

**HOUSE . . . . . No. 1510**

**The Commonwealth of Massachusetts**

PRESENTED BY:

*Shawn Dooley*

*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 relative to the Massachusetts estate tax code.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Shawn Dooley</i>	<i>9th Norfolk</i>
<i>Hannah Kane</i>	<i>11th Worcester</i>
<i>Angelo L. D'Emilia</i>	<i>8th Plymouth</i>
<i>Kimberly N. Ferguson</i>	<i>1st Worcester</i>
<i>Ryan C. Fattman</i>	<i>Worcester and Norfolk</i>
<i>Steven S. Howitt</i>	<i>4th Bristol</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>
<i>F. Jay Barrows</i>	<i>1st Bristol</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>
<i>Susannah M. Whipps</i>	<i>2nd Franklin</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>
<i>Leonard Mirra</i>	<i>2nd Essex</i>
<i>Joseph D. McKenna</i>	<i>18th Worcester</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>
<i>Nicholas A. Boldyga</i>	<i>3rd Hampden</i>

**HOUSE . . . . . No. 1510**

By Mr. Dooley of Norfolk, a petition (accompanied by bill, House, No. 1510) of Shawn Dooley and others relative to the estate tax code of the Commonwealth. Revenue.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninetieth General Court  
(2017-2018)**

An Act relative to the Massachusetts estate tax code.

*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 65C of the General Laws is hereby amended by striking out  
2 Section 1(a), as appearing in the 2012 Official Edition, and inserting in place thereof the  
3 following section:-

4 (a) "Code", the Internal Revenue Code of the United States, in effect for the taxable year

5 SECTION 2: Chapter 65C of the General Laws is hereby amended by striking out  
6 Section 1(d), as appearing in the 2012 Official Edition, and inserting in place thereof the  
7 following section:-

8 (d) "Federal Gross Estate", the gross estate as defined under the code.

9 SECTION 3: Chapter 65C of the General Laws is hereby amended by striking out  
10 Section 1(f), as appearing in the 2012 Official Edition, and inserting in place thereof the  
11 following section:-

12 (f) “Massachusetts gross estate”, the federal gross estate, whether or not a federal estate  
13 tax return is required to be filed, plus the value of any property: (i) in which the decedent had at  
14 death a qualifying income interest for life described in subsection (c) of section 3A, or to the  
15 extent of any such interest therein of which the decedent has at any time made a transfer, by trust  
16 or otherwise, under any circumstances which would require the property to be included in the  
17 gross estate under the provisions of this chapter; and (ii) for which a deduction was allowed for  
18 Massachusetts estate tax purposes with respect to the transfer of such property to the decedent;  
19 and less the value of real and tangible personal property having an actual situs outside the  
20 commonwealth, but not the value of the principal residence of the decedent unless elected  
21 pursuant to the provisions of subsection (b) of section 2. The Massachusetts gross estate shall not  
22 include the value of any property in which the decedent had a qualifying income interest for life  
23 which is not otherwise includible in the Massachusetts gross estate under the first sentence of  
24 this subsection, notwithstanding the right of the executor of the decedent's estate to recover  
25 federal or Massachusetts estate taxes from such property.

26 SECTION 4: Chapter 65C of the General Laws is hereby amended by striking out  
27 Section 1(h), as appearing in the 2012 Official Edition, and inserting in place thereof the  
28 following section:-

29 (h) “Massachusetts taxable estate”, the Massachusetts gross estate less the exemption or  
30 the exclusions provided for within this section and deductions allowable under chapter 65C.

31 SECTION 5: Chapter 65C of the General Laws is hereby amended by striking out  
32 Section 1(j), as appearing in the 2012 Official Edition, and inserting in place thereof the  
33 following section:-

34 (j) “Applicable exclusion amount”, the sum of (i) the basic exclusion amount, and (ii) in  
35 the case of a surviving spouse, the deceased spousal unused exclusion amount.

36 SECTION 6: Chapter 65C of the General Laws is hereby amended by striking out  
37 Section 1(k), as appearing in the 2012 Official Edition, and inserting in place thereof the  
38 following section:-

39 (k) “Basic exclusion amount”, 50 per cent of the basic exclusion amount as defined in  
40 section 2010 of the Code.

41 SECTION 7: Chapter 65C of the General Laws is hereby amended by striking out  
42 Section 2 and Section 2A in their entirety, as appearing in the 2012 Official Edition, and  
43 inserting in place thereof the following section:-

44 SECTION 2 (a) A tax is hereby imposed upon the transfer of the estate of each person  
45 dying on or after January 1, 2017 who, at the time of death, was a resident of the commonwealth.  
46 This subsection shall only apply to each person dying on or after January 1, 2017. For the estate  
47 of decedents dying prior to January 1, 2017, they shall be subject to the provisions of chapter  
48 65C of the general laws in effect upon the date of death of such decedent.

49 (b) A tax is hereby imposed upon the transfer of real property situated in this  
50 commonwealth and upon tangible personal property having an actual situs in this commonwealth  
51 of every person who at the time of his or her death was not a resident of this commonwealth.

52 (c) Notwithstanding any other provision of law, the tax imposed by subsections (a) and  
53 (b) shall be computed upon the value of any property subject to a power of appointment which is

54 includible in the federal gross estate, notwithstanding that a tax has been paid thereon pursuant to  
 55 section 14 of chapter 65.

56 (d) For the purposes of computing the tax imposed by subsections (a) and (b) of this  
 57 section the amount of the tax shall be computed with respect to the Massachusetts taxable estate  
 58 in accordance with the following table:-

	If the Massachusetts taxable estate is:		The Massachusetts estate tax shall be:
	Over	But not Over	
62	\$0	\$5,000,000	10% of the taxable estate
63	\$5,000,000	\$10,000,000	\$500,000 plus 11% of the excess over
64	\$5,000,000		
65	\$10,000,000	\$20,000,000	\$1,050,000 plus 12% of the excess over
66	\$10,000,000		
67	\$20,000,000	n/a	\$2,250,000 plus 13% of the excess over
68	\$20,000,000		

69 (e) A tax is hereby imposed upon the transfer of real property situated in this  
 70 commonwealth and upon tangible personal property having an actual situs in this commonwealth  
 71 of every person who at the time of his death was not a resident of this commonwealth. The  
 72 amount of this tax shall be computed with respect to the value of Massachusetts real and tangible  
 73 personal property in accordance with the following table:-

74 | If the Massachusetts taxable estate is: | The Massachusetts estate tax shall be:

75 | Over But not Over |

76 .

77 | \$0 | \$5,000,000 | 10% of the taxable estate

78 | \$5,000,000 | \$10,000,000 | \$500,000 plus 11% of the excess over

79 \$5,000,000

80 | \$10,000,000 | \$20,000,000 | \$1,050,000 plus 12% of the excess over

81 \$10,000,000

82 | \$20,000,000 | n/a | \$2,250,000 plus 13% of the excess over

83 \$20,000,000

84 (f) The executor of a deceased person who, at the time of death, was a resident of the  
85 commonwealth may elect to exclude the value of such deceased person's principal residence  
86 from such person's Massachusetts gross estate subject to the exclusion requirements of section  
87 121 of the Code, provided that such residence has been owned and used by such person as his or  
88 her principal residence for periods aggregating two years or more during the five-year period  
89 ending on the date of such person's death. Ownership shall include, but not be limited to, sole  
90 ownership, joint ownership, ownership via a funded revocable trust or nominee trust, or other  
91 such vehicles as determined by the Department of Revenue. This election shall be made by the  
92 executor on the Massachusetts estate tax return filed within the time prescribed for filing such  
93 return, or any extension of such time granted by the commissioner. Such election, once made,  
94 shall be irrevocable.

95 (g) The maximum exclusion value of a person's principal residence allowed to be  
96 deducted from their Massachusetts net estate may not exceed the amount of the basic exclusion  
97 amount as defined in section 1. This deduction is separate and distinct from the basic exclusion  
98 amount and both may be deducted from the net estate to determine the taxable estate.

99 (h) The basis of property, for Massachusetts estate tax purposes, acquired from the  
100 decedent shall be the basis computed pursuant to section 1014 of the Code.

101 (i) A person who, at the time of death, was a resident of the commonwealth and whose  
102 deceased spouse was a resident of the commonwealth may elect to apply the deceased spousal  
103 unused exclusion amount to the Massachusetts gross estate. This exclusion shall be made by the  
104 executor on the Massachusetts estate tax return filed within the time prescribed for filing such  
105 return, or any extension of such time granted by the commissioner. Such election, once made,  
106 shall be irrevocable.

107 (j) Notwithstanding any other provision of law, the tax imposed by subsections (b) and  
108 (c) shall be computed upon the value of any property subject to a power of appointment which is  
109 includible in the federal gross estate, notwithstanding that a tax has been paid thereon pursuant to  
110 section 14 of chapter 65.

111 (k) For the purposes of computing the tax imposed by subsections (b) and (c) of this  
112 section, the provisions of section 3 shall not apply.

113 (l) The commissioner of revenue may make determinations and shall prescribe such  
114 regulations as may be necessary or appropriate to carry out this subsection.

115 (m) For the estate of decedents dying on or after January 1, 2017 all references and  
116 provisions in subsection (b) to the Internal Revenue Code or Code, unless the context clearly  
117 indicates otherwise, shall be to the Code as in effect for the taxable year.

118 SECTION 6: Chapter 65C of the General Laws is hereby amended by adding the  
119 following section after Section 3(d), as appearing in the 2012 Official Edition:- (e) “Deceased  
120 spousal unused exclusion amount”, with respect to a surviving spouse of a deceased spouse  
121 dying on or after January 1, 2017 and subject to paragraph 5 of section 2010 of the Code, the  
122 lesser of (i) the basic exclusion amount or (ii) the excess of the applicable exclusion amount of  
123 the last such deceased spouse of such surviving spouse, over the amount with respect to which  
124 the Massachusetts estate tax is determined under subsection (b) of the estate of such deceased  
125 spouse.

126 SECTION 7: Chapter 65C of the General Laws is hereby amended by striking out in  
127 Section 3A(f), as appearing in the 2012 Official Edition, the line “Such election, once made,  
128 shall be irrevocable and shall be separate from and independent of any election made by the  
129 executor for federal estate tax purposes” and inserting in place thereof the following:- “If no  
130 Massachusetts estate tax return is timely filed, such election may be made on the first return filed  
131 by the executor after the due date. Such election, once made, shall be irrevocable. The executor  
132 is not required to have made the same qualified terminable interest property election for federal  
133 estate tax purposes in order to make the election for Massachusetts purposes.”

134 SECTION 8: Chapter 65C of the General Laws is hereby amended by striking out in  
135 Section 4(b), as appearing in the 2012 Official Edition, in it’s entirety.



136 SECTION 9: Chapter 65C of the General Laws is hereby amended by striking out in  
137 Section 4A, as appearing in the 2012 Official Edition, in it's entirety.