

SENATE No. 2356

Senate, March 19, 2018 --Text of the Senate amendment (Senator Hinds) to the House Bill authorizing the town of Charlemont to establish a tax on commercial recreation services (House, No. 2623).

The Commonwealth of Massachusetts

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

1 SECTION 1. (a) Notwithstanding any general or special law to the contrary, the town of
2 Charlemont may assess a tax in the amount of 3 per cent of the ticket price on the fee for service
3 for guided or unguided commercial recreational activities originating or located in the town of
4 Charlemont by a vendor including, but not limited to, skiing, ziplining, whitewater rafting and
5 kayaking, river tubing, mountain coaster rides, mountain biking and guided fishing trips. The tax
6 shall be in addition to the amount of any sales tax imposed pursuant to chapter 64H of the
7 General Laws. Upon each sale of a service for guided or unguided commercial recreational
8 activities originating or located in the town of Charlemont by a vendor, the purchaser shall
9 reimburse the vendor for the tax imposed by this chapter and the tax collected by the vendor
10 from the purchaser shall be stated and charged separately from the sale price and shown
11 separately on any record of sale used by the vendor. Not later than the twentieth day of each
12 month, each vendor providing guided or unguided commercial recreational activities originating
13 or located in the town of Charlemont shall pay the tax imposed by this act to the collector for the
14 town of Charlemont. Each such payment shall be made in the manner and accompanied by a
15 return prescribed by the collector, which shall include the vendor's taxpayer identification
16 number and report the vendor's total sales, gross sales of applicable services and the amount of

17 tax due for the preceding month and other information the collector determines is reasonably
18 necessary to administer and collect the tax. Such returns shall not be a public record under
19 clause Twenty-sixth of section 7 of chapter 4 or section 3 of chapter 66 of the General Laws. The
20 collector may disclose such returns only to the assessors, clerks and assistants of the assessors
21 and any designated private auditor of the assessors as may have occasion to inspect the vendor's
22 books, papers, records and other data in the performance of their official, contractual or
23 designated duties, or to the commissioner of revenue or the taxpayer who submitted the return.

24 (b) For good cause the collector may grant a reasonable extension of time for filing a
25 return required by subsection (a), provided that the taxpayer, on or before the date prescribed for
26 payment of the tax, files a tentative return, in such form as the collector may require, and pays
27 therewith the amount of tax reasonably estimated to be due. A penalty shall be imposed for
28 failure to file a tax return pursuant to subsection (a) on or before the due date of the return or
29 within any extension of time for payment granted by the collector. The penalty shall be 1 per
30 cent of the amount of tax required to be reported on the return, computed for each month or
31 fraction of a month during which the failure continues, not to exceed in the aggregate 25 per cent
32 of that amount. In computing the penalty for failure to file timely, the amount of tax required to
33 be shown on the return shall be reduced by the amount of any part of the tax which was paid on
34 or before the date prescribed for payment of the tax and by the amount of any credit against the
35 tax which may be claimed upon the return.

36 (c) A penalty shall be imposed for failure to pay the tax established pursuant to
37 subsection (a) on or before the due date of the return or within any extension of time for payment
38 granted by the collector. The penalty shall be $\frac{1}{2}$ of 1 per cent of the amount of unpaid tax shown
39 on the return, for each month or fraction of a month during which the failure continues, not to

40 exceed in the aggregate 25 per cent of that amount. In computing the penalty for failure to pay
41 timely, the amount of tax shown on the return shall be reduced by the amount of any part of the
42 tax which is paid before the beginning of that month.

43 (d) A penalty shall be imposed for failure to pay an assessment of the tax established
44 pursuant to subsection (a) and not reported on a return, within 30 days following the date of a
45 notice of assessment by the collector. The penalty shall be $\frac{1}{2}$ of 1 per cent of the amount of the
46 unpaid assessed tax for each month or fraction of a month during which the failure continues, not
47 to exceed in the aggregate 25 per cent of that amount.

48 (e) Any portion of the tax established by subsection (a) that is not paid on or before the
49 due date of the return will have added to it interest from the due date of the return to the date the
50 tax is paid at the rate charged on overdue property taxes under sections 57 and 57C of chapter 59
51 of the General Laws.

52 (f) For the purpose of verifying that a vendor assessed a tax and required to file a tax
53 return pursuant to subsection (a) has made a complete and accurate accounting of that vendor's
54 total sales, gross sales of applicable services and the amount of tax due, the board of assessors
55 may, not later than 3 years after the date the return was due, or not later than 3 years after the
56 date the return was filed, whichever is later, examine the books, papers, records and other data of
57 the vendor required to file the return. A justice of the supreme judicial court or of the superior
58 court may, upon the application of the assessors, compel the production of books, papers, records
59 and other data in the same manner and to the same extent as before those courts.

60 Books, papers, records and other data obtained pursuant to this subsection shall be open
61 to the inspection of the assessors, clerks and assistants of the assessors and any designated

62 private auditor of the assessors as may have occasion to inspect the books, papers, records and
63 other data in the performance of their official, contractual or designated duties. For purposes of
64 this subsection, a “designated private auditor” shall be an individual, corporation or other legal
65 entity selected by the town to perform an audit which includes the assessing department of the
66 town under the legal authority of this subsection, but only if the individual, corporation or other
67 legal entity shall be compensated for the audit work pursuant to an arrangement under which
68 neither the payment nor the amount of their fees and expenses for the work are contingent on
69 either the results of the audit or whether the results withstand an appeal by a taxpayer. Nothing in
70 this subsection shall prevent a person who submitted that information from inspecting or being
71 provided a copy of the submission upon request.

72 If the collector determines, from the verification of a return or otherwise, that the full
73 amount of tax assessed has not been reported and paid, the collector may, at any time within 3
74 years and 6 months after the date the return was filed, or 3 years and 6 months after the date it
75 was required to be filed, whichever occurs later, assess the same with interest as provided in
76 subsection (c) and notify the vendor of the assessment. An owner or company aggrieved by the
77 assessment of the additional tax may, not later than 1 month after the bill or notice of the
78 additional assessment is first sent, appeal the assessment to the appellate tax board.

79 (g) The town of Charlemont may impose a lien on real property owned by the vendor and
80 located within the town for amounts owed pursuant to subsections (a) to (e) that have not been
81 paid by the due date. Where the vendor has not filed a tax return as required by subsection (a),
82 the collector shall estimate the vendor’s total sales and gross sales of applicable services using
83 public data and information including, but not limited to the size of the business, cost of the

84 services provided, duration of the business' operating season and total sales and gross sales of
85 applicable services reported by similar operators in the same geographic region.

86 A lien authorized under this subsection shall take effect upon the recording of a list of
87 unpaid taxes by the name of the vendor assessed for the taxes in the registry of deeds of the
88 county or district where the land subject to the lien lies. Unpaid taxes secured by a lien may be
89 collected in the same manner as unpaid charges or fees secured by a municipal charges lien
90 under section 58 of chapter 40. A lien under this subsection may be discharged by filing a
91 certificate from the tax collector that all taxes constituting the lien, together with any interest and
92 costs thereon, have been paid or legally abated. All costs of recording or discharging a lien under
93 this subsection shall be borne by the vendor owing the tax.

94 (h) In the collection of this tax, the collector shall have all the remedies provided by
95 chapter 60.

96 SECTION 2. This act shall be submitted for acceptance to the qualified voters of the
97 town of Charlemont at the next regular municipal election in substantially the form of the
98 following question: "Shall an act passed by the General Court in the year 2018, authorizing the
99 town of Charlemont to establish a tax on the fee for service for guided or unguided commercial
100 recreational activity, be accepted?"

101 Town counsel shall prepare a fair and concise summary of the act, which shall appear
102 below the ballot question. If a majority of votes cast in answer to the question is in the
103 affirmative, section 1 shall take effect, but not otherwise.