

HOUSE No. 2881

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:	DATE ADDED:
<i>Shawn Dooley</i>	<i>9th Norfolk</i>	<i>2/1/2021</i>
<i>Timothy R. Whelan</i>	<i>1st Barnstable</i>	<i>2/22/2021</i>
<i>Marc T. Lombardo</i>	<i>22nd Middlesex</i>	<i>2/22/2021</i>
<i>David F. DeCoste</i>	<i>5th Plymouth</i>	<i>2/22/2021</i>
<i>Nicholas A. Boldyga</i>	<i>3rd Hampden</i>	<i>2/22/2021</i>
<i>Susan Williams Gifford</i>	<i>2nd Plymouth</i>	<i>2/23/2021</i>
<i>Hannah Kane</i>	<i>11th Worcester</i>	<i>2/23/2021</i>
<i>F. Jay Barrows</i>	<i>1st Bristol</i>	<i>2/23/2021</i>
<i>Joseph D. McKenna</i>	<i>18th Worcester</i>	<i>2/23/2021</i>
<i>Steven S. Howitt</i>	<i>4th Bristol</i>	<i>2/23/2021</i>
<i>David K. Muradian, Jr.</i>	<i>9th Worcester</i>	<i>2/23/2021</i>
<i>Steven G. Xiarhos</i>	<i>5th Barnstable</i>	<i>2/23/2021</i>
<i>Lenny Mirra</i>	<i>2nd Essex</i>	<i>2/23/2021</i>
<i>Donald R. Berthiaume, Jr.</i>	<i>5th Worcester</i>	<i>2/24/2021</i>
<i>Mathew J. Muratore</i>	<i>1st Plymouth</i>	<i>2/24/2021</i>
<i>Angelo L. D'Emilia</i>	<i>8th Plymouth</i>	<i>2/24/2021</i>
<i>Michael J. Soter</i>	<i>8th Worcester</i>	<i>2/25/2021</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>	<i>2/25/2021</i>

Kimberly N. Ferguson

1st Worcester

2/26/2021

John H. Rogers

12th Norfolk

4/8/2021

HOUSE No. 2881

By Mr. Dooley of Norfolk, a petition (accompanied by bill, House, No. 2881) of Shawn Dooley and others relative to the estate tax code of the Commonwealth. Revenue.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 2446 OF 2019-2020.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

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 (f) 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”, \$2,750,000 which shall be annually adjusted for inflation
40 based on the US Department of Labor’s Consumer Price Index (CPI) for All Urban Consumers.
41 If the amount as adjusted under the preceding sentence is not a multiple of \$10,000, such amount
42 shall be rounded to the nearest multiple of \$10,000.

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

46 Section 2. (a) A tax is hereby imposed upon the transfer of the estate of each person
47 dying on or after January 1, 2022 who, at the time of death, was a resident of the commonwealth.
48 This subsection shall only apply to each person dying on or after January 1, 2022. For the estate
49 of decedents dying prior to January 1, 2022, they shall be subject to the provisions of chapter
50 65C of the general laws in effect upon the date of death of such decedent.

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

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

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

61 [TABLE 1]

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

67 [TABLE 2]

68 (f) The principal residence of a deceased person who, at the time of their death, was a
69 resident of the commonwealth shall be excluded in such person's Massachusetts gross estate
70 subject to the exclusion requirements of section 121 of the Code, provided that such residence
71 has been owned and used by such person as his or her principal residence for periods aggregating

72 two years or more during the five-year period ending on the date of such person's death.
73 Ownership shall include, but not be limited to, sole ownership, joint ownership, ownership via a
74 funded revocable trust or nominee trust, or other such vehicles as determined by the Department
75 of Revenue. The executor may elect to include the value of such deceased person's residence in
76 such person's Massachusetts gross estate. This election shall be made by the executor on the
77 Massachusetts estate tax return filed within the time prescribed for filing such return, or any
78 extension of such time granted by the commissioner. Such election, once made, shall be
79 irrevocable.

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

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

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

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

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

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

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

100 (m) For the estate of decedents dying on or after January 1, 2022 all references and
101 provisions in subsection (b) to the Internal Revenue Code or Code, unless the context clearly
102 indicates otherwise, shall be to the Code as in effect for the taxable year.

103 SECTION 8. Chapter 65C of the General Laws is hereby amended by adding the
104 following section after Section 3(d), as appearing in the 2012 Official Edition:- (e) “Deceased
105 spousal unused exclusion amount”, with respect to a surviving spouse of a deceased spouse
106 dying on or after January 1, 2022 and subject to paragraph 5 of section 2010 of the Code, the
107 lesser of (i) the basic exclusion amount or (ii) the excess of the applicable exclusion amount of
108 the last such deceased spouse of such surviving spouse, over the amount with respect to which
109 the Massachusetts estate tax is determined under subsection (b) of the estate of such deceased
110 spouse.

111 SECTION 9. Chapter 65C of the General Laws is hereby amended by striking out in
112 Section 3A(f), as appearing in the 2012 Official Edition, the line “Such election, once made,
113 shall be irrevocable and shall be separate from and independent of any election made by the
114 executor for federal estate tax purposes” and inserting in place thereof the following:- “If no
115 Massachusetts estate tax return is timely filed, such election may be made on the first return filed

116 by the executor after the due date. Such election, once made, shall be irrevocable. The executor
117 is not required to have made the same qualified terminable interest property election for federal
118 estate tax purposes in order to make the election for Massachusetts purposes.”

119 SECTION 10. Chapter 65C of the General Laws is hereby amended by striking out in
120 Section 4(b), as appearing in the 2012 Official Edition, in its entirety.

121 SECTION 11. Chapter 65C of the General Laws is hereby amended by striking out in
122 Section 4A, as appearing in the 2012 Official Edition, in its entirety.