

**SENATE . . . . . No. 1453**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*Sonia Chang-Diaz*

*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 improving the fairness of our tax laws.**

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Sonia Chang-Diaz</i>	<i>Second Suffolk</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>

**SENATE . . . . . No. 1453**

By Ms. Chang-Diaz, a petition (accompanied by bill, Senate, No. 1453) of Sonia Chang-Diaz, Benjamin Swan and Ellen Story for legislation to improve the fairness of our tax laws . Revenue.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 1314 OF 2013-2014.]

**The Commonwealth of Massachusetts**

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

An Act improving the fairness of our 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. Chapter 63 of the General Laws is hereby amended by inserting after  
2 section 29E the following new 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 company  
9 from the buying, selling, holding, or dealing in securities or other investment intangibles on its

10 own behalf, and not as a broker. Gain from the sale of real property and improvements shall also  
11 be excluded to the extent that the gain exceeds cumulative depreciation and similar expenses  
12 with respect to the property and improvements that have been deducted in determining income  
13 taxable under subsection (c).

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

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

22 SECTION 2. Section 7B of Chapter 64C of the General Laws is hereby amended by  
23 adding the following paragraph:

24 (m) In addition to the excise imposed by paragraph (b), an excise shall be imposed on all  
25 cigars weighing more than 3 pounds per 1,000 units and not more than 12 pounds per 1,000 units  
26 held in the commonwealth at the rate of 80 per cent of the wholesale price of such product. In  
27 addition to the excise imposed by paragraph (b), an excise shall be imposed on all smoking  
28 tobacco held in the commonwealth at the rate of 90 per cent of the wholesale price of such  
29 product.

30 SECTION 3. Section 7C(a) of Chapter 64C of the General Laws is hereby amended by  
31 striking out the sentence “Notwithstanding the provisions of this section, the excise imposed by

32 this section shall equal twenty-five percent of the price paid by such licensee or unclassified  
33 acquirer to purchase smokeless tobacco so sold, imported, or acquired” and inserting in place  
34 thereof the following sentence: “Notwithstanding the provisions of this section, the excise  
35 imposed by this section shall equal forty-five percent of the price paid by such licensee or  
36 unclassified acquirer to purchase smokeless tobacco so sold, imported or acquired.”

37 SECTION 4. Chapter 64D of the General Laws is hereby amended by inserting after  
38 Section 1 the following new section: -

39 Section 1A. In addition to the tax levied under section 1 of this chapter and any surtax  
40 imposed thereon, an additional tax is hereby imposed on each deed, instrument or writing,  
41 whereby any lands, tenements or other realty sold shall be granted, assigned, transferred or  
42 otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons,  
43 by his, her or their direction, when the consideration of the interest or property conveyed,  
44 exclusive of the value of any lien or encumbrance remaining thereon at the time of the sale, is  
45 one million dollars or more. The rate of such additional tax shall be five dollars for each five  
46 hundred dollars of consideration or fractional part thereof in excess of one million dollars. This  
47 section shall not apply to any instrument or writing given to secure a debt or to any deed,  
48 instrument or writing to which the commonwealth, a city or town of the commonwealth, or the  
49 United States or any of their agencies are a party. All provisions of chapter 64D relative to the  
50 assessment, collection, payment, abatement, verification and administration of the tax imposed  
51 under section 1 of this chapter, including penalties, shall, so far as pertinent, be applicable to the  
52 tax imposed by this section. The tax imposed under this section shall be exempt from the surtax  
53 levied under section 23 of chapter 546 of the Acts of 1969.

54 SECTION 5. Section 1 of chapter 64G of the General Laws, as so appearing, is hereby  
55 amended by inserting after paragraph (b) thereof the following paragraph:--

56 (b1/2) “Doing business in the commonwealth”, ownership or operation of a bed and  
57 breakfast establishment, hotel, lodging house or motel that is located in the commonwealth,  
58 maintenance otherwise of a place of business in the commonwealth, the presence of an employee  
59 in the commonwealth on more than a de minimis basis, solicitation in the commonwealth of  
60 orders for transfer of occupancy of accommodations located in the commonwealth, solicitation in  
61 the commonwealth by a reseller of a contract or other cooperative arrangement with an operator  
62 with respect to accommodations located in the commonwealth, inspection in the commonwealth  
63 of accommodations that may be the subject of a cooperative arrangement between an operator  
64 and a reseller, or other exploitation of the market for accommodations or resale of  
65 accommodations located in the commonwealth by any means whatsoever, including, but not  
66 limited to, salesmen, solicitors or representatives in the commonwealth, whether those salesmen,  
67 solicitors or representatives are employed by the operator or reseller, by a person affiliated with  
68 the operator or the reseller by common ownership, or by any other party. This definition is  
69 intended to extend the jurisdiction of the commonwealth over operators and resellers to the full  
70 extent authorized by the Constitution and the laws of the United States.

71 SECTION 6. Said section 1 of said chapter 64G, as appearing in the 2012 Official  
72 Edition, is hereby further amended by inserting after the word “operator”, in line 49, the  
73 following words: -- or the room reseller.

74 SECTION 7. Section 16 of said chapter 62C, as appearing in the 2012 Official Edition,  
75 is hereby amended by inserting after the word “operator”, in line 53, as so appearing, the  
76 following words: -- or room reseller.

77 SECTION 8. Section 25 of said chapter 62C, as appearing in the 2012 Official Edition,  
78 is hereby amended by inserting after the word “operator”, in line 6, the following words: -- or  
79 room reseller.

80 SECTION 9. Section 67 of said chapter 62C, as appearing in the 2012 Official Edition,  
81 is hereby amended by inserting after the word “operator”, in line 2, the following words: -- or  
82 room reseller.

83 SECTION 10. Said section 1 of said chapter 64G, as so appearing, is hereby further  
84 amended by adding the following paragraph:-

85 (k) "Room Reseller" or “Reseller”, any person having any right, permission, license, or  
86 other authority from or through an operator to reserve or arrange transfer of occupancy of  
87 accommodations the transfer of which is subject to this chapter, such that the occupant pays all  
88 or a portion of the rent to the reseller, but the term shall not include a tour operator.

89 SECTION 11. Said chapter 64G is hereby further amended by striking out section 3, as  
90 so appearing, and inserting in place thereof the following section: --

91 Section 3. An excise is hereby imposed upon the transfer of occupancy of any room or  
92 rooms in a bed and breakfast establishment, hotel, lodging house, or motel in this commonwealth  
93 by any operator or room reseller doing business in the commonwealth at the rate of 5 per cent of

94 the total amount of rent for each occupancy. No excise shall be imposed if the total amount of  
95 rent paid by the occupant is less than \$15 per day or its equivalent.

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

98 SECTION 12. Section 3A of said chapter 64G, as so appearing, is hereby amended by  
99 striking out the first 3 sentences and inserting in place thereof the following 3 sentences:-

100 Any city or town that accepts this section may impose a local excise tax upon the transfer  
101 of occupancy of any room or rooms in a bed and breakfast establishment, hotel, lodging house or  
102 motel located within the city or town by any operator or room reseller at a rate up to, but not  
103 exceeding, 4 per cent of the total amount of rent paid by the occupant for the occupancy ,but the  
104 city of Boston may impose a local excise upon the transfer of occupancy of any room in a bed  
105 and breakfast establishment, hotel, lodging house or motel located within the city by any  
106 operator or room reseller at the rate of up to but not exceeding 4.5 per cent of the total amount of  
107 rent paid by the occupant for the occupancy. No excise shall be imposed if the total amount of  
108 rent paid by the occupant is less than \$15 per day or its equivalent or if the accommodation is  
109 exempt under section 2 of this chapter. The operator or room reseller shall pay the local excise  
110 tax imposed under this section to the commissioner at the same time and in the same manner as  
111 the excise tax due the commonwealth.

112 SECTION 13. Said chapter 64G is hereby further amended by inserting after section 3A  
113 the following section:-

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

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

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

123 SECTION 14. Said chapter 64G is hereby further amended by striking out sections 4 to  
124 6, as so appearing, and inserting in place thereof the following 3 sections:--

125 Section 4. Reimbursement for the excise imposed under sections 3 and 3A shall be paid  
126 by the occupant or the room reseller to the operator and by the occupant to the room reseller, as  
127 the case may be, and each operator and room reseller doing business in the commonwealth shall  
128 add to the rent and shall collect from the occupant or the room reseller the full amount of the  
129 excise imposed, in accordance with sections 3 and 3A, and that excise shall be a debt to the  
130 operator or room reseller, when so added to the rent, and shall be recoverable at law in the same  
131 manner as other debts.

132 Section 5. The amount of the excise collected by the operator or the room reseller under  
133 this chapter shall be stated and charged separately from the rent and shown separately on any  
134 record thereof at the time the transfer of occupancy is made, or on any evidence of the transfer  
135 issued or used by the operator or the room reseller. A room reseller shall not be required to

136 disclose to the occupant the amount of tax charged by the operator. The reseller shall represent  
137 to the occupant that the separately stated taxes charged by the reseller include taxes charged by  
138 the operator.

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

143           SECTION 15. Section 7A of said chapter 64G, as appearing in the 2012 Official Edition,  
144 is hereby amended by inserting after the word “operator”, in line 1, the following words:- or  
145 room reseller .

146           SECTION 16. Said section 7A of said chapter 64G, as appearing in the 2012 Official  
147 Edition, is hereby further amended by inserting after the word “operator”, in line 7, the following  
148 words:- or room reseller.

149           SECTION 17. Said chapter 64G is hereby further amended by striking out section 7B, as  
150 inserted by section 30 of chapter 163 of the acts of 2005, and inserting in place thereof the  
151 following section:-

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

158 SECTION 18. Section 12 of said chapter 64G, as appearing in the as appearing in the  
159 2014 Official Edition, is hereby amended by inserting after the word “operator”, in line 5, the  
160 following words:- and each room reseller.

161 SECTION 19. The definition of “sale at retail” or “retail sale” in section 1 of chapter  
162 64H of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by  
163 inserting after the word “business.”, in line 129, the following sentence:- A sale for resale in the  
164 regular course of business does not include a lease, rental or sale to a leasing or procurement  
165 entity for subsequent lease, rental or sale to any related entity, related member as defined in  
166 section 31I of chapter 63, or affiliate, including persons described in. section 267(b) or 707(b)(1)  
167 of the Internal Revenue Code of the United States. The previous sentence does not apply to a  
168 sale of tangible personal property held for resale to any third party that is not related as described  
169 in this section.

170 SECTION 20. Section 6 of said chapter 64H, as amended by section 15 of chapter 260  
171 of the acts of 2006, is hereby further amended by inserting after paragraph (ww), the following  
172 paragraph:-

173 (xx) Sales of tangible personal property purchased by a business entity for keeping or  
174 retention in the commonwealth for the purpose of subsequently transporting that property outside  
175 of the commonwealth for business use thereafter solely outside of the commonwealth, or for the  
176 purpose of being processed, fabricated or manufactured into other tangible personal property to  
177 be transported outside of the commonwealth and thereafter used solely outside of the  
178 commonwealth. A taxpayer must retain adequate documentation substantiating that the  
179 requirements of this exemption are met.

180 SECTION 21. Section 1 of chapter 64H of the General Laws, as appearing in the 2014  
181 Official Edition, is hereby amended by inserting the following sentence before the last sentence  
182 of the definition of “tangible personal property”:

183 A transfer of an interest in an aircraft shall be considered a transfer of tangible personal  
184 property under rules determined by the commissioner.

185 SECTION 22. Section 6 of said chapter 64H, as so appearing, is hereby amended by  
186 striking out paragraph (vv).

187 SECTION 23. Section 7 of chapter 64I of the General Laws, as so appearing, is hereby  
188 amended by striking out paragraph (e).

189 SECTION 24. Section 8 of chapter 64I of the General Laws, as appearing in the 2004  
190 Official Edition, is hereby amended by inserting after the word “purchase.”, in line 45, the  
191 following sentence:- Notwithstanding this paragraph, tangible personal property purchased for  
192 placement in inventory is presumed to be purchased for use in the commonwealth if the property  
193 is subsequently used in the commonwealth without regard to whether it is brought into the  
194 commonwealth within 6 months after purchase, and use tax is due at the time the property is first  
195 used in the commonwealth.

196 SECTION 25. The commissioner of revenue shall annually credit any tax revenue  
197 obtained under chapters 64H and 64I from the sale, storage, use, or other consumption of aircraft  
198 to line item 7007-0334, the small business technical assistance program.

199 SECTION 26. The commissioner of revenue may adopt rules and regulations to  
200 implement the provisions of sections 1 through 25 of this act.

201 SECTION 27. Section 1 of this act shall be effective for tax years beginning on or after  
202 January 1, 2016.

203 SECTION 28. Sections 2 through 18, sections 22 through 25 of this Act shall take effect  
204 on July 1, 2015.

205 SECTION 29. Sections 19 through 20 shall apply to transactions on or after January 1,  
206 2014 and shall have no retroactive impact on existing leases or rentals. Section 21 shall apply to  
207 property brought into the commonwealth for use on or after July 1, 2015. A termination of any  
208 existing lease or rental between related entities, related members, or affiliates, including persons  
209 described in section 267(b) or 707(b)(1) of the Internal Revenue Code, after the effective date of  
210 this act shall be considered to be a sale at fair market value of the leased or rented property if the  
211 lessee retains possession or use of the property.

212 SECTION 30. Sections 26 and 27 of this Act shall take effect upon enactment.