UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THOMAS CAMPANIELLO, et al.,
Plaintiffs,

-against-

NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, et al.,
Defendants.

16 Civ. 8989 (LGS)

**OPINION AND ORDER**

LORNA G. SCHOFIELD, District Judge:

Plaintiffs Thomas Campaniello ("Thomas") and Sandra Campaniello ("Sandra") (collectively, "Plaintiffs") bring this action against Defendants New York State Department of Taxation and Finance ("Department of Taxation"); New York State Division of Tax Appeals, Tax Appeals Tribunal ("TAT"); Commissioner of Taxation and Finance ("Commissioner"); James H. Tully, Jr. and Roberta Moseley Nero (collectively, "Defendants"), alleging that Defendants violated their constitutional and civil rights under 42 U.S.C. § 1983 and the Fourteenth Amendment. Defendants move to dismiss Plaintiffs' Amended Complaint ("Complaint") for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). For the following reasons, Defendants' motion is granted.

## I. BACKGROUND

The following facts are taken from Plaintiffs' Complaint and accompanying exhibits. All uncontroverted facts in the Complaint are construed, and all reasonable inferences are drawn, in favor of Plaintiffs as the party asserting jurisdiction. *See* Fed R. Civ. P. 10(c); *Fountain v. Karim*, 838 F.3d 129, 134 (2d Cir. 2016).

Plaintiffs Thomas and Sandra are happily married and spend at least half their time in separate residences. Thomas lives in Florida in an apartment that he purchased in 1981. With

the exception of his family, Thomas's business, social and community ties have been in Florida since at least 2006. Thomas has a Florida driver's license, which he obtained in 1998 and renewed in 2008. He also owns several investment properties in Florida in which Sandra "holds no interest." Sandra lives in New York in an apartment that she formerly shared with Thomas full time (the "New York Apartment"). Between 2001 and 2006, Thomas and Sandra were separated for more than half of each year, but Thomas frequently traveled -- and continues to travel -- to New York to be with his wife, daughter and grandson.

On November 19, 2007, Thomas sold one of his Florida properties and realized a capital gain of $5,392,445 from the sale, which he reported on his federal tax return. Believing he was a Florida resident, Thomas filed nonresident tax returns in New York for both 2006 and 2007. Sandra filed resident tax returns in New York for both years.

In 2011, a Department of Taxation auditor determined that Thomas was a New York resident and should have filed a New York resident tax return for 2006 and 2007. The Commissioner served Thomas with a Notice of Deficiency for the 2007 tax year, claiming that Thomas owed the state of New York a $729,501.39 tax deficiency and penalty for capital gains taxes on the sale of the Florida property.

Thomas filed a petition challenging the determination of deficiency. On June 25, 2015, an Administrative Law Judge ("ALJ") issued a determination that Thomas was a domiciliary of New York City in 2007 and thus properly subject to tax as a New York resident for that year. The ALJ found that as of the date of the hearing, Thomas continued to own, maintain and use the New York Apartment. Among numerous other findings, the ALJ also found that Thomas had a pattern of spending a portion of each week in both Florida and New York, worked at a New York office while in New York, continued to see New York doctors, had personal belongings

and clothing in the New York Apartment and listed the Bronx as his county of residence on his 2006 nonresident tax form. The ALJ considered Thomas's arguments that he did not live at the New York Apartment and that no negative inference should be drawn from the fact that he and his wife lived in different states, but concluded that Thomas was domiciled in New York City for the relevant tax year.

Thomas appealed the ALJ's determination to the TAT, arguing (1) that the ALJ's determination was unconstitutional because it denied Thomas his "constitutionally protected right" to live in a different state than his wife, and (2) that he was domiciled in Florida for the 2007 tax year. The TAT considered Thomas's arguments and rejected them in a July 21, 2016, decision written by Defendants Tully and Nero. The TAT found that the New York Tax Law ("Tax Law") "does not require a husband and his spouse to have the same domicile," and that Thomas and Sandra had the right to "live apart together" if desired. However, because the TAT also found that Thomas did not establish that he was a Florida domiciliary within the meaning of the Tax Law, the TAT affirmed the ALJ's determination.

On November 18, 2016, Plaintiffs filed the above-captioned case asserting one cause of action, a violation of 42 U.S.C. § 1983 and the Fourteenth Amendment of the United States Constitution, and seeking (1) a declaration that "living apart together" is a constitutionally-protected type of marriage, (2) a declaration that Defendants' conduct violated Plaintiffs' constitutional rights to "live apart together" and (3) a "mandatory injunction prohibiting Defendants from applying the [Tax Law] . . . such that it penalizes married parties choosing to 'live together apart.'" The Complaint alleges that this Court has subject matter jurisdiction based on diversity of citizenship, and federal question jurisdiction over certain civil rights actions. S*ee* 28 U.S.C. §§ 1332, 1343(3)–(4).

Concurrent with the filing of this action, Thomas appealed TAT's decision to the New York Supreme Court Appellate Division, Third Department, alleging that the TAT's decision was arbitrary and capricious under New York law. Thomas did not raise his federal constitutional argument before the Third Department, choosing instead to raise it only in federal court.

## II. STANDARD

"A district court properly dismisses an action under [Rule] 12(b)(1) for lack of subject matter jurisdiction if the court lacks the statutory or constitutional power to adjudicate it . . . ." *Cortlandt St. Recovery Corp. v. Hellas Telecomms., S.A.R.L.*, 790 F.3d 411, 416–17 (2d Cir. 2015) (citation and internal quotation marks omitted). "In resolving a motion to dismiss under Rule 12(b)(1), the district court must take all uncontroverted facts in the complaint . . . as true, and draw all reasonable inferences in favor of the party asserting jurisdiction." *Fountain*, 838 F.3d at 134 (quoting *Tandon v. Captain's Cove Marina of Bridgeport, Inc.*, 752 F.3d 239, 243 (2d Cir. 2014)). Plaintiffs have the burden of proving by a preponderance of the evidence that the court has subject matter jurisdiction. *Id.*

## III. DISCUSSION

The Complaint is dismissed because the Tax Injunction Act ("TIA"), 28 U.S.C. § 1341, and the comity doctrine on which it is based, deprive the Court of subject matter jurisdiction; and because the Declaratory Judgment Act does not create an independent basis for jurisdiction.

### A. The TIA

The TIA provides that federal district courts "shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." *Id.*; *accord Bernard v. Spring Valley, N.Y.*, 30

F.3d 294, 297 (2d Cir. 1994) ("[T]he Tax Injunction Act . . . prevents federal courts from giving injunctive relief or declaratory relief, as long as there is a plain, speedy and efficient remedy in state court.") (citation omitted). The TIA's prohibition is jurisdictional and strips the court of subject matter jurisdiction. *See Entergy Nuclear Vt. Yankee, LLC v. Shumlin*, 737 F.3d 228, 231 (2d Cir. 2013).

As is relevant here, an "assessment" under the TIA refers to "the official recording of a taxpayer's liability," and "might also be understood more broadly to encompass the process by which that [liability] is calculated." *Direct Mktg. Ass'n v. Brohl*, 135 S. Ct. 1124, 1130 (2015). "Collection" is "the act of obtaining payment of taxes due." *Id.* A "plain, speedy, and efficient remedy" exists "where the available state-court procedures satisfy certain minimal procedural criteria, including a full hearing and judicial determination at which [a taxpayer] may raise any and all constitutional objections to the tax." *Entergy*, 737 F.3d at 233–34 (alteration in original) (citation and internal quotation marks omitted).

The TIA bars the majority of Plaintiffs' requested relief. A declaration that Defendants violated Plaintiffs' constitutional rights by assessing and attempting to collect resident taxes from Thomas and an injunction against similar acts would enjoin and restrain Defendants' ability to assess and collect taxes under the Tax Law. *See id.* at 229, 235 (TIA barred federal district court from issuing (1) declaratory judgment that state tax violated the United States Constitution and (2) injunctive relief preventing its enforcement); *Direct Mktg. Ass'n*, 135 S. Ct. at 1132 (lawsuit "restrain[s]" assessment and collection of taxes under the TIA if it stops acts of assessment and collection).

Plaintiffs assert that they are "not seeking to enjoin assessment, levy, or collection of a local tax" because they are raising a constitutional challenge to the decision by New York

officials to treat Thomas as a New York domiciliary for tax purposes. In seeking a declaration that Defendants' conduct violated Plaintiffs' constitutional rights and an injunction prohibiting such treatment in the future, Plaintiffs are doing exactly what they claim not to be -- seeking to enjoin and restrain the assessment and collection of income tax under New York law. A request for declaratory and injunctive relief that effectively seeks a "federal-court ruling on a local tax matter" is "precisely the type of suit that the TIA . . . [is] intended to prohibit." *See, e.g.*, *Greenberg v. Scarsdale*, 477 F. App'x 849, 850 (2d Cir. 2012) (summary order); *see also Islamic Cmty. Ctr. for Mid Westchester v. Yonkers Landmark Pres. Bd.*, No. 16 Civ. 7364, 2017 WL 2804997, at *5 (S.D.N.Y. June 28, 2017) (claim that defendants administered the state tax system in a manner that violated plaintiffs' constitutional rights was "plainly" barred by the TIA). Thus, so long as the state courts provide a "plain, speedy and efficient remedy" to litigants, the TIA deprives the Court of jurisdiction over Plaintiffs' claims. *See Entergy*, 737 F.3d at 233–34.

Both the United States Supreme Court and the Second Circuit have consistently found that New York courts provide the "plain, speedy and efficient remedy" contemplated by the TIA. *See, e.g.*, *Tully v. Griffin, Inc.*, 429 U.S. 68, 76–77 (1976); *Abuzaid v. Mattox*, 726 F.3d 311, 316 (2d Cir. 2013). Consequently, the Court lacks jurisdiction over Plaintiffs' challenge to the application of the Tax Law. *See Entergy*, 737 F.3d at 231 (TIA strips district courts of subject matter jurisdiction).

**B. The Comity Doctrine**

Most of Plaintiffs' requested relief is also barred by the comity doctrine. The comity doctrine is "more embracive" than the TIA, and "restrains federal courts from entertaining claims for relief that risk disrupting state tax administration," *Levin v. Commerce Energy, Inc.*, 560 U.S.

413, 417 (2010), "so long as the plaintiffs have access to state remedies that are plain, adequate, and complete, and may ultimately seek review of the state decisions in [the Supreme] Court." *Abuzaid*, 726 F.3d at 315 (citation and internal quotation marks omitted). As discussed above, Plaintiffs' claims would disrupt state tax administration by enjoining the assessment and collection of taxes from individuals who live apart but have been deemed by the state to be domiciled in New York.

Plaintiffs do not dispute the general applicability of the comity doctrine to this case, but instead argue incorrectly that the New York courts do not provide an adequate remedy for either Thomas or Sandra. First, Plaintiffs argue that Thomas does not have an adequate remedy in state court because he chose not to raise his constitutional argument before the Third Department, and that claim is now "being preserved . . . principally in this federal-court action." That Thomas may have failed to preserve his argument in state court does not bar the application of the comity doctrine. *See, e.g.*, *Morpurgo v. Sag Harbor*, No. 07 Civ. 1149, 2007 WL 3375224, at *16 (E.D.N.Y. Oct. 11, 2007) ("plaintiff's decision to forgo his state remedies in the first instance does not permit this court to disregard its responsibility to preserve notions of comity and federalism") (citation omitted).

Second, Plaintiffs argue that the history of the Third Department's review of TAT decisions "demonstrates that the forum does not give taxpayers an 'adequate' remedy." This argument is unavailing, as both the Supreme Court and the Second Circuit have consistently found that New York state courts provide a "plain, adequate, and complete remedy" for litigants. *See, e.g.*, *Abuzaid*, 726 F.3d at 316.

Third, Plaintiffs argue that the New York state courts do not provide an adequate remedy for Sandra, who Plaintiffs contend "has the constitutional right to be treated, for New York State

tax purposes, as a resident of New York who is married but may file tax returns separately from her nonresident husband." Nothing in the Complaint suggests that Sandra cannot file tax returns separately from her husband. In fact, the Complaint states that she did so in at least 2006 and 2007. To the extent that Sandra wishes to file returns separately from her *nonresident* husband, the question at issue is whether Thomas can be considered a New York resident for tax purposes, which is properly heard by a state court under the comity doctrine. *See Joseph v. Hyman*, 659 F.3d 215, 221 (2d Cir. 2011) (applying the comity doctrine in affirming district court's refusal to hear constitutional challenge to state tax scheme and noting that "New York courts are not powerless to strike down unconstitutional laws or otherwise prevent enforcement of unconstitutional taxes").

**C. Declaratory Judgment Act**

Plaintiffs also seek a declaration that "living apart together" is a constitutionally-protected type of marriage. Divorced from Plaintiffs' other claims, which are dismissed on the grounds discussed above, the Court lacks a jurisdictional basis to grant this relief. *See* 28 U.S.C. § 2201(a) ("In a case of actual controversy *within its jurisdiction* . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.") (emphasis added). "[T]he Declaratory Judgment Act does not by itself confer subject matter jurisdiction on the federal courts . . . . Rather, there must be an independent basis of jurisdiction before a district court may issue a declaratory judgment." *Correspondent Servs. Corp. v. First Equities Corp. of Fla.*, 442 F.3d 767, 769 (2d Cir. 2006) (internal citation omitted). Thus, Plaintiffs' final claim for declaratory relief is also dismissed.

## IV. CONCLUSION

For the foregoing reasons, Defendants' motion to dismiss is GRANTED. The Clerk of Court is respectfully directed to close the motion at Docket Number 34 and close this case.

Dated: July 27, 2017
New York, New York

LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE