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Planning for Retirement: How Attractive is Massachusetts for Estate Tax Planning?

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Massachusetts is already an unattractive state of residency from an estate tax planning perspective because of its low estate tax filing threshold of \$1,000,000 per person. Once a person's adjusted taxable estate is over \$1M (including real estate values, life insurance, retirement accounts, other assets and adjusted taxable gifts), a Massachusetts estate tax return must be filed. Our commonwealth imposes a tax rate ranging from .8% to 16% on the adjusted taxable estate in excess of \$40,000.

Nonresident decedents are subject to the same filing threshold based on the value of the real estate and tangible personal property owned or transferred in Massachusetts. Intangible assets (e.g. investment accounts and bank accounts which are deemed not to have a geographical location) of nonresidents have, up until now, been off the table in determining Massachusetts estate tax liability.

This year, [Massachusetts just got a little less attractive as a retirement destination](#) for the surviving spouse of a nonresident decedent. The Supreme Judicial Court ruled that the intangible assets held in a qualified terminable interest property ("QTIP") trust, which was created by a predeceased spouse when he was domiciled in New York, will be includable in the gross estate of a surviving spouse who dies domiciled in Massachusetts. [Shaffer v. Commissioner of Revenue](#), 485 Mass. 198 (2020). A QTIP trust is a method by which a decedent's estate may defer paying estate tax until the death of the surviving spouse by claiming marital deduction on the assets held in the QTIP trust (in which the surviving spouse has a qualifying income interest for life). Ultimately, Massachusetts has the right to impose a tax on the "transfer" of assets in Massachusetts, and the Court ruled that a "transfer" occurred at the surviving spouse's death, which occasioned a change in the beneficial interests in the QTIP assets (i.e. the interest changed from a lifetime income interest held by the surviving spouse to a present interest held by her daughters).

It seems that Florida (which has no estate tax) will continue to attract retirees away from Massachusetts until the low estate tax filing threshold is hopefully increased.