



Steve Leimberg's Charitable Planning Email Newsletter - Archive
Date: 10-Dec-25
From: Steve Leimberg's Income Tax Planning Newsletter
Subject: Marc Soss: So, I Am Still a Domiciliary of New York?

“In Matter of John J. Hoff & Kathleen Ocorr-Hoff, a New York Tax Appeals Tribunal (the “Tribunal”) issued a ruling directed to ‘snowbirds’ that a true change in domicile is about substance, not paperwork, and determined that their substantial ties, including employment, gradual progression of steps to make Florida their domicile, and other steps were self-serving and not substantive in nature. In Hoff, the Tribunal held that a couple who claimed Florida residency nonetheless remained domiciled in New York despite having taken formal steps such as registering to vote, obtaining Florida driver’s licenses, filing declarations of domicile, creating Florida estate planning documents, and spending less than 165 days in New York during one of the years at issue. An individual’s domicile is their “true, fixed, and permanent home,” while their residency is “simply a place where a person lives or stays for a period of time.” An individual can have many residences but only one domicile.”

Marc Soss, J.D., LL.M., provides members with commentary on the Matter of John J. Hoff & Kathleen Ocorr-Hoff and its application to a determination of domicile outside of the state of New York.

Marc Soss’ practice focuses on estate planning, probate and trust administration, and corporate matters in Southwest Florida. Marc is a frequent contributor to LISI and has published articles in the Florida Bar, Rhode Island Bar, North Carolina Bar and National Contract Management Association magazine. Marc is also a retired United States Navy Supply Corps Officer.

Here is his commentary:

EXECUTIVE SUMMARY:

In Matter of John J. Hoff & Kathleen Ocorr-Hoff, a New York Tax Appeals Tribunal (the “Tribunal”) issued a ruling directed to ‘snowbirds’ that a true change in domicile is about substance, not paperwork, and determined that their substantial ties, including employment, gradual progression of steps to make Florida their domicile, and other steps were self-serving and not substantive in nature. In Hoff, the Tribunal held that a couple who claimed Florida residency nonetheless remained domiciled in New York despite having taken formal steps such as registering to vote, obtaining Florida driver’s licenses, filing declarations of domicile, creating Florida estate planning documents, and spending less than 165 days in New York during one of the years at issue. An individual’s domicile is their “true, fixed, and permanent home,” while their residency is “simply a place where a person lives or stays for a period of time.” An individual can have many residences but only one domicile.

What we refer to as secondary factors of domicile, such as driver's licenses, voter registration or motor vehicle registration, have far less weight in residency audits as courts have recognized their self-serving nature. The Tribunal went on to say, "...[H]ad other manifestations, such as a comparison of homes, business and social ties and the amount of time spent in each place been more consistent with a change of domicile, these offers of documentary proof might be more persuasive. Instead, they tend to only show the undisputed trend toward eventually relocating to Florida, while not negating the indicia that petitioners had yet to abandon New York as the place to which they intended to return."

COMMENT:

John J. Hoff and Kathleen Ocorr-Hoff (collectively "Hoff") had each been residents of the State of New York since 1979, when they married in 2008. In 2011, they jointly purchased a home on Poplar Beach in Canandaigua, New York (the Poplar Beach home). On July 8, 2014, the couple purchased a residence in Naples, Florida (the "Naples Home"). The Hoff's then furnished the residence and moved treasured items to the Naples Home.

In 2018, Hoff's made the Naples Home their permanent domicile and filed a formal declaration of domicile, registered to vote in Florida, obtained Florida drivers' licenses, became involved with the Naples condo board, and joined The Country Club of Naples. In 2019, they changed the registration of their vehicles from New York to Florida and executed Florida estate planning documents. The audit additionally reflected that the Hoff's utilized New York accountants, attorneys admitted to practice in both New York and Florida, and medical care providers in New York and Florida during the years at issue. For tax year 2018, Hoff's reported that they moved out of New York State on October 29, 2018, filed form IT-203, New York State nonresident and part-year resident income tax return. The Hoff's reported their mailing address as 4031 Gulf Shore Blvd N, Naples, The Hoff's did the same on their 2019 New York state tax return. 2019.

On August 3, 2020, the New York State Division of Taxation and Finance (the "Division") commenced an audit of their 2018 and 2019 non-resident returns. The audit reflected that in 2018, Hoff's spent 186 days in New York, 131 days in Florida, and 48 days in other locations. For 2019, the audit reflected 164 days spent in New York, 153.5 days in Florida, and 47.5 days in other locations. The audit also reflected that in 2018 and 2019, Mr. Hoff was president of, and held a 100% interest in, an S corporation, Hoff Associates Mfg. Reps., Inc. DBA Global Point Technology (GPT), located at 5815 County Road 41, Farmington, New York.

Based on information obtained during the audit, the Division determined that the Hoff's remained domiciled in New York State during the years 2018 and 2019 and issued a notice of deficiency asserting tax in the amount of \$59,648.00, plus penalty and interest, for the years 2018 and 2019. The Hoff's then requested a conciliation conference with the Bureau of Conciliation and Mediation Services (BCMS) to protest the notice. In 2022, BCMS sustained the amount of tax determined due by the Division and cancelled the penalty. On July 27, 2022, the Hoff's timely filed a petition with the Division of Tax Appeals in protest of the conciliation order.

New York Tax Law

New York Tax Law § 605 (b) (1) (A) and (B)year unless the definition of a New York State resident individual for income tax purposes as someone: “(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 (B) who 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, whether or not domiciled in this state for any portion of the taxable year, unless such individual is in active service in the armed forces of the United States.”

The Division’s personal income tax 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 individual in question moves to a new location with the bona fide intention of making such individual’s fixed and permanent home there. No change of domicile results from a removal to a new location if the intention is to remain there only for a limited time; this rule applies even though the individual may have sold or disposed of such individual’s former home. The burden is upon any person asserting a change of domicile to show that the necessary intention existed. In determining an individual’s intention in this regard, such individual’s declarations will be given due weight, but they will not be conclusive if they are contradicted by such individual’s conduct. The fact that a person registers and votes in one place is important but not necessarily conclusive, especially if the facts indicate that such individual did this merely to escape taxation.

(3) Domicile is not dependent on citizenship; that is, an immigrant who has permanently established such immigrant’s home in New York State is domiciled here regardless of whether such immigrant has become a United States citizen or has applied for citizenship. However, a United States citizen will not ordinarily be deemed to have changed such citizen’s domicile by going to a foreign country unless it is clearly shown that such citizen intends to remain there permanently. For example, a United States citizen domiciled in New York State who goes abroad because of an assignment by such citizen’s employer or for study, research or recreation, does not lose such citizen’s New York State domicile unless it is clearly shown that such citizen intends to remain abroad permanently and not to return

(4) A person can have only one domicile. If a person has two or more homes, such person’s domicile is the one which such person regards and uses as such person’s permanent home. In determining such person’s intentions in this matter, the length of time customarily spent at each location is important but not necessarily conclusive . . . (20 NYCRR 105.20 [d]).

Law

Under NY law, domicile is established by physical presence and intent. *Matter of McKone v State Tax Commn.*, 111 AD2d 1051, 1053 [3d Dept 1985], *affd* 68 NY2d 638 [1986]; *Matter of Adams*, Tax Appeals Tribunal, September 3, 2021. 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 (*Matter of Bodfish v Gallman*, 50 AD2d 457, 458 [3d Dept 1976]; 20 NYCRR 105.20 [d] [2]). Whether there has been a change in 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]).

This requires a taxpayer to evidence their change of lifestyle to prove a change of domicile (*Matter of Doman*, Tax Appeals Tribunal, April 9, 1992) and “[t]here must be a present, definite and honest purpose to give up the old and take up the new place as the domicile of the person whose status is under consideration . . .” (*Matter of Newcomb*, 192 NY at 251). To establish a new 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). “While the standard is subjective, the courts and this Tribunal have consistently looked to certain objective criteria to determine whether a taxpayer’s general habits of living demonstrate a change of domicile” (*Matter of Ingle*, Tax Appeals Tribunal, December 1, 2011, confirmed 110 AD3d 1392 [3d Dept 2013]).

Criteria & Test

The Tax Appeals Tribunal considers the following criteria to be of significance in addressing issues of domicile: (1) the retention and use of a permanent place of abode in New York (*Matter of Wechsler*, Tax Appeals Tribunal, May 16, 1991, confirmed 194 AD2d 879 [3d Dept 1993]); (2) the location of business activity (*Matter of Kartiganer*, Tax Appeals Tribunal, October 17, 1991); (3) the location of family ties (*Matter of Buzzard*, Tax Appeals Tribunal, February 18, 1993, confirmed 205 AD2d 852 [3d Dept 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*, 266 NY 283, 289 [1935]; *Matter of Gray*, Tax Appeals Tribunal, May 25, 1995, confirmed 235 AD2d 641 [3d Dept 1997]; *Matter of Getz*).

While certain formal 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 at 289). As noted above, “[t]o change one’s domicile requires an intent to give up the old and take up the new, coupled with an actual acquisition of a residence in the new locality” (*Matter of Bodfish v Gallman*, 50 AD2d at 458; see also *Matter of Newcomb*, 192 NY at 251). “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” (*Matter of Newcomb*, 192 NY at 250). 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 [Sur Ct, Westchester County 1943], *affd* 267 App Div 876 [2d Dept

1944], affd 293 NY 785 [1944]). The taxpayers bear the burden of proving, by clear and convincing evidence that they changed their domicile (Matter of Bodfish v Gallman, 50 AD2d at 459).

Florida Statutes

In Florida we look at Florida Statute 196.015, Permanent residency, factual determination by property appraiser. This statutory provision provides: Intention to establish a permanent residence in this state is a factual determination to be made, in the first instance, by the property appraiser. Although any one factor is not conclusive of the establishment or non-establishment of permanent residence, the following are relevant factors that may be considered by the property appraiser in making his or her determination as to the intent of a person claiming a homestead exemption to establish a permanent residence in this state:

1. A formal declaration of domicile by the applicant recorded in the public records of the county in which the exemption is being sought.
2. Evidence of the location where the applicant's dependent children are registered for school.
3. The place of employment of the applicant.
4. The previous permanent residency by the applicant in a state other than Florida or in another country and the date non-Florida residency was terminated.
5. Proof of voter registration in this state with the voter information card address of the applicant, or other official correspondence from the supervisor of elections providing proof of voter registration, matching the address of the physical location where the exemption is being sought.
6. A valid Florida driver license issued under s. 322.18 or a valid Florida identification card issued under s. 322.051 and evidence of relinquishment of driver licenses from any other states.
7. Issuance of a Florida license tag on any motor vehicle owned by the applicant.
8. The address as listed on federal income tax returns filed by the applicant.
9. The location where the applicant's bank statements and checking accounts are registered.
10. Proof of payment for utilities at the property for which permanent residency is being claimed.

Analysis

The Tribunal relied upon the following factors in reaching its conclusion that the Hoff's had not changed their domicile from New York to Florida. These included: (i) the Hoff's had continuing business activities in New York throughout 2018 and 2019, with a New York business address; (ii) Mr. Hoff remained employed with his prior New York company for several years after its sale; (iii) retention of their New York home and the length of time spent at their New York and Florida homes; (iv) the location of family in New York and near and dear items (Matter of Campaniello, Tax Appeals Tribunal, July 21, 2016, confirmed 161 AD3d 1320 [3d Dept 2018], lv denied 32 NY3d 913 [2019]); (v) location of social and community ties (maintaining country club memberships at the Canandaigua Country Club in Canandaigua, New York, and the Oak Hill Country Club in Rochester, New York, during the years at issue); and (vi) maintaining medical care providers in New York. The Tribunal concluded that the Hoff's merely evidenced a gradual progression of steps over time to make Florida their permanent home and failed to meet the burden of proof to evidence they had "an absolute and fixed intention to abandon [their New York domicile] and acquire another" (Matter of Newcomb, 192 NY at 251).

Conclusion

The Tribunal found that while the Hoff's planned to make Florida their permanent home at some point, it was not achieved in 2018 or 2019. As a result, they failed to meet the standard, by clear and convincing evidence, that they had given up their New York domicile and acquired a new domicile as their fixed and permanent home in Florida as of October 30, 2018. It is important to note that meeting the domicile criteria in the State of Florida may not be sufficient to satisfy the change of domicile requirements of another state, including New York. Snowbirds need to pay very close attention to these issues when filing their tax returns.

HOPE THIS HELPS YOU HELP OTHERS MAKE A POSITIVE DIFFERENCE!

Marc Soss