

SENATE No. 1609

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>Denise Provost</i>	<i>27th Middlesex</i>	<i>2/1/2019</i>

SENATE No. 1609

By Ms. Chang-Diaz, a petition (accompanied by bill, Senate, No. 1609) of Sonia Chang-Diaz and Denise Provost for legislation to improve the fairness of our tax laws. Revenue.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1497 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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, as appearing in the 2016 Official Edition,
2 is hereby amended by inserting after 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 in
19 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, as so appearing, is hereby
23 amended by 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, as so appearing, is
31 hereby amended by striking out the sentence “Notwithstanding the provisions of this section, the
32 excise imposed by this section shall equal twenty-five percent of the price paid by such licensee

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

37 SECTION 4. Chapter 64D of the General Laws, as so appearing, is hereby amended by
38 inserting after 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 (b^{1/2}) “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 so appearing, is hereby further
72 amended by inserting after the word “operator”, in line 49, the following words: - or the room
73 reseller.

74 SECTION 7. Section 16 of said chapter 62C, as so appearing, is hereby amended by
75 inserting after the word “operator”, in line 68, as so appearing, the following words: - or room
76 reseller.

77 SECTION 8. Section 25 of said chapter 62C, as so appearing, is hereby amended by
78 inserting after the word “operator”, in line 5, the following words: - or room reseller.

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

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

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

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

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

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

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

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

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

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

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

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

121 SECTION 14. Said chapter 64G is hereby further amended by striking out sections 4 to
122 6, as so appearing, and inserting in place thereof the following 3 sections:-

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

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

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

141 SECTION 15. Section 7A of said chapter 64G, as so appearing, is hereby amended by
142 inserting after the word “operator”, in line 1, the following words:- or room reseller .

143 SECTION 16. Said section 7A of said chapter 64G, as so appearing, is hereby further
144 amended by inserting after the word “operator”, in line 8, the following words:- or room reseller.

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

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

154 SECTION 18. Section 12 of said chapter 64G, as so appearing, is hereby amended by
155 inserting after the word “operator”, in line 5, the following words:- and each room reseller.

156 SECTION 19. The definition of “sale at retail” or “retail sale” in section 1 of chapter
157 64H of the General Laws, as so appearing, is hereby amended by inserting after the word

158 “services.”, in line 215, the following sentence:- A sale for resale in the regular course of
159 business does not include a lease, rental or sale to a leasing or procurement entity for subsequent
160 lease, rental or sale to any related entity, related member as defined in section 31I of chapter 63,
161 or affiliate, including persons described in. section 267(b) or 707(b)(1) of the Internal Revenue
162 Code of the United States. The previous sentence does not apply to a sale of tangible personal
163 property held for resale to any third party that is not related as described in this section.

164 SECTION 20. Section 6 of said chapter 64H, as amended by section 15 of chapter 260
165 of the acts of 2006, is hereby further amended by inserting after paragraph (xx), the following
166 paragraph:-

167 (yy) Sales of tangible personal property purchased by a business entity for
168 keeping or retention in the commonwealth for the purpose of subsequently transporting that
169 property outside of the commonwealth for business use thereafter solely outside of the
170 commonwealth, or for the purpose of being processed, fabricated or manufactured into other
171 tangible personal property to be transported outside of the commonwealth and thereafter used
172 solely outside of the commonwealth. A taxpayer must retain adequate documentation
173 substantiating that the requirements of this exemption are met.

174 SECTION 21. Section 1 of chapter 64H of the General Laws, as so appearing, is hereby
175 amended by inserting the following sentence before the last sentence of the definition of
176 “tangible personal property”:

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

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

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

183 SECTION 24. Section 8 of chapter 64I of the General Laws, as so appearing, is hereby
184 amended by inserting after the word “purchase.”, in line 48, the following sentence:-
185 Notwithstanding this paragraph, tangible personal property purchased for placement in inventory
186 is presumed to be purchased for use in the commonwealth if the property is subsequently used in
187 the commonwealth without regard to whether it is brought into the commonwealth within 6
188 months after purchase, and use tax is due at the time the property is first used in the
189 commonwealth.

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

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

195 SECTION 27. Section 1 of this act shall be effective for tax years beginning on or after
196 January 1, 2020.

197 SECTION 28. Sections 2 through 18, sections 22 through 25 of this Act shall take effect
198 on July 1, 2019.

199 SECTION 29. Sections 19 through 20 shall apply to transactions on or after January 1,
200 2016 and shall have no retroactive impact on existing leases or rentals. Section 21 shall apply to
201 property brought into the commonwealth for use on or after July 1, 2017. A termination of any
202 existing lease or rental between related entities, related members, or affiliates, including persons
203 described in section 267(b) or 707(b)(1) of the Internal Revenue Code, after the effective date of
204 this act shall be considered to be a sale at fair market value of the leased or rented property if the
205 lessee retains possession or use of the property.

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