara.

114. In his Tax Field Audit Record, which was introduced into evidence at the hearing, the auditor memorialized his conclusion that all five of the primary domicile factors set out in the Nonresident Audit Guidelines issued by the New York State Department of Taxation and Finance -Home, Active Business Involvement, Items Near and Dear, Family Connections, and Time - "all appear to be in our favor. "

[3] "Other" represents the total of petitioner's time in Mauritus, Colorado, Highland Park, NY, Maine, California, Massachusetts, London, Italy, Roatan, Indiana, Turkey, Spain, Connecticut, Rhode Island, New Mexico, and Florida during the 2012 year.

115. In his testimony, however, the auditor recanted his prior conclusion that the "active business involvement" factor favored New York - instead stating that the factor did not "really serve either side."

116. He further testified that his analysis of items near and dear was inconclusive, although he acknowledged that the New York City apartment as not insured for valuables.

117. On January 28, 2015, the Division issued a notice of deficiency to petitioner, asserting liability for the New York State and City personal income tax, in the principal amount of $1,681,160.00, together with interest and penalties, totaling $2,189,743.84.

118. The asserted deficiency relates solely to the Division's determination that petitioner was a domiciliary of New York State and City. The Division did not claim that petitioner was a statutory resident of New York State and City.

119. On January 28, 2015, the Division issued to Clara a notice of deficiency asserting the same liability as in the notice issued to petitioner.

120. The asserted deficiency in Clara's notice relates solely to the Division's assertion that she is jointly and severally liable for petitioner's alleged liability. The Division has since conceded that this notice should be cancelled.

121. On March 9, 2015, petitioner and Clara timely filed petitions contesting the notices. On May 27, 2015, the Division timely filed answers to the Petitions.

122. Petitioners submitted 93 Proposed Findings of Fact which have been accepted in their entirety and are made part of this determination. The Division submitted 53 Proposed Findings of Fact. The Division's Proposed Findings of Fact 1, 4, 5, 7-12, 19-32, 34-39, 42, 44-47, and 49-51, are accepted and have been substantially incorporated into the findings of fact. The

Division's Proposed Findings of Fact 2, 3, and 14 are rejected as they are not relevant. The Division's Proposed Findings of Fact 13, 15, 40, and 41 are rejected as they do not adequately reflect the record. The Division's Proposed Findings of Fact 6, 16, 17, 18, 43, 46, 47, 48, 52 and 53 are conclusory and do not accurately reflect the record. The Division's Proposed Finding of Fact 33 is rejected as it quotes testimony taken out of context from the rest of the testimony.

CONCLUSIONS OF LAW

A. 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 as follows:[4]

> "Resident individual. A resident individual means an individual:
>
> (A) who is domiciled in this city, unless (i) [h]e maintains no permanent place of abode in this city, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this city, or . . .
>
> (B) who is not domiciled in this city but maintains a permanent place of abode in this city and spends in the aggregate more than one hundred eighty-three days of the taxable year in this 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 (as relevant) source income, whereas residents are taxed on their income from all sources.

B. As set forth above, there are two bases upon which a taxpayer may be subjected to tax as a resident of New York State or City. As stipulated by the parties, this matter focuses solely on domicile.

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[4] The definition of a New York City statutory resident is identical to the definition of a New York State statutory resident, except for substitution of the term "City" for "State" (***compare*** Administrative Code § 11-1705[b][1][B] ***with*** Tax Law § 605[b][1][B]).

C. "Domicile," is defined, 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.
>
> * * *
>
> (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]).

D. 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 [1943], ***affd*** 267 App Div 876 [1944], ***affd*** 293 NY 785 [1944]); ***see also Matter of Bodfish v. Gallman*** 50 AD2d 457 [1976]). 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]).

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

> "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 as evidence, for it bears strongly upon intention, but not controlling, for unless combined with intention it cannot effect a change of domicile . . . . There must be a present, definite and honest purpose to give up the old and take up the new place as the domicile of the person whose status in under consideration . . . ." (***Matter of Newcomb***, 192 NY at 250-251)

F. 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. "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). Among the factors that have been considered are: the retention of a permanent place of abode in New York, the location of business activity, the location of family ties, the location of social and community ties, and formal declarations of domicile, as well as an analysis of the time spent in each location. "For a taxpayer to meet [his] burden of proof to establish a change of domicile, [he] must show a change in lifestyle (***Matter of***

Ingle, Tax Appeals Tribunal, December 1, 2011 ***affd Matter of Ingle v. Tax Appeals Tribunal,*** 110 AD3d 1392 [3d Dept 2013]; ***Matter of Doman***, Tax Appeals Tribunal, April 9, 1992).

G. An evaluation of these factors leads to the conclusion that petitioner changed his domicile to Paris, France, in March 2011 upon his retirement from Colgate. First, petitioner separated from, and eventually divorced his first wife, leaving his long time domicile in Connecticut. It is determined that petitioner established his domicile in New York City in 2008. Upon establishing a domicile in New York in 2008, however, petitioner was reunited with Clara, his high school sweetheart, whom he married in 2009, at which time he began to transition towards retirement and his life with Clara. Immediately upon his March 2011 retirement, he left for Paris to be with Clara where he had purchased a large penthouse apartment with a garden terrace. Petitioner's credible testimony in this regard was unequivocal, petitioner considered Paris his home. In this same vein, petitioner had no family connections in New York City while he had family in Paris; to wit: his wife Clara and her teenage son who lived with them in Paris. The fact that petitioner's children and grandchildren live in the United States is not an indication that petitioner retained a New York City domicile.

H. The crux of the Division's case is the assertion that because petitioner failed to abandon his New York apartment coupled with the amount of time petitioner was present in New York City in 2011 and 2012, petitioner has not met his burden of proving he changed his domicle. It is well established, however, that a taxpayer may change his domicile without severing all ties with the prior domicile (***Matter of Sutton***, Tax Appeals Tribunal, October 11, 1990). In this case, although petitioner's New York City apartment was substantial, it is clear from the record that the Paris apartment became petitioner's home upon his move to Paris. The Paris apartment went

through substantial renovations. Petitioner obtained a titre de sejour, a French driver's license and paid French taxes as a resident since moving to Paris. And, while it is true that petitioner spent a great deal of time in New York City during the years in question, petitioner's explanations and proof negate a finding that New York City remained his domicile. First, petitioner was seeking medical treatment for a serious medical problem that he could not receive elsewhere and required his presence in New York. In addition, petitioner credibly testified that he utilized New York City as a stopping off point when he was traveling elsewhere, including visiting his children and attending board meetings for Arrow in Colorado.

I. Moreover, petitioner no longer had New York City business ties after his retirement from Colgate. Contrary to the Division's assertions, petitioner cannot reasonably be considered to have, or retained, New York City business ties based upon his attendance at the occasional board meeting occurring in New York City. It is determined that attendance at New York City board of director meetings is not an indication of a New York domicile given that board meetings for those same corporations also occurred in locations outside of New York City during that same time period.

J. The credible testimony of both petitioner and Clara clearly established petitioner's lifestyle changed. First and foremost, petitioner retired early, foregoing a substantial amount of compensation so he could spend more time with Clara, and moved to Paris to be with her. In addition to moving to Paris, petitioner also took regular vacations, became a master scuba diver, climbed Mt. Kilimanjaro and otherwise traveled extensively with Clara. In short, it is found that petitioner has met his burden of proving that he changed his domicile to Paris, France, on March 2, 2011.

K. As it has been determined that petitioner changed his domicile to Paris, France, on March 2, 2011, the issue of penalties is moot.

L. The petitions of Stephen C. Patrick and Clara Scurati-Manzoni Patrick are granted and the January 28, 2015 Notices of Deficiency are cancelled.

DATED: Albany, New York
June 15, 2017

/s/ Kevin R. Law
ADMINISTRATIVE LAW JUDGE