

## Massachusetts Legislators Propose Tax on Endowment Funds

Many colleges and universities are taking note that state legislators in Massachusetts are supporting a tax on endowment funds as a new source of revenue to close a state budget deficit. If adopted as a part of the state's annual budget, a [floor amendment](#) added in the House of Representatives would require the Department of Revenue to study the potential impact on the state's economy of a 2.5% excise tax on college and university endowments in excess of \$1 billion. The Department would also be directed to study "the current practice of other states, any anticipated change in employment, and ancillary economic activity." The *Boston Globe* reports that such an excise tax, if adopted, would be the first of its kind in the country.

The new proposal still has a long way to go before it becomes law. The Massachusetts Senate currently has the state budget under consideration, after which action by the House and Senate budget conference committee and the Governor await. With the end of the state's June 30 fiscal year looming, the budget should be passed, with or without the amendment, within the next six weeks.

While the proposed tax, as written, would be levied on only nine institutions in the Commonwealth, many observers have noted that it reflects a larger effort to scrutinize the endowments of higher education institutions. The chair and ranking member of the U.S. Senate Finance Committee in January sent a [letter and questionnaire](#) to 136 colleges and universities with endowments of \$500 million or more, asking a series of questions about the growth and use of endowments, and in particular about spending on financial aid.

Quite apart from its wisdom as a matter of public policy, the Massachusetts proposal raises a number of interpretive questions about what constitutes "endowment," which the legislation would define as "an institutional fund . . . not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument." Individual institutions' decisions on the interpretation of gifts would therefore affect the incidence of the proposed legislation. The adoption of either the Uniform Prudent Management of Institutional Funds Act or the pending FAS 117-a could also have a significant impact on the legislation's effect.

If you have any questions about this proposed budget amendment, please consult your Ropes & Gray lawyer or any of the undersigned.

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