

MASSACHUSETTS ALLOWS CARRY FORWARD OF LOSSES FOR 20 YEARS AND A REDUCED CAPITAL GAINS RATE FOR START-UPS

On August 5, 2010, Massachusetts Gov. Deval Patrick signed into law an economic development bill that provides favorable tax treatment under Massachusetts tax law. Specifically, the new law (1) allows corporations to carry forward losses for 20 years up from the current limit of 5 years and (2) reduces an investor's tax rate on capital gains earned on investments in start-up companies from 5.3 percent to 3 percent.

20 Year Carryforward

The extended 20 year carryforward period applies to losses sustained in any taxable year beginning on January 1, 2010. Losses sustained in any taxable year prior to January 1, 2010 remain subject to the 5 year carryforward rule. Massachusetts continues to prohibit the carry back of losses to a previous taxable year.

Reduced Capital Gains Rate

Effective for tax years beginning on or after January 1, 2011, the new law provides for a reduced capital gains rate of 3 percent if: (1) the investments are in a corporation which is domiciled in Massachusetts with a date of incorporation on or after January 1, 2011; (2) the relevant corporation has less than \$50 million in assets at the time of investment and the corporation complies with Section 1202 of the Internal Revenue Code dealing with "qualified small business stock" (without regard to the requirement that the corporation be a C corporation); (3) the investments are made within 5 years of the date of incorporation; and (4) the investments are held for 3 years or more. Query as to whether the above-referenced effective date will result in start-up corporations deferring incorporation until January 2011 in an effort to attract new investors seeking the lower tax rate.

These changes apply to Massachusetts tax law and do not impact federal income tax computations.



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