SENATE DOCKET, NO. 66 FILED ON: 1/10/2013

SENATE . . . . . No. 1373

The Commonwealth of Massachusetts

PRESENTED BY:

Michael O. Moore

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act improving the tax administrative laws of the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Michael O. Moore	*Second Worcester*

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SENATE . . . . . No. 1373

By Mr. Michael O. Moore, a petition (accompanied by bill, Senate, No. 1373) of Michael O. Moore for legislation to make certain changes in the administrative tax laws of the Commonwealth. Revenue.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *1729* OF 2011-2012.]

The Commonwealth of Massachusetts

An Act improving the tax administrative laws of the Commonwealth.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 62C of the General Laws is hereby amended by striking out section 3A, as appearing in the 2010 Official Edition, and inserting in place thereof the following section:-

Section 3A. In applying the laws referred to in section 2, the commissioner may, in his discretion, disallow the asserted tax consequences of a transaction by asserting the application of the sham transaction doctrine or any other related tax doctrine, in which case the taxpayer shall have the burden of demonstrating that the transaction possessed both: (i) a valid, good-faith business purpose other than tax avoidance; and (ii) economic substance apart from the asserted tax benefit.

In the case of an individual, this section shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

This section is not intended to alter the tax treatment of basic business transactions that have been respected at common law, merely because the choice between meaningful economic alternatives is based on comparative tax advantages. These basic transactions shall include but not be limited to (1) the choice between capitalizing a business enterprise with debt or equity; (2) the choice between using a corporation organized in Massachusetts or elsewhere; (3) the choice of entity; (4) the choice to enter a transaction or series of transactions that constitute a corporate

18 organization or a reorganization governed for federal income tax purposes by Section 368(a)(1)
19 of the Code; and (4) the choice to use a related-party entity in a transaction, if the arm's length
20 standards of Section 482 of the Code and of Section 39A of chapter 63 and other applicable
21 concepts are satisfied.

22 Nothing in this section shall be construed to limit or negate the commissioner's authority
23 to make tax adjustments as otherwise permitted by law.

24 SECTION 2. Paragraph two of section 19 of chapter 62C of the General Laws, as so
25 appearing, is hereby amended by striking out the first sentence and inserting in place thereof the
26 following sentence:- An extension of six months for filing any return required by section eleven
27 or twelve shall be allowed any corporation if, in such manner and at such time as the
28 commissioner may prescribe, such corporation files a request, in such form as the commissioner
29 may require, and pays, on or before the date prescribed for payment of the tax, the amount of tax
30 reasonably estimated to be due under this chapter; but this extension may be terminated at any
31 time by the commissioner by mailing to the corporation notice of such determination at least ten
32 days prior to the date for termination fixed in such notice; provided, further that in the case of
33 taxpayer subject to section 32B of Chapter 63 that is required to file a return required by section
34 11 or 12, an extension of seven months for filing such return shall be allowed.

35 SECTION 3. Section 37C of chapter 62C of the General Laws, as so appearing, is
36 hereby amended by inserting the following paragraph:-

37 (g) If the commissioner, considering the provisions of paragraph (a), fails to accept an
38 offer of the taxpayer of 35% or more of the assessed liability in full in final settlement and the
39 appellate tax board finds for the taxpayer, the commissioner shall pay the taxpayer reasonable
40 attorney fees not to exceed twenty percent of the assessed amount, and any interest otherwise
41 due.

42 SECTION 4. Section 3 of chapter 63B of the General Laws, as appearing in the 2010
43 Official Edition, is hereby amended by striking out paragraph (c) and inserting in place thereof
44 the following:-

45 (c) For purposes of this chapter, there shall be four required installments for each taxable
46 year, except as otherwise provided by this chapter. The first installment shall be paid on or
47 before the fifteenth day of the third month of the taxable year and shall be equal to twenty-five
48 percent of the required annual payment; the second installment shall be paid on or before the
49 fifteenth day of the sixth month of the taxable year and shall be equal to twenty-five percent of
50 the required annual payment; the third installment shall be paid on or before the fifteenth day of
51 the ninth month of the taxable year and shall be equal to twenty-five percent of the required
52 annual payment; and the fourth installment shall be paid on or before the fifteenth day of the
53 twelfth month of the taxable year and shall be equal to the remaining twenty-five percent of the

54 required annual payment. Except as otherwise provided in this subsection, the term “required
55 annual payment” shall mean the lesser of:

56 (i) ninety percent of the tax shown on the return for the taxable year or, if no return is
57 filed, ninety percent of the tax for such year, or

58 (ii) one hundred percent of the tax shown on the return of the corporation for the
59 preceding taxable year, or

60 (iii) 90 per cent of the tax for the taxable year, or

61 (iv) 90 per cent of the tax that would be required to be shown on the return for the taxable
62 year if the tax were determined by using the income apportionment percentage determined for
63 the preceding taxable year under chapter 63.

64 Clause (ii) shall not apply if the preceding taxable year was not a taxable year of twelve
65 months or the corporation did not file a return for such preceding taxable year showing a liability
66 for tax. Clause (ii) shall not apply in the case of a large corporation, as defined in section sixty-
67 six hundred and fifty-five (g) of the Internal Revenue Code of the United States, as amended on
68 January first, nineteen hundred and eighty-nine and in effect for the taxable year except for
69 purposes of determining the amount of the first required installment for any taxable year;
70 provided, however, that any reduction in such first installment by reason of this provision shall
71 be recaptured by increasing the amount of the next required installment by the amount of such
72 reduction.

73 SECTION 5. Section 1 shall take effect at the same time as Section 10 of Chapter 4 of
74 the Acts of 2003 took effect.

75 SECTION 6. (a) Notwithstanding any general or special law to the contrary, the
76 commissioner of revenue shall establish a tax amnesty program for all taxes collected during
77 which period all penalties that could be assessed by the commissioner shall be waived without
78 the need for any showing by the taxpayer of reasonable cause or the absence of willful neglect
79 for the failure of the taxpayer to: (i) timely file any proper return for any tax type and for any tax
80 period; (ii) file proper returns which report the full amount of the taxpayer's liability for any tax
81 type and for any tax period; (iii) timely pay any tax liability; or (iv) pay the proper amount of any
82 required estimated payment toward a tax liability. The waiver of a taxpayer’s liability under this
83 section shall apply if the taxpayer files returns, makes payments as required by the commissioner
84 or otherwise comes into compliance with the tax laws of the commonwealth as required by the
85 commissioner pursuant to the tax amnesty program.

86 (b) The amnesty program shall be established for 2 consecutive months within fiscal year
87 2014 to be determined by the commissioner, such period to expire not later than June 30, 2014,
88 and all required payments shall be made on or before June 30, 2014, in order for the amnesty to

89 apply. If a taxpayer fails to pay the full liability before June 30, 2014, the commissioner shall
90 retain any payments made and shall apply those payments against the outstanding liability, and
91 the provisions of the tax amnesty program shall not apply.

92 (c) The commissioner's authority to waive penalties during the amnesty period shall not
93 apply to any taxpayer who, before the start date of the amnesty program selected was the subject
94 of a tax-related criminal investigation or prosecution.

95 (d) The commissioner may offer tax amnesty to those taxpayers who have either an
96 unpaid self-assessed liability or who have been assessed a tax liability, whether before or after
97 the filing of a return, which assessed liability, remains unpaid. The amnesty program shall
98 authorize the waiver of interest, or any amount treated as interest, as further provided in this
99 section. No interest shall be due for taxpayers paying in full any self-assessed tax liability. For
100 those taxpayers with an outstanding audit or assessment and in accordance with the
101 considerations outlined in sections 37A and 37C of Chapter 62C of the General Laws: 25% of
102 the interest rate as defined in section 32 of Chapter 62C, herein the applicable interest rate, so
103 long as the taxpayer pays in full and final settlement less than 50% of the tax liability assessed by
104 the commissioner; 50% of the applicable interest so long as the taxpayer pays in full and final
105 settlement more than 50% but less than 79% of the tax assessed by the commissioner; and if the
106 taxpayer pays in full and final settlement more than 80% of the tax assessed, no reduction in the
107 applicable interest rate shall be granted to the taxpayer.

108 (e) To the extent that a taxpayer within the scope of the amnesty program and wishing to
109 participate in the amnesty program has postponed the payment of an assessment of tax, interest
110 and penalty under the authority of subsection (e) of section 32 of chapter 62C of the General
111 Laws, the taxpayer shall waive in writing all rights under said subsection (e) of said section 32 of
112 said chapter 62C further delay the payment of the tax and interest portions of the assessment.
113 The tax and interest portions of the assessment shall be payable in full from the date of the
114 commissioner's notice of assessment. Upon payment by the taxpayer of the tax and interest of the
115 outstanding assessment, the commissioner shall waive all penalties associated with that
116 assessment. The taxpayer and the commissioner shall then proceed with all administrative appeal
117 rights that the taxpayer wishes to pursue with respect to the assessment.

118 (f) Amnesty shall not apply to those penalties which the commissioner would not have
119 the sole authority to waive including, but not limited to, fuel taxes administered under the
120 International Fuel Tax Agreement or under the local option portions of taxes or excises collected
121 for the benefit of cities, towns or state governmental authorities.

122 (g) The commissioner shall maintain records of the amnesty provided under this section
123 including, but not limited to: (i) the number of taxpayers provided with amnesty; (ii) the types of
124 tax liability for which amnesty was provided and, for each type of liability, the amount of tax
125 liability collected and the amount of penalties foregone by virtue of the amnesty program; and

126 (iii) the total outstanding tax liability for amnesty-eligible taxpayers at the conclusion of the tax
127 amnesty program after the collection of all funds under this section. The commissioner shall file
128 a report detailing such information with the clerks of the house of representatives and the senate,
129 the joint committee on revenue, the house and senate committees on ways and means, the
130 minority leader of the house and the minority leader of the senate not later than September 1,
131 2014; provided, however, that such report shall not contain information sufficient to identify an
132 individual taxpayer or the amnesty that an individual taxpayer was provided under this section.

133 (g) A taxpayer who is eligible for the amnesty program based upon the criteria
134 established by the commissioner and who fails to come forward under the tax amnesty program
135 and make payments before June 30, 2014 shall, in addition to all other penalties provided by
136 chapter 62C of the General Laws, be subject to an additional penalty not to exceed $500 per
137 taxpayer, which shall be calculated and assessed according to rules determined by the
138 commissioner and which may be subject to de minimis or other exceptions that the commissioner
139 may consider appropriate. This penalty shall be subject to said chapter 62C and shall be added to
140 and become part of the tax due. The commissioner may waive the penalty provided by this
141 subsection for reasonable cause as provided in subsection (f) of section 33 of said chapter 62C.