

Beacon Hill Byline by Mary Rogeness

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## A Taxing Dilemma

It does not seem fair to change the rules after the game is over, does it? That's why our constitution bars Congress from passing new laws that criminalize past (legal) activities. The rule is known by the Latin term *ex post facto*. But using a different part of our constitution, the Massachusetts Supreme Judicial Court has this year forced the state to change the rules on capital gains taxes from years ago.

Last week the legislature had to decide whether to respond to the decision by raising or lowering taxes. Guess which option they chose?

The court ruling came after a taxpayer challenged a 2002 law that increased taxes on capital gains – on May 1, 2002. People who received capital gains before that date paid no tax on long term investments; anyone whose gains came after May 1 paid 5.3% on the gains. The court ruled that the state could not treat taxpayers differently in the same tax year.

Would legislators impose the higher tax as of January 2002, or would they choose 2003 as the start date, refunding taxes paid in the later part of the year. One choice delivered a windfall to the state; the other refunded significant money to taxpayers like the one who sued the state to start the controversy.

I feel certain that the taxpayer who sued the state wanted his taxes eliminated, but that is not the remedy the legislature adopted. Over the objections of all Republicans and a few Democrats, the legislature imposed, *ex post facto*, a tax on assets sold in the first third of 2002.

Here is how the debate took place in the house of representatives.

The court offered two options to fix the problem: either designate January 2002 as the effective date and collect up to \$200 million more in taxes from as many as 120,000 taxpayers, or move the date back to January 2003 and refund about \$250 million to taxpayers who overpaid.

House leaders selected the option that raises the most revenue, the one that will tax transactions that were tax-free when they took place. Anyone who owed \$100 or less would be exempt from the tax.

Republicans supported the bill filed by Governor Romney that changes the effective date of the tax increase to January 2003 and forgives the taxes of anyone who paid the higher rate in 2002. Republicans acknowledge that the state would lose valued revenue, but are more concerned about equity. It is not fair to change the rules on a completed transaction.

After losing the battle to reduce taxes, House Minority Leader Brad Jones offered a proposal to direct that new tax receipts be distributed to the cities and towns. They are unanticipated revenue, and the state budget did not count on the millions of dollars it stands to collect. Municipalities throughout the state are under increasing stress to provide essential services, as the failed overrides in Longmeadow, East Longmeadow and Hampden demonstrate. We Republicans believe that is the best use for this "found" money. That proposal was ruled out of order by the Speaker.

Here's the bottom line: Don't count on extra state aid for your town. If you sold stock, property or a business in the first part of 2002, get ready to hear from the Department of Revenue.