



## DANIEL P. KELLY

Partner

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Dan is a member of the firm's Tax Practice. Licensed to practice in New York, California and Florida, Dan focuses on a variety of state and local tax matters in jurisdictions across the United States. Dan has assisted clients with over 1,000 tax and other legal matters, regularly advising individuals and businesses on different aspects of personal income tax, sales and use tax, corporate franchise tax, and several other lesser-known taxes. While focused on tax matters, Dan often counsels clients on a wide variety of legal matters, teaming up with his colleagues in different disciplines to deliver effective and efficient solutions.

Dan's clients frequently rely on his guidance for tax planning around significant liquidity events; changing or establishing state and local tax residency; income, franchise and sales tax substantial nexus issues; complex business income and earnings allocation issues; and related matters. He has extensive experience representing taxpayers in audits conducted by several tax jurisdictions, and also represents taxpayers at various levels of tax controversy dispute resolution and appeal.

Dan enjoys the opportunity to share his views on current state and local tax topics and legislative developments through speeches and in articles published in a variety of state and local tax publications.

### Honors

- Listed, *Upstate New York Super Lawyers* Rising Stars (Tax) 2022 - 2023
- Former articles editor, *Buffalo Law Review*

### Experience

During the spring of 2014, Hodgson Russ LLP ("Hodgson") received a letter from the Minnesota Department of Revenue ("Minnesota Revenue") that attempted to establish a new low in the states' "race to the bottom" to establish the most minimal

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605 Third Avenue  
Suite 2300  
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440 Royal Palm Way  
Suite 202  
Palm Beach, FL 33480  
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### Practices & Industries

Abandoned Property Audits  
Sales & Use Tax  
State & Local Tax  
Tax Controversy  
Tax Residency  
Voluntary Disclosure - Multistate Programs

### Admissions

New York  
California  
Florida

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constitutional standard required to satisfy substantial nexus with an out-of-state taxpayer. Minnesota Revenue asserted that under suspect provisions of the Minnesota tax code, Hodgson had nexus with the state of Minnesota based upon a single, un-audited fact: between the 2004 and 2012 tax years, Hodgson received federal Forms 1099 from payors using a Minnesota mailing address. On account of this single fact – with no revenue floor or other safeguards – Minnesota Revenue asserted that Hodgson had nexus with Minnesota, and was therefore required to file Minnesota franchise tax returns and apportion its business income to the state.

Like other entities who received similar letters from Minnesota Revenue, Hodgson was forced to make a difficult decision. Should we take the admittedly lousy deal Minnesota Revenue was offering (four-year lookback, no penalties) and avoid costly litigation, or should we fight, because we know we're right and we should win? We are tired of seeing clients and others bend to the enormous pressure of state taxing authorities, especially when a business decision cost-benefit analysis is the only basis for settlement. With this in mind, we sued Minnesota Revenue in New York State Supreme Court, seeking different types of relief.

Hodgson and Minnesota Revenue eventually settled, and like many litigated cases neither side admitted the other was right in the closing paperwork. But given Minnesota Revenue's agreement that Hodgson need not file for any one of the tax years in issue, and further that it would not pursue any avenue against Hodgson for those tax years, educated people cannot really disagree about who the victor was. Moreover, Minnesota Revenue stated on the record in New York Supreme Court that it would change its policies in regard to establishing nexus with foreign entities, hopefully saving others from the same fate as Hodgson. We're not sure this policy change has happened yet, but to the extent you or your business receives an inquiry or demand from Minnesota or any other jurisdiction with a summary conclusion that nexus exists, you should consider challenging it before rolling over. Sometimes it makes financial sense, and sometimes it's just the right thing to do.

While additional filings and briefs are available as part of the public record, a sample of relevant filings, transcripts, and briefs from this matter, along with the final settlement agreement, are included below.

- Pleadings Index
- Hodgson Russ's Verified Petition and Complaint with Exhibits
- Hodgson Russ's Memorandum in Support of Motion for Partial Summary Judgment and in Opposition to Minnesota Revenue's Motion to Dismiss
- Hodgson v. Minnesota Hearing Transcript

## Education

Syracuse University, B.A., magna cum laude

University at Buffalo School of Law, J.D., magna cum laude

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- *Hodgson v. Minnesota Settlement Transcript*
- *Hodgson v. Minnesota Settlement Agreement and Discharge*

Hodgson Russ attorneys assisted a high-net-worth individual with his residency change from New York to Florida prior to a multi-hundred-million-dollar sale of foreign investment. Planning for the residency change involved a detailed review of residency requirements as well as the application of New York's accrual provisions for changes of residency.

## **In the News**

Maybe Jordan Poyer Has a Point: If You Think Your Taxes Are Complicated, Try Being a Pro Athlete  
*Buffalo News*, March 13, 2023

Successfully Moving to a Zero or Low Tax State  
*Wealth Strategies Journal*, October 8, 2019

New York's Corporate Nexus & Apportionment Rules—Review & Update (Part 2 of 2)  
*NYSSCPA'S Taxstringer*, April 1, 2018

New York's Corporate Nexus & Apportionment Rules: Overview & Update  
*NYSSCPA'S Taxstringer*, March 7, 2018

## **Press Releases**

55 Hodgson Russ LLP Attorneys Named to 2023 *Upstate New York Super Lawyers List*  
August 23, 2023

Hodgson Russ LLP Honored with 2023 New York State Bar Association President's Pro Bono Service Award  
April 17, 2023

Fifty-Nine Hodgson Russ Attorneys Ranked in 2022 Edition of *Upstate New York Super Lawyers*  
*Hodgson Russ Press Release*, August 23, 2022

Hodgson Russ Announces Three Newly Elected Partners, Three Attorneys Promoted to Senior Associate  
*Hodgson Russ Press Release*, January 21, 2021

Hodgson Russ Announces Five Newly Elected Partners, Nine Attorneys Promoted to Senior Associate  
*Press Release*, January 2, 2018

## **Publications**

2023 New York Tax Update – Year in Review  
*TaxStringer*, February 1, 2024

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New Jersey Enacts Major Changes to Corporate and Gross Income Tax  
*Hodgson Russ LLP State & Local Tax Alert*, July 6, 2023

New York State Budget Notes – May 5, 2023  
*Hodgson Russ State and Local Tax Alert*, May 5, 2023

New Jersey Tax Laws: Out with the Old and In with the New Tax Laws in 2023  
*Hodgson Russ SALT Alert*, January 3, 2023

2022 New York Tax Update – Year in Review  
*TaxStringer*, January 3, 2023

Tax Updates from New York City – September 2022  
*Hodgson Russ TriState Tax Alert*, September 12, 2022

Tax Provisions of Interest in New York's 2022-23 Budget  
*Hodgson Russ State & Local Tax Alert*, April 12, 2022

Tax Updates from New Jersey - March 2022  
*Hodgson Russ Tristate Tax Alert*, March 28, 2022

New Jersey Enacts Amendments to its SALT Cap Workaround  
*Hodgson Russ New Jersey Tax Alert*, January 21, 2022

Tax Updates from Connecticut, New Jersey and New York City - January 2022  
*Hodgson Russ Tristate Tax Alert*, January 18, 2022

## **Presentations & Events**

2024 Florida Tax Residency Series  
Hodgson Russ LLP, Palm Beach, Boca Raton, Sarasota, Naples, Florida, January 25, 2024 - March 7, 2024

A Day With Hodgson Russ: Selected NYS and City Tax Topics Workshop Webcast  
NYSSCPA, December 11, 2023

A Day with Hodgson Russ: Selected NY State and City Tax Topics Workshop Webcast  
NYSSCPA, December 11, 2023

69th Annual Tax Institute  
Bar Association of Erie County, Buffalo Marriott Niagara, 1340 Millersport Hwy, Amherst, NY 14221, December 1, 2023

69th Annual Tax Institute  
Erie County Bar Association, Amherst, NY, December 1, 2023

Syracuse Chapter Taxation Conference  
NYSSCPA, Embassy Suites - Syracuse Destiny, November 1, 2023

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2023 Summer Tax Series

Hodgson Russ LLP, 605 Third Avenue, New York, New York, June 21 - August 2, 2023

62nd Annual TEI Upstate New York Tax Conference

Tax Executives Institute, DoubleTree by Hilton, 1111 Jefferson Rd, Rochester, NY 14623, May 3, 2023

2023 Florida Residency Series

Hodgson Russ LLP, Palm Beach, Boca Raton, Miami, Sarasota, Naples, Florida, January 26, 2023 - February 24, 2023

A Day with Hodgson Russ: Selected NY State and City Tax Topics Workshop Webcast

NYSSCPA, December 8, 2022

## **Blog Posts**

- Economic Nexus Extended Too Far – Hodgson Russ LLP v. Minnesota Department of Revenue

*Noonan's Notes Blog*, April 25, 2016

- New York Is Almost Open for Flying: A Sales and Use Tax Update

*Noonan's Notes Blog*, July 24, 2015

- NY's Driver's License Suspension Program: Thousands of Miles of Open NY Road, as Seen From the Passenger Seat

*Noonan's Notes Blog*, May 29, 2015

