

**SENATE . . . . . No. 1669**

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**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**

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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.

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**The Commonwealth of Massachusetts**

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**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.