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TECHNICAL INFORMATION RELEASE

TIR 23-12: Provisions in the Fiscal Year 2024 Budget Pertaining to the 4% Surtax and the Extension of the Brownfields Tax Credit

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REFERENCED SOURCES: [Massachusetts General Laws \(https://malegislature.gov/Laws/GeneralLaws\)](https://malegislature.gov/Laws/GeneralLaws)

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I. Introduction

This Technical Information Release (“TIR”) explains the provisions of the Massachusetts Fiscal Year 2024 Budget^[1] (the “FY24 Budget”) that pertain to the recently enacted income surtax and the extension of the brownfields tax credit for an additional 5 years.

On November 8, 2022, Massachusetts voters approved an amendment to Article XLIV of the Massachusetts Constitution to impose an additional 4% surtax on the portion of a taxpayer’s taxable income that exceeds \$1,000,000, adjusted annually for inflation^[2] (the “4% surtax”). The FY24 Budget codifies into the Massachusetts General Laws the 4% surtax and clarifies the computation of taxable income subject to the surtax.

In addition to including provisions concerning the 4% surtax, the FY24 Budget also extends the brownfields tax credit by an additional 5 years.

II. The 4% Surtax

M.G.L. c. 62 imposes a tax on a taxpayer’s Massachusetts gross income, which is divided into three parts: Part A gross income, Part B gross income, and Part C gross income.^[3] Part A gross income, Part B gross income, and Part C gross income are each modified by the respective deductions in M.G.L. c. 62, § 2 that apply under each Part to produce Part A adjusted gross income, Part B adjusted gross income, and Part C adjusted gross income.^[4] Part A adjusted gross income, Part B adjusted gross income, and Part C adjusted gross income are each further adjusted by certain deductions and exemptions in M.G.L. c. 62, § 3 to produce Part A taxable income, Part B taxable income, and Part C taxable income. See M.G.L. c. 62, § 3. Part A taxable income, Part B taxable income, and Part C taxable income are each subject to the specific tax rates provided by M.G.L. c. 62, § 4.

The FY24 Budget amends M.G.L. c. 62, § 4 by adding new paragraph (d).^[5] New paragraph (d) provides that where the sum of a taxpayer’s Part A taxable income, Part B taxable income, and Part C taxable income exceeds \$1,000,000 in a taxable year, the portion of such taxable income exceeding \$1,000,000 is taxed at the rates specified in M.G.L. c. 62, § 4(a)-(c), plus an additional 4%.^[6]

In determining the sum of Part A taxable income, Part B taxable income, and Part C taxable income in a taxable year, any negative amount or loss in any Part of taxable income cannot be applied to reduce the income of any other Part.^[7] The addition of new paragraph (d) to M.G.L. c. 62, § 4 does not affect the computation of Part A adjusted gross income, Part B adjusted gross income, or Part C adjusted gross income or Part A taxable income, Part B taxable income, or Part C taxable income. Any pre-existing adjustments or offsets among the parts of income otherwise required or allowed by M.G.L. c. 62, such as where a taxpayer’s Part B losses attributable to a trade or business can be used to reduce the taxpayer’s Part A or Part C capital gains attributable to the trade or business of a taxpayer^[8] or where excess Part C capital losses can be used to reduce the taxpayer’s Part A capital gain income,^[9] are unaffected.

The FY24 Budget also amends M.G.L. c. 62, § 5A(a) as it applies to non-residents with respect to the 4% surtax.^[10] The 4% surtax and its computational rules referenced above also apply to non-residents as well as residents, but non-residents consider only their Massachusetts source income when determining

whether their taxable income exceeds \$1,000,000 for purposes of computing the 4% surtax. Similar to residents, non-residents may have source income that is Part A taxable income, Part B taxable income and Part C taxable income. Where the sum of a Massachusetts non-resident's Part A taxable income, Part B taxable income, and Part C taxable income exceeds \$1,000,000, the portion of the non-resident's income sourced to Massachusetts that exceeds \$1,000,000 is taxed at the rates specified in M.G.L. c. 62, § 4(a)-(c), plus an additional 4%.

As a result of the FY24 Budget's incorporation of the 4% surtax into M.G.L. c. 62, the provisions of M.G.L. c. 62C that pertain to the general administration of chapter 62 also apply to the 4% surtax.^{[11] (#_ftn9)} These chapter 62C rules include provisions that pertain to the requirements for filing tax returns and making tax payments, assessments of tax, and the imposition of interest and penalties.^{[12] (#_ftn10)}

The Department of Revenue intends to issue further guidance with respect to the administration of the 4% surtax.

III. Extension of Brownfields Tax Credit

The FY24 Budget extends the brownfields tax credit, previously scheduled to expire on August 5, 2023, for five additional years.^{[13] (#_ftn1)} Taxpayers subject to the income tax under M.G.L. c. 62 or the corporate excise under M.G.L. c. 63, and, more generally, nonprofit organizations, are each allowed a transferable brownfields tax credit for incurring eligible costs to remediate a hazardous waste site on property used for business purposes and located within an economically distressed area.^{[14] (#_ftn2)} The credit may be either 50% or 25% of the "net response and removal costs" as that term is defined in M.G.L. c. 21E, § 2, depending upon whether an activity and use limitation has been imposed.^{[15] (#_ftn3)} Under prior law, to qualify for a brownfields tax credit, the relevant work must have been started on or before August 5, 2023 and the net response and removal costs must have been incurred prior to January 1, 2024.^{[16] (#_ftn4)} Under the legislative revisions made by the FY24 Budget, the taxpayer must "commence and diligently pursue" the relevant environmental response action(s) on or before August 5, 2028.^{[17] (#_ftn5)} Also, pursuant to the budgetary revisions, the net response and removal costs must be incurred prior to January 1, 2029.^{[18] (#_ftn6)}

/s/Geoffrey E. Snyder
Geoffrey E. Snyder
Commissioner of Revenue

GES:RHF:db

November 15, 2023

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^{[1] (#_ftnref1)} St. 2023, c. 28.

[2] (#_ftnref2) Article XLIV of the Massachusetts Constitution requires that the taxable income threshold be adjusted annually in subsequent years to reflect any increases in the cost-of-living by the same method used for determining the federal income tax brackets. The FY 24 budget provides that the taxable income threshold for the 4% surtax is subject to the cost-of-living adjustment provided by Internal Revenue Code § 1(f). FY24 Budget § 28.

[3] (#_ftnref1) Part A gross income consists of interest (other than interest from Massachusetts banks), dividends, gains from the sale or exchange of capital assets held for one year or less, long-term gains from collectibles, and pre-1996 gains reported on the installment method. M.G.L. c. 62, § 2(b)(1). Part B gross income consists of all income, including wage income, that is neither Part A gross income nor Part C gross income. M.G.L. c. 62, § 2(b)(2). Part C gross income includes gains from the sale or exchange of capital assets (other than collectibles) held for more than one year. M.G.L. c. 62, § 2(b)(3).

[4] (#_ftnref2) M.G.L. c. 62, § 2(c)-(e).

[5] (#_ftnref3) FY24 Budget § 28.

[6] (#_ftnref4) *Id.*

[7] (#_ftnref5) *Id.*

[8] (#_ftnref6) M.G.L. c. 62, § 2(c)(1).

[9] (#_ftnref7) M.G.L. c. 62, § 2(c)(2)(b).

[10] (#_ftnref8) FY24 Budget § 29.

[11] (#_ftnref9) M.G.L. c. 62C, § 2.

[12] (#_ftnref10) These provisions include, but are not limited to, M.G.L. c. 62C §§ 6, 26, 32, 33.

[13] (#_ftnref1) FY24 Budget §§ 30, 32.

[14] (#_ftnref2) M.G.L. c. 62, § 6(j)(1); M.G.L. c. 63, § 38Q(a).

[15] (#_ftnref3) *Id.*; M.G.L. c. 62, § 6(j)(4); M.G.L. c. 63, § 38Q(d).

[16] (#_ftnref4) St. 2018, c. 99, §§ 5-6, 15-16.

[17] (#_ftnref5) *Id.*

[18] (#_ftnref6) FY24 Budget §§ 31, 33.



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