

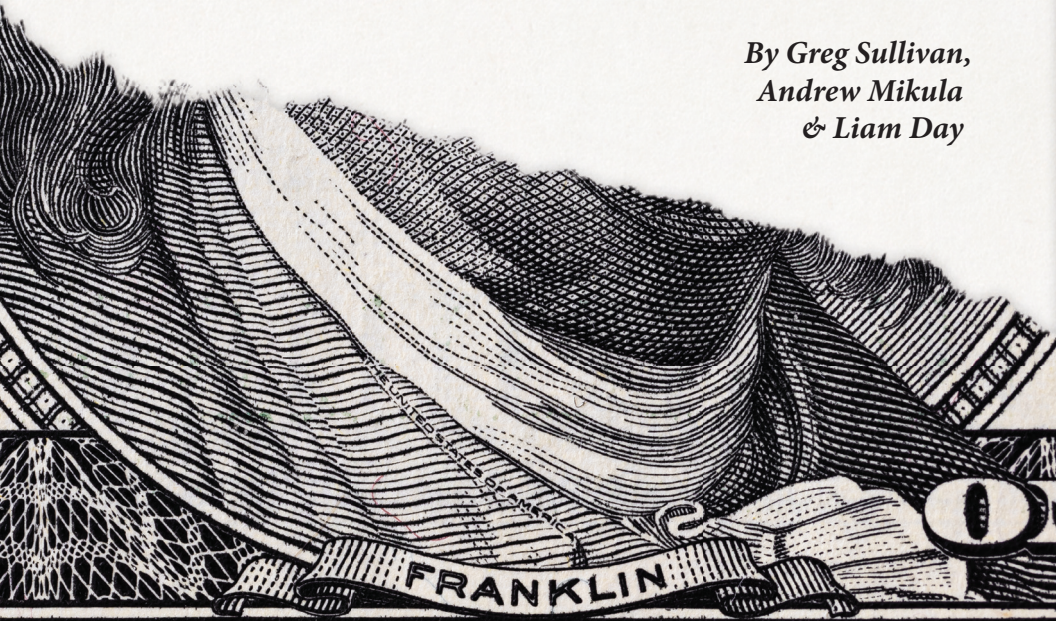


PIONEER INSTITUTE
PUBLIC POLICY RESEARCH

BACK TO TAX MASSACHUSETTS?

How the proposed tax amendment would upend one of the nation's best economies.

*By Greg Sullivan,
Andrew Mikula
& Liam Day*



Foreword

If Pioneer Institute did not exist, it would be necessary to invent it. There is no other organization in the Commonwealth capable of producing the quantity and quality of analysis on pressing issues of public policy, such as income tax policy, that is found in this volume. Political discourse these days seems to turn more on tweets than position papers. But position papers remain crucial for informing our public debate, and we all owe a debt to Pioneer for its commitment to releasing sober, well-researched papers on such a breadth of subjects.

This particular volume addresses a proposal to amend the Massachusetts Constitution to impose a 4% surtax on all income over \$1 million—an estimated \$2 billion or more in new taxes each year—requiring the money raised to be spent on public education and transportation. Currently, our state Constitution mandates a flat tax, and the single income tax rate in Massachusetts is 5%.

Under the proposed constitutional amendment that rate would nearly double, to 9%, on any income over \$1 million. Only a handful of states—California, Hawaii, Minnesota, New Jersey, and Oregon—have income tax brackets of 9% or higher.¹ With passage of the amendment, Massachusetts would jump near the front of the pack.

As explained by the analysis gathered in this volume, the proposed constitutional amendment poses significant risks that must be considered. As a matter of good governance, it is unwise to lock into the state Constitution both a particular tax rate and particular targets for increased spending (education and transportation). The Constitution is not easily amended; as seen with this proposal, it can take four years for a proposed amendment to go from introduction to the ballot.

What if, as Pioneer warns, the new tax causes high-net-worth individuals and important corporations to flee the state to lower-tax jurisdictions such as neighboring New Hampshire or sunny Florida, as happened when tax rates increased in Connecticut and New Jersey? What if some crisis (for example, a sudden global pandemic) suggests that the new revenues are better spent on priorities other than public education and transportation? The proposed amendment sets a dangerous precedent that will only be magnified if it succeeds and encourages special interests to sponsor additional proposals to lock state spending into specific categories.

As a matter of economic and social policy, the proposed amendment also is unwise. Pioneer has gathered substantial evidence demonstrating that increased state tax rates do, in fact, cause high-income individuals and corporations to relocate to more reasonable jurisdictions—states can kill the goose that lays the golden egg. In recent years, Massachusetts, which struggled so hard to shed the moniker of “Taxachusetts” that it bore in the 1980s, has been the beneficiary of that effect, taking in businesses that revolted against tax increases in neighboring Connecticut. It would be tragic if the Commonwealth reversed that inflow and began to lose businesses once again—a risk only increased, as Pioneer notes, by the ease of “working remotely” in so many industries, as revealed during the pandemic. As Pioneer also explains, the proposed amendment is punitive to many taxpayers whom no one would consider “rich,” but who may have a sudden influx of income in one year as a result of selling a home or small business as they head into retirement.

Questions of tax policy and spending priorities are difficult. There are good reasons why legislatures, legislative staff, and public interest groups such as Pioneer spend so much time debating and analyzing the fine points of tax law and appropriations. These are not subjects that should be left to bumper sticker political campaigns, especially not when the results are then locked into the state Constitution. As Pioneer explains, the proposed amendment is not even honest with voters, suggesting to them that the new tax revenues must be

spent on education and transportation, when the fungibility of money means that the legislature can spend the new revenue however it wants. If the Constitution is going to be amended, proponents should be transparent with voters about how the proposed amendment works.

Ultimately, voters will be asked in November 2022 to make a choice concerning the economic future of the Commonwealth. The ideas and analysis presented in this volume are crucial to informing that debate. I urge all those interested in preserving the Commonwealth's business climate to read Pioneer's work, and to forward it to friends and colleagues. Whichever way you decide to vote on the proposed amendment, make it an informed choice. Thank you to Pioneer for providing so much information in such a user-friendly volume.

Kevin Martin

Kevin is a partner and co-chair of the Appellate Litigation group at Goodwin Procter LLP in Boston, Massachusetts, where he has practiced since 2001. He was counsel for the plaintiffs in *Anderson v. Healey*, the 2018 decision in which the Supreme Judicial Court excluded the graduated income tax from that year's ballot.

Preface

For the past several years, Massachusetts union leaders and a majority of legislators have been working to promote a 4% surtax on the annual incomes of households and businesses that exceed \$1 million. They seek to make this change in the Massachusetts state Constitution. It was first tried, literally, in 2018, when an initiative petition on the question was challenged before the Massachusetts Supreme Judicial Court. It was found unconstitutional.

The proposal re-emerged, like Lazarus if you are pro and more like a zombie if you are con, in 2019 as a petition of the legislature itself. The legislature was put before a constitutional convention in 2019, where it was approved, and then, in accordance with the legislative petition process, voted on at a second successive constitutional convention in June 2021. It was approved, interestingly, with the very same wording found unconstitutional by the Court in 2018. With the June 2021 approval, the proposal to amend the state constitution will appear on the statewide ballot in the fall of 2022.

The lead proponents of the amendment are the Massachusetts Teachers Association and the Service Employees International Union. A series of smaller advocacy and religious groups are following in their train. The promoters of the constitutional amendment refer to it as a “Fair Share Amendment,” a wink and a nod to their frequent assertions that the measure would affect only the very wealthy, requiring them to pay what proponents define as their “fair share” of taxes.

After studying the topic at a level of depth that no other organization has, we fall squarely in the camp of the opponents. This brief volume is a distillation of two dozen academic studies that have examined the question from all angles.

As Kevin Martin suggests, there exists the structural issue of

embedding both an exact rate and its intended purpose into the state constitution. There is wilful deception built into the wording of the amendment—the fiction that voting for the tax will force increased spending on education and transportation—a point that both sides explicitly agreed was not the case during the proceedings of Massachusetts’ highest court in 2018.

Close analysis demonstrates that the people primarily impacted by the measure are businesses and retirees that are selling an asset, often a nest egg, at the end of a career. People and entities that are far from the imagined uber-wealthy who are trotted out by promoters of the new and permanent tax.

We further show that the surtax would endanger the long-term economic well-being of Massachusetts. Looking at decades of economic data, we demonstrate that the flight of businesses and wealth is already a prominent trend, especially to two low tax states: neighboring New Hampshire and sunny Florida. They assert that the new tax would prompt businesses and, yes, high-income residents to relocate to states with lower personal income tax rates, as well as the corollary: it would discourage them from moving to or establishing a presence in Massachusetts in the first place.

There is then the timing of the proposal. First, the push to amend Massachusetts’ state constitution comes in the wake of 2017’s federal tax overhaul, the Tax Cuts and Jobs Act, which includes a provision that caps the state and local tax (SALT) deductions taxpayers can take on their federal returns. The provision greatly magnifies the impact of the proposed tax increase.

While Congress may adopt changes to the deduction cap, as of this writing, the maximum state and local tax deduction is \$10,000.

Second, the proposed amendment comes in the wake of the Covid pandemic, which has upended how we work—most likely on a permanent basis. Many knowledge-based businesses and really all jobs that do not require an in-person presence have become highly mobile. That makes the risk of business and wealth flight even greater among high-income residents and businesses alike.

Toward the end of this volume, we take stock of proponents' arguments in favor of the constitutional amendment, as well as the flawed studies they cite to bolster those viewpoints.

The purpose of this brief volume is, as Kevin Martin notes, ensuring that come November 2022, voters make an informed choice as to whether to embed a tax increase permanently in the state Constitution.

While aimed at a general audience, it is even more targeted at thought leaders, business leaders, media professionals — many of whom have heard that there is a tax issue up for a vote, but don't have a good understanding of what it means for them.

Of course, no one possesses a crystal ball. And that's why we turn to the empirical record — past trends and the experiences of other states — throughout this volume.

That is precisely where we begin. The first chapter looks at the experiences in Connecticut and California, both of which implemented higher taxes ostensibly focused on the wealthy.

These two states provide strong empirical evidence of the impact of tax policies similar to the proposed surtax amendment on job creation, home values, state spending, and so much more.

James Stergios & Mary Connaughton