

## Income/Franchise:

### Massachusetts: State High Court Says S Corp's Gain from Selling LLC Interest Not Taxable in this Case

*Case No. SJC-13139*, Mass. (5/16/22). The Massachusetts Supreme Judicial Court (Court) reversed a Massachusetts Appellate Tax Board ruling from 2020 – which had held that a nondomiciliary S corporation owed Massachusetts corporate excise (income) tax on capital gains from the sale of its ownership interest in a Massachusetts limited liability company (MA LLC) [see *Docket Nos. C332269 & C332270*, Mass. App. Tax Bd. (10/23/20) for details on this earlier ruling] – to hold that while Due Process and Commerce Clause limitations on Massachusetts' authority to tax the S corporation may be satisfied through its 50% ownership interest in MA LLC, Massachusetts lacked the statutory authority in this case to tax the capital gain realized by the S corporation based on MA LLC's connection to Massachusetts as "there is no unitary business" between the S corporation and MA LLC. While holding for the taxpayer under the facts in this case, the Court noted that the constitutional limitations on Massachusetts' authority to tax a nondomiciliary corporation feasibly could be satisfied where, as here, the nondomiciliary corporation has "reaped the financial benefits (in the form of a capital gain) from its fifty percent ownership interest in an in-State entity whose growth is tied inextricably to the protections, opportunities, and benefits afforded to it" by Massachusetts.

[URL: https://www.mass.gov/files/documents/2022/05/16/y13139.pdf](https://www.mass.gov/files/documents/2022/05/16/y13139.pdf)

[URL: https://www.mass.gov/doc/vas-holdings-investments-llc-v-commissioner-of-revenue-october-23-2020/download](https://www.mass.gov/doc/vas-holdings-investments-llc-v-commissioner-of-revenue-october-23-2020/download)

See forthcoming Multistate Tax Alert for more details on this recent decision, including some related taxpayer considerations, and please contact us with any questions in the meantime.

— Bob Carleo (Boston)  
Managing Director  
Deloitte Tax LLP  
rcarleo@deloitte.com

Alexis Morrison-Howe (Boston)  
Principal  
Deloitte Tax LLP  
alhowe@deloitte.com

Gregory Bergmann (Chicago)  
Partner  
Deloitte Tax LLP  
gbergmann@deloitte.com

Robert Waldow (Minneapolis)  
Principal  
Deloitte Tax LLP  
rwaldow@deloitte.com

Ian Gilbert (Boston)  
Senior Manager  
Deloitte Tax LLP  
iagilbert@deloitte.com

Shawn David (Boston)  
Senior Manager  
Deloitte Tax LLP  
shdavid@deloitte.com

Shirley Wei (Los Angeles)  
Senior Manager  
Deloitte Tax LLP  
shiwei@deloitte.com

Olivia Schulte (Washington, DC)  
Manager  
Deloitte Tax LLP  
oschulte@deloitte.com

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