



2026 Florida Tax Residency Series



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Topics

- Residency Overview and Primer
- Case Study: Matter of Hoff
- Rules and Audits of Residency Changes
- Nonresident Allocation Considerations and the “Convenience Rule”
- Estate Planning Considerations



Residency Overview and Primer



Residency Overview

- Residency is always a hot topic in New York.
- Statistics continue to show that people are fleeing New York (and other high-tax states like New Jersey) for places like Florida.
- In the meantime, states like New York must deal with that lost revenue. So far, most of the solutions proposed have involved increased tax rates on the highest-income taxpayers and/or additional taxes on that category of taxpayer. Predictable results ensue.
- How does this impact the two main residency tests?
 - Domicile
 - Statutory Residency

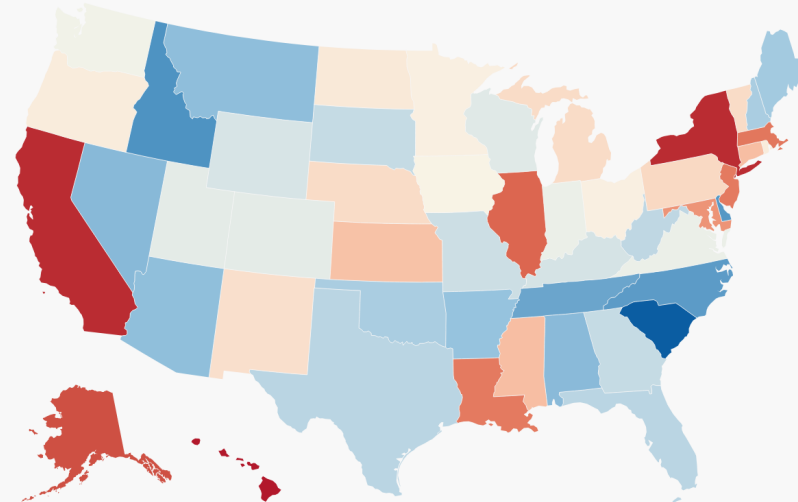
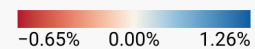




2024 Migration Map

State Population Changes Attributable to Interstate Migration (FY 2024)

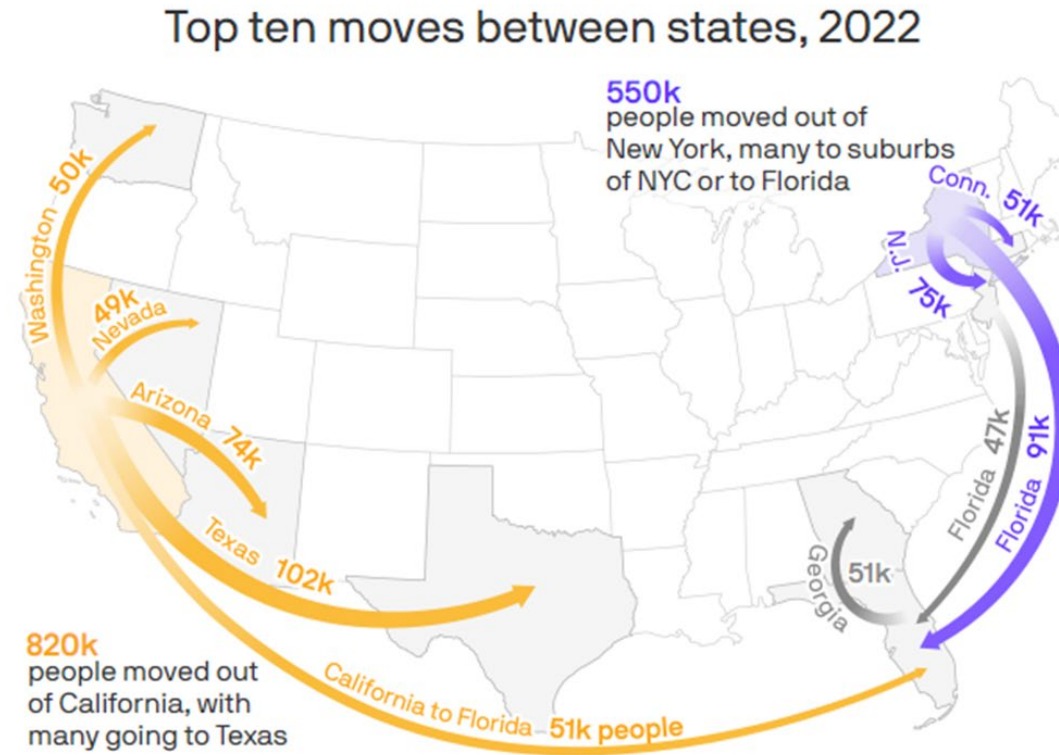
State Net Population Changes from Interstate Migration, from Most Inbound to Most Outbound, FY 2024



On this map, population changes are rounded to the hundredths place, but ranks are based on unrounded Census figures. D.C.'s rank does not affect states' ranks, but indicates where it would have ranked if included. Source: U.S. Census Bureau.



Americans Moved to Low-Tax States in 2022



Data: U.S. Census American Community Survey; Chart: Erin Davis/Axios Visuals; Editor's note: This chart has been corrected to state that many Californians moved to Texas, not a majority.

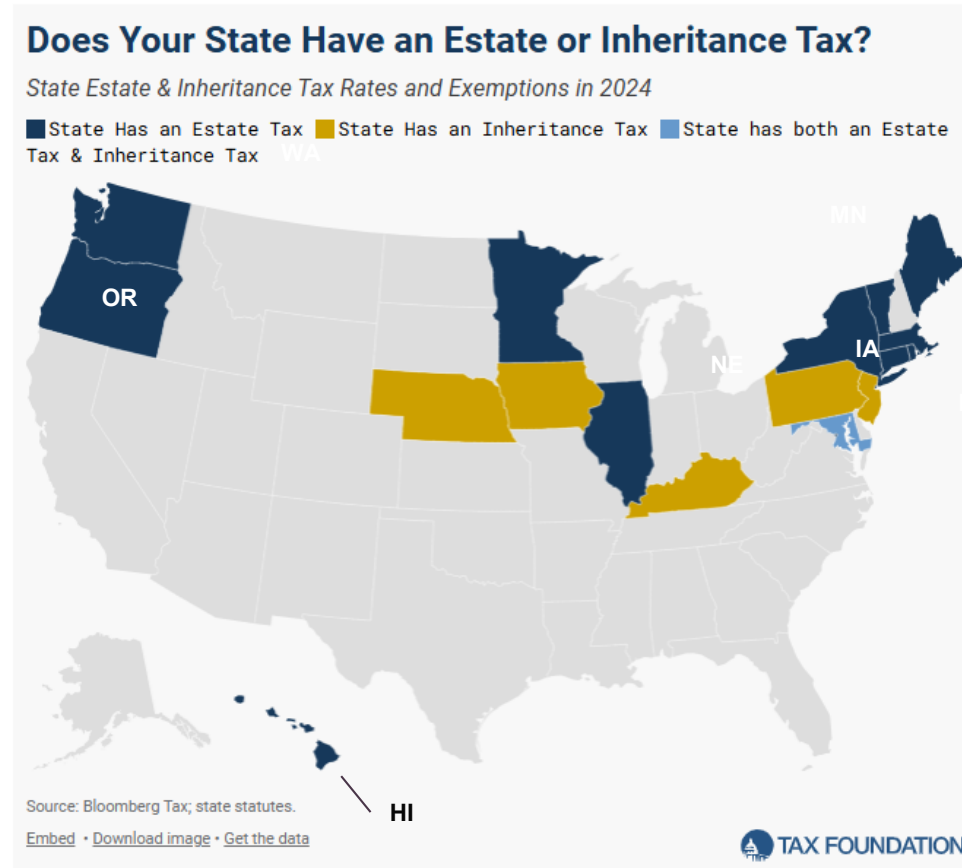


All Roads Lead to Florida

- The State Wealth-Tax Alliance: “The tax alliance emerged late last week when lawmakers from eight states unveiled plans to target wealthy residents. California, New York, Illinois, Maryland, Hawaii, Minnesota, Connecticut and Washington state are all represented, and several of the sponsors have already released bills.”
 - <https://www.wsj.com/articles/the-state-wealth-tax-alliance-progressive-states-coordinate-illinois-new-york-washington-11674600250>
- The COVID-driven rush of New Yorkers quickly turned into a stampede. A record-breaking number of Empire State residents switched their driver’s licenses to the Sunshine State version in August 2022, according to a NY Post analysis of Florida Department of Highway Safety and Motor Vehicles data. A total of 5,838 New Yorkers made the switch — the highest recorded number for a single month in history, the numbers show.
 - <https://nypost.com/2022/09/20/record-number-of-new-yorkers-swap-to-florida-licenses/>
- “More New Yorkers moved to Florida in 2022 than any year in history in staggering exodus.”
 - <https://nypost.com/2023/01/19/more-new-yorkers-moved-to-florida-in-2022-than-any-year-in-history/>



Estate Taxes





Tax Motivated Moves?

State	Top Income Tax Rate	Estate/Inheritance Tax
California	14.4% on income over \$1 million (13.3% on cap. Gains)	No
New York	10.9% NYS - 3.876% NYC (14.776% combined)	Yes
New Jersey	10.75%	Yes
D.C.	10.75%	Yes
Oregon	9.90%	Yes
Minnesota	9.85%	Yes
Massachusetts	5% + 4% on income over \$1 million	Yes
Vermont	8.75%	Yes
Wisconsin	7.65%	No
Maine	7.15%	Yes
Connecticut	6.99%	Yes



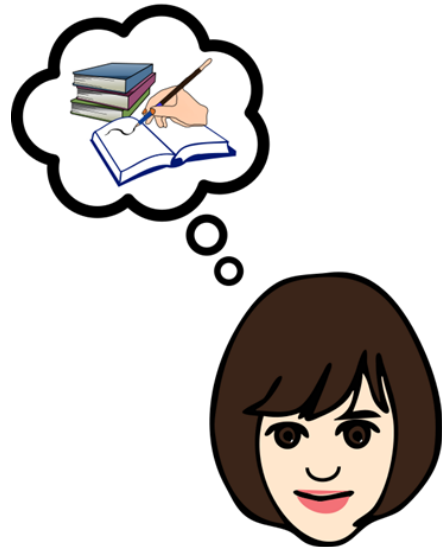
Residency Basics

- Importance of Residency Status
 - Residents: The one thing.
 - Nonresidents: Taxed on NY source income only.
 - NYC income tax: All or nothing.
- The Two Residency Tests
 - Domicile (with narrow exceptions: 30-day rule, 548-day rule)
 - One permanent, primary home.
 - The “Leave and Land” Rule.
 - Burden of proof on taxpayer moving out of NY.
 - Statutory Residency
 - 183 days + a Permanent Place of Abode.
 - A minute in the state counts as a day in the state.
 - Few exceptions to day count rules.



Domicile: What is it?

Intent



Actions





Domicile – The Factors

- The 5 Primary Domicile Factors
 - Home
 - Business
 - Time
 - Near and Dear Items
 - Family
- Other Factors?
 - Driver's licenses, voting, wills/trusts, etc.
 - Declaration of Domicile and Homesteading
- Residency is not just 6 months-and-a-day!!





Domicile – General Principles

- “Leave and Land” – You have to stick the landing
- Burden of Proof: “Clear and Convincing Evidence”
- Looking for a “Lifestyle Change”
- Examples:
 - Huge Change in Time Patterns
 - Retirement
 - Upsizing and Downsizing
 - Health Issues



Statutory Residency

- Two-Part, Objective Test:
 - 183+ days
 - AND
 - A Permanent Place of Abode (“PPA”)



+





Permanent Place of Abode

- What is a “PPA”?
 - Suitable for year-round living
 - Requisite relationship.
 - “Unfettered” access.
 - Residential use (a “residential interest”)—see *Matter of Obus et al., v New York State Tax Appeals Tribunal*
- What is a “residential interest”?
 - Own apartment, but never used? Limited usage?
 - Own/rent place for kid, but never used? Limited usage?
 - Own place, move out during the year? Impact of listing agreement?
- As of 2022, the “11-month” rule is now the “10-month” rule.
- Watch out for statutory residency issues in vacation home states.



Statutory Residency – Day Count

- The Day Count Test
 - A “day” in New York: a minute is a day
 - Matter of Zanetti—any part of a day is a full day
 - Future impact of Obus?
 - Exceptions:
 - Travel through
 - Medical days (inpatient)
 - Burden of Proof: the importance of record keeping (see next slide)
 - Matter of Robertson—recordkeeping and use of testimony
- Anti-Sobotka statute effective 2019: PPA + 183+ days trumps domicile





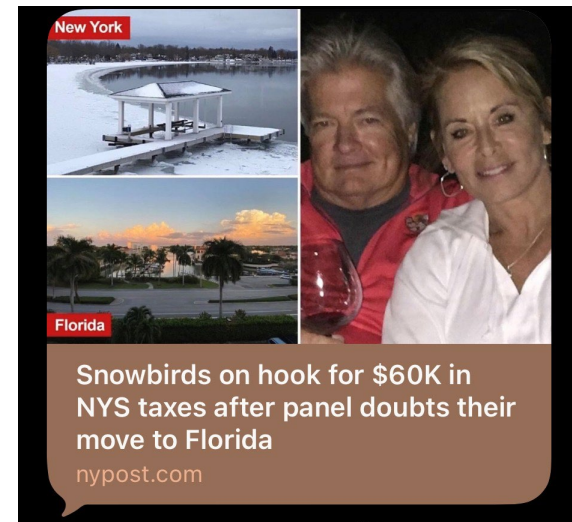
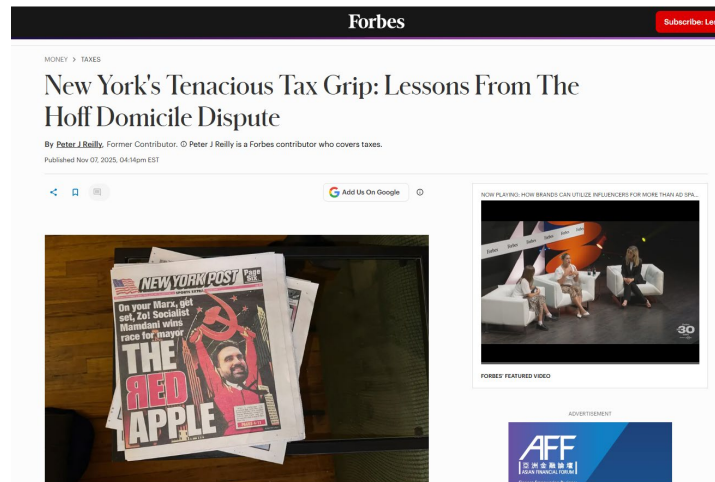
Case Study: Matter of John J. Hoff & Kathleen Ocorr-Hoff

Tax Appeals Tribunal, Oct. 9, 2025 (DTA No. 850209)



Case Study – *Matter of Hoff*

- Today, we'll center our discussion around a recent domicile case that was heard by New York's Tax Appeals Tribunal decision, *Matter of Hoff*.





***Matter of Hoff* – Background**

- Procedural Background:
 - *Hoff* is a Tax Appeals Tribunal decision from October 2025.
 - The petitioners (John Hoff and Kathleen Ocorr-Hoff) appealed the determination of the Administrative Law Judge rendered at the Division of Tax Appeals level in October 2024.
- Increasingly rare to see a “bread-and-butter” domicile case reach the Tribunal-level.
- *Hoff* provides a good example (or cautionary tale?) of the burden of proof in domicile cases, as well as common pitfalls of taxpayers claiming a change of residence to another state.



Matter of Hoff – Factual Background

- *Hoff* dealt with two taxpayers (husband & wife) who claimed a change of domicile to Florida in October 2018.
- The taxpayers historically lived in Canandaigua, New York, but purchased a condo in Naples, Florida in 2014. Though they maintained their home in Canandaigua, the taxpayers sought to become full-time Floridians and tax residents of Florida.
- Filed as part-year residents of New York in 2018 reporting a move date of October 29, 2018.
- At the audit-level, the taxpayers were assessed \$59,648 for additional tax and interest for tax years 2018 and 2019.



***Hoff* – Claiming the Move to Florida**

Here are some steps cited by the taxpayers in *Hoff* as support for their claimed change of domicile to Florida in October 2018:

- Registered to vote in Florida and obtained Florida driver’s licenses in April 2018.
- Filed the Florida “Declaration of Domicile” form in October 2018.
- Registered and insured vehicles in Florida.
- Mr. Hoff acquired a Florida hunting and fishing license.
- The taxpayers relocated important personal items to Florida, including their ski equipment and valuable crystal.
- Ms. Ocorr-Hoff indicated that she started a business in Florida.
- The taxpayers joined a country club in Florida in 2018.
- Updated estate planning documents to reflect their Florida domicile, including creating revocable trusts under Florida law and executing new wills in Florida.
- Mr. Hoff took steps to reduce his day-to-day involvement in his historic NY business.
- The taxpayers became involved with their Naples condo board during the years at issue.
- The taxpayers opened Florida bank accounts.



Hoff – Failure to Meet Burden of Proof During Years at Issue

- The Tribunal held that Mr. Hoff and Ms. Ocorr-Hoff failed to prove, by clear and convincing evidence, that they effectuated a change of domicile to Florida during the 2018-2019 audit period.
- “In examining each of the factors, we agree that while petitioners did intend at some point to change their domicile from New York to Florida, ***the manifestation of that intention is not evident during the period at issue.***”
- So, where did the taxpayers fall short?



Hoff – Pitfalls (Primary Factors)

- The Tribunal acknowledged that Mr. Hoff and Ms. Ocorr-Hoff became Floridians *at some point* – but not during the years at issue. Here is why:
- Home Factor: The Tribunal noted that “nothing about the New York residence changed it to make it less suitable” to serve as the taxpayers’ primary residence. Nature of use remained substantially similar post-move.
- Time Factor: The taxpayers spent **more time** in New York than they did in Florida in both 2018 and 2019. Snowbird pattern with bulk of Florida time in the winter months.
- Business Factor: The taxpayers did not provide proof that Ms. Ocorr-Hoff started a business in Florida. Though Mr. Hoff ultimately sold his New York business, the planned-reduction of daily role in the business was unsuccessful during the years at issue. The taxpayers’ returns indicated they derived income from New York businesses in 2018 and 2019.
- Near and Dear Factor: Evidence illustrated that the taxpayers relocated their crystal to Florida back in 2014 (4 years before the claimed move). There was no explanation offered by the taxpayers of the significance or timing of when they moved ski equipment to Florida.



Hoff – Pitfalls (Other Factors/Formalities)

- After concluding that the primary domicile factors did not provide clear and convincing evidence of the taxpayers’ intention to become Florida domiciliaries by October 2018, the Tribunal then pivoted and analyzed the “other” domicile factors.
- “That brings us to the last factor to be considered, whether petitioners manifested their intention to change their domicile through other evidence.”
- Key points:
 - Dismissed formal declarations (e.g., driver’s licenses, voter registration, vehicle registrations, and Domicile Declaration) as generally self-serving and less significant than other informal acts demonstrating general habit of life.
 - Mr. Hoff didn’t acquire his Florida hunting and fishing license until 2020.
 - The taxpayers only provided proof that 1 out of their 4 vehicles was registered in Florida during the audit period.
 - The taxpayers did not provide proof that they opened any Florida bank accounts.
 - While they joined a Florida country club, they maintained full membership at two country clubs in New York during the audit period.
 - While the taxpayers updated their estate planning documents, they did not complete that process until mid-to-late 2019.



Hoff – Takeaways

- The “clear and convincing” standard of proof is a high bar to clear. And the burden of proof falls on the party asserting the change of domicile.
- Biggest issue: time patterns. In 2018 and 2019, the taxpayers spent more time in New York than Florida.
- An excellent time factor (e.g., a 2-to-1 ratio in favor of Florida) could have balanced out the rest of the factors and made the case more compelling.
- *Hoff* underscores the critical importance of aligning: (a) objective actions with (b) stated subjective intention and (c) saving proof to document this.



Residency Rules and Audits



IF YOU MOVE... *NY Will Find You!*

Year of residency change — almost automatic

Substantial difference between federal and state income

Answer to “living quarters” question

Number of days in NY on return

Past audit history

Cross-check with real property records

Any STAR or NYC parking exemptions

NY addresses reported on a Form 1099 or K-1

All press is not good press

Unhappy ex-spouse

Audits of related parties, partners, etc.

Whistleblower



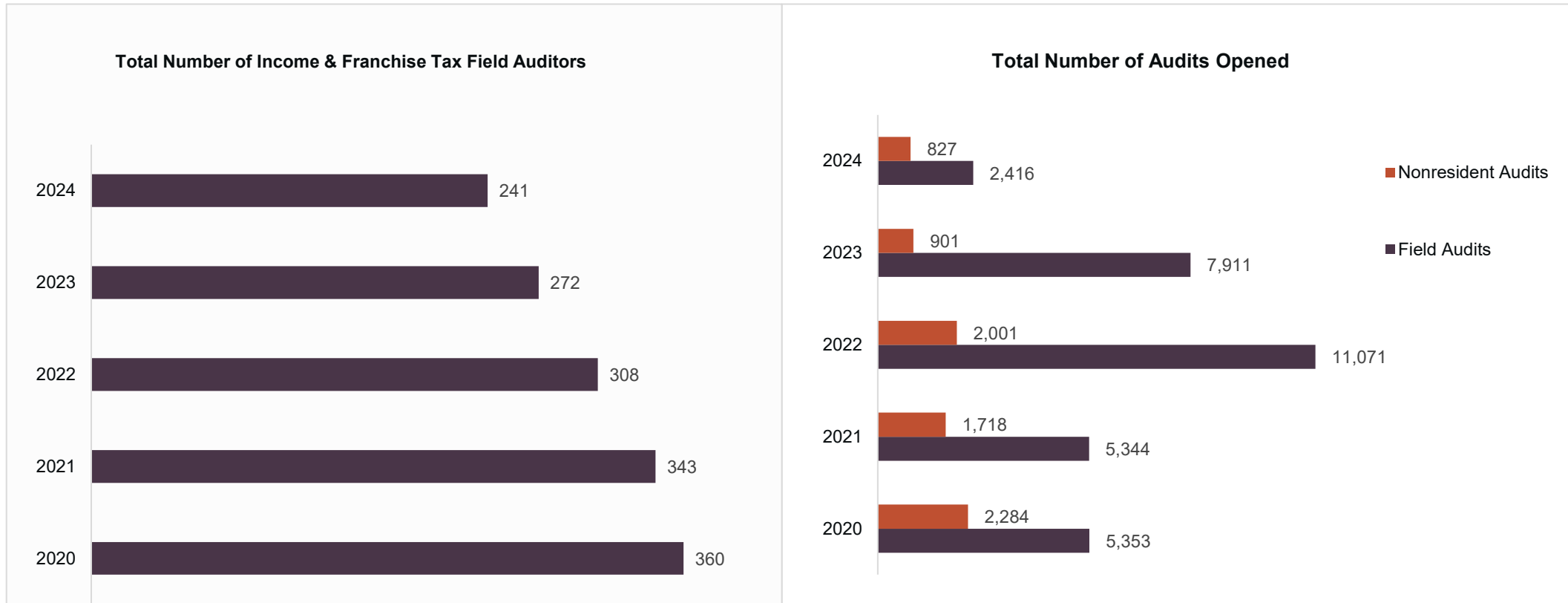


New York Audit Initiatives

- New York: Industry Leader!
- 300 Auditors
- 5,000+ field audits per year
- More than 100,000 “desk audits” in 2020-23 to catch Covid moves and telecommuters
- Audit Lottery? Close to 100% chance of audit at higher incomes
- 3-year SOL, which means the audit could come years after the move



NY Tax Enforcement Stats*



* Source: Hodgson Russ April 2025 Response to FOIL Request



NY Tax Enforcement Stats*

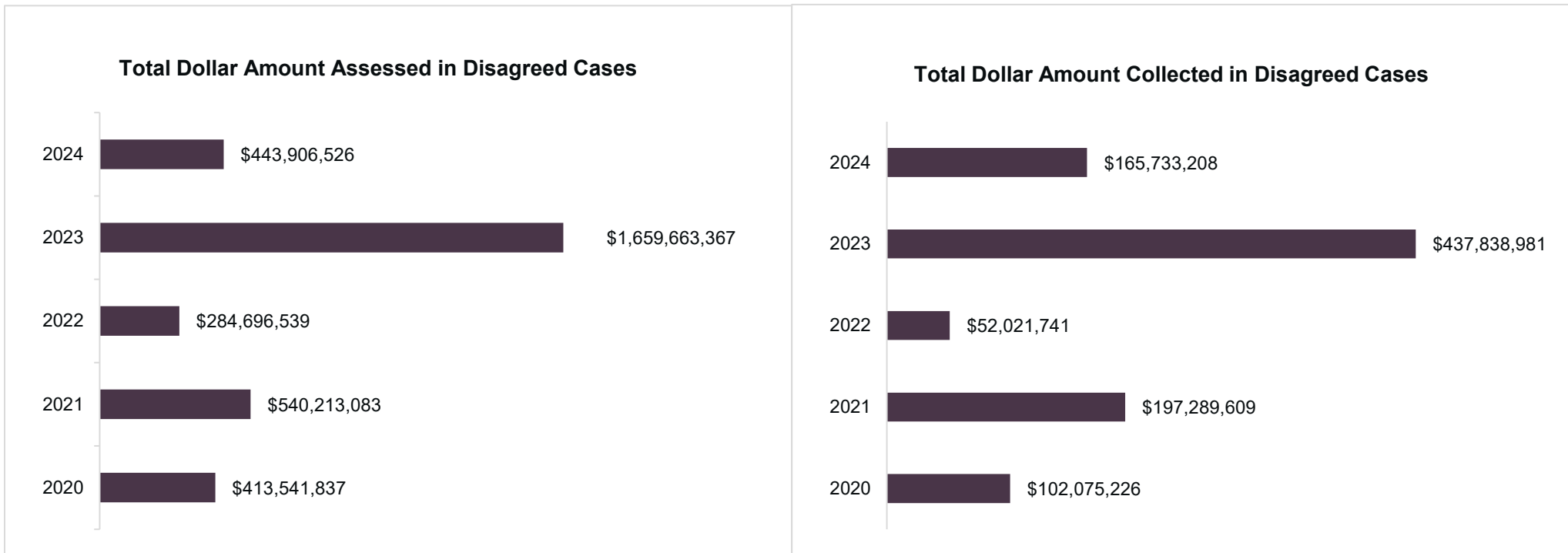


Majority of cases agreed or settled

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



NY Tax Enforcement Stats*



* Source: Hodgson Russ April 2025 Response to FOIL Request



Nonresident Income Allocation Issues and the “Convenience Rule”



Nonresident Allocation

Understanding State Sourcing - Nonresidents still pay tax on “sourced” income

- If taxpayer is a nonresident, then NYS tax is still due on the NY source amount of the wage income.
 - Sourcing of wages is generally determined based on physical working location.
 - Employer generally must withhold NYS tax based on the amount of time worked in NYS, so long as employee has more than 14 workdays in NY during the year. NY Form IT-2104.1 is used for this purpose.
- But what is a “NY workday”?
 - Days spent in NY by the nonresident employee on company business.
 - Remote work?
 - In general, if the employee works from home for their own convenience, the workdays at home will be treated as days worked at the assigned work location.
 - “Convenience” has been broadly defined in NY cases: Government shutdowns? No, for now – Matter of Zelinsky, DTA Nos. 830517 & 830681, ALJ (Nov. 30, 2023).
 - Required out-of-state work OK.
 - But if the work could be done in NY, likely means trouble.
- Gains from the sale of in-state properties
- Flow-through business income



Nonresident Allocation

Understating State Sourcing: nonresidents do not pay tax on “un-sourced” income

1. Investment Income

- Interest, dividends, capital gains, etc.

2. Carried Interest

- Treated as intangible
- Not taxable to nonresident

3. 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’s apportionment percentage



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 donee (\$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



Thank you.



Contact for More



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