

## H.2446

### *An Act relative to the Massachusetts estate tax code*

Shawn C. Dooley, 9<sup>th</sup> Norfolk District

- **Changes Estate Tax Threshold To An Exclusion System:** Currently, estates worth under \$1,000,000 are excluded from paying the estate tax, but when it reaches a value of \$1,000,000 the tax is triggered and the entire estate is taxed. This bill changes the system to an exclusion-based method where only the value of the estate above a basic exclusion amount is taxed, not the entire estate.
- **Sets the Basic Exclusion Amount At \$2,750,000 per person:** This exclusion amount is set to be indexed with inflation each year.
- **Primary Residence Exemption:** Excludes the first \$2,750,000 of value of the primary residence (if in Massachusetts) from the calculation formula of an estate. Thus, the total value of an estate minus the \$2,750,000 basic exclusion minus the value of the Massachusetts primary residence (up to \$2,750,000) equals the total taxable estate.
- **Streamlines Taxation:** Currently there are 10 rates within estate tax code ranging from 5%-16%. The new code will have 4 rates ranging from 10%-13%.
- **Forgiveness Clause:** Has a forgiveness clause that mirrors the federal forgiveness clause. If one spouse dies without proper planning then they do not lose their deduction. The current system punishes those who do not realize the tax consequences &/or do not understand the need for proper (more sophisticated) planning.
- **Brings Massachusetts Into Line:** Currently Massachusetts is an outlier even among the 11 states that have a state estate tax. We are currently tied with Oregon for the lowest exemption of \$1,000,000.
- **Eliminates Cliff Funding:** Currently the Mass tax ramps up faster once you get over the threshold. The new streamlined method eliminates that.
- **Revenue Neutral:** The reality is that wealthy people are leaving Massachusetts because of our estate (and other) taxes. This occurs at a much higher rate in retirement. Therefore we are not only losing 100% of their estate tax, but we are also losing 100% of 30-40 years worth of income tax, capital gains tax, property tax, excise tax, sales tax, etc. It is a compounding factor.
- **Clean Up:** It streamlines the entire process and eliminates many of the sections of the current law that are no longer in force or do not exist in practice because of the changes to the federal code. Fixes issues in basic areas such as QTIP (Qualified Terminable Interest Properties), generation skipping, etc.

HOUSE . . . . . No. 2446

The Commonwealth of Massachusetts

PRESENTED BY:

*Shawn Dooley*

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 code.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Shawn Dooley</i>	<i>9th Norfolk</i>
<i>Steven S. Howitt</i>	<i>4th Bristol</i>
<i>Angelo L. D'Emilia</i>	<i>8th Plymouth</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>
<i>Michael J. Soter</i>	<i>8th Worcester</i>
<i>Susan Williams Gifford</i>	<i>2nd Plymouth</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Mathew J. Muratore</i>	<i>1st Plymouth</i>
<i>David F. DeCoste</i>	<i>5th Plymouth</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>
<i>Randy Hunt</i>	<i>5th Barnstable</i>
<i>Joseph D. McKenna</i>	<i>18th Worcester</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>
<i>Hannah Kane</i>	<i>11th Worcester</i>
<i>Ryan C. Fattman</i>	<i>Worcester and Norfolk</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>
<i>Donald R. Berthiaume, Jr.</i>	<i>5th Worcester</i>
<i>David T. Vieira</i>	<i>3rd Barnstable</i>

**HOUSE . . . . . No. 2446**

By Mr. Dooley of Norfolk, a petition (accompanied by bill, House, No. 2446) of Shawn Dooley and others relative to the estate tax code of the Commonwealth. Revenue.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 1510 OF 2017-2018.]

**The Commonwealth of Massachusetts**

\_\_\_\_\_  
**In the One Hundred and Ninety-First General Court  
(2019-2020)**  
\_\_\_\_\_

An Act relative to the Massachusetts estate tax code.

*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.

**REPUBLISHED AS CORRECTED**

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 (f) 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.

**REPUBLISHED AS CORRECTED**

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”, \$2,750,000 which shall be annually adjusted for inflation  
40 based on the US Department of Labor’s Consumer Price Index (CPI) for All Urban Consumers.  
41 If the amount as adjusted under the preceding sentence is not a multiple of \$10,000, such amount  
42 shall be rounded to the nearest multiple of \$10,000.

43 SECTION 7. Chapter 65C of the General Laws is hereby amended by striking out  
44 Section 2 and Section 2A in their entirety, as appearing in the 2012 Official Edition, and  
45 inserting in place thereof the following section:-

46 Section 2. (a) A tax is hereby imposed upon the transfer of the estate of each person  
47 dying on or after January 1, 2020 who, at the time of death, was a resident of the commonwealth.  
48 This subsection shall only apply to each person dying on or after January 1, 2020. For the estate  
49 of decedents dying prior to January 1, 2020, they shall be subject to the provisions of chapter  
50 65C of the general laws in effect upon the date of death of such decedent.

**REPUBLISHED AS CORRECTED**

51 (b) A tax is hereby imposed upon the transfer of real property situated in this  
52 commonwealth and upon tangible personal property having an actual situs in this commonwealth  
53 of every person who at the time of his or her death was not a resident of this commonwealth.

54 (c) Notwithstanding any other provision of law, the tax imposed by subsections (a) and  
55 (b) shall be computed upon the value of any property subject to a power of appointment which is  
56 includible in the federal gross estate, notwithstanding that a tax has been paid thereon pursuant to  
57 section 14 of chapter 65.

58 (d) For the purposes of computing the tax imposed by subsections (a) and (b) of this  
59 section the amount of the tax shall be computed with respect to the Massachusetts taxable estate  
60 in accordance with the following table:-

61 **Table 1:**

If the Massachusetts taxable estate is:		The Massachusetts estate tax shall be:
Over	But Not Over	
\$0	\$5,000,000	10% of the taxable estate
\$5,000,000	\$10,000,000	\$500,000 plus 11% of the excess over \$5,000,000
\$10,000,000	\$20,000,000	\$1,050,000 plus 12% of the excess over \$10,000,000
\$20,000,000	N/A	\$2,250,000 plus 13% of the excess over \$20,000,000

62 (e) A tax is hereby imposed upon the transfer of real property situated in this  
63 commonwealth and upon tangible personal property having an actual situs in this commonwealth  
64 of every person who at the time of his death was not a resident of this commonwealth. The

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65 amount of this tax shall be computed with respect to the value of Massachusetts real and tangible  
66 personal property in accordance with the following table:-

67 **Table 2:**

If the Massachusetts taxable estate is:		The Massachusetts estate tax shall be:
Over	But Not Over	
\$0	\$5,000,000	10% of the taxable estate
\$5,000,000	\$10,000,000	\$500,000 plus 11% of the excess over \$5,000,000
\$10,000,000	\$20,000,000	\$1,050,000 plus 12% of the excess over \$10,000,000
\$20,000,000	N/A	\$2,250,000 plus 13% of the excess over \$20,000,000

68 (f) The principal residence of a deceased person who, at the time of their death, was a  
69 resident of the commonwealth shall be excluded in such person's Massachusetts gross estate  
70 subject to the exclusion requirements of section 121 of the Code, provided that such residence  
71 has been owned and used by such person as his or her principal residence for periods aggregating  
72 two years or more during the five-year period ending on the date of such person's death.  
73 Ownership shall include, but not be limited to, sole ownership, joint ownership, ownership via a  
74 funded revocable trust or nominee trust, or other such vehicles as determined by the Department  
75 of Revenue. The executor may elect to include the value of such deceased person's residence in  
76 such person's Massachusetts gross estate. This election shall be made by the executor on the  
77 Massachusetts estate tax return filed within the time prescribed for filing such return, or any  
78 extension of such time granted by the commissioner. Such election, once made, shall be  
79 irrevocable.

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80 (g) The maximum exclusion value of a person's principal residence allowed to be  
81 deducted from their Massachusetts net estate may not exceed the amount of the basic exclusion  
82 amount as defined in section 1. This deduction is separate and distinct from the basic exclusion  
83 amount and both may be deducted from the net estate to determine the taxable estate.

84 (h) The basis of property, for Massachusetts estate tax purposes, acquired from the  
85 decedent shall be the basis computed pursuant to section 1014 of the Code.

86 (i) A person who, at the time of death, was a resident of the commonwealth and whose  
87 deceased spouse was a resident of the commonwealth may elect to apply the deceased spousal  
88 unused exclusion amount to the Massachusetts gross estate. This exclusion shall be made by the  
89 executor on the Massachusetts estate tax return filed within the time prescribed for filing such  
90 return, or any extension of such time granted by the commissioner. Such election, once made,  
91 shall be irrevocable.

92 (j) Notwithstanding any other provision of law, the tax imposed by subsections (b) and  
93 (c) shall be computed upon the value of any property subject to a power of appointment which is  
94 includible in the federal gross estate, notwithstanding that a tax has been paid thereon pursuant to  
95 section 14 of chapter 65.

96 (k) For the purposes of computing the tax imposed by subsections (b) and (c) of this  
97 section, the provisions of section 3 shall not apply.

98 (l) The commissioner of revenue may make determinations and shall prescribe such  
99 regulations as may be necessary or appropriate to carry out this subsection.



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100 (m) For the estate of decedents dying on or after January 1, 2017 all references and  
101 provisions in subsection (b) to the Internal Revenue Code or Code, unless the context clearly  
102 indicates otherwise, shall be to the Code as in effect for the taxable year.

103 SECTION 8. Chapter 65C of the General Laws is hereby amended by adding the  
104 following section after Section 3(d), as appearing in the 2012 Official Edition:- (e) “Deceased  
105 spousal unused exclusion amount”, with respect to a surviving spouse of a deceased spouse  
106 dying on or after January 1, 2017 and subject to paragraph 5 of section 2010 of the Code, the  
107 lesser of (i) the basic exclusion amount or (ii) the excess of the applicable exclusion amount of  
108 the last such deceased spouse of such surviving spouse, over the amount with respect to which  
109 the Massachusetts estate tax is determined under subsection (b) of the estate of such deceased  
110 spouse.

111 SECTION 9. Chapter 65C of the General Laws is hereby amended by striking out in  
112 Section 3A(f), as appearing in the 2012 Official Edition, the line “Such election, once made,  
113 shall be irrevocable and shall be separate from and independent of any election made by the  
114 executor for federal estate tax purposes” and inserting in place thereof the following:- “If no  
115 Massachusetts estate tax return is timely filed, such election may be made on the first return filed  
116 by the executor after the due date. Such election, once made, shall be irrevocable. The executor  
117 is not required to have made the same qualified terminable interest property election for federal  
118 estate tax purposes in order to make the election for Massachusetts purposes.”

119 SECTION 10. Chapter 65C of the General Laws is hereby amended by striking out in  
120 Section 4(b), as appearing in the 2012 Official Edition, in it’s entirety.

**REPUBLISHED AS CORRECTED**

121           SECTION 11. Chapter 65C of the General Laws is hereby amended by striking out in  
122   Section 4A, as appearing in the 2012 Official Edition, in it's entirety.