

# The Baratelli Brief

Research and reference for finance, accounting, family office, real estate, and wealth professionals.

## When the IRS Doesn't Believe Your Move: State Estate Tax Domicile

A New York couple sells the Manhattan apartment, signs a closing on a house in Jupiter, registers the cars in Florida, and tells the accountant the move is done. Two years later one of them dies. The New York Department of Taxation and Finance audits the estate, finds that domicile never actually changed, and assesses estate tax on the full estate at New York rates. The mistake was procedural, not strategic — and it is one of the most expensive procedural mistakes a Northeast retiree can make.

Florida, Texas, Tennessee, Wyoming, and Nevada have no state estate tax. Eighteen states (plus DC) do. The arithmetic favoring a domicile move is rarely subtle: a \$20M estate moving from a \$7.16M-exemption state to a no-tax state can save \$5M+ in state estate tax. But the IRS-style "facts and circumstances" test that states apply to domicile claims is rigorous, and the burden of proof is on the estate.

### The Four Trap States

**New York.** Three-year clawback under N.Y. Tax Law §954(a)(3): gifts made within three years of death are pulled back into the New York gross estate even if the decedent had moved out. The 5% "cliff" on estates exceeding 105% of the basic exclusion (\$7.52M effective in 2026) means an estate \$1 over the cliff is taxed on the entire estate — not just the excess.

**New Jersey.** Estate tax repealed in 2018, but inheritance tax remains. Class C beneficiaries (siblings, nieces, nephews) face 11–16% on transfers above \$25,000. Class D (everyone else) faces 15–16% from dollar one. A move to Florida ends the estate-tax exposure but the inheritance-tax liability of the New Jersey resident giving the gift remains until domicile actually changes.

**Massachusetts.** The \$2M exemption (raised from \$1M in 2023) is the lowest in the country among states with estate tax. The cliff effect: an estate of \$2,000,001 is taxed on the entire estate, not just the \$1. Practitioners advising MA-resident clients should treat the cliff with the same discipline as the New York 105% cliff.

**Connecticut.** Matched the federal exemption in 2023 (\$13.99M in 2026). For most CT residents within the federal exemption, no state estate tax applies. The trap: gift-tax provisions still operate, and CT remains the only state with a state-level gift tax. Lifetime gifts above the annual exclusion produce CT gift tax even when the federal exemption fully shelters the gift.

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### The Ten-Point Domicile Test

No state has a single bright-line rule for domicile. All apply variations of a "facts and circumstances" test. The ten factors that move the needle:

- **1. Time spent.** Florida 183-day rule is well known. Less appreciated: New York and Connecticut audit days-in-state aggressively. Phone records, credit card geolocation, EZ-Pass logs, and airline records all enter the proceeding.
- **2. Home location and use.** A Florida home that is staffed and lived in nine months of the year is durable. A Florida home that sits empty while the family lives in the original state is not.
- **3. Driver's license and vehicle registration.** Both must move to Florida. Cars left registered in the prior state because "insurance is cheaper" is a frequent fatal flaw.
- **4. Voter registration.** Register in Florida; cancel in the prior state. Voting records are public and surface during audit.
- **5. Bank and brokerage relationships.** Move primary banking to a Florida branch. Out-of-state accounts can persist but the primary checking, primary credit card, and primary safe deposit box should be Florida-based.
- **6. Professional advisors.** New CPA, new attorney, new physician, new dentist — all in Florida. The advisor team in the prior state can continue for transitions but should not be the primary relationships at death.
- **7. Religious and social affiliations.** Active membership in a Florida congregation or club. Continued membership in prior-state organizations weakens the domicile claim.
- **8. Family location.** Difficult variable. Adult children in the prior state are not fatal, but they do strengthen an audit narrative that "the move was on paper only."
- **9. Statement of domicile.** Florida Declaration of Domicile filed with the county clerk. Costs \$10. Surprisingly often skipped.
- **10. Last will and trust documents.** Re-execute the will and revocable trust in Florida, with Florida choice-of-law provisions. A will dated New York and never revised after the move is one of the strongest single pieces of evidence for the auditor.

### The Real Estate Layer

Real estate held in the original state continues to expose the estate to that state's estate tax on the in-state real property — domicile or not. New York taxes New York-situs real property in a non-resident decedent's estate. So does Connecticut. So does Massachusetts. Continued ownership of a New York co-op or Connecticut second home means the move solves only part of the problem.

**The structural answer:** transfer non-Florida real property into an LLC or limited partnership before the move, and let the entity (not the individual) own the real property. State estate tax generally falls on the situs of the asset; the situs of an LLC interest is the decedent's domicile (Florida), not the location of the underlying property. The technique works but requires careful drafting and meaningful operational substance.

**Practitioner takeaway:** a domicile move is a multi-year project executed by a coordinated team — the estate attorney, the CPA, the financial advisor, and increasingly the real-estate advisor. The move that takes a weekend on paper and ten years to defend in an audit is a frequent and expensive failure mode. Build the file before the move, not after.

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## Quick Hits

- **Florida Declaration of Domicile.** Form filed with the county clerk; \$10 fee; recorded in the public record. Single most underutilized procedural step in domicile planning.
  - **NY 3-year clawback exception.** The clawback under §954(a)(3) does not apply to gifts that were includible in the federal gross estate at the time of the gift. Practitioners should map gifts in the three years preceding any planned move against this carve-out.
  - **Connecticut gift tax compliance.** CT Form CT-706/709 must be filed for taxable gifts during CT residency. The form is often overlooked because there is no federal counterpart at the state level.
  - **Massachusetts cliff planning.** For MA residents with estates approaching \$2M, lifetime gifting to fall below the cliff is the single most efficient state-tax move. A \$50K gift can save \$80K+ in MA estate tax if it brings the estate from \$2.05M to \$1.99M.
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## From the Catalog

**Estate Planning Decoded** — Chapter 15 (State Estate Tax Residency Planning) covers the seventeen states and DC with state estate or inheritance tax, the four trap-state mechanics, the ten-point domicile test, and the structural moves that survive audit. Appendix A is a state-by-state reference for inheritance-tax mechanics. Appendix D includes specimen Declaration of Domicile language.

**Family Office Reference Guide** — For HNW families coordinating real-estate-heavy domicile moves, the FO guide covers the operational governance — staff transitions, vendor relationships, household-employment compliance — that surrounds the formal residency change.

Both at [baratelliinstitute.com](https://baratelliinstitute.com).

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## Coming Next Issue (July 10, 2026)

**Topic to be announced.** Practitioner reader feedback shapes the editorial calendar. If there's a topic you want covered — a recent case, a recurring client question, a regulatory development — reply to this email and let us know.

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