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New York Tax Residency: Rules & Audit Best Practices

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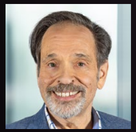

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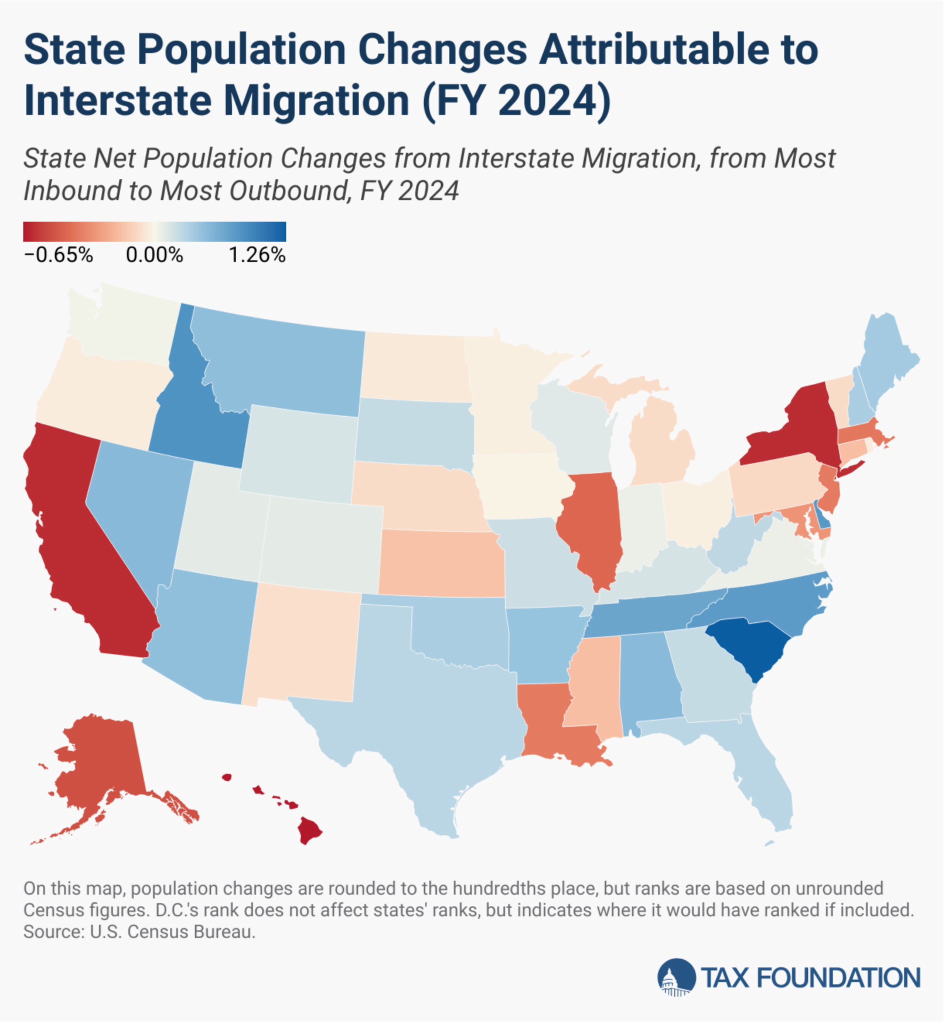
Topics to Discuss

- Lay of the Land: Recent Events in the Empire State
- Residency 101: Domicile
- Residency 101: Statutory Residency
- Nonresident Income Allocation (Sourcing)
- Residency Case Studies
- Estate Planning Considerations
- Audits: New Initiatives & Best Practices

Section 1: Lay of the Land

2024 Migration Map



Exodus of High-Earning NYC Residents

- The NYC Independent Budget Office (IBO) released some startling figures in early December 2022. See: https://www.thecity.nyc/economy/2022/12/6/23497265/nyc-tax-data-high-earners-drop-2020.
- The analysis revealed:
  - The number of New Yorkers making between $150,000 and $750,000 declined by almost 6% between 2019 and 2020
  - The number of those making more than $750,000 dropped by almost 10%.
- The 41,000 filers in the top 1% pay just over 40% of all income taxes.
- The 450,000 in the top 10% contribute almost exactly two-thirds of the city's income tax revenue.
- The remaining 3.3 million taxpayers pay the final third.

Section 1: Lay of the Land

- Why do we care?
  - The “One” Thing
  - Nonresidents still pay tax on sourced income
- 7 states still impose an estate or inheritance tax
- Estate/Inheritance Taxes
  - Most States’ Top Rate: approximately 16%
  - Some go up to 20%
  - Local taxes – e.g., NYC – all or nothing!
  - NY: no portability, 2025 “cliff” after $7,518,000, No gift tax, but….

- Residency is getting nasty: Whistleblower/Fraud Lawsuits - https://www.cnbc.com/2024/06/03/bitcoin-billionaire-michael-saylor-settles-dc-tax-fraud-case-for-40-million.html.

Section 1: Lay of the Land

– Two Tests for Residency

  – The Domicile Test

  – The Statutory Residency Test

Section 2 – Domicile

Section 2 – Domicile

- Definition: permanent, primary home
  - Not 6 months and a day!

- Subjective test: where is “home”

  - Important: time patterns, housing, business ties, kids’ school

  - Not so much: driver’s license, voter registration, cemetery plots…

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Section 2 – Domicile

– Burden of Proof: “Clear and Convincing”

– Looking for a “Lifestyle Change”

– Examples:

  – Retirement

  – Upsizing and Downsizing

  – Health Issues

– You do not want to be a typical “snowbird” filing a change of residence for the first time!

– Beware the “CREEPING DOMICILE”!!!!

The 5 Domicile Factors

Domicile Factor	Factual Considerations
Home	▪ Size, value, nature of use ▪ Historical ties ▪ Upsize/downsize/renovations ▪ Community connections?
Business	▪ Active role in day-to-day management (business owner) ▪ Primary office location (employee) ▪ Retirement/sale of business/other change
Time	▪ Much more time needed in new place, 2-to-1? ▪ Changes in patterns ▪ Quantity v. quality
Near and Dear	▪ The “teddy bear” test—move stuff of value ▪ Moving records ▪ Insurance records
Family	▪ Focus on spouse/minor kids ▪ School factor is huge

Section 2 – Domicile

- The OTHER Factors: the three-legged table
  - Mailing address for bills, financial records, etc.
  - FL Homestead/domicile declaration
  - Safe deposit box
  - Vehicle registrations
  - Registering to vote
  - Driver’s license
  - Telephone service
  - Citations in legal documents (wills, contracts, etc.)
- Best Offense is a Good Defense
- Planning Considerations

Special Safe Harbor Tests (NY & Certain Other Northeastern States)

548-Day Rule

- 450 out of 548 days in foreign country for taxpayer
- Less than 90 days in NY for taxpayer AND spouse-kids
- "Short-period" limitation for taxpayer:
  - $\frac{\text{Total \# of days in short period}}{548} \times 90 \text{ days} = \text{\# of NY allowed}$
- Perfect option when a foreign-country "landing" is a problem
- Watch out for residency status in foreign country!

30-Day Rule – calendar-year test

- No Permanent Place of Abode ("PPA") in NY; PPA somewhere else; 30 days or less in NY = nonresident for that tax year

Section 2 – Domicile

- Bringing it “Home”
- It’s all about “intent”
- What’s the most Important Factor?
- Focus on Big Picture and Lifestyle Factors
- Tell a compelling story

Section 3 – Statutory Residency

General Concept: Your home's somewhere else, but you're here enough to be taxed as a resident!

Section 3 – Statutory Residency

- The Statutory Residency Test: 2 Components
- At Least 184 Days

  AND
- A Permanent Place of Abode ("PPA")

+

Section 3 – Statutory Residency

- Factor #1: Day Count
  - A “day” in a state: a minute is a day
  - Two exceptions: e.g., travel & medical
  - Burden of Proof: the importance of record keeping
    - Must prove the negative
    - Recordkeeping (cell phone, MONAEO app, etc.)
    - Be careful of crazy audit positions re: apps!
  - Use of testimony/statements – do you really know where you were on a specific day 3 years ago?

- Careful of other “statutory” tests: non-temporary/transitory purpose states
  - Similar concept: you can be a resident even if domicile is somewhere else
  - CA, IL, AZ, HI

Section 3 – Statutory Residency

State	Presumption/Rule
Alabama	Either maintain a place of abode in-state or spend more than a total of seven months in the year within Alabama - presumed to be residents.
Arkansas	Maintains a permanent place of abode within Arkansas and spends in the aggregate more than six months of the year
Arizona	Spends in the aggregate more than 9 months of the taxable year in Arizona is presumed to be a resident
California	Spends in the aggregate more than 9 months of the taxable year in California is presumed to be a resident
Colorado	Maintains a permanent place of abode within Colorado and who spends in the aggregate more than six months of the taxable year in Colorado
Connecticut	Maintains a permanent place of abode in the state and is in the state for an aggregate of more than 183 days during the taxable year.
D.C.	Maintains a place of abode within the District for an aggregate of 183 days or more during the taxable yea
Delaware	Maintains a place of abode in Delaware and spends in the aggregate more than 183 days of the tax year in Delaware
Georgia	Residing within Georgia for 183 days or part-days, in the aggregate, of the immediately preceding 365 day period.
Hawaii	Persons who spend more than 200 days of the tax year in Hawaii are presumed to be residents
Iowa	Presumption applies if an individual maintains a place of abode in Iowa and spends more than 183 days of the tax year in Iowa
Idaho	Maintain a place of abode in Idaho for the entire tax year and spend more than 270 days of the tax year in Idaho – some safe harbors available
Illinois	Prior year resident presumed to be a resident if present in Illinois more days than in any other state during year
Indiana	Maintains a permanent place of residence in Indiana and spends more than 183 days of the taxable year within Indiana
Kansas	Spends an aggregate amount of more than six months of a taxable year within Kansas in the absence of proof to the contrary.
Kentucky	Spends, in the aggregate, more than 183 days of the tax year in the state and who maintains a place of abode in the state during that period
Louisiana	Maintains a permanent place of abode within the state or who spends in the aggregate more than six months of the taxable year within the state
Massachusetts	Maintains a permanent place of abode in Massachusetts and spends more than 183 days of the taxable year in Massachusetts
Maryland	For more than six months of the taxable year, maintained a place of abode in Maryland.
Maine	Maintains a permanent place of abode in Maine and spends in the aggregate more than 183 days of the taxable year in Maine
Michigan	Deemed a resident if lives in the state at least 183 days during the tax year or more than half the days during a tax year of less than 12 months.

Section 3 – Statutory Residency

State	Presumption/Rule
Minnesota	Spends at least 183 days in Minnesota and the taxpayer or spouse own, rent, maintain, or occupy a residence in Minnesota
Missouri	Maintain a permanent place of abode in-state and spend more than 183 days of the taxable period in Missouri.
Mississippi	Individuals who maintain homes, apartments, or other places of abodes in Mississippi or who meet the requirements of a Mississippi voter or enjoy a Mississippi homestead exemption are legal Mississippi residents
Montana	Maintaining a "permanent place of abode," in Montana and not establishing residency elsewhere.
North Carolina	In the absence of convincing proof to the contrary, being present within the state for more than 183 days of an income year constitutes residence.
North Dakota	Maintains a permanent place of abode within the state and spends more than seven months (210 days) of the year within the state
Nebraska	For an aggregate of more than 6 months, both maintains a permanent place of abode within Nebraska and is present in Nebraska
New Jersey	Maintains a permanent place of abode in the state and spends in the aggregate more than 183 days of the taxable year in this State
New Mexico	Physically present in New Mexico for 185 days or more during the taxable year regardless of domicile
New York	More than 183 days in New York combined with a permanent place of abode.
Ohio	An individual who has at least 213 "contact periods" with the state is presumed to be domiciled for the entire taxable year.
Oklahoma	Spends more than seven months of the taxable year in Oklahoma is presumed to be a resident in absence of proof to the contrary.
Oregon	Maintains a permanent place of abode in Oregon and spends more than 200 days, in the aggregate, of the taxable year.
Pennsylvania	Maintains a permanent place of abode in Pennsylvania and spends, in the aggregate, more than 183 days there.
Rhode Island	Maintains a permanent place of abode in Rhode Island and is present in the state for an aggregate of more than 183 days during the tax year
Utah	Has an abode in the state and spends at least 183 days in the state during the tax year (recently changed to be a factor for domicile)
Virginia	Maintains a place of abode in Virginia for more than 183 days during the tax year.
Vermont	Those who maintain a Vermont permanent residence and are in Vermont for over 183 days of the tax year are considered residents.
West Virginia	Maintains a permanent place of abode in-state and spends in the aggregate more than 183 days of the taxable year in-state

Section 3 – Statutory Residency

- Factor #2: A “Permanent Place of Abode” (PPA)
  - Structuring Really Doesn’t Matter!
  - The “10-month” Rule
  - Habitability Issues
- The Knight Case
  - The Girlfriend Apartment and the Company Apartment
- The Gaied Case
  - Punishing the Dutiful Son.
- The Obus Case
  - The State Finally Gets Vacation Homes Correct!

Section 4 – Nonresident Income Allocation

Section 4 – Nonresident Allocation

- Understanding State Sourcing - Nonresidents still pay tax on “sourced” income
  - Wages for services performed in-state
    - More day-counting rules
    - Careful of remote-work rules
    - Deferred compensation - IRC 457A, Nonqualified Deferred Compensation
- Gains from the sale of in-state properties
- Flow-through Business Income
  - NY partnerships and proprietorships: three-factor formula
    - If office and employees in NY, will be close to 100% sourcing (especially for service receipts)
  - NY S corps: single factor apportionment

Section 4 – Nonresident Allocation

- Understanding State Sourcing: nonresidents do not pay tax on “un-sourced” income
  - Investment Income
    - Interest, dividends, capital gains, etc.

  - Carried Interest
    - Treated as intangible
    - Not taxable to nonresident

  - Gain on Sale of Businesses
    - Stock Sale = generally not taxable to nonresident
      - Careful of 338(h)(10) deals (See TSB-M-10(10)I).
      - Careful of distributed installment obligations to nonresident S corp shareholders in liquidation under IRC § 453(h)(1)(A) (See TSB-M-10(10)I)
      - Special NY rule on sale of partnership interest under IRC § 1060 (TSB-M-18(2)I)
      - Sale of interests in an entity owning NY real property if NY real property is more than 50% of assets (See Tax Law § 632(b)(1)(A)(1).
    - Asset Sale
      - Taxed based on entity apportionment percentage

Section 4 – Nonresident Allocation - Choice of Entity Matters

	C Corporations	S Corporations	Partnerships, LLCs, Etc.
NEW YORK STATE			
Apportionment Formula	Single sales factor	Single sales factor	Three factor formula (gross income, property, payroll)
Sourcing of Service Receipts	Market-based sourcing	Market-based sourcing	Office where sale was negotiated or consummated / agent is based
Sourcing of Tangible Personal Property Receipts	Destination	Destination	Origination
MTA SURCHARGE			
Apportionment Formula	Three factor formula (gross income, property, payroll)	N/A	N/A
Sourcing of Service Receipts	Market-based sourcing	N/A	N/A
Sourcing of Tangible Personal Property Receipts	Destination	N/A	N/A
NEW YORK CITY			
Apportionment Formula	Single sales factor	Single sales factor	Single sales factor
Sourcing of Service Receipts	Market-based sourcing	Place of performance	Place of performance
Sourcing of Tangible Personal Property Receipts	Destination	Destination	Destination

Section 4 – Nonresident Allocation

- NY's Convenience Rule
  - In general, if the employee works from home for their own convenience, broadly defined, the workdays at home will be treated as days worked at their assigned work location.
  - Applications:
    - Nonresident income allocation
    - Withholding
    - Resident credits

Section 4 – Nonresident Allocation

- NY's Convenience Rule
  - 6 states (CT, DE, NE, NJ, NY, PA) have some form of a "Convenience Rule."
  - Nuances:
    - CT's and NJ's rule only applies if the other state is a "Convenience State."
    - NJ's rule is brand new (July 1, 2023) and only applies to AR, DE, NE, and NY. It does not apply to PA due to a reciprocity agreement, and it does not apply to CT because that state's rule only applies if the other state imposes a general convenience rule. See: https://www.state.nj.us/treasury/taxation/newlegislation2023.shtml.
    - Several states (GA, MA, ME, MS, NE, NY, PA, RI, SC) issued guidance or temporary legislation during pandemic requiring that days worked at home continue to be treated as if worked the employee's regular place of work.
    - New NY Case Law – A New Convenience Test?? See Matter of Bryant, DTA No. 830818 (sept. 12, 2024). https://www.dta.ny.gov/pdf/determinations/830818.det.pdf.

Section 4 – Nonresident Allocation

- Option #1: Assign to Non-NY Office
  - But be careful that this assignment is real! (see next slides)
  - Should be used regularly, paid for by employer, etc.
- Option #2: Bona-Fide Home Office
  - TSB-M Factors
- Option #3: No NY Workdays
  - Year-by-year test - Hayes v. State Tax Comm., 401 N.Y.S.2d 876 (N.Y. App. Div. 1978): Nonresident, who under his agreement to provide consultant services could have been required to work in New York but who did not work in New York at all, was not subject to New York state personal income tax liability no matter for whose convenience or necessity he performed the work. See also, Matter of Unterweiser (Tax Appeals Tribunal, July 31, 2003); Matter of Gleason v State Tax Commn., 76 AD2d 1035, 1036 (3d Dept. 1980); Matter of Linsley v Gallman, 38 AD2d 367, 369 (3d Dept. 1972), affd 33 NY2d 863 (1973).
  - Even a few New York workdays, probably too many (See Matter of Huckaby)
  - Should be in writing (employee told that they are not required to come to the NY office and employee indicates that they are not planning to come to NY during the calendar year)
  - Should be documented (for withholding purposes, T&E should reflect that no travel to NY)

Section 4 – Nonresident Allocation

- No written guidance as to what constitutes an individual's primary office.
- On Audit, NY has looked at facts, such as:
  - Office that individual visits more than any other
  - Where is employee's administrative support?
  - Where does the employee's supervisor, managers, or "team" sit?
  - Does the employee still have designated office space in NY?
  - What do employer HR records designate as primary office?
- There must be evidence other than geographical proximity to reassign an employee to another office.

Section 4 – Nonresident Allocation

Step 1: Primary Factor: Employee's duties require the use of special facilities that cannot be made available at the employer's place of business, but those facilities are available at or near the employee's home

If the home office does NOT satisfy the primary factor, proceed to Step 2

Step 2: The Secondary and "Other" Factors: The home office may still qualify as a "bona fide employer office" if it meets four out of the six Secondary Factors PLUS three out of the ten "Other" Factors

Secondary Factors (4 out of 6)	"Other" Factors (3 out of 10)
1. Home office is a requirement or condition of employment 2. Employer has a bona fide business purpose for the employee's home office location. 3. Employee performs some core duties at the home office. 4. Employee meets with clients, patients, or customers at the home office. 5. Employer does not provide the employee with office space or regular work accommodations. 6. Employer reimburses expenses for the home office.	1. Employer maintains a separate telephone line and listing for the home office. 2. Employee's home office address and phone number are on the employer's business letterhead and/or cards. 3. Employee uses a specific area of the home exclusively for the employer's business. 4. Employee keeps inventory of products or samples in the home office. 5. Employer's business records are stored at the home office. 6. Employer signage at the home office. 7. Home office is advertised as employer's place of business. 8. Home office covered by a business-related insurance policy. 9. Employee properly claims a deduction for home office expenses for federal income tax purposes. 10. Employee is not an officer of the company.

Section 5 – Case Studies and Real Life Scenarios

Client #1: Leave and LAND?

- Taxpayer resides in Nassau County with spouse and child (high school senior); family owns pied-a-terre in New York City.
- Taxpayer accepts job offer in Washington State.
- Family sells Long Island home; move personal belongings to Washington State.
- Taxpayer spouse and daughter relocate to New York City apartment; daughter finishes high school in New York City. Taxpayer resides in Washington State but visits New York City regularly.
- Following graduation, taxpayer spouse relocates to Washington State.
- One year after move, family tragedy forces taxpayer and spouse to leave Washington State and move to New York City.
- ISSUE: Where did the taxpayer land?

Client #2: Off to FL – For Good

- Facts:
  - Taxpayer was a NYC domiciliary and lived there with her husband and kids.
  - She runs a small hedge fund that was based in NYC.
  - Receives management fee income plus a big carry.
  - Taxpayer and her family went to Florida during the early stages of pandemic.
  - Shortly after, they decided they're "done" with NYC and planned a move to Florida.
  - She got a rental in Florida that started 7/1/2023 and she started spending time there, but her husband and kids didn't move until September 2023.
  - They sold NYC apartment and terminated NYC office in late-2023/early 2024.
- Issues:
  - A real "leave" and "land."
  - Timing of move: July 2023, September 2023, later?
  - Part-year residency? Accrual?
  - Anti-*Sobotka* rule and 2023 statutory day count?

Client #3: Accelerating Retirement

- Facts
  - Taxpayers are mostly retired and have been “snowbirds” for several years—living in New York (or NJ, or CT, etc.) for 8 months and in Florida for 4 months.
  - Big home in Westchester and their adult children and grandchildren live in New York.
  - In 2023, they spent many more days in Florida than NYS for the first time.
  - Question is: do they give Florida residency a go?
- Issues
  - How many more FL days in 2023—6 months and a day? 190 v. 160? 8 months v. 4 months?
  - Continuing patterns of time in 2024 and later?
  - Picking the right date?
  - What to do with New York home (sell, rent, downsize)?

Client #4: The Loving Grandparents

- Facts
  - Florida couple with 2 grown children.
  - Children have recently had their own kids, and grandparents want to be seeing their grandkids more.
  - Children and grandchildren reside in NY.
  - Parents want to get a home in NY, but retain FL residency, so they can see grandchildren.
- Issues
  - How not to “leave” and “land?”
  - Day counting a priority

Client #5: Real Move, Real Savings?

- Facts
  - Taxpayer lives and works in NYC, but she has decided to give up New York lease and move to Florida for good.
  - Taxpayer's employer is based out of NYC and doesn't have a Florida office.
  - Employer is okay with remote work indefinitely, so long as employee makes occasional visits to NYC office.
  - Taxpayer moves and telecommutes from her home office in Florida with occasional visits to NYC office.
- Issues
  - Easy domicile case and NYC tax savings.
  - But…NYS nonresident wage allocation?
  - The "Convenience Rule"

Section 6 - Change of Domicile: Estate Planning Considerations

Estate Tax Landscape

- Federal estate, gift, and generation-skipping transfer tax (GST) exemption amounts are fixed at $15M per person, indexed for inflation
- For 2026, the annual gift tax exclusion is $19,000 per person, per done ($38,000 for married couples)
- Planning opportunities?

Portability

– Allows a surviving spouse to use a decedent spouse's unused federal estate and gift tax exemption on the surviving spouse's later death

– GST amount cannot be ported

– Under current law, a married couple can essentially transfer up to $30 million of wealth without incurring federal estate and gift tax

Portability Examples

- Portability Example #1
  - Husband 1 dies, having used only $3M of his basic exclusion ($12M remaining)
  - Wife remarries and predeceases husband 2
  - Wife’s estate is $25M
  - Husband 1 was her “last deceased spouse,” meaning that her applicable exclusion amount is $27M (her $15M plus husband 1’s unused $12M)
- Portability Example #2
  - Husband 1 dies, having used only $3M of his basic exclusion ($12M remaining)
  - Wife remarries and survives husband 2
  - Husband 2 used all his exclusion
  - Wife’s exclusion is back to $15M because husband 2 was her “last deceased spouse” and he used all his exclusion

Planning Considerations

- Basic Estate Planning Documents:
  - Revocable Living Trust
  - Will
  - Durable Power of Attorney for Property
  - Living Will/Designation of Health Care Surrogate

Homestead

- Three Homestead situations in Florida:
  - Homestead property tax exemption up to $50,000 on assessed value of individual’s Florida permanent residence plus Save Our Homes Cap
  - Homestead asset protection against a judgment lien
    - *What about exceptions?*
  - Homestead rules regarding descent and distribution
    - *What if the homestead is not validly devised?*

Selected Topics

- Tenancy by the Entirety
- Life Insurance Planning
- Charitable Planning
- Asset Protection
- Avoiding New York State Estate Tax After a Florida Move

Section 7 - Audits: New Initiatives & Best Practices

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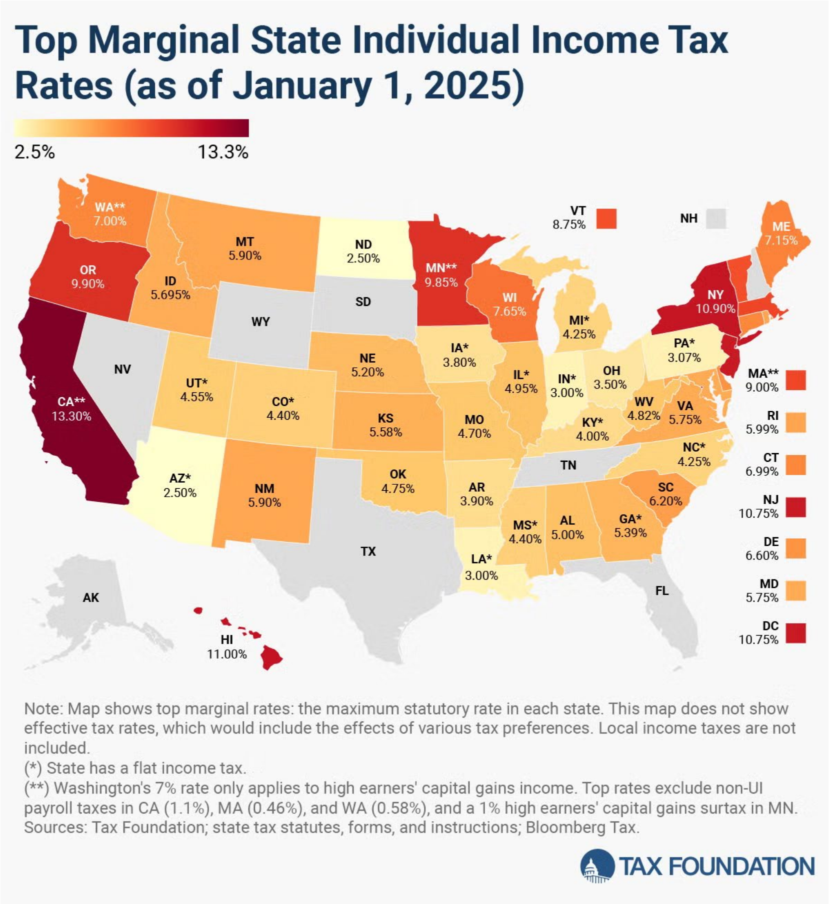

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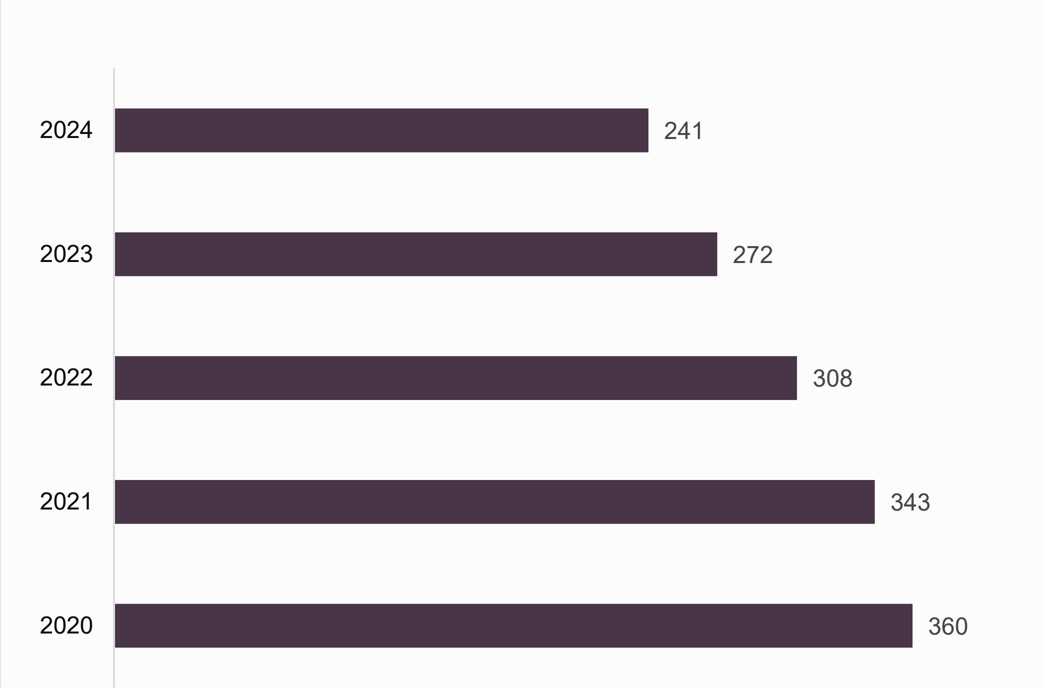
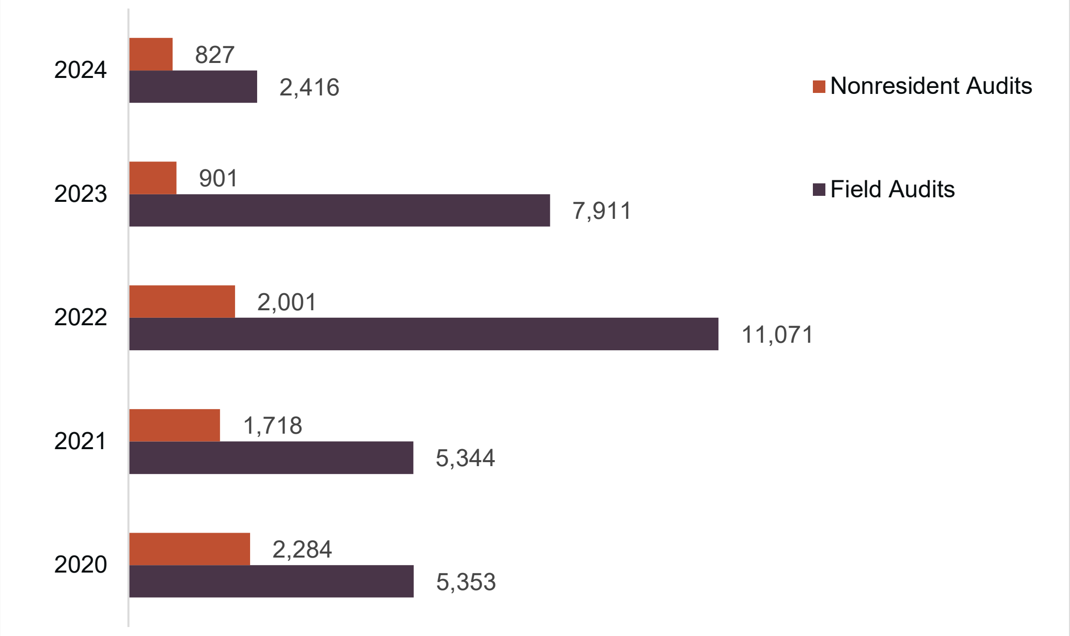
NY Tax Enforcement Stats*





** Source: Hodgson Russ April 2025 Response to FOIL Request*

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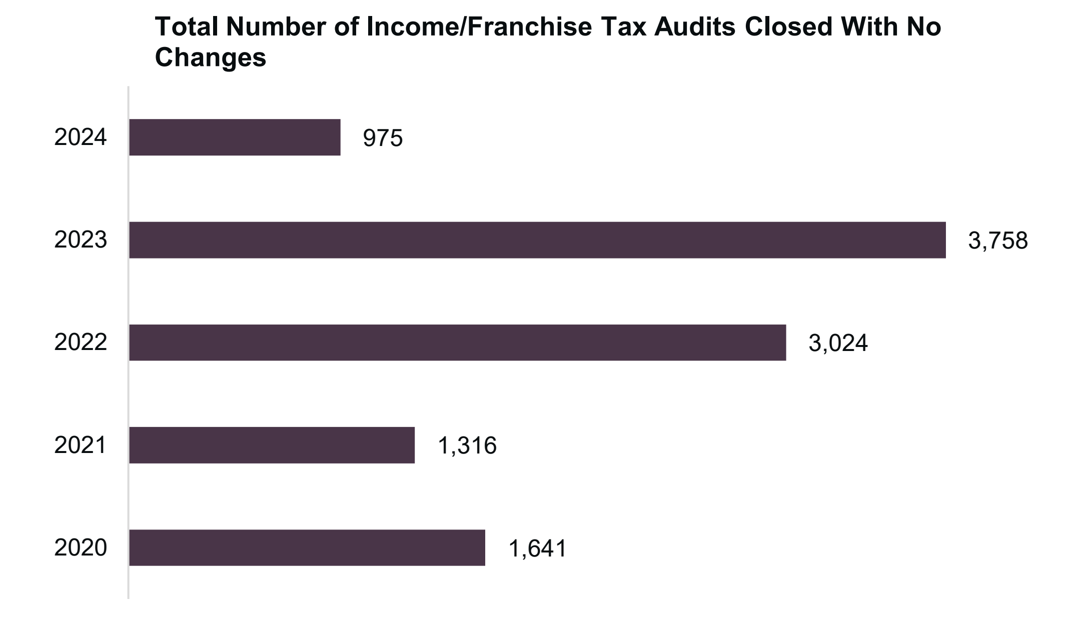
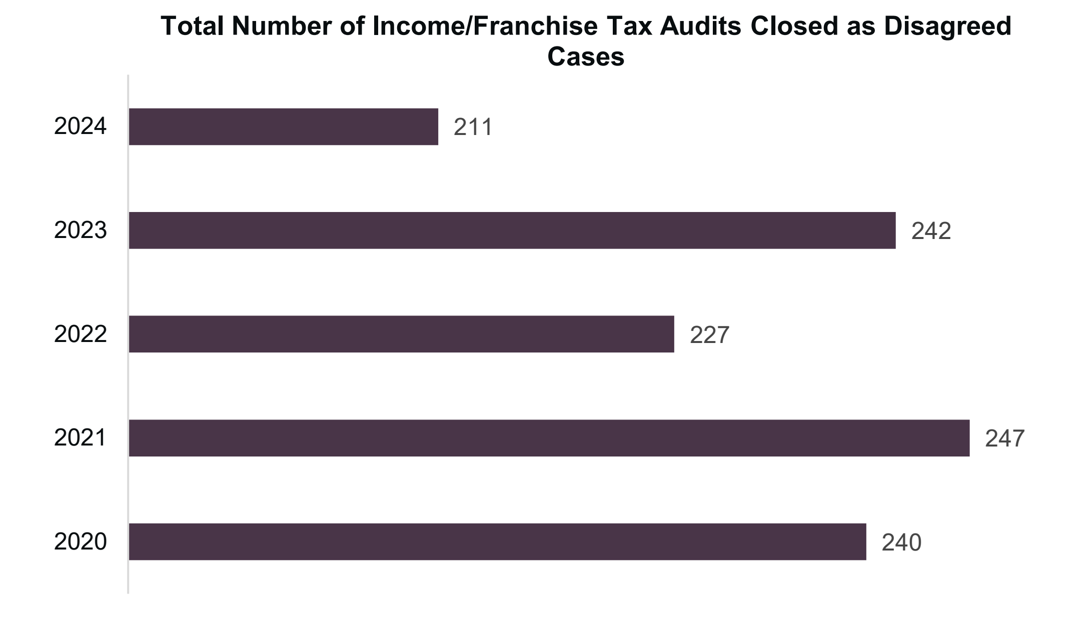
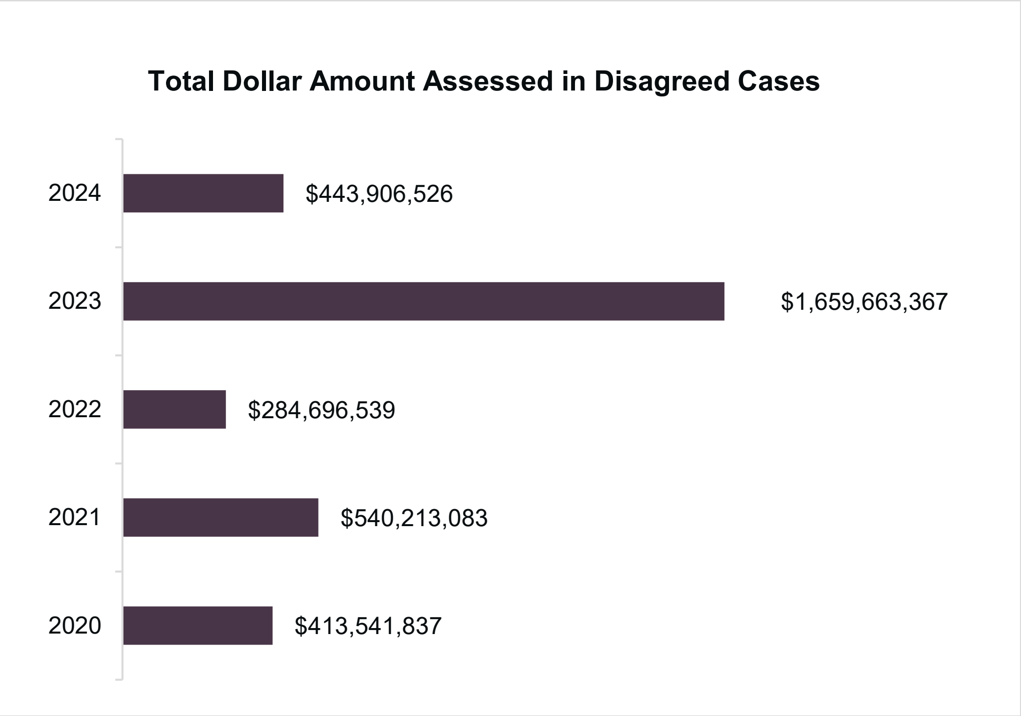
NY Tax Enforcement Stats*





Majority of cases agreed or settled
** Source: Hodgson Russ April 2025 Response to FOIL Request*

NY Tax Enforcement Stats*



** Source: Hodgson Russ April 2025 Response to FOIL Request*

Section 7 – Audits: New Initiatives & Best Practices

- NYS: Industry Leader!
  - Audit Lottery? Close to 100% chance of audit at higher incomes
  - 3-year SOL: so audit could come years after the move

Section 7 – Audits: New Initiatives & Best Practices

NEW YORK STATE | Department of Taxation and Finance

Audit Division-Income/Franchise Desk
W A Harriman Campus, Albany NY 12227

[redacted]

Request for Information

Notice date:	[redacted]/2021
Tax type:	Personal Income Tax
DLN:	PH[redacted]
Case ID:	X[redacted]
Tax year:	2020
Form number:	IT-203

We need more information by December 1, 2021 about your 2020 New York State income tax return.

Why did you get this letter?

We need to verify your residency status.

If you either: (A) are domiciled in New York State, OR (B) maintained a permanent place of abode *AND* spent 184 days or more in New York State, you must file a resident tax return, Form IT-201, regardless of the location where you may have been working or telecommuting from in 2020.

We need to verify the amount of income you allocated to New York State, as reported in the *New York State amount* column of your return.

If you are a nonresident or part-year resident whose assigned primary work location is in New York State, days you worked at a location outside New York State may be considered New York State work days. In particular, days you telecommuted from a location outside New York State are considered New York State work days unless your employer has established a bona fide employer office at your telecommuting location.

Additional information about residency and telecommuting can be found on our website at *www.tax.ny.gov* (search: telecommuting).

Section 7 – Audits: New Initiatives & Best Practices

What must you do?

1. You must complete the enclosed Nonresident Audit Questionnaire (Form AU-262.3) to explain your residency status in New York City and/or New York State.

   You must support your residency status claimed on your 2020 personal income tax return by providing the following information, as applicable:

   - A copy of your ending lease agreement (with lease termination letter, if applicable) or home sale documents.
   - A copy of your new lease or home purchase agreement.
   - Copies of any moving receipts or other records to support your move.

   You must also verify your income allocation by providing the following (for each taxpayer if a joint return):

   - A copy of your federal W-2, *Wage and Tax Statement*, for each employer;
   - A completed *Income Allocation Questionnaire* (Form AU-262.55, enclosed) for each employer; and
   - A full description of the composition of your wages (base compensation, bonuses, stock options, sick pay, vacation pay, severance pay, gambling income, unemployment compensation, etc.).

How do you send this back to us?

The best way is online. It is easy to start an account at *www.tax.ny.gov/online*. From there, you can attach images and files of supporting documentation. Please include an image of this letter in your response. Responding online is also:

- Safe, secure, and confidential. Your information and privacy are protected.
- Quick. Your information will be instantly delivered to us.
- User-friendly. It is easy to navigate.
- Economical. It is the least expensive way to respond.

What if you cannot get online?

You can also send us the information by fax, U.S. Mail, or by a private delivery service (see Publication 55, *Designated Private Delivery Services*). Please include a copy of this letter in your response.

- **Fax:** 518-435-8518
- **U.S. Mail:** NYS Tax Department, Audit Division-Income/Franchise Desk, P.O. Box 15270, Albany, NY 12212-5270
- **Private delivery service:** NYS Tax Department, RPC-PIT, 90 Cohoes Avenue, Green Island, NY 12183.

What happens after you send in the required information?

We will attach the information you provide to the return you already submitted, then we will continue processing your return. There may still be other changes to your return. If we need additional information to continue processing your return, would you like us to contact you by phone? If so, please include a daytime phone number:

Daytime phone number ____________________ Taxpayer name ____________________________

What happens if you do not send all the information we need by December [redacted] 2021?

We will process your return without this information. That may reduce your refund or increase the amount of tax you owe.

Who do you contact if you have questions?

Section 7 – Audits: New Initiatives & Best Practices

New York State Department of Taxation and Finance

Audit Division-Income/Franchise Desk
W A Harriman Campus, Albany NY 12227-9995

X-999999999

Income Allocation Questionnaire

Tax year	Taxpayer name	Audit case ID

You must verify the amount of income you allocated to New York State as reported in the *New York State amount* column of your income tax return. If you are a nonresident or part-year resident whose assigned primary work location is in New York State, days you worked at a location outside New York State may be considered New York workdays. In particular, days you telecommuted from a location outside New York State are considered days worked in the state, unless your employer has established a bona fide employer office at your telecommuting location.

Complete this questionnaire for **each** employer (for each taxpayer if a joint return). Attach additional sheets if necessary.

Employer name and address: ______

Job title: ______

Period of employment (full year or specific dates): ______

Assigned primary work location: ______

If your assigned primary work location changed during the tax year, provide proof of this change.

Total compensation for the period of employment (from federal Forms W-2): ______

Provide a full description of the composition of your wages *(base compensation, bonuses, stock options, sick pay, vacation pay, severance pay, gambling income, unemployment compensation, etc.)*

Total number of days in the employment period: ______

Total number of non-working days (weekends, holidays, vacation, sick leave, etc.): ______

Total number of working days: ______

Total days worked at home: ______

Section 6 – Audits: New Initiatives & Best Practices

Location of working days:

Address	Type of work location (office, home, client site, etc.)	Number of days worked at location	Nature of duties performed (in-person business meetings, telecommuting, client visit, etc.)

You must be prepared to provide documentation substantiating the above day counts upon request.

If you telecommuted from a location or locations outside New York State, please specify whether any such location constituted a bona fide employer office, and provide proof of actions taken by the employer, if any, to establish a bona fide employer office at that location. For more information on the factors used to determine whether a telecommuting location is a bona fide employer office, see *www.tax.ny.gov* (search: *telecommuting*).

I certify that the information given herein is true and correct.

Date	Taxpayer's signature	Taxpayer's Social Security number
Date	Spouse's signature (if joint return)	Spouse's Social Security number (if joint return)

Section 7 – Audits: New Initiatives & Best Practices

- Best Practices

  - Burden of Proof
    - No close calls
    - You must prove where you were and where you weren't
  - Cell phones data and smartphone apps
  - Prepare for the audit when preparing for the move
  - Consider resident credits, but it's not always a zero-sum game
  - Be wary of double taxation

Thank you.

HodgsonRuss

Contact for More

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