

February 9, 2024 | Estate Planning, Tax, & Probate, Insights, Real Estate

Massachusetts Estate Tax Law Changes – Millionaire's Tax Loophole and Capital Gains

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On October 4th, 2023, Governor Maura Healy signed into law Bill H. 4104, "An Act to improve the Commonwealth's competitiveness, affordability, and equity" (the "Act"). In our recent post, <https://www.richmaylaw.com/massachusetts-estate-tax-law-changes-what-you-need-to-know/>, we addressed the sweeping and comprehensive nature of the Act, but focused specifically on the increase in the Massachusetts estate tax exemption from \$1 million to \$2 million, and the effects of this increase on both Massachusetts residents and nonresidents owning property in Massachusetts. In this segment, we focus our attention on the Act's effect on the so-called "Millionaire's Tax Loophole", and the changes to the capital gains tax.

Millionaire's Tax Loophole Is No More

On November 8th, 2022, Massachusetts voters voted to amend the state constitution by introducing the Fair Share Amendment, or as it is more commonly known, the "Millionaires Tax." Prior to the enactment of the Millionaire's Tax, the Massachusetts Constitution required a single tax rate for all personal income; Massachusetts taxpayers paid a flat 5% tax on all earned income (salaries, wages, tips, commissions) and unearned income (interest, dividends, and capital gains). By utilizing a single tax rate, it became increasingly difficult to raise the Massachusetts income tax without disproportionately impacting lower-income taxpayers. The Millionaires Tax is intended to combat this issue and raise state revenue without impacting lower-income taxpayers.

Beginning January 1, 2023, the Millionaire's Tax imposed an additional 4% surtax on a Massachusetts tax filer's return reporting income in excess of \$1 million, increased annually for inflation. For the 2024 tax year, the threshold is \$1,053,750. Only the portion of a taxpayer's taxable income that exceeds the surtax threshold (\$1 million for tax year 2023) will be subject to the 4% surtax. The 4% surtax applies to all Chapter 62 taxpayers, including individuals, trusts, estates, and unincorporated associations, that have taxable income exceeding the surtax threshold in a taxable year beginning with tax year 2023.

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Shortly after the Millionaire's Tax was enacted, Massachusetts taxpayers quickly discovered a purported loophole under which married couples could legally report less income by electing to file their returns separately with the Commonwealth, and jointly at the federal level. In doing so, each spouse could earn up to \$1 million of income before being subject to the Millionaire's Tax, thereby effectively doubling the amount of income that could escape the Millionaire's Tax from \$1 million to \$2 million. As a result, taxpayers were able to receive favorable tax treatment at both the state and federal level.

To foreclose the availability of this loophole, starting in the 2024 tax year, the Act now requires married couples to elect the same status with Massachusetts as they do at the federal level, either separate or joint. For example, married couples who file a joint federal income tax return shall also have to file a joint Massachusetts income tax return. By requiring married couples to use the same filing status at the state and federal levels, the Act effectively eliminates the Millionaires Tax loophole. This requirement does not apply to tax year 2023, but rather begins on or after January 1, 2024. Accordingly, it may still be possible to file separately for Massachusetts tax year 2023, so it is imperative to consult with an appropriate authority with your specific questions.

Short-Term Capital Gains Tax Rate Changes

In addition to foreclosing the availability of the Millionaire's Tax loophole, for individual income tax purposes, the Act also cuts the Massachusetts income tax rate for short-term capital gains, i.e. gains realized from the sale of capital assets held for a year or less. Before the enactment of the Act, the short-term capital gains rate was 12%. Now, the short-term capital gains rate will be 8.5%, beginning on or after January 1, 2023. The long-term capital gains rate remains at 5%.

Questions

Given the importance of the Act and its effects on estates, our office is prepared to review your documents, or if you do not have an estate plan in place, to assist you with a plan in order to take full advantage of the benefits of this legislation. Questions regarding these matters can be directed to Danielle Justo and Kennedy Cameron.

Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. If you have any questions concerning Estate Tax, Tax Exemptions, or Estate Planning, please don't hesitate to reach out to [Danielle Justo](#) or [Kennedy K. Cameron](#).

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