

By Mr. Guernsey of Williamstown, petition of Sherwood Guernsey for legislation to provide for certain changes in the tax on capital gains and providing for the establishment of trust funds for health care and educational assistance. Taxation.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety.

AN ACT AMENDING THE TAX ON CAPITAL GAINS AND ESTABLISHING TRUST FUNDS FOR HEALTH CARE AND EDUCATIONAL ASSISTANCE.

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. Subsection (c) of section 2 of chapter 62 of the
2 General Laws, as appearing in the 1988 Official Edition, is hereby
3 amended by striking out paragraph (3) and inserting in place
4 thereof the following: —

5 (3) (i) A deduction equal to 50% of the net capital gain
6 attributable to and recognized on the taxpayer's principal
7 residence, as defined in the Internal Revenue Code.

8 (ii) A deduction from any net long-term capital gain from
9 primary investments in a corporation or corporations doing
10 business in the commonwealth and included in the calculation of
11 such long-term capital gain. For purposes of this paragraph, the
12 following terms shall have the following meanings: —

13 "Primary investment", the purchase of the taxpayer of stock,
14 a security that is convertible into stock, or rights or warrants to
15 purchase stock of a corporation doing business in Massachusetts
16 which receives the entire proceeds, after expenses, paid by the
17 purchasing taxpayer and which is certified by such corporation
18 at the time of the investment as an investment which will create
19 jobs in Massachusetts. If a stock issuance includes any stock which
20 does not constitute a primary investment, the amount of the gain
21 or loss from such investment which may be claimed under this
22 paragraph shall be the same proportion of the total gain as the

23 amount of stock which qualifies as a primary investment bears
24 to the total amount of the stock issued. Any corporation issuing
25 stock with such a certification shall immediately notify the
26 commissioner stating the following: the name of the corporation,
27 the amount and date of the stock issued, the percentage of the
28 amount issued which qualifies as a primary investment under this
29 paragraph, and the number of jobs which the proceeds of the issue
30 are expected to create in Massachusetts. In addition, such
31 corporation shall, annually during the life of the issue, at the time
32 of filing its return under the provisions of chapter sixty-three,
33 include a statement of the information shown above and a
34 statement as to the number of jobs which were, in fact, created
35 and were in existence at the end of the last taxable year of the
36 corporation. Notwithstanding the provisions of section twenty-
37 one of chapter sixty-two C, the information so provided shall be
38 a public record.

39 In any case where stock eligible under this paragraph is
40 transferred, the transferee shall be eligible for a deduction under
41 this paragraph only if his basis in the stock is determined by
42 reference to the transferor's basis. In any case where stock eligible
43 under this section is exchanged for other stock, the stock shall
44 continue to be eligible only if its basis is determined by reference
45 to the basis of the stock exchanged. Stock received in stock splits,
46 stock dividends, and similar adjustments on stock which are
47 eligible under this paragraph shall also be eligible after
48 appropriate adjustment of basis and providing such adjustments
49 are not taxable transactions.

50 "Corporation doing business in Massachusetts", any corpora-
51 tion, domestic or foreign, which at the end of its last preceding
52 fiscal year and at the time of issuance of stock which qualifies in
53 whole or in part as a primary investment, was deemed to be a
54 manufacturing corporation or a research and development
55 corporation within the meaning of sections thirty-eight C or forty-
56 two B of chapter sixty-three, provided, however, that if the
57 corporation had no prior fiscal year, its classification as a
58 corporation will be determined by the commissioner as of the date
59 of issuance of such stock.

60 "Allowed percentage", the per cent of any long-term capital gain
61 from a primary investment in a corporation or corporations doing

62 business in Massachusetts which is allowed as a deduction from
63 any net long-term gain determined according to the length of time
64 such primary investment had been held by the taxpayer. For such
65 investments held for ten years or more, the allowed percentage
66 shall be seventy-five per cent; for such investments held for five
67 years but less than ten years, fifty per cent; for such investments
68 held for more than one year but less than five years, twenty-five
69 per cent.

1 SECTION 2. Chapter 10 of the General Laws is hereby
2 amended by inserting after section 35I, as appearing in the 1988
3 Official Edition, the following section: —

4 Section 35J. There shall be established and set up on the books
5 of the commonwealth two separate funds to be known as the
6 Elderly Health Care Fund and the Educational Opportunity Fund
7 each of which shall be separately administered. Said funds shall
8 consist of all revenues as determined by commissioner of revenue
9 to be the amount of tax expenditures that would have occurred
10 had the changes in the capital gains tax reduction set forth in
11 paragraph (3) of section two of chapter sixty-two of the General
12 Laws not become law. The commissioner shall annually on or
13 before June thirtieth, allocate to each of said funds fifty per cent
14 of such revenues and expenditures may be made from said funds
15 solely for the purposes set forth below and without further
16 appropriation.

17 All revenues credited under this section shall remain in said
18 funds and shall be expended as follows: —

19 The commissioner of the department of public welfare shall
20 make such expenditures from the funds allocated to the Elderly
21 Health Care Fund for the purposes of making payments under
22 the medical assistance program as provided in chapter one
23 hundred eighteen E of the General Laws and specifically for
24 eligible persons in long term care facilities or for health care
25 expenses at home.

26 The commissioner of education shall make such expenditures
27 from the funds allocated to the Educational Opportunity Fund
28 for education programs approved by the board of education. The
29 board shall approve only those programs determined to be in the
30 greatest financial need under the provisions of sections forty-nine

31 to forty-nine E of chapter fifteen of the General Laws and such
32 other purposes, programs and plans as provided in chapter one
33 hundred eighty-eight of the acts of nineteen hundred and eighty-
34 five.

1 SECTION 3. The provisions of this act shall apply to taxable
2 years commencing after December 31, 1988.