

**HOUSE . . . . . No.**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Josh S. Cutler, (BY REQUEST)***

*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 to create an excise tax resolution procedure.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>T Lawrence Ware</i>	<i>4 Jessica Circle Pembroke, MA 02359</i>	<i>2/25/2014</i>

**HOUSE . . . . . No.**

By Mr. Cutler of Duxbury (by request), a petition (subject to Joint Rule 12) of T Lawrence Ware for legislation to create an excise tax resolution procedure. The Judiciary.

**The Commonwealth of Massachusetts**

**In the Year Two Thousand Fourteen**

An Act to create an excise tax resolution procedure.

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

1 Chapter 218 of the General Laws, as appearing in the 2012 Official Edition, is hereby  
2 amended by adding the following section:-

3 Section 85. (a) There shall be within the district court department and the Boston  
4 municipal court department a simple, informal and inexpensive procedure, hereinafter called the  
5 procedure, for the factual determination of whether or not a person who received an excise tax  
6 bill paid the assessed excise tax. The procedure shall not be exclusive, but shall be alternative to  
7 the procedure for civil actions begun by summons and complaint.

8 The chief justice for the district court department shall make uniform rules with respect to  
9 the procedure applicable to all the courts within the said department, and the chief justice for the  
10 Boston municipal court department shall make rules for the Boston municipal court department,  
11 all such rules being subject to the approval of the supreme judicial court.

12 (b) Every case begun under the procedure shall be determined initially in the district court  
13 department. No such cause may be removed for trial in the superior court department. A plaintiff  
14 beginning a cause under the procedure shall be deemed to have waived a trial by jury and any  
15 right of appeal to a jury of six session in the district court department.

16 At the commencement of an action under the procedure the plaintiff shall be informed  
17 that such action may be submitted for mediation and resolution at the request of either party and  
18 with the agreement of both parties. The clerk-magistrate shall make appropriate note of any  
19 agreement so reached, and the court shall enter judgment.

20 (c) The plaintiff shall bring actions under this section in the judicial district in which the  
21 city or town that assessed the excise tax is located.

22 Notwithstanding the foregoing, if venue of the action is waived, each court within the  
23 district court department shall have jurisdiction of such actions commenced in that court but  
24 which should have been brought in a different court, to the extent that the court in which the  
25 plaintiff commenced the action may hear and dispose of the action.

26 If venue is not waived, the court may, on the motion of any party, order the action, along  
27 with all papers relating thereto, transferred to the court in which the plaintiff should have brought  
28 the action. The action shall thereupon be entered and prosecuted in such court as if it originally  
29 commenced therein. All prior proceedings otherwise regularly taken shall thereafter be valid.

30 (d) Actions brought under this section may be heard in the first instance by a clerk-  
31 magistrate of the district court department or the Boston municipal court department.

32 In the hearing and disposition of any claim under the jurisdiction of the procedure, the  
33 Boston municipal court and district court departments shall have all equality powers and  
34 jurisdiction conferred by sections one, one A, two, and three of chapter two hundred and  
35 fourteen.

36 (e) A plaintiff may begin an action under the procedure with an entry fee of \$20, but  
37 without summons or complaint and without requirement, except by special order of the court, of  
38 any pleading other than a concise written statement of the alleged facts. The procedure shall  
39 include notice by first class mail and shall include provisions for early hearing. The clerk  
40 magistrate may waive the \$20 fee if he finds in favor of the plaintiff.

41 If the clerk magistrate finds in favor of the defendant, the plaintiff shall be assessed an  
42 additional \$35. The court may assess the plaintiff a fee of \$5 for each calendar week, beginning  
43 four calendar weeks after the date of judgment, during which the excise tax is not paid. No  
44 additional fees or penalties shall accrue during the pendency of the action.

45 (f) The procedure shall include notice by first class mail instead of the mode of service  
46 heretofore required, and shall include provisions for early hearing. It may include the  
47 modification of any or all rules of pleading and practice, anything contained in other chapters,  
48 sections or acts notwithstanding, and may include stay of the entry of judgment or of the issue of  
49 execution and authority in the court, in its discretion, after proper enquiry, to order payment to  
50 the prevailing party of the amount found due on or before a day stated or by installments, to  
51 modify, extend or vacate such order and, in its discretion, to enforce such order by contempt  
52 proceedings, substantially in the manner provided in chapter two hundred and twenty-four, and  
53 to provide therefor in the rules for the procedure. Said rules for the procedure may provide for  
54 the elimination of any or all fees and costs, and that costs shall be in the discretion of the court.

55           (g) A defendant or plaintiff may, within 10 days after receipt of the magistrate's finding,  
56 file in the court where the cause was determined a claim of trial before single justice and shall  
57 file his affidavit that there are questions of law or fact in the cause requiring trial by a single  
58 justice, with the specification thereof, and that such trial is intended in good faith.