How California and Washington Could Ignite a Nationwide Tax Storm
By Michelle T. Dellino
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There's a very straightforward way some of California's wealthiest residents could avoid paying a proposed new billionaire tax: Get a divorce.

Now, even the most tax-averse billionaires probably won't walk out on their marriages over a one-time, 5% flat tax on their accumulated net worth. But it is worth thinking about how new tax policies will inevitably affect high-net-worth divorces already underway.

California's ballot initiative is part of a broader wave of state-level tax policies targeting the wealthy, including Washington state's millionaire tax, which is facing a repeal effort on the November ballot, and similar efforts in Maryland and Oregon.

These new taxes specifically include wealth and earnings not captured by traditional income, sales, or property taxes. But that puts them in direct conflict with family courts, where the primary objective is dividing those very same assets.

Wealth taxes target all an individual or family's assets, including ones that have gone up in value but not been sold. That can be tricky for a couple whose money is tied up in investments that aren't liquid, like real estate, since they'll need to find cash from somewhere else to pay the tax.

It's even trickier in a divorce, where those assets might leave one party stuck with a high tax bill, adding a significant and largely uncharted variable to divorce proceedings.

Because California's billionaire tax would only apply to the roughly 200 residents worth over $1 billion, a well-timed divorce could theoretically drop both former spouses just below the threshold.

In fact, high-profile divorces historically have taken a far larger bite out of ultra-wealthy individuals' assets than state taxes ever could, such as when Amazon founder Jeff Bezos transferred $38 billion in stock to MacKenzie Scott during their 2019 split.

Divorce is always painful, and I don't think anyone wants to go through it just for the sake of a fleeting tax advantage. But it is worth noting that it is treated very differently from almost any other personal event.

For example, if someone wanted to transfer millions of dollars of assets to their spouse, that would normally trigger capital gains taxes. But if it's being done because of a divorce, that transfer is in most cases, tax-free.

Higher-earning couples also typically get hit with a "marriage penalty," meaning they pay more in taxes than they would if they were each filing as a single person. That means they also get something of a divorce bonus, as their individual tax brackets are far lower than what they paid as a couple.

Because many of these new wealth tax proposals are straightforward flat taxes that only apply past a certain threshold, there's also a huge bonus for divorcing couples who fall below it when they are no longer married.

While California's proposal affects a very small group, in Washington, where I practice family law, upcoming tax changes are already reshaping how high earners approach their personal lives.

In March, Washington enacted a 9.9% tax on individual annual earnings over $1 million, set to take effect on Jan. 1, 2028. Although the effective date is more than a year away, business owners, executives, and high-earning professionals are already looking into restructuring their financial arrangements or even moving to another state.

I have also heard from high-net-worth individuals who don't necessarily want to divorce but are asking whether Legal Separation, which also financially separates a couple, is a viable option for getting under the tax threshold. It's not that far-fetched of an idea. Over the years, I have worked with couples who wanted to do a legal separation for tax or other financial reasons.

For those going through a divorce, other considerations come into play.

For high-net-worth couples with complicated finances, the tax raises tricky questions about selling a private company, accepting deferred compensation, or vesting equity in a startup before the tax takes effect.

It can also complicate moving plans for a high-earning divorced parent hoping to avoid the tax. In Washington, parenting plans restrict moving with children without a process that allows for notice and opportunity to respond and challenge the move, especially for the spouse with primary custody. This could rule that option out.

Many of the arguments about the millionaires' and billionaires' taxes have focused on the revenue they can generate.

But major changes to the tax code will always have unforeseen side effects. In this case, that can include the marriages and divorces of the people who will pay it.

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