

Matter of Ingle v Tax Appeals Trib. of the Dept. of Taxation & Fin. of the State of N.Y.

2013 NY Slip Op 07094 [110 AD3d 1392]

October 31, 2013

Appellate Division, Third Department

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In the Matter of Robin R. Ingle, Petitioner, v Tax Appeals Tribunal of the Department of Taxation and Finance of the State of New York et al., Respondents.

—[*1] Morrison & Foerster, LLP, New York City (David A. Hughes of counsel, Chicago, Illinois, admitted pro hac vice), for petitioner.

Eric T. Schneiderman, Attorney General, Albany (Robert M. Goldfarb of counsel), for Commissioner of Taxation and Finance, respondent.

McCarthy, J. Proceeding pursuant to CPLR article 78 (initiated in this Court pursuant to Tax Law § 2016) to review a determination of respondent Tax Appeals Tribunal which sustained a notice of deficiency of personal income tax imposed under Tax Law article 22.

In 2004, petitioner filed a New York part-year resident income tax return identifying herself as a resident of New York from January 1, 2004 to March 31, 2004, and determining her income tax liability on that basis. Petitioner sold shares of stock on April 30, 2004, resulting in capital gains of almost \$2 million, which she did not include on her New York income tax return. The Division of Taxation conducted an audit, concluded that petitioner had been a domiciliary of the state until June 30, 2004, and issued a notice of deficiency assessing petitioner with over \$255,000 in additional income tax, plus interest. After a hearing on petitioner's challenge to the notice, an Administrative Law Judge sustained the notice of deficiency. Upon petitioner's further challenge, respondent Tax Appeals Tribunal affirmed that determination, finding that petitioner was a New York domiciliary until July 9, 2004. Petitioner commenced this proceeding seeking a [*2]redetermination regarding the deficiency.

It is undisputed that petitioner changed her domicile from New York to Tennessee in 2004. The only question is when that change occurred. We confirm the Tribunal's

determination that petitioner failed to establish a change in domicile pr