

Changing Your Residency

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Summary of Topics

Section 1: Why Do We Care?

Section 2: Overview of Residency Rules: Domicile

Section 3: Overview of Residency Rules: Statutory Residency

Section 4: Enforcement/Audit Issues: Trips and Traps

Polling Question # 1

- What interested you in today's class
 1. Looking for a solution for a client
 2. Interested in the topic personally
 3. Just CPE
 4. Something else

Section 1: Why Do We Care?



Section 1: Why Do We Care?

- Why do we care?
 - The Importance of Residency Status
 - The “One” Thing
 - 17 states still impose an estate or inheritance tax
 - Estate/Inheritance Taxes— e.g. NY, MA, KY, IL, OR
 - Most States’ Top Rate: approximately 16%
 - Washington State 20%
 - Local taxes – e.g., NYC

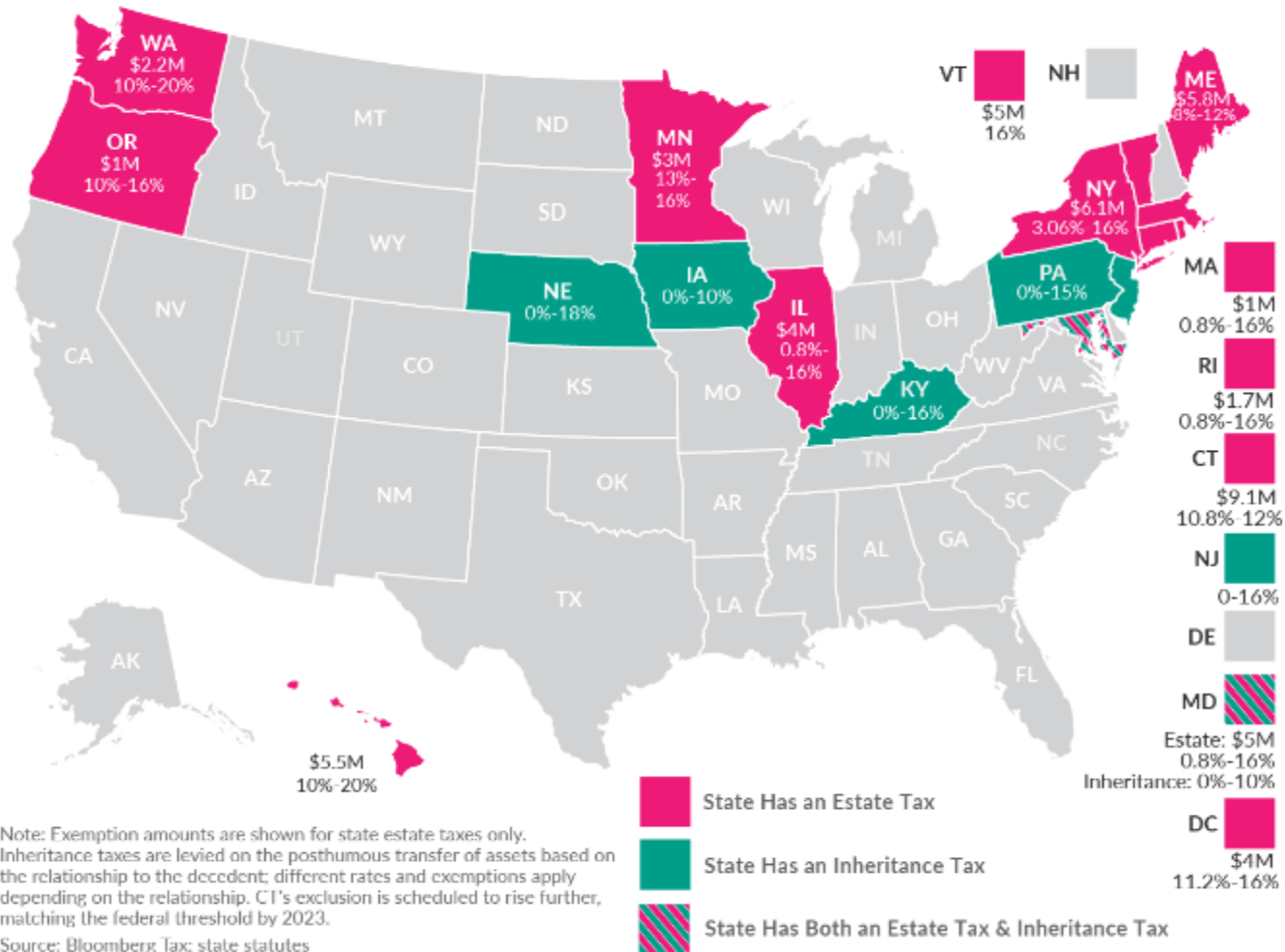
Section 1: Why Do We Care?

State	Top Income Tax Rate	Estate/Inheritance Tax
California	12.3% + 1% on income over \$1 million	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	9%	Yes
Vermont	8.75%	Yes
Wisconsin	7.65%	No
Maine	7.15%	Yes
Connecticut	6.99%	Yes

Section 1: Why Do We Care?

Does Your State Have an Estate or Inheritance Tax?

State Estate & Inheritance Tax Rates & Exemptions in 2022



Section 1: Why Do We Care? Residency – The Two Tests

➤ Two Tests for Residency

1. The Domicile Test
2. The Statutory Residency Test



Domicile: What is it?



Section 2: Domicile – General Principles

- “Leave and Land” – you have to stick the landing
- Burden of Proof: “Clear and Convincing”
- Looking for a “Lifestyle Change”
- Examples:
 1. Retirement
 2. Upsizing and Downsizing
 3. Health Issues
- You do not want to be a typical “snowbird” filing a change of residence for the first time!
- Beware the “CREEPING DOMICILE”!!!!



Polling Question # 2

- Who bears the Burden of Proof in a domicile case in most states?
 1. The state
 2. The taxpayer
 3. The party asserting the change

Section 2: Domicile – the Factors

➤ The 5 Primary Domicile Factors

1. Home
2. Business
3. Time
4. Near and Dear
5. Family



➤ The “Other” Factors

Section 2: Domicile – the Home Factor

➤ The HOME Factor

1. Comparing size, value, nature of use, etc.
2. Keeping the historical home?
3. Watch out for real estate tax programs, such as:
 - i. STAR in NYS
 - ii. An individual receiving a homestead exemption for Illinois property is presumed to be a resident of Illinois.
 - iii. IRC § 121 issues.



Section 2: Domicile – the Business Factor

➤ The BUSINESS Factor

1. What you do, not just where you do it
2. Focus on Active Business Ties
3. Consider the location of business headquarters, your office, assistant, etc.



Section 2: Domicile – the Time Factor

➤ The TIME Factor

1. NOT the 183-day test!
2. How to count and compare
3. Consider Quality, not just Quantity



Section 2: Domicile – the Near and Dear Factor

➤ The NEAR AND DEAR Factor

1. Where's your teddy bear?
2. Use of pictures
3. Moving bills/insurance
4. Safe deposit boxes
5. Moving vans v. storage
6. Pets!



Section 2: Domicile – the Family Factor

➤ The FAMILY Factor

1. The presumption
2. Separate spousal domicile
3. Minor children can be critical



Section 2: Domicile – the “Other” Factors

➤ The OTHER Factors: the three-legged table

1. Mailing address for bills, financial records, etc.
2. FL Homestead/domicile declaration
3. Safe deposit box
4. Vehicle registrations
5. Registering to vote
6. Driver’s license
7. Telephone service
8. Citations in legal documents (wills, contracts, etc.)

➤ Best Offense is a Good Defense

➤ Planning Considerations

Section 2: Domicile Conclusion

- 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

Polling Question # 3

■ What is the most important domicile factor?

1. Home
2. Business
3. Time
4. Family
5. It depends.....

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 - Overview

➤ The Statutory Residency Test: 2 Components

1. Time Spent in State

AND

2. A Permanent Place of Abode (“PPA”)



+



Some states just require a specific amount of time to create a presumption of residency

Section 3: Statutory Residency/Presumptions

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 year
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/Presumptions

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
Tennessee	Maintaining a place of residence for more than six months will cause a person to be liable for tax
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 – Day Count

➤ Factor #1: Day Count

1. A “day” in a state: a minute is a day
2. Some states offer some exceptions: e.g., travel & medical
3. Burden of Proof: the importance of record keeping
4. Use of testimony/statements – do you really know where you were on a specific day 3 years ago?

Section 3: Statutory Residency - *Day Count Records*

Credit card statements	ATM usage	Personal diary	Outlook calendar
Flight records (frequent flyer reports)	EZ Pass	Limo logs	Landline phone
Cell phone logs!!	Special Software (MONAEO)	Travel itineraries	Swipe Card records

Section 3: Statutory Residency - “There’s an App for That...”



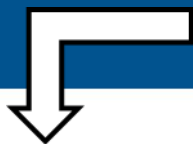
Polling Question # 4

- How long must you be physically present in a state on a given day before that day counts towards your statutory total?
 1. More than 12 hours
 2. More than 6 hours
 3. More than 4 hours
 4. A minute is a day

Section 3: Statutory Residency – Permanent Place of Abode (PPA)

- Factor #2: A “Permanent Place of Abode” (PPA) - New York a Case Study
 - Type of dwelling
 - The “10-month” rule
 - Habitability issues
- The *Knight Case*
 - The Girlfriend Apartment and the Company Apartment
- The *Barker Case*
 - Really? A Vacation Home?
- The *Gaied Case*
 - Punishing the Dutiful Son.

PPA



1. Physical Attributes

- Suitable for year -round living
- Not mere camp or cottage



2. Relationship

- Ownership/property rights
- Maintenance
 - Monetary contributions
 - Contributions in kind to the household (furniture, food, etc.)
 - Payment of bills
- Relationship to co-inhabitants
- Registration for governmental/business services (mail, voting, car, phone)
- Personal items
- Access
 - Possession of a key
 - Use (not exclusively overnight)
 - Accommodations

Section 4: Enforcement and Audits



Great Resource for NY Audits:

<https://www.hodgsonruss.com/assets/htmldocuments/Residency%205.22.2020.pdf>

Section 4: Audits and COVID

- Now that we know the residency rules, we have to ask: how has the pandemic impacted them?
- We're now seeing audits of the 2020-2021 tax years. The pandemic caused significant disruption in people's day-to-day lives.
- How does this impact the two main residency tests?
- And what do the audits look like?



Section 4: Audits and COVID

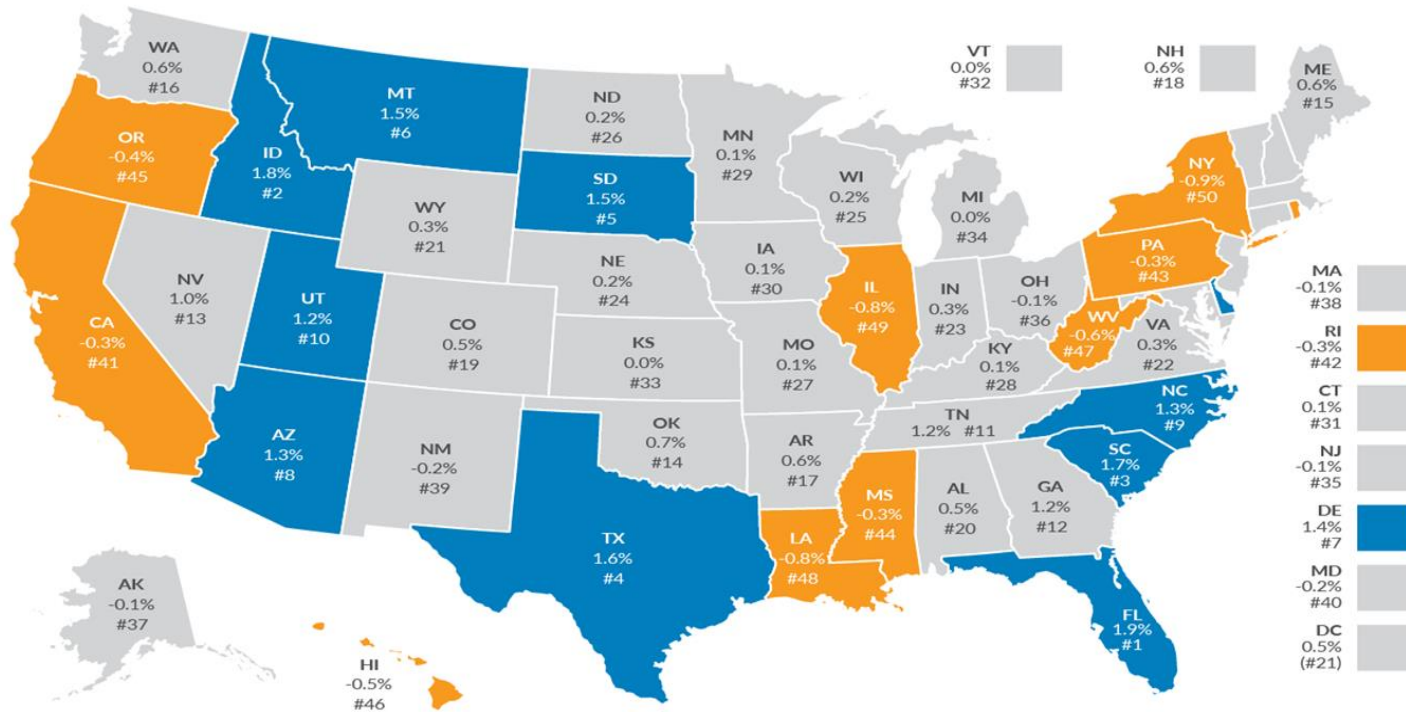
➤ Residency in a Pandemic – Three Main Issues:

1. You may have left your home during the height of the pandemic in 2020, but was that enough...?
 - The “Leave and Land” Rule is Key: must “stick the landing”
 - 20/20 hindsight on 2020 Moves – are you already back “home”
 - Residency is not just “6 months-and-a-day.”
2. Maybe you did, in fact, “stick the landing” and changed your permanent home....but when?
3. Be mindful of having spent more time than usual in another state! Dual-residency problem?
 - No easing of day-counting rules during the pandemic
 - Watch out for problems in vacation home states

Section 4: Can States Go After Everyone?

State Population Change in 2022

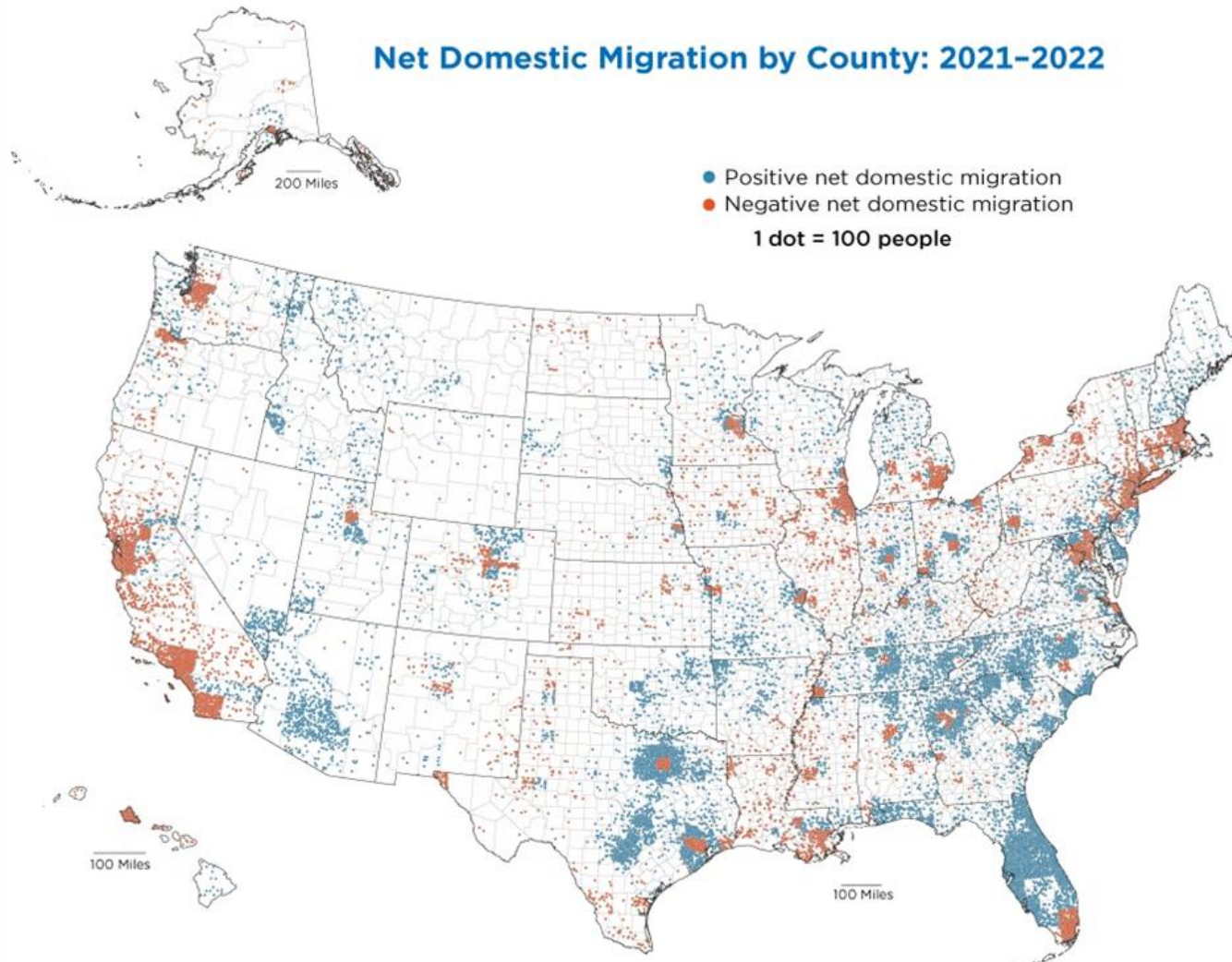
State Migration Patterns, from Most Inbound to Most Outbound, 2022



Note: D.C.'s rank does not affect states' ranks, but the figure in parentheses indicates where it would have ranked if included.
Source: U.S. Census Bureau.

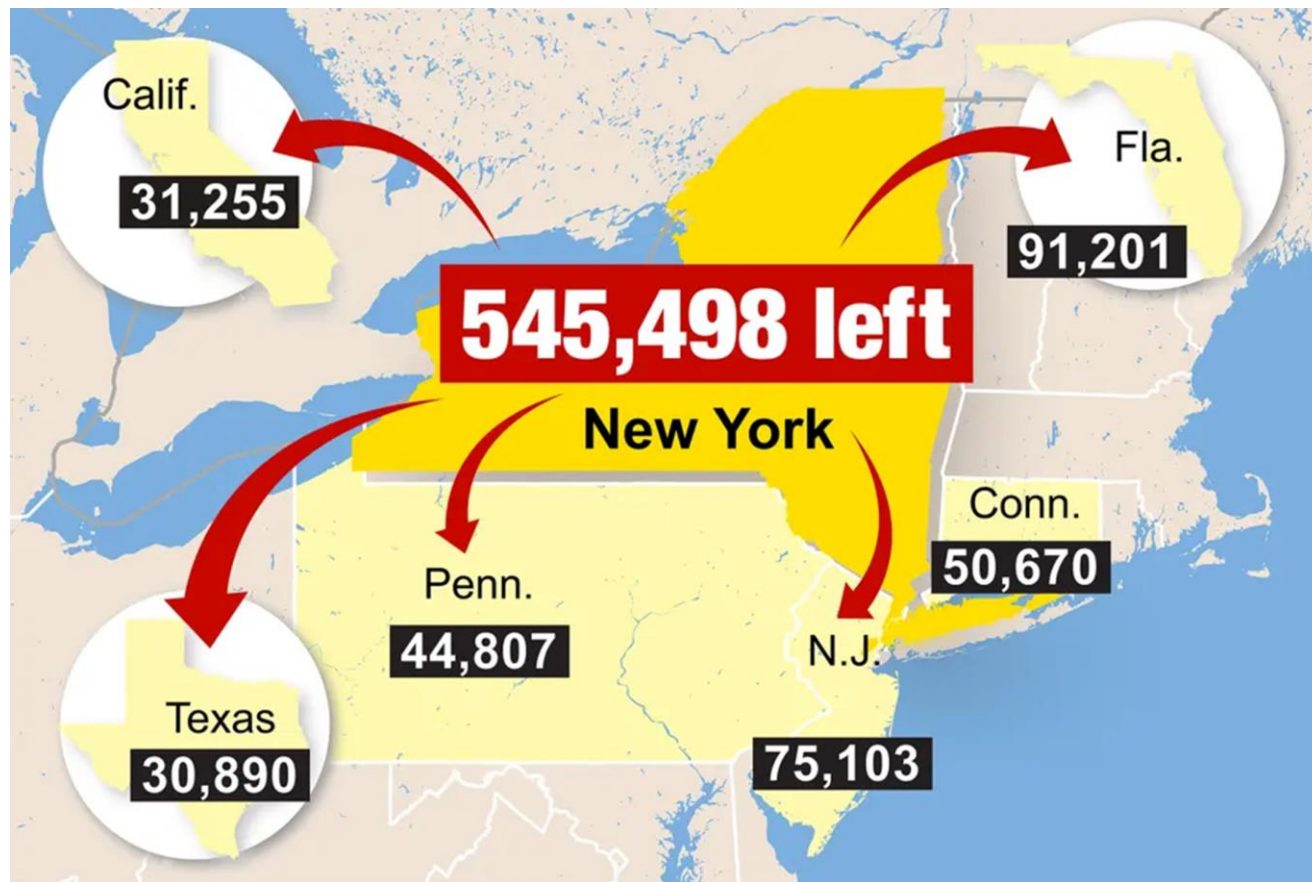
- Top 10 States for Inbound Migration
- Top 10 States for Outbound Migration

Section 4: Can States Go After Everyone?



Source: U.S. Census Bureau, Vintage 2022 Population Estimates.

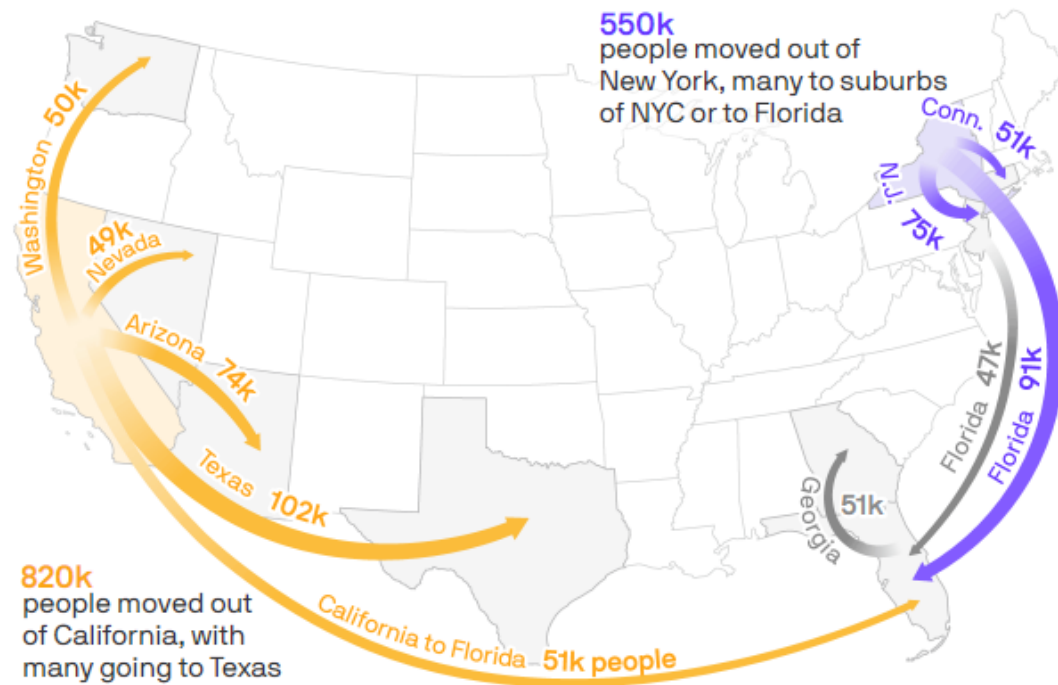
Americans Moved to Low-Tax States in 2022



NY Post: 2023 Tristate Population Analysis

Americans Moved to Low-Tax States in 2022

Top ten moves between states, 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.

Polling Question # 5

- How many residency audits does NYS conduct on average per year?
 1. 500
 2. 1000
 3. 5000
 4. 7000

Section 5: Residency Audits

How they find you!

Not all states are equally aggressive, but...

Year of residency change — almost automatic

Substantial difference between federal and state income

Answer to “living quarters” question

Number of days in state on return

Past audit history

Cross-check with real property records

Real estate or parking exemptions

State 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



Section 5: Enforcement Tips and Traps

1. Nobody moves on January 1.
2. Correct W-2s, 1099s and K-1s with old address.
3. Never start an audit with an amended return.
4. Control the flow of information.

Section 5: Enforcement - Frequently Asked Audit Questions

➤ Frequently Asked Audit Questions

1. Should I sign a waiver of statute?
2. How will this affect my federal return?
3. Will I have to pay interest and penalties?
4. Can I refuse to provide certain records?
5. Can they collect against me if I'm out of here?
6. What about retirement income?



Section 5: Enforcement - Retirement Income

- Retirement Income can receive special treatment pursuant to federal law.
- 4 U.S.C. § 114 states that “[n]o State may impose an income tax on any retirement income of an individual who is not a resident or domiciliary of such State (as determined under the laws of such State).”
- Key question: what qualifies as “retirement income” under this federal law?
 - Many qualified plans are included.
 - But then there is also a “catchall” provision that can include many nonqualified deferred compensation plans, if the income is:
 - part of a series of substantially equal periodic payments (not less frequently than annually) made for the life or life expectancy of the recipient (or the joint lives or joint life expectancies of the recipient and the designated beneficiary of the recipient), or a period of not less than 10 years; or
 - An “excess benefits” plan, even if paid out as a lump sum.

Section 5: Enforcement – Voluntary Disclosure

- Most states offer some type of voluntary disclosure program
 1. Limited look-back period
 2. No penalties
 3. Only available if you're not under audit/investigation

Polling Question #6

- Have you ever had to endure a residency audit?
 1. Yes, and it was painless
 2. Yes, and it was hell on earth
 3. No, and I don't want to, which is why I'm here

Thank You for Attending Today's Presentation

If you have further questions or if you need additional assistance,
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