

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Sonia Chang-Díaz

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 passage of the accompanying bill:

An Act Improving the Fairness of Tax Laws.

PETITION OF:

NAME:

Sonia Chang-Díaz

DISTRICT/ADDRESS:

Second Suffolk

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT IMPROVING THE FAIRNESS OF 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. Said chapter 63 is further amended by inserting after section 29E the
2 following 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 excise
5 determined under those sections, be subject to this section if the company owns, directly or
6 indirectly, 50 per cent or more of the interests in an entity treated as a partnership or disregarded
7 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
23 SECTION 2. Chapter 64D of the General Laws is hereby amended by striking out sections 1
24 to 3, as so appearing, and inserting in place thereof the following 3 sections:-

25 Section 1. (a) There shall be levied, collected and paid the excise specified in this
26 section on each conveyance of real property located in the commonwealth or interest in real
27 property located in the commonwealth: when the consideration for the interest or property

28 conveyed, exclusive of the value of any lien or encumbrance remaining on the interest or
29 property at the time of the sale, exceeds \$100 and does not exceed \$500, \$2; and for each
30 additional \$500 or fractional part thereof, \$2, but in Barnstable county, the excise specified in
31 this section shall be \$1.50 for each \$500 or fractional part of the consideration, excluding a
32 consideration of between \$0 and \$100 dollars. The excise shall be payable at the registry of
33 deeds in the county in which the real property lies, regardless of whether the conveyance is
34 evidenced by a deed, instrument, or other writing or whether the deed, instrument, or other
35 writing is otherwise recorded. Notwithstanding any other provisions of this section or any other
36 general or special law to the contrary, Nantucket county may disburse and expend deposits in
37 county excise funds for the purpose of facilities and programs related to law enforcement,
38 including the planning, improving or constructing of police stations and other related facilities
39 and programs. This chapter shall not apply to any instrument or writing given to secure a debt or
40 to any conveyance to which the commonwealth, a city or town of the commonwealth, or the
41 United States or any of their agencies are a party.

42 (b) For purposes of calculating the excise set forth in this chapter, under regulations to be
43 adopted by the commissioner, the commissioner may treat multiple transactions as a single
44 transaction or may otherwise adopt reasonable rules to avoid multiple applications of the excise
45 when the transactions are components of a single project including, but not limited to, projects
46 involving historic rehabilitation tax credits, the Community Preservation Act and the
47 development of affordable housing.

48 (c) For purposes of this chapter, unless otherwise expressly stated, the following words shall
49 have the following meanings:

50 "Conveyance", a transfer or transfers, directly or indirectly, of any interest in real property by
51 any method, including but not limited to sale, exchange, grant, assignment, trust indenture, or
52 transfer or acquisition of a controlling interest in any entity with an interest in real property, but
53 the transfer or acquisition of a controlling interest shall be considered to be a conveyance only if
54 the fair market value of the interest or interests in real property wherever situated that is owned
55 by the entity, whether directly or through subsidiary entities, equals or exceeds 80 per cent of the
56 fair market value of all of the assets of the entity.

57 "Interest in real property", includes, but is not limited to, an estate in fee simple, a beneficial
58 interest, a life estate, a perpetual easement, or a leasehold or sublease interest, ordinary or
59 proprietary, but only where the sum of the term of the lease or sublease and any options for
60 renewal, extension, or the like exceeds 49 years.

61 "Transfer or acquisition of a controlling interest", occurs, in the case of a corporation which
62 has an interest in real property, when a person, or group of persons acting in concert, transfers or
63 acquires, directly or indirectly, including through the transfer or acquisition of an interest in
64 another entity, a total of 50 per cent or more of the total combined stock of the corporation, by
65 vote or value. In the case of any partnership, limited liability company, association, trust, or other
66 entity having an interest in real property, the transfer or acquisition of a controlling interest
67 therein occurs when a person, or group of persons acting in concert, transfers or acquires,
68 directly or indirectly, including through the transfer or acquisition of an interest in another entity,
69 a total of 50 per cent or more of the capital, profits, or beneficial interest in the entity.

70 (d) Persons are considered to be "acting in concert" when, in accordance with regulations
71 adopted by the commissioner, they have a relationship such that 1 person influences or controls
72 the actions of another. Where the individuals or entities are not commonly controlled or owned,
73 persons shall be considered to be acting in concert when, in accordance with regulations adopted

74 by the commissioner, the unity with which the sellers or purchasers have negotiated and will
75 consummate the transfer of ownership interests indicates that they are acting as a single entity. If
76 the transfers or acquisitions are completely independent, each seller selling or purchaser buying
77 without regard to the identity of the other sellers or purchasers, then the transfers or acquisitions
78 shall be treated as separate transfers or acquisitions.

79 (e) For purposes of determining whether a controlling interest is transferred or acquired, only
80 transfers or acquisitions of interests occurring on or after January 1, 2008, shall be added
81 together. Where there is a transfer or acquisition of an interest in an entity that has an interest in
82 real property on or after January 1, 2008, and subsequently there is a transfer or acquisition of an
83 additional interest or interests in the same entity, the transfers or acquisitions shall be added
84 together to determine whether a transfer or acquisition of a controlling interest has occurred. No
85 transfer or acquisition of an interest in an entity that has an interest in real property shall be
86 added to another transfer or acquisition in the same entity if they occur more than 3 years apart,
87 unless the transfers or acquisitions are so timed as part of a plan to avoid the excises specified in
88 this section. Notwithstanding the foregoing, neither a bona fide pledge of stock, partnership, or
89 other interest as loan collateral nor any conveyance of publicly traded stock, partnership, or other
90 interest, shall be considered subject to taxation under this chapter.

91 (f) The commissioner may adopt regulations to implement this section.

92 Section 2. The excise imposed by this chapter shall be paid by the person who conveys the
93 real property or interest in real property, or for whose benefit the real property or interest in it is
94 conveyed. When the conveyance consists of a transfer or an acquisition of a controlling interest
95 in an entity with an interest in real property, the "person who conveys" the interest means, but is
96 not limited to, a shareholder, partner, or other interest-holder transferring stock, a partnership
97 interest, or another equity interest, respectively. The payment of the excise shall be denoted by
98 "stamps," as that term is defined in section 3, affixed to or printed directly on the deed,
99 instrument or writing evidencing the conveyance, or if none, to a form prescribed by the
100 commissioner for the purpose. In any case in which a conveyance subject to the excise imposed
101 in this chapter is not evidenced by a deed, instrument, or writing that will be recorded, the
102 conveyance shall be evidenced by recording the stamp form required by this section. The person
103 affixing or printing a stamp shall cancel the same by writing or stamping on it the initials of his
104 name and the date when the stamp is affixed or printed, in such manner that it cannot be used
105 again; but the stamp shall not be so defaced as to prevent determination of its denomination and
106 genuineness.

107 The word "person" shall, for the purposes of this chapter, include political subdivisions of the
108 commonwealth, individuals, partnerships, corporations, trusts, limited liability companies,
109 societies, associations, or any other form of unincorporated enterprise.

110 Section 3. (a) Stamps for the purpose of paying the excise under this chapter shall be
111 prepared in the form, of the denominations and in the quantities that the commissioner may
112 prescribe. The commissioner shall provide for the sale of the stamps in the places and at the
113 times that the commissioner considers necessary. The commissioner shall provide for the
114 custody of the stamps and other equipment used in the production of the stamps in the manner
115 that he considers expedient. For purposes of this section, the term "stamps" shall include both
116 adhesive stamps and computer generated images printed directly on a deed, instrument, writing,
117 or form required by section 2.

118 (b) The commissioner may cause to be installed in any registry of deeds 1 or more metering
119 machines through which the stamps may be sold and may remove the machine if the

120 commissioner considers it expedient. The commissioner may also approve computer hardware
121 and software, purchased at the expense of the registry, to produce stamps. Upon the installation
122 of a metering machine or approved computer hardware and software, the register of deeds shall
123 sell stamps to persons requiring the same for affixation or printing to deeds, instruments,
124 writings, or forms in accordance with this chapter.

125 (c) Each register of deeds shall on or before the tenth day of each month account to the
126 commissioner on a form prescribed and furnished by him for all sales made by the register
127 during the preceding calendar month and shall turn over to the commissioner all moneys
128 received from the sales, less any adjustments approved by him. Each register of deeds, with the
129 approval of the advisory board on county expenditures and the county commissioners, shall for
130 the purposes of purchasing equipment or services relative to electronic reporting, indexing,
131 computers and systems designed to modernize and maintain registry records, retain interest
132 earned on the deposit of excise stamp fees. Each register shall, annually, furnish to the county
133 treasurer a financial report regarding this interest and the expenditure of it in accordance with
134 accepted accounting procedures.

135 The machines or computer equipment shall, upon installation, be subject to inspection by the
136 commissioner or his duly appointed agent or agents at any time.

137 Each register of deeds shall give to the commissioner a bond, in a penal sum and with sureties
138 approved by the commissioner, conditioned satisfactorily to account for money received by the
139 register in his official capacity from the sale of the stamps. The premium for the bond shall be
140 paid by the state treasurer upon certification by the commissioner.

141 (d) Sections 3A and 3B shall not be applicable to any registry of deeds during the period in
142 which a metering machine or approved computer hardware or software is installed in that
143 registry, nor to any registry operated by the state secretary.

144
145 SECTION 3. Said chapter 64D is hereby further amended by striking out section 6, as so
146 appearing, and inserting in place thereof the following section:-

147 Section 6. The commissioner shall administer and enforce the excise imposed by this chapter
148 and shall adopt regulations as necessary to implement this chapter. At any time after the making
149 of a conveyance subject to the excise imposed by this chapter, the commissioner may investigate
150 and ascertain whether the excise, in the proper amount, was paid. For this purpose, the
151 commissioner may exercise all powers granted to him under section 70 of chapter 62C. Whoever
152 refuses to produce the books, papers, records, or other data required to be produced under section
153 70, or fails to preserve the same for 3 years or a longer period that the commissioner may by
154 regulation provide, or alters, cancels or obliterates any part of this data, or makes any false entry
155 therein, shall be punished by a fine of not less than \$500 nor more than \$5,000, or by
156 imprisonment for not less than 3 months nor more than 2 years, or both.

157
158 SECTION 4. Section 1 of chapter 64G of the General Laws, as so appearing, is hereby
159 amended by inserting after paragraph (b) thereof the following paragraph:--

160 (b1/2) "Doing business in the commonwealth", ownership or operation of a bed and breakfast
161 establishment, hotel, lodging house or motel that is located in the commonwealth, maintenance
162 otherwise of a place of business in the commonwealth, the presence of an employee in the
163 commonwealth on more than a de minimis basis, solicitation in the commonwealth of orders for
164 transfer of occupancy of accommodations located in the commonwealth, solicitation in the
165 commonwealth by a reseller of a contract or other cooperative arrangement with an operator with

166 respect to accommodations located in the commonwealth, inspection in the commonwealth of
167 accommodations that may be the subject of a cooperative arrangement between an operator and a
168 reseller, or other exploitation of the market for accommodations or resale of accommodations
169 located in the commonwealth by any means whatsoever, including, but not limited to, salesmen,
170 solicitors or representatives in the commonwealth, whether those salesmen, solicitors or
171 representatives are employed by the operator or reseller, by a person affiliated with the operator
172 or the reseller by common ownership, or by any other party. This definition is intended to
173 extend the jurisdiction of the commonwealth over operators and resellers to the full extent
174 authorized by the Constitution and the laws of the United States.

175
176 SECTION 5. Said section 1 of said chapter 64G, as so appearing, is hereby further amended
177 by inserting after the word "operator", in line 49, the following words: -- or the room reseller.
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179 SECTION 6. Section 16 of said chapter 62C, as so appearing, is hereby amended by inserting
180 after the word "operator", in line 53, as so appearing, the following words: -- or room reseller.
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182 SECTION 7. Section 25 of said chapter 62C, as so appearing, is hereby amended by
183 inserting after the word "operator", in line 6, the following words: -- or room reseller.
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185 SECTION 8. Section 67 of said chapter 62C, as so appearing, is hereby amended by inserting
186 after the word "operator", in line 2, the following words: -- or room reseller.
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188 SECTION 9. Said section 1 of said chapter 64G, as so appearing, is hereby further amended
189 by adding the following paragraph:-

190 (k) "Room Reseller" or "Reseller", any person having any right, permission, license, or other
191 authority from or through an operator to reserve or arrange transfer of occupancy of
192 accommodations the transfer of which is subject to this chapter, such that the occupant pays all
193 or a portion of the rent to the reseller, but the term shall not include a tour operator.
194

195 SECTION 10. Said chapter 64G is hereby further amended by striking out section 3, as so
196 appearing, and inserting in place thereof the following section: --

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

202 The operator or room reseller shall pay the excise to the commissioner at the time provided
203 for filing the return required by section 16 of chapter 62C.
204

205 SECTION 11. Section 3A of said chapter 64G, as so appearing, is hereby amended by
206 striking out the first 3 sentences and inserting in place thereof the following 3 sentences:-

207 Any city or town that accepts this section may impose a local excise tax upon the transfer of
208 occupancy of any room or rooms in a bed and breakfast establishment, hotel, lodging house or
209 motel located within the city or town by any operator or room reseller at a rate up to, but not
210 exceeding, 4 per cent of the total amount of rent paid by the occupant for the occupancy ,but the
211 city of Boston may impose a local excise upon the transfer of occupancy of any room in a bed

212 and breakfast establishment, hotel, lodging house or motel located within the city by any
213 operator or room reseller at the rate of up to but not exceeding 4.5 per cent of the total amount of
214 rent paid by the occupant for the occupancy. No excise shall be imposed if the total amount of
215 rent paid by the occupant is less than \$15 per day or its equivalent or if the accommodation is
216 exempt under section 2 of this chapter. The operator or room reseller shall pay the local excise
217 tax imposed under this section to the commissioner at the same time and in the same manner as
218 the excise tax due the commonwealth.

219

220 SECTION 12. Said chapter 64G is hereby further amended by inserting after section 3A the
221 following section:-

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

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

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

230

231 SECTION 13. Said chapter 64G is hereby further amended by striking out sections 4 to 6, as
232 so appearing, and inserting in place thereof the following 3 sections:--

233 Section 4. Reimbursement for the excise imposed under sections 3 and 3A shall be paid by
234 the occupant or the room reseller to the operator and by the occupant to the room reseller, as the
235 case may be, and each operator and room reseller doing business in the commonwealth shall add
236 to the rent and shall collect from the occupant or the room reseller the full amount of the excise
237 imposed, in accordance with sections 3 and 3A, and that excise shall be a debt to the operator or
238 room reseller, when so added to the rent, and shall be recoverable at law in the same manner as
239 other debts.

240 Section 5. The amount of the excise collected by the operator or the room reseller under this
241 chapter shall be stated and charged separately from the rent and shown separately on any record
242 thereof at the time the transfer of occupancy is made, or on any evidence of the transfer issued or
243 used by the operator or the room reseller. A room reseller shall not be required to disclose to the
244 occupant the amount of tax charged by the operator. The reseller shall represent to the occupant
245 that the separately stated taxes charged by the reseller include taxes charged by the operator.

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

249

250 SECTION 14. Section 7A of said chapter 64G, as so appearing, is hereby amended by
251 inserting after the word "operator", in line 1, the following words:- or room reseller .

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253 SECTION 15. Said section 7A of said chapter 64G, as so appearing, is hereby further
254 amended by inserting after the word "operator", in line 7, the following words:- or room reseller.

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256 SECTION 16. Said chapter 64G is hereby further amended by striking out section 7B, as
257 inserted by section 30 of chapter 163 of the acts of 2005, and inserting in place thereof the
258 following section:-

259 Section 7B. Every operator or room reseller who fails to pay to the commissioner any sums
260 required to be paid by this chapter shall be personally and individually liable for those amounts
261 to the commonwealth. The terms “operator” and “room reseller”, as used in this section, include
262 an officer or employee of a corporation, or a member or employee of a partnership, who as an
263 officer, employee or member is under a duty to pay over the taxes imposed by this chapter.
264

265 SECTION 17. Section 12 of said chapter 64G, as appearing in the 2004 Official Edition, is
266 hereby amended by inserting after the word “operator”, in line 5, the following words:- and each
267 room reseller.
268

269 SECTION 18. The definition of “sale at retail” or “retail sale” in section 1 of chapter 64H of
270 the General Laws, as so appearing, is hereby amended by inserting after the word “business.”, in
271 line 129, the following sentence:- A sale for resale in the regular course of business does not
272 include a lease, rental or sale to a leasing or procurement entity for subsequent lease, rental or
273 sale to any related entity, related member as defined in section 31I of chapter 63, or affiliate,
274 including persons described in. section 267(b) or 707(b)(1) of the Internal Revenue Code of the
275 United States. The previous sentence does not apply to a sale of tangible personal property held
276 for resale to any third party that is not related as described in this section.
277

278 SECTION 19. Section 6 of said chapter 64H, as amended by section 15 of chapter 260 of the
279 acts of 2006, is hereby further amended by inserting after paragraph (ww), the following
280 paragraph:-

281 (xx) Sales of tangible personal property purchased by a business entity for keeping or
282 retention in the commonwealth for the purpose of subsequently transporting that property outside
283 of the commonwealth for business use thereafter solely outside of the commonwealth, or for the
284 purpose of being processed, fabricated or manufactured into other tangible personal property to
285 be transported outside of the commonwealth and thereafter used solely outside of the
286 commonwealth. A taxpayer must retain adequate documentation substantiating that the
287 requirements of this exemption are met.
288

289 SECTION 20. Section 8 of chapter 64I of the General Laws, as appearing in the 2004
290 Official Edition, is hereby amended by inserting after the word “purchase.”, in line 45, the
291 following sentence:- Notwithstanding this paragraph, tangible personal property purchased for
292 placement in inventory is presumed to be purchased for use in the commonwealth if the property
293 is subsequently used in the commonwealth without regard to whether it is brought into the
294 commonwealth within 6 months after purchase, and use tax is due at the time the property is first
295 used in the commonwealth.
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297 SECTION 21. The commissioner may adopt rules and regulations to implement sections 28,
298 30 and 97 to 107, inclusive, of this act.
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300 SECTION 22. Sections X to XX, shall be effective for tax years beginning on or after July
301 31st, 2009.

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SECTION 23. Sections 108 and 109 shall apply to transactions on or after January 1, 2008 and shall have no retroactive impact on existing leases or rentals. Section 110 shall apply to property brought into the commonwealth for use on or after January 1, 2008. A termination of any existing lease or rental between related entities, related members, or affiliates, including persons described in section 267(b) or 707(b)(1) of the Internal Revenue Code, after the effective date of this act shall be considered to be a sale at fair market value of the leased or rented property if the lessee retains possession or use of the property.

SECTION 24. Section 1,2,10 to 13, inclusive and 19 shall be effective for tax year beginning on or after January 1st, 2009.