SENATE DOCKET, NO. 1871 FILED ON: 1/21/2011

SENATE . . . . . No. 1417

The Commonwealth of Massachusetts

PRESENTED BY:

Sonia Chang-Diaz

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 fairness of our tax laws.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Sonia Chang-Diaz	☐ *[District]* ☐
Ellen Story	*3rd Hampshire*

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SENATE . . . . . No. 1417

By Ms. Chang-Diaz, petition (accompanied by bill, Senate, No. 1417) of Story and Chang-Diaz for legislation to improve the fairness of our tax laws
 [Joint Committee on Revenue].

The Commonwealth of Massachusetts

An Act improving the fairness of our tax laws.

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 63 of the General Laws is hereby amended by inserting after section 29E the following new section:-

Section 29F. Certain Non-Insurance Trade or Business Income.

(a) An insurance company subject to sections 20 through 29E shall, in addition to the excise determined under those sections, be subject to this section if the company owns, directly or indirectly, 50 per cent or more of the interests in an entity treated as a partnership or disregarded entity that is engaged in a non-insurance trade or business in Massachusetts.

(b) Without limitation, this section shall not apply to income of an insurance company from the buying, selling, holding, or dealing in securities or other investment intangibles on its own behalf, and not as a broker. Gain from the sale of real property and improvements shall also be excluded to the extent that the gain exceeds cumulative depreciation and similar expenses with respect to the property and improvements that have been deducted in determining income taxable under subsection (c).

(c) An insurance company with non-insurance trade or business income from a partnership or disregarded entity, as described in subsection (a), shall file a return under this chapter with respect to the income and activities of the partnership or disregarded entity in the manner of a business corporation, financial institution, or utility corporation, as applicable, and pay the associated excise. The income and activities shall, to the extent applicable, be included in a combined return filed under section 32B.

(d) The commissioner may issue regulations or other guidance as may be needed for the implementation of this section.

SECTION 2. Section 7B of Chapter 64C of the General Laws is hereby amended by adding the following paragraph:

(m) In addition to the excise imposed by paragraph (b), an excise shall be imposed on all cigars weighing more than 3 pounds per 1,000 units and not more than 12 pounds per 1,000 units held in the commonwealth at the rate of 80 per cent of the wholesale price of such product. In addition to the excise imposed by paragraph (b), an excise shall be imposed on all smoking tobacco held in the commonwealth at the rate of 90 per cent of the wholesale price of such product.

SECTION 3. Section 7C(a) of Chapter 64C of the General Laws is hereby amended by striking out the sentence "Notwithstanding the provisions of this section, the excise imposed by this section shall equal twenty-five percent of the price paid by such licensee or unclassified acquirer to purchase smokeless tobacco so sold, imported, or acquired" and inserting in place thereof the following sentence: "Notwithstanding the provisions of this section, the excise imposed by this section shall equal forty-five percent of the price paid by such licensee or unclassified acquirer to purchase smokeless tobacco so sold, imported or acquired."

SECTION 4. Chapter 64D of the General Laws is hereby amended by inserting after Section 1 the following new section: -

Section 1A. In addition to the tax levied under section 1 of this chapter and any surtax imposed thereon, an additional tax is hereby imposed on each deed, instrument or writing, whereby any lands, tenements or other realty sold shall be granted, assigned, transferred or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her or their direction, when the consideration of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of the sale, is one million dollars or more. The rate of such additional tax shall be five dollars for each five hundred dollars of consideration or fractional part thereof in excess of one million dollars. This section shall not apply to any instrument or writing given to secure a debt or to any deed, instrument or writing to which the commonwealth, a city or town of the commonwealth, or the United States or any of their agencies are a party. All provisions of chapter 64D relative to the assessment, collection, payment, abatement, verification and administration of the tax imposed under section 1 of this chapter, including penalties, shall, so far as pertinent, be applicable to the tax imposed by this section. The tax imposed under this section shall be exempt from the surtax levied under section 23 of chapter 546 of the Acts of 1969.

SECTION 5. Section 1 of chapter 64G of the General Laws, as so appearing, is hereby amended by inserting after paragraph (b) thereof the following paragraph:--

(b1/2) "Doing business in the commonwealth", ownership or operation of a bed and breakfast establishment, hotel, lodging house or motel that is located in the commonwealth, maintenance otherwise of a place of business in the commonwealth, the

60 presence of an employee in the commonwealth on more than a de minimis basis, solicitation in
61 the commonwealth of orders for transfer of occupancy of accommodations located in the
62 commonwealth, solicitation in the commonwealth by a reseller of a contract or other cooperative
63 arrangement with an operator with respect to accommodations located in the commonwealth,
64 inspection in the commonwealth of accommodations that may be the subject of a cooperative
65 arrangement between an operator and a reseller, or other exploitation of the market for
66 accommodations or resale of accommodations located in the commonwealth by any means
67 whatsoever, including, but not limited to, salesmen, solicitors or representatives in the
68 commonwealth, whether those salesmen, solicitors or representatives are employed by the
69 operator or reseller, by a person affiliated with the operator or the reseller by common
70 ownership, or by any other party. This definition is intended to extend the jurisdiction of the
71 commonwealth over operators and resellers to the full extent authorized by the Constitution and
72 the laws of the United States.

73 SECTION 6. Said section 1 of said chapter 64G, as so appearing, is hereby
74 further amended by inserting after the word “operator”, in line 49, the following words: -- or the
75 room reseller.

76 SECTION 7. Section 16 of said chapter 62C, as so appearing, is hereby
77 amended by inserting after the word “operator”, in line 53, as so appearing, the following words:
78 -- or room reseller.

79 SECTION 8. Section 25 of said chapter 62C, as so appearing, is hereby
80 amended by inserting after the word “operator”, in line 6, the following words: -- or room
81 reseller.

82 SECTION 9. Section 67 of said chapter 62C, as so appearing, is hereby
83 amended by inserting after the word “operator”, in line 2, the following words: -- or room
84 reseller.

85 SECTION 10. Said section 1 of said chapter 64G, as so appearing, is hereby
86 further amended by adding the following paragraph:-

87 (k) "Room Reseller" or “Reseller”, any person having any right, permission,
88 license, or other authority from or through an operator to reserve or arrange transfer of
89 occupancy of accommodations the transfer of which is subject to this chapter, such that the
90 occupant pays all or a portion of the rent to the reseller, but the term shall not include a tour
91 operator.

92 SECTION 11. Said chapter 64G is hereby further amended by striking out
93 section 3, as so appearing, and inserting in place thereof the following section: --

94 Section 3. An excise is hereby imposed upon the transfer of occupancy of any
95 room or rooms in a bed and breakfast establishment, hotel, lodging house, or motel in this
96 commonwealth by any operator or room reseller doing business in the commonwealth at the rate
97 of 5 per cent of the total amount of rent for each occupancy. No excise shall be imposed if the
98 total amount of rent paid by the occupant is less than $15 per day or its equivalent.

99 The operator or room reseller shall pay the excise to the commissioner at the
100 time provided for filing the return required by section 16 of chapter 62C.

101 SECTION 12. Section 3A of said chapter 64G, as so appearing, is hereby
102 amended by striking out the first 3 sentences and inserting in place thereof the following 3
103 sentences:-

104 Any city or town that accepts this section may impose a local excise tax upon
105 the transfer of occupancy of any room or rooms in a bed and breakfast establishment, hotel,
106 lodging house or motel located within the city or town by any operator or room reseller at a rate
107 up to, but not exceeding, 4 per cent of the total amount of rent paid by the occupant for the
108 occupancy ,but the city of Boston may impose a local excise upon the transfer of occupancy of
109 any room in a bed and breakfast establishment, hotel, lodging house or motel located within the
110 city by any operator or room reseller at the rate of up to but not exceeding 4.5 per cent of the
111 total amount of rent paid by the occupant for the occupancy. No excise shall be imposed if the
112 total amount of rent paid by the occupant is less than $15 per day or its equivalent or if the
113 accommodation is exempt under section 2 of this chapter. The operator or room reseller shall
114 pay the local excise tax imposed under this section to the commissioner at the same time and in
115 the same manner as the excise tax due the commonwealth.

116 SECTION 13. Said chapter 64G is hereby further amended by inserting after
117 section 3A the following section:-

118 Section 3B. Notwithstanding any other provision of this chapter, in cases in
119 which occupancy is transferred through the use of a room reseller, the application of the excise
120 shall be as follows:

121 If the room reseller is required to register under section 6 to collect the excise,
122 the room reseller shall collect and pay to the commissioner the excise upon the amount of rent
123 paid by the occupant to the room reseller, less the amount of rent that the reseller has paid to the
124 operator.

125 Whether or not the room reseller is so registered, the operator shall collect and
126 pay to the commissioner the excise upon the amount of rent paid to the operator by the reseller or
127 the occupant.

128 SECTION 14. Said chapter 64G is hereby further amended by striking out
129 sections 4 to 6, as so appearing, and inserting in place thereof the following 3 sections:--

130 Section 4. Reimbursement for the excise imposed under sections 3 and 3A
131 shall be paid by the occupant or the room reseller to the operator and by the occupant to the room
132 reseller, as the case may be, and each operator and room reseller doing business in the
133 commonwealth shall add to the rent and shall collect from the occupant or the room reseller the
134 full amount of the excise imposed, in accordance with sections 3 and 3A, and that excise shall be
135 a debt to the operator or room reseller, when so added to the rent, and shall be recoverable at law
136 in the same manner as other debts.

137 Section 5. The amount of the excise collected by the operator or the room
138 reseller under this chapter shall be stated and charged separately from the rent and shown
139 separately on any record thereof at the time the transfer of occupancy is made, or on any
140 evidence of the transfer issued or used by the operator or the room reseller. A room reseller shall
141 not be required to disclose to the occupant the amount of tax charged by the operator. The
142 reseller shall represent to the occupant that the separately stated taxes charged by the reseller
143 include taxes charged by the operator.

144 Section 6. No person shall operate a bed and breakfast establishment, hotel,
145 lodging house or motel in this commonwealth, or do business as a room reseller in the
146 commonwealth, unless a certificate of registration has been issued to him in accordance with
147 section 67 of chapter 62C.

148 SECTION 15. Section 7A of said chapter 64G, as so appearing, is hereby
149 amended by inserting after the word “operator”, in line 1, the following words:- or room reseller
150 .

151 SECTION 16. Said section 7A of said chapter 64G, as so appearing, is hereby
152 further amended by inserting after the word “operator”, in line 7, the following words:- or room
153 reseller.

154 SECTION 17. Said chapter 64G is hereby further amended by striking out
155 section 7B, as inserted by section 30 of chapter 163 of the acts of 2005, and inserting in place
156 thereof the following section:-

157 Section 7B. Every operator or room reseller who fails to pay to the
158 commissioner any sums required to be paid by this chapter shall be personally and individually
159 liable for those amounts to the commonwealth. The terms “operator” and “room reseller”, as
160 used in this section, include an officer or employee of a corporation, or a member or employee of
161 a partnership, who as an officer, employee or member is under a duty to pay over the taxes
162 imposed by this chapter.

163 SECTION 18. Section 12 of said chapter 64G, as appearing in the 2004
164 Official Edition, is hereby amended by inserting after the word "operator", in line 5, the
165 following words:- and each room reseller.

166 SECTION 19. The definition of "sale at retail" or "retail sale" in section 1 of
167 chapter 64H of the General Laws, as so appearing, is hereby amended by inserting after the word
168 "business.", in line 129, the following sentence:- A sale for resale in the regular course of
169 business does not include a lease, rental or sale to a leasing or procurement entity for subsequent
170 lease, rental or sale to any related entity, related member as defined in section 31I of chapter 63,
171 or affiliate, including persons described in. section 267(b) or 707(b)(1) of the Internal Revenue
172 Code of the United States. The previous sentence does not apply to a sale of tangible personal
173 property held for resale to any third party that is not related as described in this section.

174 SECTION 20. Section 6 of said chapter 64H, as amended by section 15 of
175 chapter 260 of the acts of 2006, is hereby further amended by inserting after paragraph (ww), the
176 following paragraph:-

177 (xx) Sales of tangible personal property purchased by a business entity for
178 keeping or retention in the commonwealth for the purpose of subsequently transporting that
179 property outside of the commonwealth for business use thereafter solely outside of the
180 commonwealth, or for the purpose of being processed, fabricated or manufactured into other
181 tangible personal property to be transported outside of the commonwealth and thereafter used
182 solely outside of the commonwealth. A taxpayer must retain adequate documentation
183 substantiating that the requirements of this exemption are met.

184 SECTION 21. Section 1 of chapter 64H of the General Laws, as appearing in
185 the 2008 Official Edition, is hereby amended by inserting the following sentence before the last
186 sentence of the definition of "tangible personal property":

187 A transfer of an interest in an aircraft shall be considered a transfer of tangible
188 personal property under rules determined by the commissioner.

189 SECTION 22. Section 6 of said chapter 64H, as so appearing, is hereby
190 amended by striking out paragraph (vv).

191 SECTION 23. Section 7 of chapter 64I of the General Laws, as so appearing,
192 is hereby amended by striking out paragraph (e).

193 SECTION 24. Section 8 of chapter 64I of the General Laws, as appearing in
194 the 2004 Official Edition, is hereby amended by inserting after the word "purchase.", in line 45,
195 the following sentence:- Notwithstanding this paragraph, tangible personal property purchased
196 for placement in inventory is presumed to be purchased for use in the commonwealth if the
197 property is subsequently used in the commonwealth without regard to whether it is brought into

198 the commonwealth within 6 months after purchase, and use tax is due at the time the property is
199 first used in the commonwealth.

200 SECTION 25. Section 321 of Chapter 94 of the General Laws, as appearing
201 in the 2002 Official Edition, is hereby amended by striking out the definitions for "beverage" and
202 "beverage container," and inserting in place thereof the following definitions:—

203 "Beverage," soda water or similar carbonated soft drinks; noncarbonated
204 beverages including mineral water, flavored and unflavored water, vitamin water, and other
205 water beverages, tea, sports drinks, isotonic drinks; beer and other malt beverages; and all other
206 non-alcoholic carbonated and noncarbonated drinks in liquid form intended for human
207 consumption except milk and beverages that are primarily derived from dairy products, infant
208 formula, and FDA-approved medicines.

209 "Beverage container," any sealable bottle, can, jar, or carton which is
210 primarily composed of glass, metal, plastic, or any combination of those materials and is
211 produced for the purpose of containing a beverage, which, at the time of sale, contains one-
212 hundred and thirty-five ounces or less of a beverage. This definition shall not include containers
213 made of paper-based biodegradable material and aseptic multi-material packaging.

214 SECTION 26. Section 321 of Chapter 94 of the General Laws, as appearing
215 in the 2002 Official Edition, is hereby amended by adding, after the definition of "Plastic bottle"
216 the following definition:— "Redemption center," any business whose primary purpose is the
217 redemption of beverage containers and is not ancillary to any other business,

218 SECTION 27. Section 321 of Chapter 94 of the General Laws, as so
219 appearing, is hereby amended by adding, after the definition of "Reusable beverage container,"
220 the following definition:—

221 "Small dealer," any person, including any operator of a vending machine,
222 employing the equivalent of ten full time employees or less, who engages in the sale of
223 beverages in beverage containers to consumers in the Commonwealth.

224 SECTION 28. Section 323 of Chapter 94 of the General Laws, as so
225 appearing, is hereby amended by adding in line 30 after the letter "(e)," the following:—

226 The Executive Office of Environmental Affairs shall promulgate rules and
227 regulations for the licensure of redemption centers, and may set fees for the licensing of such
228 redemption centers.

229 SECTION 29. Section 323, paragraph (a), of Chapter 94 of the General Laws,
230 as appearing in the 1998 Official Edition, is hereby amended by striking out in line the words
231 "the refund value" and inserting in place thereof the words "the full refund value".

232 SECTION 30. Section 323, paragraph (b), of Chapter 94 of the General Laws,
233 as appearing in the 1998 Official Edition, is hereby amended by striking out the words "one
234 cent" and inserting in place thereof the words "three and one quarter cents" and placing the
235 following sentence at the end of the paragraph. "The handling fee shall be reviewed semi-
236 annually by the Secretary of the Executive Office of Environmental Affairs and adjustments
237 made to reflect increases in costs incurred by redemption facilities."

238 SECTION 31. Section 323, paragraph (c), of Chapter 94 of the General Laws,
239 as appearing in the 2002 Official Edition, is hereby amended by striking out in the words "one
240 cent" and inserting in place thereof the words "three and one quarter cents" and placing the
241 following sentence at the end of the paragraph. "The handling fee shall be reviewed semi-
242 annually by the Secretary of the Executive Office of Environmental Affairs and adjustments
243 made to reflect increases in costs incurred by redemption facilities."

244 SECTION 32. Section 323 of Chapter 94 of the General Laws, appearing in
245 the 2002 Official Edition, is hereby amended by adding in line 73, after the word "civil," the
246 words "or administrative."

247 SECTION 33. Chapter 94 of the General Laws, as so appearing, is hereby
248 amended by adding a new section after 323F:—

249 Section 323G. Redemption Centers.

250 (a) Only small dealers may apply for an exemption with the department.

251 (b) Application for an exemption shall be jointly filed with the department by
252 the small dealer and redemption center. The application shall state the name and address of the
253 person responsible for the establishment and operation of the center, the kinds, sizes and brand
254 names of beverage containers that will be accepted and the names and addresses of dealer(s) to
255 be served and their distance from the local redemption center.

256 (c) In approving the exemption, the department shall consider at least the
257 health and safety of the public; the convenience for the public, including standards governing
258 distribution of centers by population or by distance or both, the size and storage capacity of the
259 dealer(s) to be served by the redemption center and the size and storage capacity of the
260 redemption center. The order approving a local redemption center license must state the dealers
261 to be served and the kinds, sizes and brand names of empty beverage containers that the center
262 accepts.

263 (d) A local redemption center may not refuse to accept from any consumer or
264 other person not a dealer any empty, unbroken and reasonably clean beverage container of the
265 kind, size and brand sold by a dealer served by the center, or refuse to pay in cash the full refund

266 value of the returned beverage container as established by Section 322 of Chapter 94 of the
267 General Laws.

268 (e) A list of the dealers served and the kinds, sizes and brand names accepted
269 shall be promptly displayed at each local redemption centers.

270 (f) The name and location of the redemption center serving the dealer shall be
271 conspicuously displayed at the dealer.

272 SECTION 34. Section 327 of Chapter 94 of the General Laws, as so
273 appearing, is hereby amended by inserting after the first paragraph the following new
274 paragraphs:— The Department of Environmental Protection shall have authority to enforce the
275 provisions of sections three hundred and twenty-one; three hundred and twenty-two; paragraphs
276 (a) through (f) inclusive, and paragraph (i) of section three hundred and twenty-three; three
277 hundred and twenty-three A; three hundred and twenty-three F; three hundred and twenty-four;
278 and three hundred and twenty-five. Any bottler, distributor, redemption center, or dealer who
279 violates any of the foregoing provisions shall be subject to an administrative penalty for each
280 violation of not more than one thousand dollars.

281 The Department of Revenue shall have authority to enforce the provisions of
282 paragraphs (g) and (h) of section three hundred and twenty-three and sections three hundred and
283 twenty-three B to three hundred and twenty-three E, inclusive. Any bottler, distributor,
284 redemption center, or dealer who violates any of the foregoing provisions shall be subject to an
285 administrative penalty for each violation of not more than one thousand dollars.

286 SECTION 35. Section 327 of Chapter 94 of the General Laws, as so
287 appearing, is hereby amended by adding after the word “civil” in line 14 the words “or
288 administrative.”

289 SECTION 36. Section 323F. of Chapter 94 of the General Laws, is hereby
290 amended by replacing the existing text with the following:

291 (a) There shall be established on the books of the Commonwealth a separate
292 fund to be known as the Clean Environment Fund as established in Section 323D of Chapter 94
293 of the General Laws. Amounts deposited in said fund shall be used, subject to appropriation,
294 solely for programs and projects in the management of solid waste and for environmental
295 protection; provided, however, that no funds shall be used for costs associated with incineration.

296 (b) Not less than fifty percent of amounts deposited in the Fund shall be used
297 for recycling, composting and solid waste source reduction projects and programs.

298 (c) Not less than an additional twenty percent of amounts deposited in the
299 Fund shall be used for recycling and other solid waste projects and programs.

300 (d) Not more than thirty percent of amounts deposited in the fund shall be
301 used for other environmental programs consistent with the purposes of the "bottle bill", so-called.

302 (e) Of amounts expended under paragraphs (b) through (d), not more than
303 fifty percent shall be used for debt service on capital outlays authorized prior to January first,
304 nineteen hundred and eighty-eight.

305 SECTION 37. Section 95 of chapter 173 of the acts of 2008 is hereby
306 repealed. The repeal is effective upon enactment and applies to all future taxable years.

307 SECTION 38. The commissioner of revenue shall annually credit any tax
308 revenue obtained under chapters 64H and 64I from the sale, storage, use, or other consumption
309 of aircraft to line item 7007-0334, the small business technical assistance program.

310 SECTION 39. The commissioner may adopt rules and regulations to
311 implement the provisions of sections 1 through 24 and sections 37 through 38 of this act.

312 SECTION 40. Section 1 of this act shall be effective for tax years beginning
313 on or after January first, two thousand twelve.

314 SECTION 41. Sections 2 through 18, sections 22 through 24 and section 38 of
315 this Act shall take effect on July first, two thousand eleven.

316 SECTION 42. Sections 19 through 20 shall apply to transactions on or after
317 January 1, 2012 and shall have no retroactive impact on existing leases or rentals. Section 21
318 shall apply to property brought into the commonwealth for use on or after July 1, 2011. A
319 termination of any existing lease or rental between related entities, related members, or affiliates,
320 including persons described in section 267(b) or 707(b)(1) of the Internal Revenue Code, after
321 the effective date of this act shall be considered to be a sale at fair market value of the leased or
322 rented property if the lessee retains possession or use of the property.

323 SECTION 43. Sections 25 through 36 of this Act shall take effect on
324 December 1st, 2011.

325 SECTION 44. Sections 37 and 39 of this Act shall take effect upon enactment.