

# SB2121



## 102ND GENERAL ASSEMBLY

### State of Illinois

2021 and 2022

SB2121

Introduced 2/26/2021, by Sen. Robert Peters

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Extremely High Wealth Mark-to-Market Tax Act. Contains provisions concerning gains or losses of assets for individual taxpayers with net assets worth \$50,000,000 or more. Creates a Task Force on mark-to-market tax administration. Sets forth penalties. Effective immediately.

LRB102 14999 HLH 20354 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the  
5 Extremely High Wealth Mark-to-Market Tax Act.

6 Section 5. Tax imposed; tax years beginning on or after  
7 January 1, 2020 and beginning prior to January 1, 2021.

8 (a) Notwithstanding any other provision of law, resident  
9 individual taxpayers with net assets worth more than the  
10 exemption allowance of \$50,000,000, as specified in Section  
11 15, or more on December 31, 2020, shall recognize gain or loss  
12 as if each asset owned by the individual taxpayer were sold for  
13 its fair market value on that date. Any resulting net gains  
14 from these deemed sales, up to the phase-in cap amount, shall  
15 be included in the taxpayer's income for tax years beginning  
16 on or after January 1, 2020 and beginning prior to January 1,  
17 2021. Proper adjustment shall be made in the amount of any gain  
18 or loss subsequently realized for gains or losses taken into  
19 account under this subsection. At the taxpayer's option, the  
20 tax payable as a result of this Section shall either be payable  
21 in one installment or else shall be payable annually in 10  
22 equal installments beginning in the year of the effective date  
23 of this Act and with all such installment payments commencing

1 after the initial installment payment also being subject to an  
2 annual nondeductible deferral charge at a rate to be  
3 determined and published by the Department of Revenue, that  
4 conservatively estimates the borrowing cost that the State of  
5 Illinois would incur to borrow the present value of the  
6 deferred payments over a ten-year term. For resident  
7 individual taxpayers who would recognize net gains as a result  
8 of this Section except for the operation of this sentence, if  
9 the taxpayer can show that any portion of such gains was  
10 accumulated prior to the taxpayer becoming a resident  
11 individual of Illinois, and if the taxpayer can also show that  
12 such portion of such gains was previously taxed by any prior  
13 state or jurisdiction in which the taxpayer was a resident  
14 prior to becoming a resident individual of Illinois, then  
15 credit shall be provided in the amount of any such tax on such  
16 gains paid to any such prior states or jurisdictions in which  
17 the taxpayer was a resident prior to becoming a resident  
18 individual of Illinois. Any credits so provided by this  
19 subsection, however, shall not exceed the lesser of the total  
20 tax owed under this Section on such gains and the tax imposed  
21 on such gains by such other prior states or jurisdictions in  
22 which the taxpayer was a resident prior to becoming a resident  
23 individual of Illinois.

24 (b) For tax years included in this Section, whether an  
25 individual is a resident individual for purposes of this Act  
26 shall be determined using the pursuant to the criteria in the

1 Illinois Income Tax Act.

2 Section 10. Tax imposed; subsequent years. For taxable  
3 years beginning on or after January 1, 2021, resident  
4 individual taxpayers with net assets that are worth more than  
5 the exemption-allowance amount of \$50,000,000, as specified in  
6 Section 15, at the end of the last day of any tax year shall  
7 recognize gain or loss as if each asset owned by such taxpayer  
8 at the end of the last day of the tax year were sold for its  
9 fair market value on such date, but with adjustment made for  
10 tax paid on gain in previous years. Any resulting net gains  
11 from these deemed sales, up to the phase-in cap amount, shall  
12 be included in the taxpayer's income for such taxable year.  
13 Proper adjustment shall be made in the amount of any gain or  
14 loss subsequently realized for gain or loss taken into account  
15 under the preceding sentence. To the extent that the losses of  
16 a taxpayer exceed such taxpayer's gains, such net losses shall  
17 not be recognized in such taxable year and shall instead carry  
18 forward indefinitely. Notwithstanding the prior sentence, if a  
19 taxpayer has such net losses carried forward for more than  
20 five consecutive years, and if the taxpayer previously  
21 included in the taxpayer's income for any prior year net gains  
22 from any deemed sales as a result of this Act, then the  
23 taxpayer may file to claim a refund in the amount of lesser of  
24 either one fifth of the amount of the taxpayer's net losses  
25 that have been carried forward for more than 5 years or the

1 amount of tax the taxpayer paid in prior years as a result of  
2 any net gains included in the taxpayer's income from deemed  
3 sales as a result of this Act. For resident individual  
4 taxpayers who would recognize net gains as a result of this  
5 Section except for the operation of this sentence, but who  
6 were not resident individuals for all of the preceding five  
7 tax years, solely for purposes of deemed sales pursuant to  
8 this Section, the tax basis of each asset owned on the last day  
9 of the last tax year before the resident individual became an  
10 Illinois resident shall be the fair market value of the asset  
11 as of that day.

12 Section 15. Exemption-allowance amount and phase-in cap  
13 amount.

14 (a) The exemption-allowance amount shall be \$50,000,000.

15 (b) The phase-in cap amount, for each date on which gains  
16 or losses are recognized as a result of this Act, shall be  
17 equal to a quarter of the extent to which the worth of a  
18 taxpayer's net assets exceeds the exemption-allowance amount  
19 on such date.

20 Section 20. Net worth calculation. For the purposes of  
21 determining whether a resident individual taxpayer has net  
22 assets worth more than the exemption-allowance amount, the  
23 term "assets" shall include all of the following, but only to  
24 the extent allowable under the Illinois Constitution, the

1 United States Constitution, and any other governing federal  
2 law: all owned real or personal, tangible or intangible,  
3 property, wherever situated, (1) owned by the taxpayer, (2)  
4 owned by the taxpayer's spouse, minor children, or any trust  
5 or estate of which the taxpayer is a beneficiary, (3)  
6 contributed by the taxpayer, or the taxpayer's spouse, minor  
7 children, or any trust or estate of which the taxpayer is a  
8 beneficiary, to any private foundation, donor advised fund,  
9 and any other entity described in Section 501(c) or Section  
10 527 of the Internal Revenue Code of which the taxpayer, or the  
11 taxpayer's spouse, minor children, or any trust or estate of  
12 which the taxpayer is a beneficiary, is a substantial  
13 contributor (as such term is defined in Section  
14 4958(c)(3)(B)(i) of the Internal Revenue Code), and (4)  
15 without duplication, all gifts and donations made within the  
16 past five years by the taxpayer, or the taxpayer's spouse,  
17 minor children, or any trust or estate of which the taxpayer is  
18 a beneficiary, as if such gifts and donations were still owned  
19 by the taxpayer. For the purpose of this Section, "net assets"  
20 shall include the fair market value of assets less the fair  
21 market value of liabilities of the taxpayer and, in  
22 appropriate cases as determined by the Department of Revenue,  
23 liabilities of such other persons described in the definition  
24 of assets.

25 Section 25. Determining Valuations.

1           (a) The Department of Revenue shall adopt rules for  
2 determining the fair market value of assets for all purposes  
3 of this Act. Such rules may require the use of formulaic  
4 valuation approaches for designated assets, including  
5 formulaic approaches based on proxies for determining  
6 presumptive valuations (such as, for example, requiring that  
7 privately held business entities be valued based on a blended  
8 formula of book value plus a multiple of book profits),  
9 formulaic approaches based on prospective adjustments from  
10 purchase prices or other prior events, or formulaic approaches  
11 based on retrospectively adding deferral charges based on  
12 eventual sale prices or other specified later events  
13 indicative of valuation.

14           (b) Except as might otherwise be specified through rules  
15 adopted by the Department of Revenue, the fair market value of  
16 each asset owned by the taxpayer shall be the price at which  
17 such asset would change hands between a willing buyer and a  
18 willing seller, neither being under any compulsion to buy or  
19 to sell, and both having reasonable knowledge of relevant  
20 facts. The value of a particular asset shall not be the price  
21 that a forced sale of the property would produce. Further, the  
22 fair market value of an asset shall not be the sale price in a  
23 market other than that in which such item is most commonly sold  
24 to the public, taking into account the location of the item  
25 wherever appropriate. In the case of an asset which is  
26 generally obtained by the public in the retail market, the

1 fair market value of such an asset shall be the price at which  
2 such item or a comparable item would be sold at retail.

3 (c) For purposes of this Section, any feature of an asset,  
4 such as a poison pill, that was added with the intent, and has  
5 the effect, of reducing the value of the asset shall be  
6 disregarded, and no valuation or other discount shall be taken  
7 into account if it would have the effect of reducing the value  
8 of a pro rata economic interest in an asset below the pro rata  
9 portion of the value of the entire asset.

10 Section 30. Administration.

11 (a) The Department of Revenue shall amend or create tax  
12 forms as necessary for the reporting of gains by assets.  
13 Assets shall be listed with: (i) a description of the asset;  
14 (ii) the asset category; (iii) the year the asset was  
15 acquired; (iv) the adjusted Illinois basis of the asset as of  
16 December 31 of the tax year; (v) the fair market value of the  
17 asset as of December 31 of the tax year; and (vi) the amount of  
18 gain that would be taxable under this Act; unless the  
19 Department shall determine that one or more categories is not  
20 appropriate for a particular type of asset.

21 (b) Asset categories separately listed shall include, but  
22 not be limited to, the following:

- 23 (1) stock held in any publicly traded corporation;  
24 (2) stock held in any private traded C corporation;  
25 (3) stock held in any S corporation;



1 (4) interests in any private equity or hedge fund  
2 organized as a partnership;

3 (5) interests in any other partnerships;

4 (6) interests in any other noncorporate businesses;

5 (7) bonds and interest bearing savings accounts, cash  
6 and deposits;

7 (8) interests in mutual funds or index funds;

8 (9) put and call options;

9 (10) futures contracts;

10 (11) financial assets held offshore reported on IRS  
11 tax form 8938;

12 (12) real property;

13 (13) art and collectibles;

14 (14) pension funds;

15 (15) other assets;

16 (16) debts and liabilities; and

17 (17) assets not owned by the taxpayer but which count  
18 toward the \$50,000,000 threshold pursuant to Section 20.

19 (b) The Department shall specifically request the filing  
20 of such forms by any resident individual expected to have net  
21 assets in excess of the exemption-allowance amount. Such  
22 taxpayers shall include, but not be limited to, taxpayers with  
23 an adjusted gross income summed over the previous ten years in  
24 excess of three fifths of the exemption-allowance amount and  
25 any taxpayer with adjusted gross income of more than  
26 \$10,000,000 for the tax year (as calculated prior to

1 accounting for any gains or losses recognized as a result of  
2 this Act).

3 Section 35. Mark-to-market in other states. If any  
4 resident individual taxpayer becomes an Illinois resident  
5 subsequent to paying tax to another state as a result of  
6 recognizing gain or loss pursuant to any mark-to-market or  
7 deemed-realization regime of that other state, proper  
8 adjustment shall be made in the amount of any gain or loss  
9 subsequently realized for gain or loss taken into account  
10 under such mark-to-market or deemed-realization regime of that  
11 other state for purposes of computing gain or loss under  
12 Sections 5 or 10 of this Act.

13 Section 40. Collection. The Department of Revenue shall  
14 collect the mark-to-market taxes imposed by this Act. Money  
15 collected, after deducting amounts necessary for  
16 administration and enforcement by the Department, shall be  
17 paid into the General Revenue Fund in the State treasury.

18 Section 45. Task Force on administration and enforcement.

19 (a) There is established a Task Force on mark-to-market  
20 tax administration.

21 (b) The purpose of the Task Force will be to assure  
22 adequate funding and staffing for the administration of the  
23 mark-to-market tax. Adequate funding should result in an audit

1 rate for taxpayers with net worth of \$1,000,000,000 or greater  
2 of 100%. Adequate funding should result in an audit rate for  
3 taxpayers with net worth between \$50,000,000 and \$1,000,000 of  
4 at least 25%. Adequate funding should additionally make it  
5 both possible and feasible for the Department of Revenue to  
6 hire any outside experts or outside counsel as appropriate and  
7 helpful for vigorously enforcing this Act.

8 For the first two years of operation, \$50,000,000 or 1% of  
9 all projected revenues from the mark-to-market tax, whichever  
10 is greater, shall be deposited in the Tax Compliance and  
11 Administration Fund for the purpose of setting up the  
12 administration and enforcement of the mark-to-market tax.

13 The Task Force shall recommend prudently spending down any  
14 excess funds deposited into the Tax Compliance and  
15 Administration Fund under this provisions of this subsection.

16 (c) The Task Force shall propose an appropriate level of  
17 funding for mark-to-market tax administration annually, with  
18 the first proposal due 6 months after the effective date of  
19 this Act.

20 (d) The Governor, the Comptroller, the Treasurer, the  
21 General Assembly, and the Director of Revenue shall each  
22 appoint one member from each of the following 3 categories:  
23 (1) a current or retired Illinois revenue official; (2) a  
24 taxpayer representative; (3) a policy analyst or academic.

25 (e) All appointments shall be made within 40 days after  
26 the effective date of this Act. If any of the appointments are

1 not completed within that time, the Task Force shall proceed  
2 to operate with the appointments that are in place, provided  
3 that at least 60% of the appointments have been made.

4 Forty-five days after the effective date of this Act, the  
5 Director of Revenue shall convene a meeting of the appointed  
6 members of the Task Force to elect a chairperson and vice  
7 chairperson from among the individuals nominated pursuant to  
8 subsection (d).

9 The members shall serve 8-year terms. Members shall serve  
10 a maximum of 2 terms.

11 If a vacancy occurs within a term, the appointing  
12 authority shall appoint a replacement member within 90 days to  
13 serve the remainder of the term.

14 When a term expires, the appointing authority shall  
15 appoint a member within 90 days. Task Force members shall  
16 continue to serve until their replacements are appointed.

17 Actions of the Task Force may be taken only by a majority  
18 vote of a quorum of the Task Force.

19 Section 50. Penalties.

20 (a) A taxpayer subject to the tax imposed under this Act  
21 with an understatement of tax for any taxable year shall be  
22 subject to the penalty imposed under this Section if that  
23 understatement exceeds the greater of the following:

24 (1) \$1,000,000; or

25 (2) 20% of the tax shown on an original return or shown

1 on an amended return filed on or before the original or  
2 extended due date of the return for the taxable year.

3 (b) The penalty under this Section shall be an amount  
4 equal to 20% of any understatement of tax. For purposes of this  
5 Section, "understatement of tax" means the amount by which the  
6 tax imposed by this Act exceeds the amount of tax shown on an  
7 original return or shown on an amended return filed on or  
8 before the original or extended due date of the return for the  
9 taxable year.

10 The penalty under this Section shall be an amount equal to  
11 40% of any understatement of tax if that understatement was  
12 substantially the result of not reporting an asset required to  
13 be listed under Section 30.

14 (c) The penalty imposed by this Section shall be in  
15 addition to any other penalty imposed under the personal  
16 income tax or other relevant provision of law.

17 (d) A refund or credit for any amounts paid to satisfy a  
18 penalty imposed under this Section may be allowed only on the  
19 grounds that the amount of the penalty was not properly  
20 computed by the Department of Revenue.

21 (e) No penalty shall be imposed under this Section on any  
22 understatement to the extent that the understatement is  
23 attributable to any of the following:

24 (1) A change in law that is enacted, adopted, issued,  
25 or becomes final after the earlier of either of the  
26 following dates:

1 (A) the date the taxpayer files the return for the  
2 taxable year for which the change is operative; or

3 (B) the extended due date for the return of the  
4 taxpayer for the taxable year for which the change is  
5 operative.

6 For purposes of this Section, a "change of law" means a  
7 statutory change or an interpretation of law or rule of law by  
8 regulation, legal ruling of counsel, or a published federal or  
9 Illinois court decision.

10 The Department of Revenue shall implement this Section in  
11 a reasonable manner.

12 (f) No penalty shall be imposed under this Section to the  
13 extent that a taxpayer's understatement is attributable to the  
14 taxpayer's reasonable reliance on written advice of the  
15 Department of Revenue, but only if the written advice was a  
16 formal legal ruling.

17 Section 55. Rules. The Department of Revenue shall adopt  
18 rules necessary or appropriate to carry out the purposes of  
19 this Act, including rules to prevent the use of year-end  
20 transfers, related parties, or other arrangements to avoid its  
21 provisions.

22 Section 99. Effective date. This Act takes effect upon  
23 becoming law.