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## Sky-High 14.4% California Taxes Often Trigger Out-Of-State Moves



California has wildfires, high crime rates and plenty of government regulations. All prompt complaints from residents, but in some circles, complaints about taxes loom even larger. The top tax rate in the Golden State is an eye-watering 14.4%. For a decade, California's top tax rate hovered at 13.3%. Perhaps even more painful for many, that top rate applies equally to ordinary income and capital gain, with no lower tax rate for capital gain. With the IRS, the capital gain rate is 20% for higher income taxpayers. Add the 3.8% net investment tax under the Affordable Care Act, and you have 23.8%.

### No Capital Gain Rate

Moves can happen for many reasons, but say that you are about to sell your stock, large amounts of crypto, or settle a big lawsuit? It might be tempting to move first. After all, California does not tax long term capital gain at a lower rate. By paying 23.8% plus 13.3%, Californians are paying more on capital gain than virtually anyone else in the *world*. In the past, several proposals have been made in Sacramento to increase the top [13.3% rate as high as 16.8%](#).

Currently, the top rate is 14.4% as a result of California Senate Bill 951, which eliminated the \$145,600 wage limit on California's 1.1% employee payroll tax for State Disability Insurance (SDI). It hits high earners, with the top rate being 14.4% for those earning over \$1 million.

### Moving Sounds Simple

Will more people move away? Moves before big stock sales, sales of a company, a lawsuit settlement will likely remain common. Moving sounds easy, but if you aren't careful how and when you do it, you could end up with an audit from California's tough [Franchise Tax Board \(FTB\)](#). In general, the burden is on *you* to show you are *not* a Californian. Some people who exit

have unrealistic expectations and a hard time distancing themselves from California.

In an audit, [California's special tax procedures can be tricky](#). California, like the IRS, gets unlimited time to audit if you never file a tax return, and that rule catches many people who move away. It can make filing a non-resident tax return—just reporting your California-source income as a non-resident—a smart move.

### Residency Tax Audits

Your domicile is your true, fixed permanent home, the place where you intend to return even when you're gone. Many innocent facts might not look so innocent to California's tax agency. For example, do you maintain a California base in a state of constant readiness for your return?

California looks to objective factors to determine residency, including your time in California versus time outside. Consider the size and value of your residences, and the location of the property on which you claimed the homeowner's property tax exemption.

Where your driver's license was issued, cars are registered, professional licenses, registration to vote all counts. So does the location of your banks, doctors, dentists, accountants, church, temple or mosque, and more. What clubs are you a member of, and where? Where do you work, and have business and social contacts? Where do you have all your mail sent?

As you might expect, physical presence is often the biggest issue. If you spend more than 9 months in California, you are *presumed* to be a resident. If you spend 6 months or less in California, you *may* qualify as a seasonal visitor, but

only if you don't work while you are in the state and meet other tests. Yet if your job requires you to be outside the state, it usually takes 18 months to be presumed no *longer* a resident.

### It's All About Timing

It should be no surprise that former Californians often become residents of no-tax states like Texas, Nevada, Florida, etc. Some Californians flee the state before selling real estate or a business. California real estate is taxed here even if you are a non-resident. But settling a lawsuit, or selling stock and other assets after a move can make sense. Some carefully orchestrated [moves away from California](#) can work out just fine, but timing and other details are tricky, so be careful. Check out [FTB Publication 1031](#).