

# SENATE . . . . . No. 1240

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Nine  
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An Act Improving the Fairness of 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. Said chapter 63 is further amended by inserting after section 29E the  
2 following 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  
9 company from the buying, selling, holding, or dealing in securities or other investment  
10 intangibles on its own behalf, and not as a broker. Gain from the sale of real property and  
11 improvements shall also be excluded to the extent that the gain exceeds cumulative depreciation  
12 and similar expenses with respect to the property and improvements that have been deducted in  
13 determining income taxable under subsection (c).

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

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

SECTION 2. Chapter 64D of the General Laws is hereby amended by striking out sections 1 to 3, as so appearing, and inserting in place thereof the following 3 sections:-

Section 1. (a) There shall be levied, collected and paid the excise specified in this section on each conveyance of real property located in the commonwealth or interest in real property located in the commonwealth: when the consideration for the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining on the interest or property at the time of the sale, exceeds \$100 and does not exceed \$500, \$2; and for each additional \$500 or fractional part thereof, \$2, but in Barnstable county, the excise specified in this section shall be \$1.50 for each \$500 or fractional part of the consideration, excluding a consideration of between \$0 and \$100 dollars. The excise shall be payable at the registry of deeds in the county in which the real property lies, regardless of whether the conveyance is evidenced by a deed, instrument, or other writing or whether the deed, instrument, or other writing is otherwise recorded. Notwithstanding any other provisions of this section or any other general or special law to the contrary, Nantucket county may disburse and expend deposits in

county excise funds for the purpose of facilities and programs related to law enforcement, including the planning, improving or constructing of police stations and other related facilities and programs. This chapter shall not apply to any instrument or writing given to secure a debt or to any conveyance to which the commonwealth, a city or town of the commonwealth, or the United States or any of their agencies are a party.

(b) For purposes of calculating the excise set forth in this chapter, under regulations to be adopted by the commissioner, the commissioner may treat multiple transactions as a single transaction or may otherwise adopt reasonable rules to avoid multiple applications of the excise when the transactions are components of a single project including, but not limited to, projects involving historic rehabilitation tax credits, the Community Preservation Act and the development of affordable housing.

(c) For purposes of this chapter, unless otherwise expressly stated, the following words shall have the following meanings:

"Conveyance", a transfer or transfers, directly or indirectly, of any interest in real property by any method, including but not limited to sale, exchange, grant, assignment, trust indenture, or transfer or acquisition of a controlling interest in any entity with an interest in real property, but the transfer or acquisition of a controlling interest shall be considered to be a conveyance only if the fair market value of the interest or interests in real property wherever situated that is owned by the entity, whether directly or through subsidiary entities, equals or exceeds 80 per cent of the fair market value of all of the assets of the entity.

"Interest in real property", includes, but is not limited to, an estate in fee simple, a beneficial interest, a life estate, a perpetual easement, or a leasehold or sublease interest, ordinary

or proprietary, but only where the sum of the term of the lease or sublease and any options for renewal, extension, or the like exceeds 49 years.

"Transfer or acquisition of a controlling interest", occurs, in the case of a corporation which has an interest in real property, when a person, or group of persons acting in concert, transfers or acquires, directly or indirectly, including through the transfer or acquisition of an interest in another entity, a total of 50 per cent or more of the total combined stock of the corporation, by vote or value. In the case of any partnership, limited liability company, association, trust, or other entity having an interest in real property, the transfer or acquisition of a controlling interest therein occurs when a person, or group of persons acting in concert, transfers or acquires, directly or indirectly, including through the transfer or acquisition of an interest in another entity, a total of 50 per cent or more of the capital, profits, or beneficial interest in the entity.

(d) Persons are considered to be "acting in concert" when, in accordance with regulations adopted by the commissioner, they have a relationship such that 1 person influences or controls the actions of another. Where the individuals or entities are not commonly controlled or owned, persons shall be considered to be acting in concert when, in accordance with regulations adopted by the commissioner, the unity with which the sellers or purchasers have negotiated and will consummate the transfer of ownership interests indicates that they are acting as a single entity. If the transfers or acquisitions are completely independent, each seller selling or purchaser buying without regard to the identity of the other sellers or purchasers, then the transfers or acquisitions shall be treated as separate transfers or acquisitions.

(e) For purposes of determining whether a controlling interest is transferred or acquired, only transfers or acquisitions of interests occurring on or after January 1, 2008, shall be added together. Where there is a transfer or acquisition of an interest in an entity that has an interest in real property on or after January 1, 2008, and subsequently there is a transfer or acquisition of an additional interest or interests in the same entity, the transfers or acquisitions shall be added together to determine whether a transfer or acquisition of a controlling interest has occurred. No transfer or acquisition of an interest in an entity that has an interest in real property shall be added to another transfer or acquisition in the same entity if they occur more than 3 years apart, unless the transfers or acquisitions are so timed as part of a plan to avoid the excises specified in this section. Notwithstanding the foregoing, neither a bona fide pledge of stock, partnership, or other interest as loan collateral nor any conveyance of publicly traded stock, partnership, or other interest, shall be considered subject to taxation under this chapter.

(f) The commissioner may adopt regulations to implement this section.

Section 2. The excise imposed by this chapter shall be paid by the person who conveys the real property or interest in real property, or for whose benefit the real property or interest in it is conveyed. When the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in real property, the "person who conveys" the interest means, but is not limited to, a shareholder, partner, or other interest-holder transferring stock, a partnership interest, or another equity interest, respectively. The payment of the excise shall be denoted by "stamps," as that term is defined in section 3, affixed to or printed directly on the deed, instrument or writing evidencing the conveyance, or if none, to a form prescribed by the commissioner for the purpose. In any case in which a conveyance subject to the excise imposed in this chapter is not evidenced by a deed, instrument, or writing that will be recorded, the

conveyance shall be evidenced by recording the stamp form required by this section. The person affixing or printing a stamp shall cancel the same by writing or stamping on it the initials of his name and the date when the stamp is affixed or printed, in such manner that it cannot be used again; but the stamp shall not be so defaced as to prevent determination of its denomination and genuineness.

The word "person" shall, for the purposes of this chapter, include political subdivisions of the commonwealth, individuals, partnerships, corporations, trusts, limited liability companies, societies, associations, or any other form of unincorporated enterprise.

Section 3. (a) Stamps for the purpose of paying the excise under this chapter shall be prepared in the form, of the denominations and in the quantities that the commissioner may prescribe. The commissioner shall provide for the sale of the stamps in the places and at the times that the commissioner considers necessary. The commissioner shall provide for the custody of the stamps and other equipment used in the production of the stamps in the manner that he considers expedient. For purposes of this section, the term "stamps" shall include both adhesive stamps and computer generated images printed directly on a deed, instrument, writing, or form required by section 2.

(b) The commissioner may cause to be installed in any registry of deeds 1 or more metering machines through which the stamps may be sold and may remove the machine if the commissioner considers it expedient. The commissioner may also approve computer hardware and software, purchased at the expense of the registry, to produce stamps. Upon the installation of a metering machine or approved computer hardware and software, the register of deeds shall

123 sell stamps to persons requiring the same for affixation or printing to deeds, instruments,  
124 writings, or forms in accordance with this chapter.

125 (c) Each register of deeds shall on or before the tenth day of each month account to the  
126 commissioner on a form prescribed and furnished by him for all sales made by the register  
127 during the preceding calendar month and shall turn over to the commissioner all moneys  
128 received from the sales, less any adjustments approved by him. Each register of deeds, with the  
129 approval of the advisory board on county expenditures and the county commissioners, shall for  
130 the purposes of purchasing equipment or services relative to electronic reporting, indexing,  
131 computers and systems designed to modernize and maintain registry records, retain interest  
132 earned on the deposit of excise stamp fees. Each register shall, annually, furnish to the county  
133 treasurer a financial report regarding this interest and the expenditure of it in accordance with  
134 accepted accounting procedures.

135 The machines or computer equipment shall, upon installation, be subject to inspection by  
136 the commissioner or his duly appointed agent or agents at any time.

137 Each register of deeds shall give to the commissioner a bond, in a penal sum and with  
138 sureties approved by the commissioner, conditioned satisfactorily to account for money received  
139 by the register in his official capacity from the sale of the stamps. The premium for the bond  
140 shall be paid by the state treasurer upon certification by the commissioner.

141 (d) Sections 3A and 3B shall not be applicable to any registry of deeds during the period  
142 in which a metering machine or approved computer hardware or software is installed in that  
143 registry, nor to any registry operated by the state secretary.

SECTION 3. Said chapter 64D is hereby further amended by striking out section 6, as so appearing, and inserting in place thereof the following section:-

Section 6. The commissioner shall administer and enforce the excise imposed by this chapter and shall adopt regulations as necessary to implement this chapter. At any time after the making of a conveyance subject to the excise imposed by this chapter, the commissioner may investigate and ascertain whether the excise, in the proper amount, was paid. For this purpose, the commissioner may exercise all powers granted to him under section 70 of chapter 62C. Whoever refuses to produce the books, papers, records, or other data required to be produced under section 70, or fails to preserve the same for 3 years or a longer period that the commissioner may by regulation provide, or alters, cancels or obliterates any part of this data, or makes any false entry therein, shall be punished by a fine of not less than \$500 nor more than \$5,000, or by imprisonment for not less than 3 months nor more than 2 years, or both.

SECTION 4. Section 1 of chapter 64G of the General Laws, as so appearing, is hereby amended by inserting after paragraph (b) thereof the following paragraph:--

(b1/2) "Doing business in the commonwealth", ownership or operation of a bed and breakfast establishment, hotel, lodging house or motel that is located in the commonwealth, maintenance otherwise of a place of business in the commonwealth, the presence of an employee in the commonwealth on more than a de minimis basis, solicitation in the commonwealth of orders for transfer of occupancy of accommodations located in the commonwealth, solicitation in the commonwealth by a reseller of a contract or other cooperative arrangement with an operator with respect to accommodations located in the commonwealth, inspection in the commonwealth of accommodations that may be the subject of a cooperative arrangement between an operator



166 and a reseller, or other exploitation of the market for accommodations or resale of  
167 accommodations located in the commonwealth by any means whatsoever, including, but not  
168 limited to, salesmen, solicitors or representatives in the commonwealth, whether those salesmen,  
169 solicitors or representatives are employed by the operator or reseller, by a person affiliated with  
170 the operator or the reseller by common ownership, or by any other party. This definition is  
171 intended to extend the jurisdiction of the commonwealth over operators and resellers to the full  
172 extent authorized by the Constitution and the laws of the United States.

173         SECTION 5. Said section 1 of said chapter 64G, as so appearing, is hereby further  
174 amended by inserting after the word “operator”, in line 49, the following words: -- or the room  
175 reseller.

176         SECTION 6. Section 16 of said chapter 62C, as so appearing, is hereby amended by  
177 inserting after the word “operator”, in line 53, as so appearing, the following words: -- or room  
178 reseller.

179         SECTION 7. Section 25 of said chapter 62C, as so appearing, is hereby amended by  
180 inserting after the word “operator”, in line 6, the following words: -- or room reseller.

181         SECTION 8. Section 67 of said chapter 62C, as so appearing, is hereby amended by  
182 inserting after the word “operator”, in line 2, the following words: -- or room reseller.

183         SECTION 9. Said section 1 of said chapter 64G, as so appearing, is hereby further  
184 amended by adding the following paragraph:-

185         (k) "Room Reseller" or “Reseller”, any person having any right, permission, license, or  
186 other authority from or through an operator to reserve or arrange transfer of occupancy of

accommodations the transfer of which is subject to this chapter, such that the occupant pays all or a portion of the rent to the reseller, but the term shall not include a tour operator.

SECTION 10. Said chapter 64G is hereby further amended by striking out section 3, as so appearing, and inserting in place thereof the following section: --

Section 3. An excise is hereby imposed upon the transfer of occupancy of any room or rooms in a bed and breakfast establishment, hotel, lodging house, or motel in this commonwealth by any operator or room reseller doing business in the commonwealth at the rate of 5 per cent of the total amount of rent for each occupancy. No excise shall be imposed if the total amount of rent paid by the occupant is less than \$15 per day or its equivalent.

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

SECTION 11. Section 3A of said chapter 64G, as so appearing, is hereby amended by striking out the first 3 sentences and inserting in place thereof the following 3 sentences:-

Any city or town that accepts this section may impose a local excise tax upon the transfer of occupancy of any room or rooms in a bed and breakfast establishment, hotel, lodging house or motel located within the city or town by any operator or room reseller at a rate up to, but not exceeding, 4 per cent of the total amount of rent paid by the occupant for the occupancy ,but the city of Boston may impose a local excise upon the transfer of occupancy of any room in a bed and breakfast establishment, hotel, lodging house or motel located within the city by any operator or room reseller at the rate of up to but not exceeding 4.5 per cent of the total amount of rent paid by the occupant for the occupancy. No excise shall be imposed if the total amount of rent paid by the occupant is less than \$15 per day or its equivalent or if the accommodation is

exempt under section 2 of this chapter. The operator or room reseller shall pay the local excise tax imposed under this section to the commissioner at the same time and in the same manner as the excise tax due the commonwealth.

SECTION 12. Said chapter 64G is hereby further amended by inserting after section 3A the following section:-

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

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

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

SECTION 13. Said chapter 64G is hereby further amended by striking out sections 4 to 6, as so appearing, and inserting in place thereof the following 3 sections:--

Section 4. Reimbursement for the excise imposed under sections 3 and 3A shall be paid by the occupant or the room reseller to the operator and by the occupant to the room reseller, as the case may be, and each operator and room reseller doing business in the commonwealth shall add to the rent and shall collect from the occupant or the room reseller the full amount of the excise imposed, in accordance with sections 3 and 3A, and that excise shall be a debt to the

230 operator or room reseller, when so added to the rent, and shall be recoverable at law in the same  
231 manner as other debts.

232         Section 5. The amount of the excise collected by the operator or the room reseller under  
233 this chapter shall be stated and charged separately from the rent and shown separately on any  
234 record thereof at the time the transfer of occupancy is made, or on any evidence of the transfer  
235 issued or used by the operator or the room reseller. A room reseller shall not be required to  
236 disclose to the occupant the amount of tax charged by the operator. The reseller shall represent  
237 to the occupant that the separately stated taxes charged by the reseller include taxes charged by  
238 the operator.

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

243         SECTION 14. Section 7A of said chapter 64G, as so appearing, is hereby amended by  
244 inserting after the word “operator”, in line 1, the following words:- or room reseller .

245         SECTION 15. Said section 7A of said chapter 64G, as so appearing, is hereby further  
246 amended by inserting after the word “operator”, in line 7, the following words:- or room reseller.

247         SECTION 16. Said chapter 64G is hereby further amended by striking out section 7B, as  
248 inserted by section 30 of chapter 163 of the acts of 2005, and inserting in place thereof the  
249 following section:-

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

256           SECTION 17. Section 12 of said chapter 64G, as appearing in the 2004 Official Edition,  
257    is hereby amended by inserting after the word “operator”, in line 5, the following words:- and  
258    each room reseller.

259           SECTION 18. The definition of “sale at retail” or “retail sale” in section 1 of chapter  
260    64H of the General Laws, as so appearing, is hereby amended by inserting after the word  
261    “business.”, in line 129, the following sentence:- A sale for resale in the regular course of  
262    business does not include a lease, rental or sale to a leasing or procurement entity for subsequent  
263    lease, rental or sale to any related entity, related member as defined in section 31I of chapter 63,  
264    or affiliate, including persons described in. section 267(b) or 707(b)(1) of the Internal Revenue  
265    Code of the United States. The previous sentence does not apply to a sale of tangible personal  
266    property held for resale to any third party that is not related as described in this section.

267           SECTION 19. Section 6 of said chapter 64H, as amended by section 15 of chapter 260  
268    of the acts of 2006, is hereby further amended by inserting after paragraph (ww), the following  
269    paragraph:-

270           (xx) Sales of tangible personal property purchased by a business entity for keeping or  
271    retention in the commonwealth for the purpose of subsequently transporting that property outside

of the commonwealth for business use thereafter solely outside of the commonwealth, or for the purpose of being processed, fabricated or manufactured into other tangible personal property to be transported outside of the commonwealth and thereafter used solely outside of the commonwealth. A taxpayer must retain adequate documentation substantiating that the requirements of this exemption are met.

SECTION 20. Section 8 of chapter 64I of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by inserting after the word “purchase.”, in line 45, the following sentence:- Notwithstanding this paragraph, tangible personal property purchased for placement in inventory is presumed to be purchased for use in the commonwealth if the property is subsequently used in the commonwealth without regard to whether it is brought into the commonwealth within 6 months after purchase, and use tax is due at the time the property is first used in the commonwealth.

SECTION 21. The commissioner may adopt rules and regulations to implement sections 28, 30 and 97 to 107, inclusive, of this act.

SECTION 22. Sections X to XX, shall be effective for tax years beginning on or after July 31st, 2009.

SECTION 23. Sections 108 and 109 shall apply to transactions on or after January 1, 2008 and shall have no retroactive impact on existing leases or rentals. Section 110 shall apply to property brought into the commonwealth for use on or after January 1, 2008. A termination of any existing lease or rental between related entities, related members, or affiliates, including persons described in section 267(b) or 707(b)(1) of the Internal Revenue Code, after the effective

293 date of this act shall be considered to be a sale at fair market value of the leased or rented  
294 property if the lessee retains possession or use of the property.

295 SECTION 24. Section 1,2,10 to 13, inclusive and 19 shall be effective for tax year  
296 beginning on or after January 1st, 2009.