

SENATE No. 1497

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 adoption of the accompanying bill:

An Act improving the fairness of our tax laws.

PETITION OF:

NAME:

Sonia Chang-Diaz

DISTRICT/ADDRESS:

Second Suffolk

SENATE No. 1497

By Ms. Chang-Diaz, a petition (accompanied by bill, Senate, No. 1497) of Sonia Chang-Diaz for legislation to improve the fairness of our tax laws. Revenue.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1453 OF 2015-2016.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

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:

1 SECTION 1. Chapter 63 of the General Laws, as appearing in the 2014 Official Edition,
2 is hereby amended by inserting after section 29E the following new section:-

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

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

8 (b) Without limitation, this section shall not apply to income of an insurance company
9 from the buying, selling, holding, or dealing in securities or other investment intangibles on its
10 own behalf, and not as a broker. Gain from the sale of real property and improvements shall also

11 be excluded to the extent that the gain exceeds cumulative depreciation and similar expenses
12 with respect to the property and improvements that have been deducted in determining income
13 taxable under subsection (c).

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

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

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

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

30 SECTION 3. Section 7C(a) of Chapter 64C of the General Laws is hereby amended by
31 striking out the sentence “Notwithstanding the provisions of this section, the excise imposed by
32 this section shall equal twenty-five percent of the price paid by such licensee or unclassified

33 acquirer to purchase smokeless tobacco so sold, imported, or acquired” and inserting in place
34 thereof the following sentence: “Notwithstanding the provisions of this section, the excise
35 imposed by this section shall equal forty-five percent of the price paid by such licensee or
36 unclassified acquirer to purchase smokeless tobacco so sold, imported or acquired.”

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

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

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

56 (b1/2) “Doing business in the commonwealth”, ownership or operation of a bed and
57 breakfast establishment, hotel, lodging house or motel that is located in the commonwealth,
58 maintenance otherwise of a place of business in the commonwealth, the presence of an employee
59 in the commonwealth on more than a de minimis basis, solicitation in the commonwealth of
60 orders for transfer of occupancy of accommodations located in the commonwealth, solicitation in
61 the commonwealth by a reseller of a contract or other cooperative arrangement with an operator
62 with respect to accommodations located in the commonwealth, inspection in the commonwealth
63 of accommodations that may be the subject of a cooperative arrangement between an operator
64 and a reseller, or other exploitation of the market for accommodations or resale of
65 accommodations located in the commonwealth by any means whatsoever, including, but not
66 limited to, salesmen, solicitors or representatives in the commonwealth, whether those salesmen,
67 solicitors or representatives are employed by the operator or reseller, by a person affiliated with
68 the operator or the reseller by common ownership, or by any other party. This definition is
69 intended to extend the jurisdiction of the commonwealth over operators and resellers to the full
70 extent authorized by the Constitution and the laws of the United States.

71 SECTION 6. Said section 1 of said chapter 64G, as appearing in the 2014 Official
72 Edition, is hereby further amended by inserting after the word “operator”, in line 49, the
73 following words: - or the room reseller.

74 SECTION 7. Section 16 of said chapter 62C, as appearing in the 2012 Official Edition, is
75 hereby amended by inserting after the word “operator”, in line 68, as so appearing, the following
76 words: - or room reseller.

77 SECTION 8. Section 25 of said chapter 62C, as appearing in the 2014 Official Edition, is
78 hereby amended by inserting after the word “operator”, in line 5, the following words: - or room
79 reseller.

80 SECTION 9. Section 67 of said chapter 62C, as appearing in the 2014 Official Edition, is
81 hereby amended by inserting after the word “operator”, in line 2, the following words: - or room
82 reseller.

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

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

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

91 Section 3. An excise is hereby imposed upon the transfer of occupancy of any room or
92 rooms in a bed and breakfast establishment, hotel, lodging house, or motel in this commonwealth
93 by any operator or room reseller doing business in the commonwealth at the rate of 5 per cent of

94 the total amount of rent for each occupancy. No excise shall be imposed if the total amount of
95 rent paid by the occupant is less than \$15 per day or its equivalent.

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

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

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

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

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

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

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

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

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

132 Section 5. The amount of the excise collected by the operator or the room reseller under
133 this chapter shall be stated and charged separately from the rent and shown separately on any
134 record thereof at the time the transfer of occupancy is made, or on any evidence of the transfer
135 issued or used by the operator or the room reseller. A room reseller shall not be required to

136 disclose to the occupant the amount of tax charged by the operator. The reseller shall represent
137 to the occupant that the separately stated taxes charged by the reseller include taxes charged by
138 the operator.

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

143 SECTION 15. Section 7A of said chapter 64G, as appearing in the 2014 Official Edition,
144 is hereby amended by inserting after the word “operator”, in line 1, the following words:- or
145 room reseller .

146 SECTION 16. Said section 7A of said chapter 64G, as appearing in the 2014 Official
147 Edition, is hereby further amended by inserting after the word “operator”, in line 8, the following
148 words:- or room reseller.

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

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

158 SECTION 18. Section 12 of said chapter 64G, as appearing in the as appearing in the
159 2014 Official Edition, is hereby amended by inserting after the word “operator”, in line 5, the
160 following words:- and each room reseller.

161 SECTION 19. The definition of “sale at retail” or “retail sale” in section 1 of chapter 64H
162 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by inserting
163 after the word “services.”, in line 215, the following sentence:- A sale for resale in the regular
164 course of business does not include a lease, rental or sale to a leasing or procurement entity for
165 subsequent lease, rental or sale to any related entity, related member as defined in section 31I of
166 chapter 63, or affiliate, including persons described in. section 267(b) or 707(b)(1) of the Internal
167 Revenue Code of the United States. The previous sentence does not apply to a sale of tangible
168 personal property held for resale to any third party that is not related as described in this section.

169 SECTION 20. Section 6 of said chapter 64H, as amended by section 15 of chapter 260 of
170 the acts of 2006, is hereby further amended by inserting after paragraph (xx), the following
171 paragraph:-

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

179 SECTION 21. Section 1 of chapter 64H of the General Laws, as appearing in the 2014
180 Official Edition, is hereby amended by inserting the following sentence before the last sentence
181 of the definition of “tangible personal property”:

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

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

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

188 SECTION 24. Section 8 of chapter 64I of the General Laws, as appearing in the 2014
189 Official Edition, is hereby amended by inserting after the word “purchase.”, in line 48, the
190 following sentence:- Notwithstanding this paragraph, tangible personal property purchased for
191 placement in inventory is presumed to be purchased for use in the commonwealth if the property
192 is subsequently used in the commonwealth without regard to whether it is brought into the
193 commonwealth within 6 months after purchase, and use tax is due at the time the property is first
194 used in the commonwealth.

195 SECTION 25. The commissioner of revenue shall annually credit any tax revenue
196 obtained under chapters 64H and 64I from the sale, storage, use, or other consumption of aircraft
197 to line item 7007-0334, the small business technical assistance program.

198 SECTION 26. The commissioner of revenue may adopt rules and regulations to
199 implement the provisions of sections 1 through 25 of this act.

200 SECTION 27. Section 1 of this act shall be effective for tax years beginning on or after
201 January 1, 2018.

202 SECTION 28. Sections 2 through 18, sections 22 through 25 of this Act shall take effect
203 on July 1, 2017.

204 SECTION 29. Sections 19 through 20 shall apply to transactions on or after January 1,
205 2014and shall have no retroactive impact on existing leases or rentals. Section 21 shall apply to
206 property brought into the commonwealth for use on or after July 1, 2015. A termination of any
207 existing lease or rental between related entities, related members, or affiliates, including persons
208 described in section 267(b) or 707(b)(1) of the Internal Revenue Code, after the effective date of
209 this act shall be considered to be a sale at fair market value of the leased or rented property if the
210 lessee retains possession or use of the property.

211 SECTION 30. Sections 26 and 27 of this Act shall take effect upon enactment.