

SENATE No. 01417

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 passage 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>Ellen Story</i>	<i>3rd Hampshire</i>

SENATE No. 01417

By Ms. Chang-Diaz, petition (accompanied by bill, Senate, No. 1417) of Story and Chang-Diaz for legislation to improve the fairness of our tax laws
 [Joint Committee on Revenue].

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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 is hereby amended by inserting after
2 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
19 in a combined return filed under section 32B.

20 (d) The commissioner may issue regulations or other guidance as may be needed for
21 the implementation of this section.

22 SECTION 2. Section 7B of Chapter 64C of the General Laws is hereby amended by
23 adding the following paragraph:

24 (m) In addition to the excise imposed by paragraph (b), an excise shall be imposed on
25 all cigars weighing more than 3 pounds per 1,000 units and not more than 12 pounds per 1,000
26 units held in the commonwealth at the rate of 80 per cent of the wholesale price of such product.
27 In 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 is hereby amended
31 by striking out the sentence "Notwithstanding the provisions of this section, the excise imposed
32 by this section shall equal twenty-five percent of the price paid by such licensee or unclassified

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

37 SECTION 4. Chapter 64D of the General Laws is hereby amended by inserting after
38 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
55 hereby amended by inserting after paragraph (b) thereof the following paragraph:--

56 (b1/2) “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 53, 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 6, 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,
84 or 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,
88 as 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
90 or rooms in a bed and breakfast establishment, hotel, lodging house, or motel in this
91 commonwealth by any operator or room reseller doing business in the commonwealth at the rate
92 of 5 per cent of the total amount of rent for each occupancy. No excise shall be imposed if the
93 total amount of 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
97 by 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
99 transfer of occupancy of any room or rooms in a bed and breakfast establishment, hotel, lodging
100 house or motel located within the city or town by any operator or room reseller at a rate up to,
101 but not exceeding, 4 per cent of the total amount of rent paid by the occupant for the occupancy
102 ,but the city of Boston may impose a local excise upon the transfer of occupancy of any room in
103 a bed 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
111 3A 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
116 room reseller shall collect and pay to the commissioner the excise upon the amount of rent paid
117 by the occupant to the room reseller, less the amount of rent that the reseller has paid to the
118 operator.

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

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

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

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

136 represent to the occupant that the separately stated taxes charged by the reseller include taxes
137 charged by the operator.

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

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

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

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

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

155 SECTION 18. Section 12 of said chapter 64G, as appearing in the 2004 Official
156 Edition, is hereby amended by inserting after the word “operator”, in line 5, the following
157 words:- and each room reseller.

158 SECTION 19. The definition of “sale at retail” or “retail sale” in section 1 of chapter
159 64H of the General Laws, as so appearing, is hereby amended by inserting after the word
160 “business.”, in line 129, the following sentence:- A sale for resale in the regular course of
161 business does not include a lease, rental or sale to a leasing or procurement entity for subsequent
162 lease, rental or sale to any related entity, related member as defined in section 31I of chapter 63,
163 or affiliate, including persons described in. section 267(b) or 707(b)(1) of the Internal Revenue
164 Code of the United States. The previous sentence does not apply to a sale of tangible personal
165 property held for resale to any third party that is not related as described in this section.

166 SECTION 20. Section 6 of said chapter 64H, as amended by section 15 of chapter
167 260 of the acts of 2006, is hereby further amended by inserting after paragraph (ww), the
168 following paragraph:-

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

176 SECTION 21. Section 1 of chapter 64H of the General Laws, as appearing in the
177 2008 Official Edition, is hereby amended by inserting the following sentence before the last
178 sentence of the definition of “tangible personal property”:

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

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

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

185 SECTION 24. Section 8 of chapter 64I of the General Laws, as appearing in the 2004
186 Official Edition, is hereby amended by inserting after the word “purchase.”, in line 45, the
187 following sentence:- Notwithstanding this paragraph, tangible personal property purchased for
188 placement in inventory is presumed to be purchased for use in the commonwealth if the property
189 is subsequently used in the commonwealth without regard to whether it is brought into the
190 commonwealth within 6 months after purchase, and use tax is due at the time the property is first
191 used in the commonwealth.

192 SECTION 25. Section 321 of Chapter 94 of the General Laws, as appearing in the
193 2002 Official Edition, is hereby amended by striking out the definitions for “beverage” and
194 “beverage container,” and inserting in place thereof the following definitions:—

195 “Beverage,” soda water or similar carbonated soft drinks; noncarbonated beverages
196 including mineral water, flavored and unflavored water, vitamin water, and other water

197 beverages, tea, sports drinks, isotonic drinks; beer and other malt beverages; and all other non-
198 alcoholic carbonated and noncarbonated drinks in liquid form intended for human consumption
199 except milk and beverages that are primarily derived from dairy products, infant formula, and
200 FDA-approved medicines.

201 “Beverage container,” any sealable bottle, can, jar, or carton which is primarily
202 composed of glass, metal, plastic, or any combination of those materials and is produced for the
203 purpose of containing a beverage, which, at the time of sale, contains one-hundred and thirty-five
204 ounces or less of a beverage. This definition shall not include containers made of paper-based
205 biodegradable material and aseptic multi-material packaging.

206 SECTION 26. Section 321 of Chapter 94 of the General Laws, as appearing in the
207 2002 Official Edition, is hereby amended by adding, after the definition of “Plastic bottle” the
208 following definition:— “Redemption center,” any business whose primary purpose is the
209 redemption of beverage containers and is not ancillary to any other business,

210 SECTION 27. Section 321 of Chapter 94 of the General Laws, as so appearing, is
211 hereby amended by adding, after the definition of “Reusable beverage container,” the following
212 definition:—

213 “Small dealer,” any person, including any operator of a vending machine, employing
214 the equivalent of ten full time employees or less, who engages in the sale of beverages in
215 beverage containers to consumers in the Commonwealth.

216 SECTION 28. Section 323 of Chapter 94 of the General Laws, as so appearing, is
217 hereby amended by adding in line 30 after the letter “(e),” the following:—

218 The Executive Office of Environmental Affairs shall promulgate rules and regulations
219 for the licensure of redemption centers, and may set fees for the licensing of such redemption
220 centers.

221 SECTION 29. Section 323, paragraph (a), of Chapter 94 of the General Laws, as
222 appearing in the 1998 Official Edition, is hereby amended by striking out in line the words “the
223 refund value” and inserting in place thereof the words “the full refund value”.

224 SECTION 30. Section 323, paragraph (b), of Chapter 94 of the General Laws, as
225 appearing in the 1998 Official Edition, is hereby amended by striking out the words “one cent”
226 and inserting in place thereof the words “three and one quarter cents” and placing the following
227 sentence at the end of the paragraph. “The handling fee shall be reviewed semi-annually by the
228 Secretary of the Executive Office of Environmental Affairs and adjustments made to reflect
229 increases in costs incurred by redemption facilities.”

230 SECTION 31. Section 323, paragraph (c), of Chapter 94 of the General Laws, as
231 appearing in the 2002 Official Edition, is hereby amended by striking out in the words “one
232 cent” and inserting in place thereof the words “three and one quarter cents” and placing the
233 following sentence at the end of the paragraph. “The handling fee shall be reviewed semi-
234 annually by the Secretary of the Executive Office of Environmental Affairs and adjustments
235 made to reflect increases in costs incurred by redemption facilities.”

236 SECTION 32. Section 323 of Chapter 94 of the General Laws, appearing in the 2002
237 Official Edition, is hereby amended by adding in line 73, after the word “civil,” the words “or
238 administrative.”

239 SECTION 33. Chapter 94 of the General Laws, as so appearing, is hereby amended
240 by adding a new section after 323F:—

241 Section 323G. Redemption Centers.

242 (a) Only small dealers may apply for an exemption with the department.

243 (b) Application for an exemption shall be jointly filed with the department by the
244 small dealer and redemption center. The application shall state the name and address of the
245 person responsible for the establishment and operation of the center, the kinds, sizes and brand
246 names of beverage containers that will be accepted and the names and addresses of dealer(s) to
247 be served and their distance from the local redemption center.

248 (c) In approving the exemption, the department shall consider at least the health and
249 safety of the public; the convenience for the public, including standards governing distribution of
250 centers by population or by distance or both, the size and storage capacity of the dealer(s) to be
251 served by the redemption center and the size and storage capacity of the redemption center. The
252 order approving a local redemption center license must state the dealers to be served and the
253 kinds, sizes and brand names of empty beverage containers that the center accepts.

254 (d) A local redemption center may not refuse to accept from any consumer or other
255 person not a dealer any empty, unbroken and reasonably clean beverage container of the kind,
256 size and brand sold by a dealer served by the center, or refuse to pay in cash the full refund value
257 of the returned beverage container as established by Section 322 of Chapter 94 of the General
258 Laws.

259 (e) A list of the dealers served and the kinds, sizes and brand names accepted shall be
260 promptly displayed at each local redemption centers.

261 (f) The name and location of the redemption center serving the dealer shall be
262 conspicuously displayed at the dealer.

263 SECTION 34. Section 327 of Chapter 94 of the General Laws, as so appearing, is
264 hereby amended by inserting after the first paragraph the following new paragraphs:— The
265 Department of Environmental Protection shall have authority to enforce the provisions of
266 sections three hundred and twenty-one; three hundred and twenty-two; paragraphs (a) through (f)
267 inclusive, and paragraph (i) of section three hundred and twenty-three; three hundred and
268 twenty-three A; three hundred and twenty-three F; three hundred and twenty-four; and three
269 hundred and twenty-five. Any bottler, distributor, redemption center, or dealer who violates any
270 of the foregoing provisions shall be subject to an administrative penalty for each violation of not
271 more than one thousand dollars.

272 The Department of Revenue shall have authority to enforce the provisions of
273 paragraphs (g) and (h) of section three hundred and twenty-three and sections three hundred and
274 twenty-three B to three hundred and twenty-three E, inclusive. Any bottler, distributor,
275 redemption center, or dealer who violates any of the foregoing provisions shall be subject to an
276 administrative penalty for each violation of not more than one thousand dollars.

277 SECTION 35. Section 327 of Chapter 94 of the General Laws, as so appearing, is
278 hereby amended by adding after the word “civil” in line 14 the words “or administrative.”

279 SECTION 36. Section 323F. of Chapter 94 of the General Laws, is hereby amended
280 by replacing the existing text with the following:

281 (a) There shall be established on the books of the Commonwealth a separate fund to
282 be known as the Clean Environment Fund as established in Section 323D of Chapter 94 of the
283 General Laws. Amounts deposited in said fund shall be used, subject to appropriation, solely for
284 programs and projects in the management of solid waste and for environmental protection;
285 provided, however, that no funds shall be used for costs associated with incineration.

286 (b) Not less than fifty percent of amounts deposited in the Fund shall be used for
287 recycling, composting and solid waste source reduction projects and programs.

288 (c) Not less than an additional twenty percent of amounts deposited in the Fund shall
289 be used for recycling and other solid waste projects and programs.

290 (d) Not more than thirty percent of amounts deposited in the fund shall be used for
291 other environmental programs consistent with the purposes of the "bottle bill", so-called.

292 (e) Of amounts expended under paragraphs (b) through (d), not more than fifty
293 percent shall be used for debt service on capital outlays authorized prior to January first, nineteen
294 hundred and eighty-eight.

295 SECTION 37. Section 95 of chapter 173 of the acts of 2008 is hereby repealed. The
296 repeal is effective upon enactment and applies to all future taxable years.

297 SECTION 38. The commissioner of revenue shall annually credit any tax revenue
298 obtained under chapters 64H and 64I from the sale, storage, use, or other consumption of aircraft
299 to line item 7007-0334, the small business technical assistance program.

300 SECTION 39. The commissioner may adopt rules and regulations to implement the
301 provisions of sections 1 through 24 and sections 37 through 38 of this act.

302 SECTION 40. Section 1 of this act shall be effective for tax years beginning on or
303 after January first, two thousand twelve.

304 SECTION 41. Sections 2 through 18, sections 22 through 24 and section 38 of this
305 Act shall take effect on July first, two thousand eleven.

306 SECTION 42. Sections 19 through 20 shall apply to transactions on or after January
307 1, 2012 and shall have no retroactive impact on existing leases or rentals. Section 21 shall apply
308 to property brought into the commonwealth for use on or after July 1, 2011. A termination of
309 any existing lease or rental between related entities, related members, or affiliates, including
310 persons described in section 267(b) or 707(b)(1) of the Internal Revenue Code, after the effective
311 date of this act shall be considered to be a sale at fair market value of the leased or rented
312 property if the lessee retains possession or use of the property.

313 SECTION 43. Sections 25 through 36 of this Act shall take effect on December 1st,
314 2011.

315 SECTION 44. Sections 37 and 39 of this Act shall take effect upon enactment.