

JANUARY 2026

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FLYING SOUTH, TAXED UP NORTH: ANOTHER SNOWBIRD DILEMMA

Each year, thousands of taxpayers relocate for warmer weather, lower taxes or new opportunities. However, failure to properly change domicile can cost these taxpayers a hefty and unexpected tax bill. In a recent New York Tax Appeals Tribunal case, *In the Matter of the Petition of John J. Hoff and Kathleen Ocorr-Hoff*, the court determined that petitioners owed approximately \$60,000 in personal income tax to New York State for failing to change their domicile to Florida in 2018 and 2019. This case is yet another cautionary example of the intricacies of a New York income tax audit and the importance of properly establishing a new domicile.

Petitioners, a married couple, were long-time residents of Ontario County, New York who moved to their Florida residence in 2018. Petitioners argued that their formal declarations and lifestyles changes were sufficient to prove that they changed their domicile to Florida. In 2018, petitioners changed their voter registration and driver's licenses to Florida, filed a Florida Declaration of Domicile, acquired a Florida vehicle registration for one of their cars, joined a Florida country club and served on their condominium board for their Florida residence. In 2019, petitioners also updated their estate planning documents to Florida law. Additionally, petitioners filed their 2018 and 2019 federal income tax returns using their Florida address, reporting themselves as part-year residents in New York for 2018 and non-residents in New York for 2019.

While the court agreed that petitioners intended to change their domicile from New York to Florida at some point, the manifestation of that intention was not evident during the periods at issue. To determine domicile, the court examined six categories of objective factors to determine the petitioners' subjective intent to maintain or change their domicile. These six categories evaluate (i) the home, (ii) time spent, (iii) business ties, (iv) social ties, (v) family ties and (vi) other evidence. No single category is dispositive.

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CLIENT ALERT | JANUARY 2026

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Despite the formal declarations and lifestyle changes petitioners claimed to have made in 2018 and 2019, the court concluded that petitioners failed all six categories. According to the court, during the tax years at issue:

- **Home:** Petitioners maintained permanent, full-time residences in both New York and Florida. Petitioners spent more time in their New York residence, and did not change their New York residence to make it less suitable as a full-time residence.
- **Time Spent:** In 2019, petitioners spent 164 days in New York, 153.5 days in Florida and 47.5 days in other locations. Although petitioners spent fewer than 183 days in New York, they spent more time in New York than they did in Florida.
- **Business Ties:** Petitioner Mr. Hoff continued to collect significant salaries, maintained business accounts and traveled on behalf of his New York business. Petitioner Mrs. Ocorr-Hoff continued to collect salary from her New York business and failed to establish that she opened a Florida business (which petitioners claimed).
- **Social Ties:** Although petitioners maintained one country club membership in Florida, they also maintained two country club memberships in New York.
- **Family Ties:** Petitioners celebrated Christmas in New York both years, and celebrated Thanksgiving in New York in 2018 and in Florida in 2019.
- **Other Evidence:**
 - *Driver's licenses:* In 2018, petitioners changed their driver's licenses to Florida.
 - *Voter registrations:* In 2018, petitioners registered to vote in Florida.
 - *Declaration of Domicile:* In 2018, petitioners filed a Florida Declaration of Domicile.
 - *Vehicle registrations and insurance:* Although one of their cars was registered in Florida, petitioners' three

other cars were registered and insured in New York.

- *Estate planning documents:* Petitioners updated their estate plans to Florida law in May 2019 and September 2019.
- *Federal income tax returns:* Petitioners filed their federal income tax returns using their Florida address.
- *Bank accounts:* Petitioners only had New York bank accounts.
- *Personal effects:* Petitioners only moved their ski equipment and Waterford crystal from their New York residence to their Florida residence. Petitioners furnished their Florida residence with furniture purchased from local businesses in Florida.
- *Medical:* Petitioners visited doctors in both Florida and New York.
- *Recreational licenses:* Petitioners acquired fishing and hunting licenses in Florida after the tax years at issue.

"Formal declarations" of domicile, such as voter registration and driver's licenses, have lost their importance in recent years as courts have recognized their self-serving nature, while "informal declarations" and acts of the taxpayer have been given greater recognition in determining domicile. Notably, even sworn statements filed with Florida, such as the Declaration of Domicile, are less significant than informal acts demonstrating the taxpayer's general habit of life.

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The court concluded that petitioners failed to establish their domicile in Florida, and further reasoned that if “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 (i.e., their domicile).”

Changing domicile from New York to Florida is not just about swapping snow boots for flip-flops - it is about making sure you have taken as many steps as possible to prove that your formal declarations and, more importantly, your informal declarations, demonstrate a Floridian lifestyle. From updating your driver's license to moving your financial and social ties, every step matters. If done properly, you'll enjoy the sunshine without the shadow of an unexpected tax bill. Take the time to make your change of domicile official - your wallet (and peace of mind) will thank you.

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