

Alert: Massachusetts Millionaire's Tax

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This week, Massachusetts voters approved the so-called “millionaire’s tax”, a constitutional amendment that will impose a Massachusetts surtax of 4% on annual earnings over \$1 million, in addition to the 5% rate already imposed on that income. The change is effective on January 1, 2023. This means that a taxpayer who makes \$2 million in income in 2023 will pay \$140,000 in Massachusetts income tax (5% tax on the first \$1 million (\$50,000) plus 9% tax on the second million (\$90,000)). Prior to this amendment, the same taxpayer would have paid \$100,000 in Massachusetts income taxes. It is important to emphasize that only earnings in excess of \$1 million are subject to the surtax.

Undoubtedly, Massachusetts taxpayers will be looking for planning opportunities to avoid or mitigate the impact of this tax. One often-raised solution, and one that opponents to the surtax highlighted in their campaign, is that Massachusetts taxpayers who consistently have income in excess of \$1 million may decide that now is the time to leave the state, avoiding the higher income taxes and the Massachusetts estate tax (which has one of the lowest exemption amounts in the nation). While this may be a viable option for some taxpayers, it involves careful consideration of state domicile and residency rules, both in Massachusetts and in the state they are considering moving to. A taxpayer who does not tread carefully around these rules may find out, to their disappointment, that they remain a Massachusetts resident for tax purposes and/or that they have effectively established residency in two states at the same time.

Other than leaving the state, taxpayers may want to consider accelerating income into 2022 rather than 2023, if it is likely that a one-time event (such as a sale of a business, securities, or a home) will tip them into the higher bracket when it occurs. This has the disadvantage of requiring that the tax due on the transaction be paid sooner rather than later, but it may make sense in some circumstances. Also, married taxpayers may consider whether filing separately (rather than jointly) in Massachusetts will produce a better tax outcome.

While we await further guidance from the Department of Revenue, we remain available to discuss tax planning strategies to avoid or mitigate the impact of this new tax.

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