

Massachusetts: Proposal for a millionaire's tax passes its first legislative hurdle



David M. Kall | Thursday, May 26, 2016

In February, we [described](#) the Fair Share Amendment, [H 3933](#), which aims to change the state's constitution by adding a 4 percent tax on the portion of annual taxable income in excess of \$1 million. Known as the fair share tax, it is expected to generate \$1.9 billion of new revenue annually starting in 2019, and affect just half of one percent of all filers. H 3933, effective for tax years beginning on or after Jan. 1, 2019, requires that the new revenue be spent on "quality public education and affordable public colleges and universities, and for the repair and maintenance of roads, bridges and public transportation...subject to appropriation, only for these purposes."

On May 18, 2016, the Massachusetts legislature met jointly in a constitutional convention and voted 135-57 to advance the amendment; the measure would have proceeded with just 50 votes. In a [press release](#), RaiseUpMassachusetts, a coalition of community organizations, religious groups, and labor unions, cheered the vote as an important "next step in our campaign to invest in quality public schools for our children, affordable high-quality public higher education, and a transportation system that lets people get to school, work, and religious services. That's what our values and faith say we need to be doing."

The press release celebrated the large amount of support, noting that over 150,000 voters signed petitions to place the amendment on the Nov. 6, 2018 ballot. This will happen if there is a second approval by at least 25 percent of lawmakers in a joint legislative session in 2017 or 2018.

[The Boston Globe](#) revealed a possible "torpedo that could blow a hole in the hull" of the initiative.

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Opponents refer to the “subject to appropriation” language as a loophole that would allow the legislature to “appropriate the money to rehab poor kittens and puppies, [or] a thousand things.” A lawyer for RaiseUpMassachusetts disputes this criticism, citing a 1974 voter-approved constitutional amendment that dedicated funds for a certain purpose.

An outside lawyer not involved in the dispute opined that “[t]here is a plausible argument that the Legislature would still have discretion to not spend the money the way the drafters intended.”

The **Tax Foundation** cautioned that although the intention of the amendment is that only the wealthiest individuals would be subject to the additional tax, it could also affect pass-through business entities. Based on data for the 2013 tax year, there were about 9,000 filers with adjusted gross income above \$1 million that included income from partnerships or S corporations. Along with 3,000 filers with net business income, these taxpayers represent the bulk of pass-through business returns. Sixty-two percent of all partnership and S corporation net income in the Bay State comes from returns with more than \$1 million in adjusted gross income.

The current individual income tax rate is a flat 5.1 percent.



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