

SENATE No. 1669

The Commonwealth of Massachusetts

PRESENTED BY:

James E. Timilty

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.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>James E. Timilty</i>	<i>Bristol and Norfolk</i>	
<i>Steven S. Howitt</i>	<i>4th Bristol</i>	<i>1/26/2017</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>	<i>1/31/2017</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	<i>2/3/2017</i>

SENATE No. 1669

By Mr. Timilty, a petition (accompanied by bill, Senate, No. 1669) of James E. Timilty, Steven S. Howitt, Bradley H. Jones, Jr. and Bruce E. Tarr for legislation relative to the Massachusetts estate tax. Revenue.

The Commonwealth of Massachusetts

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

An Act relative to the Massachusetts estate tax.

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:- if the Massachusetts taxable estate is over \$0 but not over
59 \$5,000,000 the Massachusetts estate tax shall be: 10% of the taxable estate; if the Massachusetts
60 taxable estate is over \$5,000,000 but not over \$10,000,000 the Massachusetts estate tax shall be:
61 \$500,000 plus 11% of the excess over \$5,000,000; if the Massachusetts taxable estate is over
62 \$10,000,000 but not over \$20,000,000 the Massachusetts estate tax shall be: \$1,050,000 plus
63 12% of the excess over \$10,000,000; if the Massachusetts taxable estate is over \$20,000,000 but
64 not over n/a the Massachusetts estate tax shall be: \$2,250,000 plus 13% of the excess over
65 \$20,000,000.

66 (e) A tax is hereby imposed upon the transfer of real property situated in this
67 commonwealth and upon tangible personal property having an actual situs in this commonwealth
68 of every person who at the time of his death was not a resident of this commonwealth. The
69 amount of this tax shall be computed with respect to the value of Massachusetts real and tangible
70 personal property in accordance with the following:- if the Massachusetts taxable estate is over
71 \$0 but not over \$5,000,000 the Massachusetts estate tax shall be: 10% of the taxable estate; if the
72 Massachusetts taxable estate is over \$5,000,000 but not over \$10,000,000 the Massachusetts
73 estate tax shall be: \$500,000 plus 11% of the excess over \$5,000,000; if the Massachusetts
74 taxable estate is over \$10,000,000 but not over \$20,000,000 the Massachusetts estate tax shall
75 be: \$1,050,000 plus 12% of the excess over \$10,000,000; if the Massachusetts taxable estate is

76 over \$20,000,000 but not over n/a the Massachusetts estate tax shall be: \$1,050,000 plus 12% of
77 the excess over \$10,000,000.

78 (f) The executor of a deceased person who, at the time of death, was a resident of the
79 commonwealth may elect to exclude the value of such deceased person's principal residence
80 from such person's Massachusetts gross estate subject to the exclusion requirements of section
81 121 of the Code, provided that such residence has been owned and used by such person as his or
82 her principal residence for periods aggregating two years or more during the five-year period
83 ending on the date of such person's death. Ownership shall include, but not be limited to, sole
84 ownership, joint ownership, ownership via a funded revocable trust or nominee trust, or other
85 such vehicles as determined by the Department of Revenue. This election shall be made by the
86 executor on the Massachusetts estate tax return filed within the time prescribed for filing such
87 return, or any extension of such time granted by the commissioner. Such election, once made,
88 shall be irrevocable.

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

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

95 (i) A person who, at the time of death, was a resident of the commonwealth and whose
96 deceased spouse was a resident of the commonwealth may elect to apply the deceased spousal
97 unused exclusion amount to the Massachusetts gross estate. This exclusion shall be made by the

98 executor on the Massachusetts estate tax return filed within the time prescribed for filing such
99 return, or any extension of such time granted by the commissioner. Such election, once made,
100 shall be irrevocable.

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

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

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

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

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

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

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

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