

# SENATE . . . . . No. 1226

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Nine  
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An Act relative to authorizing tax credits for qualified donations of certain land to a public or private conservation agency..

*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. Section 6 of chapter 62 of the General Laws is hereby amended by adding  
2     the following subsection:-

3           (p)(1) As used in this subsection, the following words shall have the following  
4     meanings:-

5           “Bargain sale”, the sale of an interest in real property by a taxpayer at a cost below  
6     appraised market value, when a portion of the value of the interest in real property is a qualified  
7     donation, as such term is defined herein and which meets the requirements of section 1011(b) of  
8     the Internal Revenue Code of 1986, as amended.

9           “Certified land”, an interest in real property, the donation or bargain sale of which has  
10    first been determined by the secretary of environmental affairs to be in the public interest for  
11    natural resource protection including, but not limited to, drinking water supplies, wildlife habitat  
12    and biological diversity, agricultural and forestry production, recreational opportunities, or

scenic and cultural values; provided, however, that the secretary of environmental affairs shall assure that all certified lands are protected in perpetuity.

“Interest in real property”, any right in real property in the commonwealth, with or without improvements thereon, or water including, but not limited to, fee simple, life estate, restriction, easement, covenant, condition, partial interest, remainder, future interest, lease, license, mineral right, riparian right or other interest or right in real property that may be conveyed concerning the power to transfer property.

“Public or private conservation agency”, the commonwealth, or any subdivision thereof, or any municipality, or private nonprofit corporation organized for the purposes of land conservation, which is authorized to do business in the commonwealth, and which has tax-exempt status as a nonprofit charitable organization as described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

“Qualified donation”, a donation, or the donated portion of a bargain sale, made in perpetuity of a fee interest in real property or a less-than-fee interest in real property, including a conservation restriction, agricultural preservation restriction or watershed preservation restriction, pursuant to chapter 184, provided that such less-than-fee interest meets the requirements of qualified conservation contributions under section 170(h) of the Internal Revenue Code of 1986.

“Taxpayer”, a taxpayer subject to the income tax under this chapter.

(2) A taxpayer making a qualified donation of certified land to a public or private conservation agency shall be allowed a credit against the taxes imposed by this chapter. The credit shall be equal to 50 per cent of the fair market value of the qualified donation. The amount

of the credit that may be claimed by a taxpayer for each qualified donation shall not exceed \$50,000.

(3) The fair market value of certified land shall be substantiated by a qualified appraisal, as defined in United States Treasury Regulation section 1.170A-13(c)(3), and shall be prepared by a qualified appraiser, as defined in United States Treasury Regulation section 1.170A-13(c)(5). For any taxpayer to qualify for the credit provided for in subdivision (2), the taxpayer shall at the same time that the taxpayer files a return for the taxable year in which the credit is claimed, file with the department a summary of a qualified appraisal or, if requested by said department, the taxpayer shall submit the appraisal itself.

(4) In any one tax year, the credit used may not exceed the amount of tax liability otherwise owed by the taxpayer. The tax credit shall be taken against the taxes imposed under this chapter and shall not be refundable. Any amount of the credit that exceeds the tax due for a taxable year may be carried forward by the taxpayer to any of the 10 subsequent tax years.

(5) All or any tax credits issued in accordance with this section may be in addition to any charitable deductions claimed on the taxpayer's federal income tax return for the same qualified donations of certified lands.

(6) Any taxpayer claiming a state income tax or excise tax credit under this section may not claim an additional state income tax credit or deduction during any one tax year for costs related to the same interest in certified lands.

(7) Any tax credits which arise under this section from the qualified donation of certified land by a pass-through tax entity such as a trust, estate, partnership, corporation, limited partnership, limited liability partnership, limited liability corporation, subchapter S organization,

or other fiduciary, shall be used either by such entity in the event it is the taxpayer on behalf of such entity or by the member, partner, shareholder, or beneficiary, as the case may be, in proportion to its interest in such entity in the event that income, deductions, and tax liability passes through such entity to such member, partner, shareholder, or beneficiary. Such tax credits may not be claimed by both the entity and the member, partner, shareholder, or beneficiary, for the same conveyance.

(8) Any tax credits which arise under this chapter from the qualified donations of certified land by a married couple shall be used only if the spouses file a joint return, if both spouses are required to file Massachusetts income tax returns. If only one spouse is required to file a Massachusetts income tax return, that spouse may claim the credit allowed by this chapter on a separate return.

(9) The secretaries of energy and environmental affairs and of administration and finance, acting jointly and in writing, shall authorize tax credits under this subsection together with section 38Z of chapter 63 in a cumulative amount, including the current year cost of credits allowed in previous years, that shall not exceed \$2,000,000 annually. No credits shall be allowed under this subsection except to the extent authorized as provided in this paragraph. The commissioner of revenue, after consulting those secretaries concerning, among other things, the land conservation objectives of this section, shall adopt regulations governing applications for and other administration of these tax credits.

SECTION 2. Chapter 63 of the General Laws is hereby amended by inserting after section 38Z the following section:-

Section 38AA. (a) As used in this section, the following words shall have the following meanings:-

“Bargain sale”, the sale of an interest in real property by a taxpayer at a cost below appraised market value, when a portion of the value of the interest in real property is a qualified donation, as such terms are defined herein, and which meets the requirements of section 1011(b) of the Internal Revenue Code of 1986, as amended.

“Certified land”, an interest in real property, the donation or bargain sale of which has first been determined by the secretary of environmental affairs to be in the public interest for natural resource protection including, but not limited to, drinking water supplies, wildlife habitat and biological diversity, agricultural and forestry production, recreational opportunities or scenic and cultural values; provided, however, that the secretary of environmental affairs shall assure that all certified lands are protected in perpetuity.

“Interest in real property”, any right in real property in the commonwealth, with or without improvements thereon, or water, including, but not limited to, fee simple, life estate, restriction, easement, covenant, condition, partial interest, remainder, future interest, lease, license, mineral right, riparian right, or other interest or right in real property that may be conveyed concerning the power to transfer property.

“Public or private conservation agency”, the commonwealth, or any subdivision thereof, or any municipality, or private nonprofit corporation organized for the purposes of land conservation, which is authorized to do business in the commonwealth, and which has tax-exempt status as a nonprofit charitable organization as described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

“Qualified donation”, a donation, or the donated portion of a bargain sale, made in perpetuity of a fee interest in real property or a less-than-fee interest in real property, including a conservation restriction, agricultural preservation restriction or watershed preservation restriction, pursuant to chapter 184, provided that such less-than-fee interest meets the requirements of qualified conservation contributions under section 170(h) of the Internal Revenue Code of 1986.

“Taxpayer”, a taxpayer subject to the income tax under this chapter.

(b) A taxpayer making a qualified donation of certified land to a public or private conservation agency shall be allowed a credit against the taxes imposed by this chapter. The credit shall be equal to 50 per cent of the fair market value of the qualified donation. The amount of the credit that may be claimed by a taxpayer for each qualified donation shall not exceed fifty thousand dollars.

(c) The fair market value of certified land shall be substantiated by a qualified appraisal, as defined in United States Treasury Regulation section 1.170A-13(c)(3), and shall be prepared by a Qualified Appraiser, as defined in United States Treasury Regulation section 1.170A-13(c)(5). For any taxpayer to qualify for the credit provided for in subsection (b) of this section, the taxpayer shall at the same time as the taxpayer files a return for the taxable year in which the credit is claimed, file with the department a summary of a qualified appraisal or, if requested by said department, the taxpayer shall submit the appraisal itself.

(d) In any one tax year the credit used may not exceed the amount of tax liability otherwise owed by the taxpayer. The tax credit shall be taken against the taxes imposed under

121 this chapter and shall not be refundable. Any amount of the credit that exceeds the tax due for a  
122 taxable year may be carried forward by the taxpayer to any of the 10 subsequent taxable years.

123 (e) Any tax credits issued in accordance with this section may be in addition to any  
124 charitable deductions claimed on the taxpayer's federal income tax return for the same qualified  
125 donations of certified lands.

126 (f) Any taxpayer claiming a state income tax or excise tax credit under this section may  
127 not claim an additional state income tax credit or deduction during any one tax year for costs  
128 related to the same interest in certified lands.

129 (g) Any tax credits which arise under this section from the qualified donation of certified  
130 land by a pass-through tax entity such as a trust, estate, partnership, corporation, limited  
131 partnership, limited liability partnership, limited liability corporation, subchapter S organization,  
132 or other fiduciary, shall be used either by such entity in the event it is the taxpayer on behalf of  
133 such entity or by the member, partner, shareholder, or beneficiary, as the case may be, in  
134 proportion to its interest in such entity in the event that income, deductions, and tax liability  
135 passes through such entity to such member, partner, shareholder, or beneficiary. Such tax credits  
136 may not be claimed by both the entity and the member, partner, shareholder, or beneficiary, for  
137 the same conveyance.

138 (h) The secretaries of energy and environmental affairs and of administration and  
139 finance, acting jointly and in writing, shall authorize tax credits under this section together with  
140 subsection (p) of section 6 of chapter 62 in a cumulative amount, including the current year cost  
141 of credits allowed in previous years, that shall not exceed \$2,000,000 annually. No credits shall  
142 be allowed under this section except to the extent authorized as provided in this subsection. The

commissioner of revenue, after consulting those secretaries concerning, among other things, the land conservation objectives of this section, shall adopt regulations governing applications for and other administration of these tax credits.

SECTION 3. (a) The secretary of energy and environmental affairs shall promulgate regulations to define land eligible for certification under subsection (p) of section 6 of chapter 62 of the General Laws and under section 38AA of chapter 63 of the General Laws. Such regulations shall be promulgated within 180 days after the effective date of this act.

(b) The secretary of environmental affairs shall, within 5 years after the effective date of this act, prepare a report to the joint committee on revenue and the joint committee on environment, natural resources and agriculture, describing the certified lands conserved under subsection (p) of section 6 of chapter 62 of the General Laws and section 38AA of chapter 63 of the General Laws.

(c) The commissioner of revenue shall, in consultation with the secretary of energy and environmental affairs, promulgate regulations to administer subsection (p) of section 6 of chapter 62 of the General Laws and section 38AA of chapter 63 of the General Laws. Such regulations shall include provisions to prevent the generation of multiple credits with respect to the same property. Regulations shall be promulgated within 180 days after the effective date of this act.

(d) The commissioner of revenue shall, within 5 years after the effective date of this act, submit a report to the joint committee on revenue and the joint committee on environment, natural resources and agriculture, calculating the annual tax savings under subsection (p) of section 6 of chapter 62 of the General Laws and section 38AA of chapter 63 of the General Laws.



(e) There shall be a commission to study the transferability of tax credits under subsection (p) of section 6 of chapter 62 of the General Laws and section 38AA of chapter 63 of the General Laws. The commission shall be composed of 9 persons, including the commissioner of the department of agricultural resources, or his designee, who shall serve as chairman; the commissioner of revenue, or his designee; 2 members of the house of representatives, 1 of whom shall be appointed by the minority leader; 2 members of the senate, 1 of whom shall be appointed by the minority leader; a representative of the American Farmland Trust; a representative of the Massachusetts Audubon Society; and a representative of The Nature Conservancy. The commission shall examine all aspects of transferability including, but not limited to: the status of its application in other states, potential fiscal impacts and potential conservation benefits. The commission shall file a report of its findings and recommendations, including any drafts of legislation necessary to put its recommendations into effect, with the joint committee on revenue and the joint committee on environment, natural resources and agriculture on or before January 1, 2011.

SECTION 4. Sections 1 and 2 shall be effective for tax years beginning on and after January 1, 2011.