SENATE DOCKET, NO. 1538   FILED ON: 1/20/2017

SENATE . . . . No. 1569

The Commonwealth of Massachusetts

PRESENTED BY:

Mark C. Montigny

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 closing a corporate tax haven loophole.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Mark C. Montigny	*Second Bristol and Plymouth*	
Marjorie C. Decker	*25th Middlesex*	*1/26/2017*
Mike Connolly	*26th Middlesex*	*1/31/2017*
Dylan Fernandes	*Barnstable, Dukes and Nantucket*	*1/31/2017*
Jack Lewis	*7th Middlesex*	*2/1/2017*
Mary S. Keefe	*15th Worcester*	*2/2/2017*
Sal N. DiDomenico	*Middlesex and Suffolk*	*2/2/2017*
Eric P. Lesser	*First Hampden and Hampshire*	*2/3/2017*
Joan B. Lovely	*Second Essex*	*2/3/2017*
Denise Provost	*27th Middlesex*	*2/3/2017*
Thomas M. Stanley	*9th Middlesex*	*2/3/2017*
James B. Eldridge	*Middlesex and Worcester*	*2/3/2017*

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By Mr. Montigny, a petition (accompanied by bill, Senate, No. 1569) of Mark C. Montigny, Marjorie C. Decker, Mike Connolly, Dylan Fernandes and other members of the General Court for legislation to close a corporate tax haven loophole. Revenue.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *1524* OF 2015-2016.]

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act closing a corporate tax haven loophole.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 32B of chapter 63 of the General Laws, as most recently amended by section 125 of chapter 240 of the Acts of 2010, is hereby amended by adding after subsection (c)(3)(iii), the following subsections:

(v) any member incorporated in a jurisdiction defined herein as a tax haven, including Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Bahrain, Barbados, Belize, Bermuda, British Virgin Islands, Cayman Islands, Cook Islands, Cyprus, Dominica, Gibraltar, Grenada, Guernsey-Sark-Alderney, Hong Kong, Isle of Man, Jersey, Liberia, Liechtenstein, Luxembourg, Malta, Mauritius, the Kingdom of the Netherlands, San Marino, Seychelles, Singapore, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Switzerland, Turks and Caicos Islands, U.S. Virgin Islands, and Vanuatu.

(vi) On a biannual basis, the commissioner shall submit a report to the Legislature. The report shall include recommendations for legislation related to tax haven jurisdictions listed in subsection (c)(3)(iv), including recommendations for additions to or subtractions from the list. This report shall be made available to the public.

(viii) In developing its annual report and for the purposes of this section, the commissioner shall consider a tax haven a jurisdiction that, during the tax year in question has no or nominal effective tax on the relevant income and that meets at least two of the following three criteria:

a. The income being reported by a member to the suspected tax haven jurisdiction is disproportionately large as compared to the average percentage of property, payroll, and sales factors within that jurisdiction.

b. The laws, rules, and tax administrative rulings and practices of that jurisdiction encourage the disproportionately large income to be reported in that jurisdiction. Such laws, rules, tax administrative rulings and practices may:

1. prevent effective exchange of information for tax purposes with other governments on taxpayers benefiting from the tax regime;

2. lack transparency by having legislative, legal, or administrative provisions that are not open and apparent or are not consistently applied among similarly situated taxpayers, or if the information needed by tax authorities to determine a taxpayer's correct tax liability, such as accounting records and underlying documentation, is not adequately available;

3. facilitate the establishment of foreign-owned entities without the need for a local substantive presence or prohibit these entities from having any commercial impact on the local economy;

4. explicitly or implicitly exclude the jurisdiction's resident taxpayers from taking advantage of the tax regime's benefits or prohibit enterprises that benefit from the regime from operating in the jurisdiction's domestic market; or

5. create a tax regime that is favorable for tax avoidance, based upon an overall assessment of relevant factors, including whether the jurisdiction has a significant untaxed offshore financial and related services sector relative to its overall economy.

c. The jurisdiction is recognized by experts or is marketed as a tax haven for corporations.

(vii) The commissioner may require the taxable member making a water's-edge election to submit within six (6) months after the taxable member files its federal income tax return a domestic disclosure spreadsheet to provide full disclosure of the income reported to each state for the year, the tax liability for each state, the method used for allocating or apportioning income to the states, and the identity of the water's-edge group and those of its United States affiliated corporations. The commissioner may require the taxable member to disclose the same information for income reported to tax havens as listed in subsection (c)(3)(iv).