

NICE WORK IF YOU CAN GET IT: A NEW YORKER'S GUIDE TO CHANGE OF DOMICILE

Authors

Andrew P. Mitchel
Rusudan Shervashidze

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New York State has been known to question individuals who leave the state, easily identifiable as prior New York residents who file Form IT-203, *Nonresident and Part-Year Resident Income Tax Returns*. Often, the New York State Division of Taxation (the “Division of Tax”) will argue that the taxpayer has not established sufficient evidence to relinquish New York domicile. New York places a high standard on redomiciliation: “The taxpayer must prove his subjective intent based upon the objective manifestation of that intent displayed through his conduct,”¹ and it is always challenging for the taxpayer to show subjective intent. Therefore, it was welcome news when Judge Herbert M. Friedman Jr., an Administrative Law Judge, in Albany, New York recently ruled in favor of the taxpayer Irene D. May.

THE MATTER OF IRENEE D. MAY

Mr. May moved to New York State and acquired a home in Harrison, New York (the “Harrison House”), where he resided with his wife and two children. He worked for JP Morgan in New York City for almost 20 years. Mr. May was terminated from his job effective January 2005. Shortly after, Mr. May obtained a position in London, working for the Royal Bank of Scotland. Mr. and Mrs. May made plans for the family to move to London with their children. They rented an apartment in London for the whole family, including their nanny. The lease was for one year; the eventual goal of the family was to sell Harrison House and purchase a home in London.

Subsequently, the children were not accepted to the desired London schools; therefore, Mrs. May returned with the children to Harrison allowing them to continue attending their previous school in Greenwich, C.T. Mr. May’s daughter briefly attended school in London but later returned to Harrison to live with her mother and brother.

The Harrison House was not listed for sale due to the uncertainty of the timing when the family would move to London. In late 2006, Mr. May moved to a smaller apartment in London, but it was still big enough for each family member to have their own room. Mr. May remained in London while his family lived at the Harrison House. Due to the distance and Mr. May’s desire to remain permanently in London, his marriage deteriorated and eventually ended in divorce proceedings, which were finalized in 2011.

During his employment at the Royal Bank of Scotland, Mr. May was an “at will” employee without any limit on duration or term to his contract. He was not treated as an expatriate, but as a U.K.-based employee, who did not receive a housing stipend. Mr. May received payments in British pounds, which were directly deposited into his U.K. bank account.

¹ *Matter of Simon*, Tax Appeals Tribunal, March 2, 1989.

On his N.Y. tax returns for 2006, 2007, and 2008 he filed as nonresident, maintaining that his new domicile was London. The Division of Tax claimed that Mr. May did not establish new domicile and remained a New York domiciliary, assessing income tax against him as a New York resident, plus penalties and interest.

SUBSTANCE OF THE DECISION

Judge Friedman held that Mr. May had established a change in domicile to London after carefully considering the following factors:

- Retention of the place of abode in the former domicile;
- Location of business activity;
- Family ties;
- Social and community ties; and
- Formal declarations of domicile.

Judge Friedman clearly distinguished this case from others where a taxpayer's claim of change of domicile had been rejected. Judge Friedman emphasized the fact that Mr. May spent far more time in London than in New York: Mr. May spent approximately 25 days in New York in 2006, 27 days in 2007, and 40 days in 2008. When Mr. May traveled to the United States to join his family for holidays, it was often to the Delaware property and not New York.

Judge Friedman was convinced by the testimony of Mr. May and his former wife regarding Mr. May's intentions to make London a new permanent home for himself and his family. In addition, Judge Friedman rejected the Division of Tax's argument that establishing a change to a foreign domicile required greater proof than establishing a change of domicile to another state.

CONCLUSIONS

A taxpayer who maintains property in New York State should be careful when changing to a new domicile outside of New York. In this light, the *Matter of Irene D. May* is a potentially significant decision that can help many taxpayers. As demonstrated in the case above, there is no bright-line rule to determine an individual's domicile. Therefore, taxpayers should plan carefully when attempting redomiciliation and pay special attention to how many days are spent in New York, as well as the ties he/she establishes in a new place.

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