

HOUSE No. 2489**The Commonwealth of Massachusetts**

PRESENTED BY:

Shawn Dooley

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 relative to the Massachusetts estate tax code.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|-------------------------------|---------------------------------------|-------------------|
| <i>Shawn Dooley</i> | <i>9th Norfolk</i> | <i>1/15/2015</i> |
| <i>Angelo L. D'Emilia</i> | <i>8th Plymouth</i> | <i>1/26/2015</i> |
| <i>Steven S. Howitt</i> | <i>4th Bristol</i> | <i>1/16/2015</i> |
| <i>Bradley H. Jones, Jr.</i> | <i>20th Middlesex</i> | <i>1/16/2015</i> |
| <i>John H. Rogers</i> | <i>12th Norfolk</i> | <i>11/14/2019</i> |
| <i>Susannah M. Whipps Lee</i> | <i>2nd Franklin</i> | <i>1/16/2015</i> |
| <i>Peter J. Durant</i> | <i>6th Worcester</i> | <i>1/16/2015</i> |
| <i>Leonard Mirra</i> | <i>2nd Essex</i> | <i>11/14/2019</i> |
| <i>Joseph D. McKenna</i> | <i>18th Worcester</i> | <i>2/3/2015</i> |
| <i>Richard J. Ross</i> | <i>Norfolk, Bristol and Middlesex</i> | <i>1/16/2015</i> |
| <i>Ryan C. Fattman</i> | <i>Worcester and Norfolk</i> | <i>1/22/2015</i> |
| <i>Todd M. Smola</i> | <i>1st Hampden</i> | <i>1/22/2015</i> |
| <i>Kimberly N. Ferguson</i> | <i>1st Worcester</i> | <i>1/22/2015</i> |
| <i>David K. Muradian, Jr.</i> | <i>9th Worcester</i> | <i>1/26/2015</i> |
| <i>Elizabeth A. Poirier</i> | <i>14th Bristol</i> | <i>11/14/2019</i> |
| <i>David T. Vieira</i> | <i>3rd Barnstable</i> | <i>11/14/2019</i> |
| <i>Michael O. Moore</i> | <i>Second Worcester</i> | <i>11/14/2019</i> |
| <i>F. Jay Barrows</i> | <i>1st Bristol</i> | <i>2/4/2015</i> |

| | | |
|----------------------------------|-----------------------------|------------------|
| <i>Donald R. Berthiaume, Jr.</i> | <i>5th Worcester</i> | <i>2/1/2015</i> |
| <i>Nicholas A. Boldyga</i> | <i>3rd Hampden</i> | <i>1/29/2015</i> |
| <i>Leah Cole</i> | <i>12th Essex</i> | <i>2/1/2015</i> |
| <i>David F. DeCoste</i> | <i>5th Plymouth</i> | <i>2/4/2015</i> |
| <i>Robert L. Hedlund</i> | <i>Plymouth and Norfolk</i> | <i>2/4/2015</i> |
| <i>Randy Hunt</i> | <i>5th Barnstable</i> | <i>1/30/2015</i> |
| <i>Kevin J. Kuros</i> | <i>8th Worcester</i> | <i>2/2/2015</i> |
| <i>Mathew Muratore</i> | <i>1st Plymouth</i> | <i>1/29/2015</i> |
| <i>Timothy R. Whelan</i> | <i>1st Barnstable</i> | <i>1/29/2015</i> |

HOUSE No. 2489

By Mr. Dooley of Norfolk, a petition (accompanied by bill, House, No. 2489) of Shawn Dooley and others relative to the estate tax code. Revenue.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act relative to the Massachusetts estate tax code.

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 65C of the General Laws is hereby amended by striking out
2 Section 2A, as appearing in the 2012 Official Edition, and inserting in place thereof the
3 following section:-

4 Section 2A. (a)(1): A tax is hereby imposed upon the transfer of the estate of each person
5 dying on or after January 1, 1997 but before January 1, 2016 who, at the time of death, was a
6 resident of the commonwealth. The amount of the tax shall be the sum equal to the amount by
7 which the credit for state death taxes that would have been allowable to a decedent's estate as
8 computed under Code section 2011, as in effect on December 31, 2000, hereinafter referred to as
9 the "credit", exceeds the lesser of:

10 (A) the aggregate amount of all estate, inheritance, legacy and succession taxes actually
11 paid to the several states of the United States, other than the commonwealth, in respect to any

property owned by that decedent or subject to those taxes as part of or in connection with his estate; or

(B) an amount equal to the proportion of such allowable credit as the value of properties taxable by other states bears to the value of the entire federal gross estate wherever situated.

(2) A tax is hereby imposed upon the transfer of real property situated in this commonwealth and upon tangible personal property having an actual situs in this commonwealth of every person who at the time of his death was not a resident of this commonwealth. The amount of this tax is a sum equal to the proportion of the credit which the value of Massachusetts real and tangible personal property taxed in this commonwealth which qualified for such credit bears to the value of the decedent's total federal gross estate.

(3) Notwithstanding any other provision of law, the tax imposed by paragraphs (1) and (2) shall be computed upon the value of any property subject to a power of appointment which is includible in the federal gross estate, notwithstanding that a tax has been paid thereon pursuant to section 14 of chapter 65.

(4) For the purposes of computing the tax imposed by paragraphs (1) and (2) of this subsection, the provisions of section 3 shall not apply.

(b)(1) For the purposes of this subsection, notwithstanding the provisions of section 1, the following words or terms shall have the following meanings:-

(A) "Applicable exclusion amount", the sum of (i) the basic exclusion amount, and (ii) in the case of a surviving spouse, the deceased spousal unused exclusion amount.

(B) “Basic exclusion amount”, 50 percent of the basic exclusion amount as defined in section 2010 of the Code.

(C) “Code”, the Internal Revenue Code of the United States, in effect for the taxable year.

(D) “Deceased spousal unused exclusion amount” , with respect to a surviving spouse of a deceased spouse dying on or after January 1, 2016, and subject to paragraph 5 of section 2010 of the Code, the lesser of

(i) the basic exclusion amount, or

(ii) the excess of the applicable exclusion amount of the last such deceased spouse of such surviving spouse, over the amount with respect to which the Massachusetts estate tax is determined under paragraph 2 of the subsection of the estate of such deceased spouse.

(E) “Massachusetts gross estate”, the federal gross estate, whether or not a federal estate tax return is required to be filed, plus the value of any property (i) in which the decedent had at death a qualifying income interest for life described in subsection (C) of section 3A, or to the extent of any such interest therein of which the decedent has at any time made a transfer, by trust or otherwise, under any circumstances which would require the property to be included in the gross estate under the provisions of this chapter and (ii) for which a deduction was allowed for Massachusetts estate tax purposes with respect to the transfer of such property to the decedent; and less the value of real and tangible personal property having an actual situs outside the commonwealth, but not the value of the principal residence of the decedent unless elected pursuant to the provisions of paragraph 4 of this subsection. The Massachusetts gross estate shall not include the value of any property in which the decedent had a qualifying income interest for

life which is not otherwise includible in the Massachusetts gross estate under the first sentence of this paragraph, notwithstanding the right of the executor of the decedent's estate to recover federal or Massachusetts estate taxes from such property.

(F) "Massachusetts taxable estate", the Massachusetts gross estate less the applicable exclusion amount.

(2) A tax is hereby imposed upon the transfer of the estate of each person dying on or after January 1, 2016 who, at the time of death, was a resident of the commonwealth. The provisions of this subsection shall only apply to each person dying after January 1, 2016. The amount of the tax shall be computed with respect to the Massachusetts taxable estate in accordance with the following table:-

If the Massachusetts taxable estate is: The Massachusetts estate tax shall be:

| Over | But not over | |
|------|--------------|--|
|------|--------------|--|

| | | |
|--------------|--------------|--|
| \$0 | \$5,000,000 | 10% of the taxable estate |
| \$5,000,000 | \$10,000,000 | \$500,000 plus 11% of the excess over \$5,000,000 |
| \$10,000,000 | \$20,000,000 | \$1,050,000 plus 12% of the excess over \$10,000,000 |
| \$20,000,000 | | \$2,250,000 plus 13% of the excess over \$20,000,000 |

(3) A tax is hereby imposed upon the transfer of real property situated in this commonwealth and upon tangible personal property having an actual situs in this commonwealth of every person who at the time of his death was not a resident of this commonwealth. The

amount of this tax shall be computed with respect to the value of Massachusetts real and tangible personal property in accordance with the following table:-

If the Massachusetts real and tangible personal property is: The Massachusetts estate tax shall be:

| Over | But not over |
|------|--------------|
|------|--------------|

| | |
|-------|--|
| ----- | |
|-------|--|

| | | |
|--------------|--------------|--|
| \$0 | \$5,000,000 | 10% of the taxable estate |
| \$5,000,000 | \$10,000,000 | \$500,000 plus 11% of the excess over \$5,000,000 |
| \$10,000,000 | \$20,000,000 | \$1,050,000 plus 12% of the excess over \$10,000,000 |
| \$20,000,000 | | \$2,250,000 plus 13% of the excess over \$20,000,000 |

(4) A person who, at the time of death, was a resident of the commonwealth may elect to exclude the value of his principal residence from Massachusetts gross estate subject to the exclusion requirements of section 121 of the Code. This exclusion shall be made by the executor on the Massachusetts estate tax return filed within the time prescribed for filing such return, or any extension of such time granted by the commissioner. Such election, once made, shall be irrevocable.

(5) the basis of property, for Massachusetts estate tax purposes, acquired from the decedent shall be the basis computed pursuant to section 1014 of the code.

(6) A person who, at the time of death, was a resident of the commonwealth and whose deceased spouse was a resident of the commonwealth may elect to apply the deceased spousal unused exclusion amount to the Massachusetts gross estate. This exclusion shall be made by the executor on the Massachusetts estate tax return filed within the time prescribed for filing such return, or any extension of such time granted by the commissioner. Such election, once made, shall be irrevocable.

(7) Notwithstanding any other provision of law, the tax imposed by paragraphs (2) and (3) shall be computed upon the value of any property subject to a power of appointment which is includible in the federal gross estate, notwithstanding that a tax has been paid thereon pursuant to section 14 of chapter 65.

(8) For the purposes of computing the tax imposed by paragraphs (2) and (3) of this subsection, the provisions of section 3 shall not apply.

(9) The commissioner of revenue may make determinations and shall prescribe such regulations as may be necessary or appropriate to carry out this subsection.

(10) For the estate of decedents dying on or after January 1, 2016, all references and provisions in subsection (b) to the Internal Revenue Code or Code, unless the context clearly indicates otherwise, shall be to the Code as in effect for the taxable year.

SECTION 2. Section 3A of Chapter 65C of the General Laws, as so appearing, is hereby amended by striking out, in lines 28-30, the words "Such election, once made, shall be irrevocable and shall be separate from and independent of any election made by the executor for federal estate tax purposes" and inserting in place thereof the following words:-

114 Such election, once made, shall be irrevocable. The executor is not required to have made
115 the same qualified terminable interest property election for federal estate tax purposes in order to
116 make the election for Massachusetts purposes.