

**HOUSE . . . . . No. 01729**

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The Commonwealth of Massachusetts

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PRESENTED BY:

*David M. Torrisi*

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*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 tax administrative laws of the Commonwealth

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PETITION OF:

NAME:

*David M. Torrisi*

DISTRICT/ADDRESS:

*14th Essex*

# HOUSE . . . . . No. 01729

By Mr. David M. Torrasi of North Andover, petition (accompanied by bill, House, No. 01729) of David M. Torrasi for legislation to make certain changes in the administrative tax laws of the Commonwealth.. Joint Committee on Revenue.

## The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act improving the tax administrative laws of the Commonwealth

□.

*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 62C of the General Laws, as appearing in the 2008 Official Edition, is  
2 hereby amended by deleting Section 3A and replacing it with the following new section:-
- 3 Section 3A. In applying the laws referred to in section 2, the commissioner may, in his  
4 discretion, disallow the asserted tax consequences of a transaction by asserting the application of  
5 the sham transaction doctrine or any other related tax doctrine, in which case the taxpayer shall  
6 have the burden of demonstrating that the transaction possessed both: (i) a valid, good-faith  
7 business purpose other than tax avoidance; and (ii) economic substance apart from the asserted  
8 tax benefit.
- 9 In the case of an individual, this section shall apply only to transactions entered into in  
10 connection with a trade or business or an activity engaged in for the production of income.

11 This section is not intended to alter the tax treatment of basic business transactions that have  
12 been respected at common law, merely because the choice between meaningful economic  
13 alternatives is based on comparative tax advantages. These basic transactions shall include but  
14 not be limited to (1) the choice between capitalizing a business enterprise with debt or equity; (2)  
15 the choice between using a corporation organized in Massachusetts or elsewhere; (3) the choice  
16 of entity; (4) the choice to enter a transaction or series of transactions that constitute a corporate  
17 organization or a reorganization governed for federal income tax purposes by Section 368(a)(1)  
18 of the Code; and (4) the choice to use a related-party entity in a transaction, if the arm's length  
19 standards of Section 482 of the Code and of Section 39A of chapter 63 and other applicable  
20 concepts are satisfied.

21 Nothing in this section shall be construed to limit or negate the commissioner's authority to  
22 make tax adjustments as otherwise permitted by law.

23 SECTION 2. Paragraph two of Section 19 of Chapter 62C of the General Laws, as appearing in  
24 the 2008 Official Edition, is hereby amended by deleting the first sentence and replacing it with  
25 the following new sentence:- "An extension of six months for filing any return required by  
26 section eleven or twelve shall be allowed any corporation if, in such manner and at such time as  
27 the commissioner may prescribe, such corporation files a request, in such form as the  
28 commissioner may require, and pays, on or before the date prescribed for payment of the tax, the  
29 amount of tax reasonably estimated to be due under this chapter; but this extension may be  
30 terminated at any time by the commissioner by mailing to the corporation notice of such  
31 determination at least ten days prior to the date for termination fixed in such notice; provided,  
32 further that in the case of taxpayer subject to section 32B of Chapter 63 that is required to file a

33 return required by section 11 or 12, an extension of seven months for filing such return shall be  
34 allowed."

35 SECTION 3. Section 37C of Chapter 62C of the General Laws, as appearing in the 2008  
36 Official Edition, is hereby amended by inserting the following new paragraph:-

37 (g) If the commissioner, considering the provisions of paragraph (a), fails to accept an offer of  
38 the taxpayer of 35% or more of the assessed liability in full in final settlement and the appellate  
39 tax board finds for the taxpayer, the commissioner shall pay the taxpayer reasonable attorney  
40 fees not to exceed twenty percent of the assessed amount, and any interest otherwise due.

41 SECTION 4. Chapter 63B of the General Laws, as appearing in the 2008 Official Edition is  
42 hereby amended by striking paragraph (c) of section 3 and replacing it with the following:-

43 (c) For purposes of this chapter, there shall be four required installments for each taxable year,  
44 except as otherwise provided by this chapter. The first installment shall be paid on or before the  
45 fifteenth day of the third month of the taxable year and shall be equal to twenty-five percent of  
46 the required annual payment; the second installment shall be paid on or before the fifteenth day  
47 of the sixth month of the taxable year and shall be equal to twenty-five percent of the required  
48 annual payment; the third installment shall be paid on or before the fifteenth day of the ninth  
49 month of the taxable year and shall be equal to twenty-five percent of the required annual  
50 payment; and the fourth installment shall be paid on or before the fifteenth day of the twelfth  
51 month of the taxable year and shall be equal to the remaining twenty-five percent of the required  
52 annual payment. Except as otherwise provided in this subsection, the term "required annual  
53 payment" shall mean the lesser of:

54 (i) ninety percent of the tax shown on the return for the taxable year or, if no return is filed,  
55 ninety percent of the tax for such year, or

56 (ii) one hundred percent of the tax shown on the return of the corporation for the preceding  
57 taxable year, or

58 (iii) 90 per cent of the tax for the taxable year, or

59 (iv) 90 per cent of the tax that would be required to be shown on the return for the taxable year if  
60 the tax were determined by using the income apportionment percentage determined for the  
61 preceding taxable year under chapter 63.

62 Clause (ii) shall not apply if the preceding taxable year was not a taxable year of twelve months  
63 or the corporation did not file a return for such preceding taxable year showing a liability for tax.

64 Clause (ii) shall not apply in the case of a large corporation, as defined in section sixty-six  
65 hundred and fifty-five (g) of the Internal Revenue Code of the United States, as amended on  
66 January first, nineteen hundred and eighty-nine and in effect for the taxable year except for  
67 purposes of determining the amount of the first required installment for any taxable year;  
68 provided, however, that any reduction in such first installment by reason of this provision shall  
69 be recaptured by increasing the amount of the next required installment by the amount of such  
70 reduction.

71 SECTION 5. Section 1 shall take effect at the same time as Section 10 of Chapter 4 of the Acts  
72 of 2003 took effect.

73 SECTION 6. (a) Notwithstanding any general or special law to the contrary, the commissioner of  
74 revenue shall establish a tax amnesty program for all taxes collected during which period all

75 penalties that could be assessed by the commissioner shall be waived without the need for any  
76 showing by the taxpayer of reasonable cause or the absence of willful neglect for the failure of  
77 the taxpayer to: (i) timely file any proper return for any tax type and for any tax period; (ii) file  
78 proper returns which report the full amount of the taxpayer's liability for any tax type and for any  
79 tax period; (iii) timely pay any tax liability; or (iv) pay the proper amount of any required  
80 estimated payment toward a tax liability. The waiver of a taxpayer's liability under this section  
81 shall apply if the taxpayer files returns, makes payments as required by the commissioner or  
82 otherwise comes into compliance with the tax laws of the commonwealth as required by the  
83 commissioner pursuant to the tax amnesty program.

84 (b) The amnesty program shall be established for 2 consecutive months within fiscal year 2012  
85 to be determined by the commissioner, such period to expire not later than June 30, 2012, and all  
86 required payments shall be made on or before June 30, 2012, in order for the amnesty to apply. If  
87 a taxpayer fails to pay the full liability before June 30, 2012, the commissioner shall retain any  
88 payments made and shall apply those payments against the outstanding liability, and the  
89 provisions of the tax amnesty program shall not apply.

90 (c) The commissioner's authority to waive penalties during the amnesty period shall not apply to  
91 any taxpayer who, before the start date of the amnesty program selected was the subject of a tax-  
92 related criminal investigation or prosecution.

93 (d) The commissioner may offer tax amnesty to those taxpayers who have either an unpaid self-  
94 assessed liability or who have been assessed a tax liability, whether before or after the filing of a  
95 return, which assessed liability, remains unpaid. The amnesty program shall authorize the waiver  
96 of interest, or any amount treated as interest, as further provided in this section. No interest shall

97 be due for taxpayers paying in full any self-assessed tax liability. For those taxpayers with an  
98 outstanding audit or assessment and in accordance with the considerations outlined in sections  
99 37A and 37C of Chapter 62C of the General Laws: 25% of the interest rate as defined in section  
100 32 of Chapter 62C, herein the applicable interest rate, so long as the taxpayer pays in full and  
101 final settlement less than 50% of the tax liability assessed by the commissioner; 50% of the  
102 applicable interest so long as the taxpayer pays in full and final settlement more than 50% but  
103 less than 79% of the tax assessed by the commissioner; and if the taxpayer pays in full and final  
104 settlement more than 80% of the tax assessed, no reduction in the applicable interest rate shall be  
105 granted to the taxpayer.

106 (e) To the extent that a taxpayer within the scope of the amnesty program and wishing to  
107 participate in the amnesty program has postponed the payment of an assessment of tax, interest  
108 and penalty under the authority of subsection (e) of section 32 of chapter 62C of the General  
109 Laws, the taxpayer shall waive in writing all rights under said subsection (e) of said section 32 of  
110 said chapter 62C further delay the payment of the tax and interest portions of the assessment.

111 The tax and interest portions of the assessment shall be payable in full from the date of the  
112 commissioner's notice of assessment. Upon payment by the taxpayer of the tax and interest of the  
113 outstanding assessment, the commissioner shall waive all penalties associated with that  
114 assessment. The taxpayer and the commissioner shall then proceed with all administrative appeal  
115 rights that the taxpayer wishes to pursue with respect to the assessment.

116 (f) Amnesty shall not apply to those penalties which the commissioner would not have the sole  
117 authority to waive including, but not limited to, fuel taxes administered under the International  
118 Fuel Tax Agreement or under the local option portions of taxes or excises collected for the  
119 benefit of cities, towns or state governmental authorities.

120 (g) The commissioner shall maintain records of the amnesty provided under this section  
121 including, but not limited to: (i) the number of taxpayers provided with amnesty; (ii) the types of  
122 tax liability for which amnesty was provided and, for each type of liability, the amount of tax  
123 liability collected and the amount of penalties foregone by virtue of the amnesty program; and  
124 (iii) the total outstanding tax liability for amnesty-eligible taxpayers at the conclusion of the tax  
125 amnesty program after the collection of all funds under this section. The commissioner shall file  
126 a report detailing such information with the clerks of the house of representatives and the senate,  
127 the joint committee on revenue, the house and senate committees on ways and means, the  
128 minority leader of the house and the minority leader of the senate not later than September 1,  
129 2012; provided, however, that such report shall not contain information sufficient to identify an  
130 individual taxpayer or the amnesty that an individual taxpayer was provided under this section.

131 (g) A taxpayer who is eligible for the amnesty program based upon the criteria established by the  
132 commissioner and who fails to come forward under the tax amnesty program and make payments  
133 before June 30, 2012 shall, in addition to all other penalties provided by chapter 62C of the  
134 General Laws, be subject to an additional penalty not to exceed \$500 per taxpayer, which shall  
135 be calculated and assessed according to rules determined by the commissioner and which may be  
136 subject to de minimis or other exceptions that the commissioner may consider appropriate. This  
137 penalty shall be subject to said chapter 62C and shall be added to and become part of the tax due.  
138 The commissioner may waive the penalty provided by this subsection for reasonable cause as  
139 provided in subsection (f) of section 33 of said chapter 62C.