SENATE DOCKET, NO. 1699 FILED ON: 1/16/2015

SENATE . . . . . No. 1524

The Commonwealth of Massachusetts

PRESENTED BY:

Mark C. Montigny

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 closing a corporate tax haven loophole.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Mark C. Montigny	*Second Bristol and Plymouth*	
Jason M. Lewis	*Fifth Middlesex*	
Michael J. Barrett	*Third Middlesex*	
Michael S. Day	*31st Middlesex*	
Patricia D. Jehlen	*Second Middlesex*	
Eric P. Lesser	*First Hampden and Hampshire*	
James B. Eldridge	*Middlesex and Worcester*	
Diana DiZoglio	*14th Essex*	
Marjorie C. Decker	*25th Middlesex*	
Barbara A. L'Italien	*Second Essex and Middlesex*	
Denise Provost	*27th Middlesex*	
Joan B. Lovely	*Second Essex*	*3/4/2015*
Sal N. DiDomenico	*Middlesex and Suffolk*	

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By Mr. Montigny, a petition (accompanied by bill, Senate, No. 1524) of Mark C. Montigny, Jason M. Lewis, Michael J. Barrett, Michael S. Day and other members of the General Court for legislation to close a corporate tax haven loophole. Revenue.

The Commonwealth of Massachusetts

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

An Act closing a corporate tax haven loophole.

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

Section 32B of chapter 63 of the General Laws, as most recently amended by section 125 of chapter 240 of the Acts of 2010, is hereby amended by adding after subsection (c)(3)(iii), the following subsections:

(iv) any member incorporated in a jurisdiction defined herein as a tax haven, including Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Bahrain, Barbados, Belize, Bermuda, British Virgin Islands, Cayman Islands, Cook Islands, Cyprus, Dominica, Gibraltar, Grenada, Guernsey-Sark-Alderney, Hong Kong, Isle of Man, Jersey, Liberia, Liechtenstein, Luxembourg, Malta, Mauritius, the Kingdom of the Netherlands, San Marino, Seychelles, Singapore, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Switzerland, Turks and Caicos Islands, U.S. Virgin Islands, and Vanuatu.

(v) On a biannual basis, the commissioner shall submit a report to the Legislature. The report shall include recommendations for legislation related to tax haven jurisdictions listed in

13 subsection (c)(3)(iv), including recommendations for additions to or subtractions from the list.
14 This report shall be made available to the public.

15 (vi) In developing its annual report and for the purposes of this section, the commissioner
16 shall consider a tax haven a jurisdiction that, during the tax year in question has no or nominal
17 effective tax on the relevant income and that meets at least two of the following three criteria:

18 a. The income being reported by a member to the suspected tax haven jurisdiction is
19 disproportionately large as compared to the average percentage of property, payroll, and sales
20 factors within that jurisdiction.

21 b. The laws, rules, and tax administrative rulings and practices of that jurisdiction
22 encourage the disproportionately large income to be reported in that jurisdiction. Such laws,
23 rules, tax administrative rulings and practices may:

24 1. prevent effective exchange of information for tax purposes with other governments on
25 taxpayers benefiting from the tax regime;

26 2. lack transparency by having legislative, legal, or administrative provisions that are not
27 open and apparent or are not consistently applied among similarly situated taxpayers, or if the
28 information needed by tax authorities to determine a taxpayer's correct tax liability, such as
29 accounting records and underlying documentation, is not adequately available;

30 3. facilitate the establishment of foreign-owned entities without the need for a local
31 substantive presence or prohibit these entities from having any commercial impact on the local
32 economy;

33 4. explicitly or implicitly exclude the jurisdiction's resident taxpayers from taking
34 advantage of the tax regime's benefits or prohibit enterprises that benefit from the regime from
35 operating in the jurisdiction's domestic market; or

36 5. create a tax regime that is favorable for tax avoidance, based upon an overall
37 assessment of relevant factors, including whether the jurisdiction has a significant untaxed
38 offshore financial and related services sector relative to its overall economy.

39 c. The jurisdiction is recognized by experts or is marketed as a tax haven for
40 corporations.

41 (vii) The commissioner may require the taxable member making a water's-edge election
42 to submit within six (6) months after the taxable member files its federal income tax return a
43 domestic disclosure spreadsheet to provide full disclosure of the income reported to each state
44 for the year, the tax liability for each state, the method used for allocating or apportioning
45 income to the states, and the identity of the water's-edge group and those of its United States
46 affiliated corporations. The commissioner may require the taxable member to disclose the same
47 information for income reported to tax havens as listed in subsection (c)(3)(iv).