taxnotes® state

Volume 121, Number 7 ■ August 17, 2026

Setting the Standard: A Major Development In Connecticut Domicile Cases

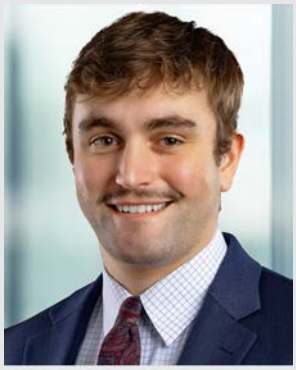
by Timothy P. Noonan and Noah S. Chase

Reprinted from *Tax Notes State*, August 17, 2026, p. 531

Setting the Standard: A Major Development In Connecticut Domicile Cases

by Timothy P. Noonan and Noah S. Chase

Timothy P. Noonan



Noah S. Chase

Timothy P. Noonan is a partner in the Buffalo and New York City offices of Hodgson Russ LLP, and Noah S. Chase is an associate in the firm's Albany office.

In this installment of Noonan's Notes, Noonan and Chase examine a recent Connecticut Supreme Court decision holding that the wrong standard of proof is being applied in appeals for determining domicile for estate tax purposes, and they explain how the decision could affect Connecticut audits and appeals.

Over the years, we've spent a lot of time exploring the nuances of state tax residency and domicile issues in New York and other states. This is an area of state and local tax law that seems to be taking on an even greater focus, especially as taxpayers have become more mobile and states have become more aggressive, auditing more taxpayers.

A dull but important topic in this area is the standard of proof, because it dictates precisely how hard it is for taxpayers to win these cases. It's a given in most states that to prove a change of residency from one state to another, a taxpayer not only bears the burden of proof to prove a change of domicile, but that burden is, typically, the high "clear and convincing" standard. In other words, a taxpayer won't succeed without presenting clear and convincing evidence of a move — evidence that demonstrates a high probability of truth. This has led to myriad cases in which taxpayers, with arguably good facts in a residency case, still fell short of meeting their burden of proof.[1]

In a recent development that has gone largely unnoticed, the Connecticut Supreme Court took aim at this clear and convincing standard. In *Daniels v. Commissioner of Revenue Services*,[2] the court held, *sua sponte*, that Connecticut trial courts have been applying the wrong standard of proof to appeals from the commissioner's determination of domicile for estate tax assessments. The decision is likely to cause shock waves in the residency arena, or at least in Connecticut residency cases. In this article, we examine what happened and how it could affect Connecticut audits and appeals.

Daniels v. Commissioner of Revenue Services

In *Daniels*, the executor of an estate appealed the trial court's judgment upholding a Connecticut estate tax assessment that was based on the determination of the Connecticut Department of Revenue Services that the decedent

[1] *See, e.g.*, *Matter of Zapka*, DTA No. 804111 (N.Y. Tax App. Trib. June 22, 1989); *Amen v. Law*, 39 Conn. 243, 2005 WL 1089985 (Conn. Super. Ct. 2005); *Appeal of Bracamonte*, 2021-OTA-156P (Cal. OTA Mar. 22, 2021). This high standard has led one *Tax Notes State* commentator to argue that it was impossible to win a residency case. *See* William Hays Weissmann, "The Impossibility of Proving a Change in Domicile Out of New York," *Tax Notes State*, Feb. 2, 2026, p. 361.

[2] *Daniels v. Commissioner of Revenue Services*, 357 A.3d 672 (Conn. 2026). *See also* Cameron Browne, "Connecticut High Court Remands $13 Million Estate Tax Challenge," *Tax Notes State*, June 22, 2026, p. 918.

For more *Tax Notes State* content, visit www.taxnotes.com.

© 2026 Tax Analysts. All rights reserved. Tax Analysts does not claim copyright in any public domain or third party content.

had been a Connecticut domiciliary at the time of his death.[3] The facts sound like a typical residency dispute: The decedent had maintained three homes, one each in Arizona, Connecticut, and Florida. For nearly the last decade of his life, he split his time among those three places, although not evenly. Each year he spent about five and a half months in Connecticut, three and a half months in Florida, and the remaining three months in Arizona.

Nine years before his death, the decedent filed a declaration of domicile in Florida, switched his driver's license and voting registration, and opened a bank account there. He maintained friendships and social connections in both Florida and Connecticut. The trial court conducted a *de novo* review and determined that the executor failed to establish by clear and convincing evidence that the decedent was not a Connecticut domiciliary. The determination was based on, first, a finding that the decedent's personal, social, and property connections between Florida and Connecticut were generally equal. The trial court gave little weight to the "one-time administrative tasks" such as changing a driver's license.[4] The second and main reason for this holding was, as it usually is, the fact that decedent chose to spend more time in Connecticut than in any other state, paired with his substantial social and property ties there.

The executor appealed, and the case ended up at the Connecticut Supreme Court, where something unusual happened. At oral argument, a question arose about the standard of proof. Both parties had assumed that in Connecticut domicile cases, the clear and convincing standard applied. But an inquisitive court wasn't so sure. After oral arguments, the court ordered each party to file supplemental briefs addressing the standard of proof that an executor must satisfy to prevail under these circumstances.

That seemed like a bad sign for the Department of Revenue Services, and indeed it was. The supreme court held that the burden of proof that should have been applied is the "preponderance of the evidence" standard.[5] In other words, the executor, bearing the burden of proof, had to show by a preponderance of the evidence that the decedent had not been domiciled in Connecticut at the time of his death. Explaining why it had, *sua sponte*, decided to look at the evidentiary standard, the court wrote that the case presented an "exceptional circumstance," as follows:

> Specifically, the evidentiary standard that taxpayers must meet in disputes with the state is an issue of sufficient gravity to warrant sua sponte review in the interest of fairness, particularly in a circumstance such as this one, when [the court has] never previously had occasion to opine on the proper standard of proof required in establishing a domicile for estate tax purposes.[6]

In its explanation, the court traced the genesis of the clear and convincing standard to sales tax, starting with *Leonard v. Commissioner of Revenue Services*, a 2023 decision in which the Connecticut Supreme Court first held in an appeal from a sales and use tax deficiency assessment that the taxpayer "must present clear and convincing evidence that the assessment is incorrect or that the method of audit or amount of tax assessed was erroneous or unreasonable."[7] But then the *Daniels* court noted that neither the state supreme nor the appellate court "has ever applied the clear and convincing standard of proof . . . articulated in *Leonard* beyond the sales and use tax context."[8] Particularly, it said, "we have never been presented with a case in which we would have to extend the clear and convincing standard to a de novo estate tax appeal, let alone a case involving the commissioner's domicile determination."[9]

[3] *See Daniels*, 357 A.3d at 674.

[4] *Id.* at 676-677.

[5] *Id.* at 674.

[6] *Id.* at 679.

[7] *Id.* at 680 (quoting *Leonard v. Commissioner of Revenue Services*, 822 A.2d 1184 (Conn. 2003)).

[8] *Id.*

[9] *Id.*

For more *Tax Notes State* content, visit www.taxnotes.com.

© 2026 Tax Analysts. All rights reserved. Tax Analysts does not claim copyright in any public domain or third party content.

The court also surveyed the laws of other jurisdictions and, finding no demonstrated consensus, concluded that it must look to the principles drawn from Connecticut's own law to determine the standard of proof that the legislature intended.[10] It wrote that the relevant statute, Conn. Gen. Stat. section 12-391(h)(1), is silent on the standard of such a burden, and that typically, as in most states, when a civil statute is silent on the burden of proof, the preponderance of evidence standard will govern determinations of fact.[11]

Generally, the court posited, a higher burden of proof — clear and convincing evidence — is reserved for civil issues involving quasi-criminal wrongdoing or when particularly important individual rights are involved. In its view, the determination of a decedent's domicile "does not present an 'extraordinary [circumstance]' that demands a higher degree of proof."[12] Although the court agreed with the trial court's sentiment in *Amen v. Law* that the change of domicile is "of no small moment," it said that "it is illogical in this context to use that rationale to impose a more demanding burden of proof on the decedent's estate, which stands to suffer the consequences of an erroneous domicile determination."[13] The court said that is especially true because the statute "places the commissioner in a favorable position by requiring the executor to overcome the presumption of Connecticut residency in the domicile inquiry."[14]

To be sure, this doesn't end the *Daniels* case, which was remanded for a new trial, limited to the issue of the decedent's domicile, and the Department of Revenue Services will now have to make its argument under the lower standard.[15] And the trial court may well find that the decedent still loses, even under that lower standard. But even if it does, we can expect reverberations from this decision to be felt in Connecticut residency cases for years to come.

Personal Income Tax Cases?

We can't blame the Department of Revenue Services — or the executor in *Daniels*, for that matter — for thinking that the standard of proof was a nonissue. In the few other domicile cases adjudicated in Connecticut, courts applied the clear and convincing standard. As the *Daniels* decision pointed out, the superior court in *Amen* — in rejecting a taxpayer's claim that they moved out of the country and abandoned their Connecticut domicile — held that a change of domicile was "of no small moment" and that "when important individual rights are involved, as here, a higher degree of proof represented by the clear and convincing standard should be applied."[16] To support this, the superior court in *Amen* cited the *Handbook of Connecticut Evidence*[17] and *Babbin v. State Tax Commission*,[18] a New York Court of Appeals-affirmed decision applying the same standard for an international move. Two years after *Amen*, in *Rizzuto v. Law*, the same question was raised, and the superior court, citing the *Leonard* sales tax case, again backed the department's use of the clear and convincing standard in a domicile case.[19]

But in light of *Daniels*, these holdings no longer stand up. And why would they? The *Daniels* court was firm that the clear and convincing standard used in other cases was specific only to sales tax cases, and it criticized superior court decisions like *Amen* and *Rizzuto* that extended that standard to other tax areas. The presumption of the superior courts in those decisions and the Department of Revenue Services in *Daniels*, that a standard of proof applicable to one tax area would apply equally in others, was incorrect. The *Daniels* court, tipping its hat to Ralph Waldo Emerson, wrote: "The hobgoblin of consistency — or consistency only for the sake of consistency — across statutory frameworks that present different factual inquiries, presumptions, and burden shifting

[10] *Id.* at 681-683.

[11] *Id.* at 683 (citing *State v. Davis*, 641 A.2d 370, 375 (Conn. 1994)).

[12] *Id.* at 684 (quoting *Dacey v. Connecticut Bar Association*, 368 A.2d 125, 133 (Conn. 1976)) (alteration in original).

[13] *Id.* (quoting *Amen*, 2005 WL 1089985, at *3).

[14] *Id.*

[15] *See id.* at 689.

[16] *Amen*, 2005 WL 1089985, at *3.

[17] Colin C. Tait and Eliot D. Prescott, *Tait's Handbook of Connecticut Evidence* 142 (section 3.5.2) (3d ed. 2001).

[18] *Babbin v. State Tax Commission*, 67 A.D.2d 762 (N.Y. App. Div. 3d Dep't 1979), *aff'd*, 49 N.Y.2d 846 (1980).

[19] *See Rizzuto v. Law*, 42 Conn. 895, 2007 WL 831166, at *1-*2 (Conn. Super. Ct. 2007).

For more *Tax Notes State* content, visit www.taxnotes.com.

© 2026 Tax Analysts. All rights reserved. Tax Analysts does not claim copyright in any public domain or third party content.

schemes, is neither a virtue nor necessarily legislatively intended."[20]

One other important aspect of the decision came up regarding the commissioner's argument that a determination of domicile "is simply a finding of fact" and part of the commissioner's function in assessing taxes, and therefore "a higher standard of proof appropriately gives weight to the presumption that the commissioner has acted properly in making assessments."[21] The supreme court responded that although sales and use tax appeals are often objective analysis, "domicile determinations instead present a question of fact determined by ascertaining an individual's intent from the totality of the individual's acts, declarations and circumstances."[22]

Thus, it said, "a domicile inquiry does not challenge an administrative finding of objective facts that lend themselves to a greater degree of certainty" and, as such, does not "justify[] the protection on appeal afforded by a higher standard of proof."[23] Pointedly, it added that it —

> do[es] not believe that the department possesses any expertise in determining th[e] intent in the same way it has expertise in complex accounting methods, financial systems, or asset valuations that may justify elevating the standard of proof a taxpayer is required to sustain in challenging other types of assessments.[24]

All these principles are directly, if not purposefully, applicable to personal income tax determinations of domicile.

Thus, the idea that the court would disallow the use of a clear and convincing standard in domicile cases for estate tax purposes but allow it to be used in domicile cases for income tax purposes is silly. There should be no debate. In Connecticut domicile cases, taxpayers will have to prove their move only by a preponderance of evidence. The clear and convincing standard is effectively dead.

Of course, what this means in practice is another matter altogether. How much easier will it be for a taxpayer to prove their domicile case now, under the lower standard of proof? Only future litigation will tell. ■

[20] *Daniels*, 357 A.3d at 685.
[21] *Id.* at 684.
[22] *Id.*
[23] *Id.*
[24] *Id.* at 684-685.

© 2026 Tax Analysts. All rights reserved. Tax Analysts does not claim copyright in any public domain or third party content.

For more *Tax Notes State* content, visit www.taxnotes.com.