

HOUSE No. 3770

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, April 13, 2023.

The committee on Ways and Means, to whom was referred the message from Her Excellency the Governor submitting requests for making appropriations for the fiscal year 2023 to provide for supplementing certain existing appropriations and for certain other activities and projects (House, No. 47) reports, in part, recommending that the accompanying bill (House, No. 3770) ought to pass.

For the committee,

AARON MICHLEWITZ.

HOUSE No. 3770

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act to improve the Commonwealth’s competitiveness, affordability, and equity.

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. Section 2H of chapter 29 of the General Laws, as appearing in the 2020
2 Official Edition, is hereby amended by striking out, in line 29, the figure “15” and inserting in
3 place thereof the following figure:- 25.5.

4 SECTION 2. Section 3 of chapter 62 of the General Laws, as so appearing, is hereby
5 amended by striking out, in line 109, the figure “\$3,000” and inserting in place thereof the
6 following figure:- \$4,000.

7 SECTION 3. Section 4 of said chapter 62, as so appearing, is hereby amended by
8 inserting, in line 5, after the word “cent” the following words:- ; provided, however, that any
9 gain from the sale or exchange of capital assets held for 1 year or less shall be taxed at the rate of
10 8 per cent.

11 SECTION 4. Said section 4 of said chapter 62, as amended by section 3, is hereby further
12 amended by striking out the figure “8” and inserting in place thereof the following figure:- 5.

13 SECTION 5. Section 6 of said chapter 62, as appearing in the 2020 Official Edition, is
14 hereby amended by striking out, in lines 245 and 250, the figure “30”, each time it appears, and
15 inserting in place thereof, in each instance, the following figure:- 40.

16 SECTION 6. Said section 6 of said chapter 62, as so appearing, is hereby further
17 amended by striking out, in line 447, the figure “\$750” and inserting in place thereof the
18 following figure:- \$1,500.

19 SECTION 7. Said section 6 of said chapter 62 is hereby further amended by striking out
20 subsections (x) and (y), added by section 29 of chapter 24 of the acts of 2021, and inserting in
21 place thereof the following subsection:-

22 (x)(1) As used in this subsection, the following words shall, unless the context clearly
23 requires otherwise, have the following meanings:

24 “Cost-of-living adjustment”, for any calendar year, the percentage, if any, by which the
25 CPI for the preceding calendar year exceeds the CPI for calendar year 2023.

26 “CPI”, the consumer price index for any calendar year as defined in section 1 of the
27 Code.

28 “Eligible dependent”, an individual who is either: (i) under the age of 13 and who
29 qualifies for exemption as a dependent pursuant to section 151 of the Code; (ii) not less than 65
30 years of age and who qualifies as a dependent pursuant to section 152 of the Code; or (iii)
31 disabled and who qualifies as a dependent pursuant to section 152 of the Code.

32 “Maintains a household”, the same meaning as defined in section 21 of the Code.

33 (2) A taxpayer who maintains a household that includes as a member an eligible
34 dependent shall be allowed a credit in an amount equal to \$310 for each such eligible dependent;
35 provided, that the credit provided in this subsection shall be allowed only if the taxpayer and the
36 taxpayer's spouse file a joint return for the taxable year or if the taxpayer qualifies as a head of
37 household pursuant to section 2(b) of the Code. For each taxable year, the commissioner shall
38 annually increase the amount of the credit for each eligible dependent as provided by this
39 subsection by an amount equal to such credit multiplied by the cost-of-living adjustment for the
40 calendar year in which such taxable year begins. With respect to a taxpayer who is a non-resident
41 for part of the taxable year, the credit shall be further limited to the amount of allowable credit
42 multiplied by a fraction, the numerator of which shall be the number of days in the taxable year
43 the person resided in the commonwealth and the denominator of which shall be the number of
44 days in the taxable year. A person who is a non-resident for the entire taxable year shall not be
45 allowed the credit. If the amount of the credit allowed pursuant to this subsection exceeds the
46 taxpayer's tax liability, the commissioner shall treat the excess as an overpayment and shall pay
47 the taxpayer the entire amount of the excess without interest.

48 SECTION 8. Paragraph (2) of subsection (x) of said section 6 of said chapter 62, as
49 amended by section 7, is hereby further amended by striking out the figure "\$310" and inserting
50 in place thereof the following figure:- \$455.

51 SECTION 9. Said paragraph (2) of said subsection (x) of said section 6 of said chapter
52 62, as amended by section 8, is hereby further amended by striking out the figure "\$455" and
53 inserting in place thereof the following figure:- \$600.

54 SECTION 10. The first paragraph of section 6 of chapter 62F of the General Laws, as
55 appearing in the 2020 Official Edition, is hereby amended by striking out the second sentence
56 and inserting in place thereof the following 3 sentences:- The credit shall be applied against the
57 then current personal income tax liability of each taxpayer who files an income tax return in both
58 the then current and the previous taxable year in an amount determined by dividing the total
59 amount of excess revenues by the total number of taxpayers filing an income tax return in the
60 previous taxable year. For the purposes of this section, a married couple filing a joint return shall
61 be counted as 2 taxpayers. If the amount of the credit allowed under this section exceeds the
62 taxpayer's liability, the commissioner shall treat the excess as an overpayment and shall pay the
63 taxpayer the amount of the excess without interest.

64 SECTION 11. Section 2A of chapter 63 of the General Laws, as so appearing, is hereby
65 amended by striking out subsections (b) and (c) and inserting in place thereof the following 2
66 subsections:-

67 (b) If the financial institution has income from business activity which is taxable both
68 within and without the commonwealth, its net income shall be apportioned to the commonwealth
69 by multiplying its net income by its receipts factor. If the receipts factor is missing, the whole of
70 the financial institution's net income shall be taxable pursuant to section 2. The receipts factor
71 shall be missing if both its numerator and denominator are zero, but it shall not be missing
72 merely because its numerator is zero.

73 (c) The receipts factor shall be computed according to the method of accounting, cash or
74 accrual basis, used by the taxpayer for federal income tax purposes for the taxable year.

75 SECTION 12. Subsection (d) of said section 2A of said chapter 63, as so appearing, is
76 hereby amended by striking out paragraph (xii) and inserting in place thereof the following
77 paragraph:-

78 (xii) The amount of interest, dividends, net gains, but not less than zero, and other income
79 from investment assets and activities and from trading assets and activities to be attributed to the
80 commonwealth and included in the numerator shall be determined by multiplying all such
81 income from such assets and activities by a fraction, the numerator of which shall be the total
82 receipts included in the numerator pursuant to paragraphs (i) through (x), inclusive, and
83 paragraph (xii) and the denominator of which shall be all total receipts of the taxpayer included
84 in the denominator other than interest, dividends, net gains, but not less than zero, and other
85 income from investment assets and activities and from trading assets and activities.

86 SECTION 13. Said section 2A of said chapter 63, as so appearing, is hereby further
87 amended by striking out subsections (e) through (g), inclusive, and inserting in place thereof the
88 following subsection:-

89 (e) If the provisions of subsections (a) to (d), inclusive, are not reasonably adapted to
90 approximate the net income derived from business carried on within the commonwealth, a
91 financial institution may apply to the commissioner, or the commissioner may require the
92 financial institution, to have its income derived from business carried on within the
93 commonwealth determined by a method other than that set forth in subsections (a) to (d),
94 inclusive. Such application shall be made by attaching to its duly-filed return a statement of the
95 reasons why the financial institution believes that subsections (a) to (d), inclusive, are not
96 reasonably adapted to approximate its net income derived from business carried on within the

97 commonwealth and a description of the method sought by it. A financial institution which so
98 applies shall, upon receipt of a request therefor from the commissioner, file with the
99 commissioner, under oath of its treasurer, a statement of such additional information as the
100 commissioner may require.

101 If, after such application by the financial institution, or after the commissioner's own
102 review, the commissioner determines that the provisions of subsections (a) to (d), inclusive, are
103 not reasonably adapted to approximate the financial institution's net income derived from
104 business carried on within the commonwealth, the commissioner shall by reasonable methods
105 determine the amount of net income derived from business activity carried on within the
106 commonwealth. The amount thus determined shall be the net income taxable under section 2 and
107 the foregoing determination shall be in lieu of the determination required by subsections (a) to
108 (d), inclusive. If an alternative method is used by the commissioner hereunder, the
109 commissioner, in their discretion, with respect to the 2 next succeeding taxable years, may
110 require similar information from such financial institution if it shall appear that the provisions of
111 subsections (a) to (d), inclusive, are not reasonably adapted to approximate for the applicable
112 year the financial institution's net income derived from business carried on within the
113 commonwealth and may again by reasonable methods determine such income.

114 SECTION 14. Said chapter 63 is hereby further amended by striking out section 38, as so
115 appearing, and inserting in place thereof the following section:-

116 Section 38. The commissioner shall determine the part of the net income of a business
117 corporation derived from business carried on within the commonwealth as follows:

118 (a) Net income, as defined in section 30, adjusted as follows shall constitute taxable net
119 income:

120 (1) 95 per cent of dividends, exclusive of distributions in liquidation, included therein
121 shall be deducted other than dividends from or on account of the ownership of:

122 (i) shares in a corporate trust, as defined in section 1 of chapter 62, to the extent such
123 dividends represent tax-free earnings and profits, as defined in section 8 of said chapter 62, as in
124 effect on December 31, 2008;

125 (ii) deemed distributions and actual distributions, except actual distributions out of
126 previously taxed income, from a domestic international sales corporation, as defined in 26 U.S.C.
127 § 992, which is not a wholly owned domestic international sales corporation; or

128 (iii) any class of stock, if the corporation owns less than 15 per cent of the voting stock of
129 the corporation paying such dividend.

130 (2) Long-term capital gains realized and long-term capital losses sustained from the sale
131 or exchange of intangible property affected under the provisions of the Federal Internal Revenue
132 Code, as amended, and in effect for taxable years ended on or before December 31, 1962, shall
133 not be included in any part therein.

134 (b) If the corporation does not have income from business activity which is taxable in
135 another state, the whole of its taxable net income, determined pursuant to subsection (a), shall be
136 allocated to the commonwealth. For purposes of this section, a corporation is taxable in another
137 state if: (1) in that state such corporation is subject to a net income tax, a franchise tax measured
138 by net income, a franchise tax for the privilege of doing business or a corporate stock tax; or (2)

139 that state has jurisdiction to subject such corporation to a net income tax regardless of whether,
140 in fact, the state does or does not. Notwithstanding any other provision of this section, the
141 portion of the taxable net income of a corporation that a non-domiciliary state is prohibited from
142 taxing under the Constitution of the United States shall be allocated in full to the commonwealth
143 if the commercial domicile of the corporation is in the commonwealth.

144 (c) If a corporation has income from business activity which is taxable both within and
145 without the commonwealth, its taxable net income, as determined pursuant to subsection (a),
146 shall be apportioned to the commonwealth by multiplying such taxable net income by the sales
147 factor.

148 (d) The sales factor is a fraction, the numerator of which is the total sales of the
149 corporation in the commonwealth during the taxable year, and the denominator of which is the
150 total sales of the corporation everywhere during the taxable year.

151 As used in this section, unless specifically stated otherwise, “sales” shall mean all gross
152 receipts of the corporation, including deemed receipts from transactions treated as sales or
153 exchanges under the Code, except interest, dividends and gross receipts from the maturity,
154 redemption, sale, exchange or other disposition of securities; provided, however, that “sales”
155 shall not include gross receipts from transactions or activities to the extent that a non-domiciliary
156 state would be prohibited from taxing the income from such transactions or activities under the
157 Constitution of the United States.

158 (e) Sales of tangible personal property are in the commonwealth for purposes of this
159 section if: (1) the property is delivered or shipped to a purchaser within the commonwealth
160 regardless of the f.o.b. point or other conditions of the sale; or (2) the corporation is not taxable

161 in the state of the purchaser and the property was not sold by an agent or agencies chiefly
162 situated at, connected with or sent out from premises for the transaction of business owned or
163 rented by the corporation outside the commonwealth. "Purchaser", as used in clauses (1) and (2)
164 shall include the United States government.

165 (f) Sales, other than sales of tangible personal property, are in the commonwealth for
166 purposes of this section if the corporation's market for the sale is in the commonwealth. The
167 corporation's market for a sale is in the commonwealth and the sale is thus assigned to the
168 commonwealth for the purpose of this section:

169 (1) in the case of sale, rental, lease or license of real property, if and to the extent the
170 property is located in the commonwealth;

171 (2) in the case of rental, lease or license of tangible personal property, if and to the extent
172 the property is located in the commonwealth;

173 (3) in the case of sale of a service, if and to the extent the service is delivered to a
174 location in the commonwealth;

175 (4) in the case of lease or license of intangible property, including a sale or exchange of
176 such property where the receipts from the sale or exchange derive from payments that are
177 contingent on the productivity, use or disposition of the property, if and to the extent the
178 intangible property is used in the commonwealth; and

179 (5) in the case of the sale of intangible property, other than as provided in clause (4),
180 where the property sold is a contract right, government license or similar intangible property that
181 authorizes the holder to conduct a business activity in a specific geographic area, if and to the

182 extent that the intangible property is used in or otherwise associated with the commonwealth;
183 provided, however, that any sale of intangible property, not otherwise described in this clause or
184 clause (4), shall be excluded from the numerator and the denominator of the sales factor.

185 (g) If the sales factor is missing, the whole of the corporation's net income shall be
186 taxable net income allocated to the commonwealth. The sales factor shall be missing if both its
187 numerator and denominator are zero, but it shall not be missing merely because its numerator is
188 zero.

189 (h) For the purposes of this section:

190 (1) in the case of sales, other than sales of tangible personal property, if the state or states
191 to which sales should be assigned cannot be determined, it shall be reasonably approximated;

192 (2) in the case of sales other than sales of tangible personal property if the taxpayer is not
193 taxable in a state to which a sale is assigned, or if the state or states to which such sales should be
194 assigned cannot be determined or reasonably approximated, such sale shall be excluded from the
195 numerator and denominator of the sales factor;

196 (3) the corporation shall be considered to be taxable in the state of the purchaser if
197 tangible personal property is delivered or shipped to a purchaser in a foreign country;

198 (4) sales of tangible personal property to the United States government or any agency or
199 instrumentality thereof for purposes of resale to a foreign government or any agency or
200 instrumentality thereof are not sales made in the commonwealth;

201 (5) in the case of sale, exchange or other disposition of a capital asset, as defined in
202 paragraph (m) of section 1 of chapter 62, used in a taxpayer's trade or business, including a

203 deemed sale or exchange of such asset, “sales” shall be measured by the gain from the
204 transaction;

205 (6) “security” shall mean any interest or instrument commonly treated as a security as
206 well as other instruments which are customarily sold in the open market or on a recognized
207 exchange, including, but not limited to, transferable shares of a beneficial interest in any
208 corporation or other entity, bonds, debentures, notes and other evidences of indebtedness,
209 accounts receivable and notes receivable, cash and cash equivalents including foreign currencies
210 and repurchase and futures contracts;

211 (7) in the case of a sale or deemed sale of a business, the term “sales” shall not include
212 receipts from the sale of the business “goodwill” or similar intangible value, including, without
213 limitation, “going concern value” and “workforce in place”;

214 (8) in the case of a business deriving receipts from operating a gaming establishment or
215 otherwise deriving receipts from conducting a wagering business or activity, income-producing
216 activity shall be considered to be performed in the commonwealth to the extent that the location
217 of wagering transactions or activities that generated the receipts is in the commonwealth;

218 (9) in the case of a business deriving receipts from operating a marijuana establishment or
219 otherwise deriving receipts from conducting a marijuana business or activity, income-producing
220 activity shall be considered to be performed in the commonwealth to the extent that the location
221 of marijuana transactions or activities that generated the receipts is in the commonwealth; and

222 (10) dividends that are deemed to be received from an entity, including amounts included
223 in federal gross income pursuant to sections 951 or 951A of the Code, shall not be considered
224 “sales”.

225 (i)(1) As used in this subsection, the following words shall, unless the context requires
226 otherwise, have the following meanings:

227 “Administration services”, include, but are not limited to, clerical, fund or shareholder
228 accounting, participant record keeping, transfer agency, bookkeeping, data processing, custodial,
229 internal auditing, legal and tax services performed for a regulated investment company, but only
230 if the provider of such service or services during the taxable year in which such service or
231 services are provided also provides or is affiliated with a person that provides management or
232 distribution services to any regulated investment company.

233 “Affiliate”, the meaning as set forth in 15 USC section a-2(a)(3)(C), as may be amended
234 from time to time.

235 “Distribution services”, include, but are not limited to, the services of advertising,
236 servicing, marketing or selling shares of a regulated investment company, but, in the case of
237 advertising, servicing or marketing shares, only where such service is performed by a person
238 who is, or in the case of a close end company, was, either engaged in the services of selling
239 regulated investment company shares or affiliated with a person that is engaged in the service of
240 selling regulated investment company shares. In the case of an open end company, such service
241 of selling shares shall be performed pursuant to a contract entered into pursuant to 15 USC
242 section a-15(b), as from time to time amended.

243 “Domicile”, presumptively the shareholder’s mailing address on the records of the
244 regulated investment company. If, however, the regulated investment company or the
245 corporation has actual knowledge that the shareholder’s primary residence or principal place of
246 business is different than the shareholder’s mailing address said presumption shall not control. If

247 the shareholder of record is a company which holds the shares of the regulated investment
248 company as depositor for the benefit of a separate account, then the shareholder shall be the
249 contract owners or policyholders of the contracts or policies supported by the separate account,
250 and it shall be presumed that the domicile of said shareholder is the contract owner's or
251 policyholder's mailing address to the extent that the company maintains such mailing addresses
252 in the regular course of business. If the regulated investment company or the corporation has
253 actual knowledge that the shareholder's principal place of business is different than the
254 shareholder's mailing address said presumption shall not control.

255 "Management services", include, but shall not necessarily be limited to, the rendering of
256 investment advice directly or indirectly to a regulated investment company, making
257 determinations as to when sales and purchases of securities are to be made on behalf of the
258 regulated investment company, or the selling or purchasing of securities constituting assets of a
259 regulated investment company, and related activities, but only where such activity or activities
260 are performed: (i) pursuant to a contract with the regulated investment company entered into
261 pursuant to 15 USC section a-15(a), as from time to time amended; (ii) for a person that has
262 entered into such contract with the regulated investment company; or (iii) for a person that is
263 affiliated with a person that has entered into such contract with a regulated investment company.

264 "Mutual fund sales", taxable net income derived within the taxable year directly or
265 indirectly from the rendering of management, distribution or administration services to a
266 regulated investment company, including net income received directly or indirectly from
267 trustees, sponsors and participants of employee benefit plans, which have accounts in a regulated
268 investment company.

269 “Regulated investment company”, the meaning as set forth in section 851 of the Code.

270 (2) Mutual fund sales, other than the sale of tangible personal property, shall be assigned
271 to the commonwealth to the extent that shareholders of the regulated investment company are
272 domiciled in the commonwealth as follows:

273 (i) By multiplying the taxpayer’s total dollar amount of sales of such services on behalf
274 of each regulated investment company by a fraction, the numerator of which shall be the average
275 of the number of shares owned by the regulated investment company’s shareholders domiciled in
276 the commonwealth at the beginning of and at the end of the regulated investment company’s
277 taxable year that ends with or within the taxpayer’s taxable year and the denominator of which
278 shall be the average of the number of shares owned by the regulated investment company
279 shareholders everywhere at the beginning of and at the end of the regulated investment
280 company’s taxable year that ends with or within the taxpayer’s taxable year.

281 (ii) A separate computation shall be made to determine the sale for each regulated
282 investment company, the sum of which shall equal the total sales assigned to the commonwealth.

283 (3) Nothing in this subsection shall limit the commissioner’s authority under subsection
284 (k).

285 (j) If a corporation maintains an office, warehouse or other place of business in a state
286 other than the commonwealth for the purpose of reducing its tax under this chapter, the
287 commissioner shall, in determining the amount of taxable net income apportionable to the
288 commonwealth, adjust the sales factor to properly reflect the amount which the factor ought
289 reasonably to assign to the commonwealth.

290 (k) If the apportionment provisions of this section are not reasonably adapted to
291 approximate the net income derived from business carried on within the commonwealth by any
292 type of industry group, the commissioner may, by regulation, adopt alternative apportionment
293 provisions to be applied to such an industry group in lieu of the foregoing provisions.

294 (l) In any case in which a purchasing corporation makes an election under section 338 of
295 the Code, the target corporation shall be treated as having sold its assets for purposes of this
296 section.

297 (m) The commissioner shall adopt regulations to implement subsections (d) to (i),
298 inclusive.

299 SECTION 15. Section 2A of chapter 65C of the General Laws, as so appearing, is hereby
300 amended by striking out subsection (a) and inserting in place thereof the following subsection:-

301 (a) A tax is hereby imposed upon the transfer of the estate of each person dying on or
302 after January 1, 1997 who, at the time of death, was a resident of the commonwealth. The
303 amount of the tax shall be equal to the credit for state death taxes that would have been allowable
304 to a decedent's estate as computed pursuant to section 2011 of the Internal Revenue Code, as in
305 effect on December 31, 2000, hereinafter referred to as the "credit". In the event that the federal
306 gross estate of a person includes real or tangible personal property located outside of the
307 commonwealth at the time of death, the tax shall be reduced by an amount equal to the
308 proportion of such allowable credit as the value of said real or tangible personal property located
309 outside of the commonwealth bears to the value of the entire federal gross estate wherever
310 situated, pursuant to section 2011 of the Internal Revenue Code, as in effect on December 31,
311 2000.

312 SECTION 16. Said section 2A of said chapter 65C, as so appearing, is hereby further
313 amended by adding the following subsection:-

314 (f) Effective for the estates of decedents dying on or after January 1, 2023, for purposes
315 of computing the tax imposed by subsections (a) and (b), the credit shall be determined based on
316 the value of the federal taxable estate after such estate is reduced by \$2,000,000. Estates of
317 decedents dying on or after January 1, 2023 shall not be required to pay any tax pursuant to
318 subsections (a) and (b) if the value of the federal taxable estate is \$2,000,000 or less. For the
319 purposes of this subsection, the federal taxable estate is the federal gross estate less any qualified
320 conservation exclusion elected pursuant to section 2031(c) of the Internal Revenue Code, as in
321 effect on December 31, 2000, and further reduced by the deductions allowable by the Internal
322 Revenue Code, as in effect on December 31, 2000.

323

324 SECTION 17. Sections 15 and 16 shall take effect for the estates of decedents dying on
325 or after January 1, 2023.

326 SECTION 18. Sections 4 and 8 shall take effect on January 1, 2024.

327 SECTION 19. Section 9 and sections 11 through 14, inclusive, shall take effect on
328 January 1, 2025.

329 SECTION 20. Except as otherwise specified, this act shall take effect for taxable years
330 beginning on or after January 1, 2023.