

Massachusetts Tax Alert

Description

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The Massachusetts Department of Revenue (the “DOR”) has recently issued two Technical Information Releases of importance to taxpayers. In TIR 19-7, the DOR provides guidance on the applicability of the Federal Opportunity Zone tax benefits under Massachusetts tax law, clarifying that while the benefits are available to corporate taxpayers they are not available to individuals or partnerships. In TIR 19-4 the DOR provides a summary of the expansion of the Massachusetts room occupancy tax to cover short-term rentals (AKA, the “Airbnb tax”) that goes into effect on July 1st.

Massachusetts DOR Issues Guidance on Opportunity Zone Tax Benefits

On June 17, 2019, the DOR released TIR 19-7 clarifying that under Massachusetts tax rules, Opportunity Zone tax benefits are not available for individuals and partnerships but may be available for corporations. Under the Federal Internal Revenue Code, “rolling over” certain capital gains into certain investments in specially designated “Opportunity Zones” could give investors tax benefits including deferral of recognizing the “rolled over” capital gains for income tax purposes until December 31, 2026, excluding a portion of those capital gains permanently from income taxation, and excluding appreciation from taxation if the investment is held for at least ten years. See prior Client Alerts [here](#) and [here](#) for general background information on Opportunity Zone Investments.

The Massachusetts personal income tax rules, including partnership tax rules, do not follow the federal rules regarding Opportunity Zone investments. Massachusetts personal income tax rules are based upon the Internal Revenue Code as amended on January 1, 2005 and not upon the current code. Accordingly, gain from the sale or exchange of property that is reinvested in an Opportunity Zone investment must still be recognized in the year of the original gain for Massachusetts income tax purposes (i.e., in the year of the sale of the asset generating the gain). No deferral or exclusion is recognized for Massachusetts personal income tax purposes from an investment in an Opportunity Zone.

For corporate taxpayers the rules are different. Massachusetts generally conforms to the Internal Revenue Code as currently in effect for corporations. Accordingly, a corporation that invests eligible capital gain in an Opportunity Zone investment may be eligible for the same deferral and exclusion from Massachusetts corporate income taxes as are available from federal taxes.

Absent Massachusetts legislative action, individuals and partnerships investing in Opportunity Zone investments will be required to report gain in the year recognized and will not be able to take advantage of the Opportunity Zone tax benefits for Massachusetts income taxes. Treatment under Massachusetts tax rules does not affect federal treatment, so although the benefits would not be available on the Massachusetts level for individuals and partnerships, the benefits may still be available for Federal income tax purposes.

Massachusetts “Airbnb Tax” Goes Into Effect July 1st

On December 28, 2018, Massachusetts Governor Charlie Baker signed into law legislation to tax and regulate the short-term housing rental market in Massachusetts. Commonly referred to as the “Airbnb tax”, the rules go into effect on July 1st and cover more than just Airbnb rentals.

The revised law expands the Massachusetts room occupancy excise tax to cover short-term rentals, rentals that are generally defined as property where at least 1 room or unit is rented to an occupant for a period not more than 31 days and the rental is reserved in advanced. Any rental agreements entered into after January 1,

2019, for a period beginning on or after July 1, 2019, are covered by the revised law.

Generally, under the revised law renting out rooms our houses through services like Airbnb or VRBO, or even through classified ads or on-line bulletin boards, will be subject to the room occupancy excise tax. However, a bed and breakfast home (a private owner-occupied house where not more than 3 rooms are rented, a breakfast is included, and all accommodations are reserved in advance) is exempt from this tax.

In addition to being subject to taxation, rental hosts must register with the DOR Commissioner and must carry applicable insurance (normal home owner or rental insurance may not cover these activities). There is an exemption from taxation if a property is rented out for not more than 14 days in a calendar year, but this exemption is not automatic. In order for a rental host to be eligible for the exemption, the property must be registered with the DOR Commissioner as a rental property and the rental host must file a declaration setting forth its intention to rent for not more than 14 days in a calendar year. This declaration has to be filed annually with the DOR Commissioner.

If the property is subject to taxation, the state occupancy tax of 5.7% applies and cities and towns may also impose a local option excise tax of up to 6% (6.5% for the city of Boston) as well as a community impact fee of up to 3% of the rent amount for short-term rentals. In addition, depending on the location of the rental property, a Convention Center Finance Fee or a Cape and Islands Water Protection Fund excise tax may apply.

The law also provides rules for certain intermediaries (such as brokers, hosting platforms, or agents) to comply with regarding occupancy excise tax collection.

Please contact [Russell J. Stein](#) at [Partridge Snow & Hahn LLP](#) if you have questions about these Technical Information Releases, Opportunity Zones, the short-term rental tax or any other tax issue.

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