

Accompanying the tenth recommendation of the Department of Revenue (House, No. 311). Taxation.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-One.

AN ACT MAKING CORRECTIVE CHANGES IN THE CAPITAL GAINS DEDUCTION.

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 1 of chapter 62 of the General Laws, as
2 most recently amended by section 1 of chapter 409 of the acts of
3 1979, is hereby amended by adding after subsection (l) the follow-
4 ing subsection: —

5 (m) The terms “long-term capital gain”, “short-term capital
6 gain”, “long-term capital loss”, “short-term capital loss”, “net long-
7 term capital gain”, “net long-term capital loss”, “net short-term
8 capital loss”, “net short-term capital gain”, “capital gain net in-
9 come”, and “net capital gain” shall have the meanings given in
10 section one thousand two hundred and twenty-two of the Code;
11 provided, however, that in determining the amount of gain or loss
12 on any sale, exchange, or other disposition of property, the provi-
13 sions of section seven A shall be taken into account, and in deter-
14 mining the amount of long-term capital loss or short-term capital
15 loss for any year, the provisions of paragraph two of subsection (c)
16 of section two of this chapter be taken into account; and provided,
17 further, that the term “capital asset” as used in section one thou-
18 sand two hundred and twenty-two of the Code shall be limited to
19 assets described only in section one thousand two hundred and
20 twenty-one of the Code which are sold, exchanged or otherwise
21 disposed of by a person while he is subject to taxation under this
22 chapter on any Part A taxable income; and provided further that
23 the term “capital loss” does not include any item the deduction of
24 which is, or but for some other section would be, prohibited by
25 section two hundred and sixty-two of the Code.

1 SECTION 2. Section 2 of chapter 62, as most recently amended
2 by section 8 of chapter 796 of the acts of 1979, is hereby further
3 amended by striking out, in subsection (a), the word "seven" and
4 inserting in place thereof the words: seven A.

1 SECTION 3. Section 2 of said chapter 62, as so amended, is
2 hereby further amended by striking out paragraph 1 of subsection
3 (b) and inserting in place thereof the following paragraph: —

4 (1) Part A gross income shall be the total interest, dividends and
5 capital gain net income, included in Massachusetts gross income,
6 other than: —.

1 SECTION 4. Section 2 of said chapter 62, as most recently
2 amended by section 8 of chapter 796 of the acts of 1979, is hereby
3 amended by striking out paragraph 2 of subsection (c) and insert-
4 ing in place thereof the following paragraph: —

5 (2) The excess, if any, of the net short-term capital loss for the
6 year over the net long-term capital gain for the year, but not more
7 than two thousand dollars, shall be applied against any interest and
8 dividends included in Part A gross income. If the amount of such
9 excess is less than two thousand dollars, then one-half of the
10 excess, if any, of the net long-term capital loss for the year over the
11 net short-term capital gain for the year shall be applied against the
12 balance of such interest and dividends; provided, however, that the
13 aggregate amount of the deduction under this paragraph shall not
14 be more than two thousand dollars. The excess of the net short-
15 term capital loss over the net long-term capital gain, reduced by the
16 amount allowed under this paragraph which is attributable to such
17 excess, shall be a short-term capital loss in the succeeding taxable
18 year. The excess of the net long-term capital loss over the net
19 short-term capital gain, reduced by twice the amount allowed
20 under this paragraph which is attributable to such excess, shall be a
21 long-term capital loss in the succeeding taxable year.

1 SECTION 5. Said subsection (c) of said section 2 of said chap-
2 ter 62, is hereby amended by striking out paragraph (3), as appear-
3 ing in section 2 of chapter 409 of the acts of 1979, and inserting in
4 place thereof the following paragraph: —

5 (3) a deduction equal to sixty per cent of the net capital gain for
6 the year.

1 SECTION 6. Said chapter 62 is hereby further amended by
2 inserting after section 7 the following section: —

3 *Section 7A. (a)* In determining Massachusetts gross income, if
4 the federal gross income includes any item of gain or has been
5 reduced by any item of loss, with respect to property, then the
6 federal gross income shall be increased by the excess of the federal
7 adjusted basis of such property over the Massachusetts adjusted
8 basis thereof, and shall be decreased by the excess of the Massachu-
9 setts adjusted basis of such property over the federal adjusted basis
10 thereof.

11 *(b)* The Massachusetts adjusted basis of property shall be the
12 Massachusetts initial basis determined under paragraph *(c)* of this
13 section, adjusted as provided in paragraphs *(d)* and *(e)* of this
14 section.

15 *(c)* (1) The Massachusetts initial basis of property held on
16 December thirty-first, nineteen hundred and seventy shall be deter-
17 mined as follows: —

18 *(A)* In the case of property as to which, if it had been sold on
19 December thirty-first, nineteen hundred and seventy in the course
20 of business, a gain realized on such sale would have been taxable
21 under this chapter to its then owner: —

22 *(i)* the Massachusetts initial basis shall, for purposes of com-
23 puting gain, be its adjusted basis as computed under this chapter as
24 in effect on December thirty-first, nineteen hundred and seventy,
25 and

26 *(ii)* the Massachusetts initial basis shall, for the purpose of
27 computing loss, be the lower of the basis computed under clause *(i)*
28 of this subparagraph or the federal adjusted basis for the determi-
29 nation of loss as of such date.

30 *(B)* In the case of any other property the Massachusetts initial
31 basis shall be its federal adjusted basis on such date, determined
32 without regard to any federal adjustment made under section one
33 thousand and fifteen *(d)* of the Code.

34 (2) The Massachusetts initial basis of property acquired after
35 December thirty-first, nineteen hundred and seventy shall be deter-
36 mined as follows: —

37 *(A)* If the taxpayer's federal basis of the property at acquisition
38 is determined without regard to the basis of such property in the
39 hands of the transferor or of other property in the hands of the

40 transferee, hereinafter called the “basis of prior property”, the
41 Massachusetts initial basis shall be the such federal basis, deter-
42 mined without regard to any federal adjustment made under sec-
43 tion one thousand and fifteen (*d*) of the Code.

44 (B) If such federal basis is determined in whole or in part by
45 application of the basis of prior property, and

46 (i) if no item of gain is includable in federal gross income and
47 federal gross income has not been reduced by any item of loss, with
48 respect to the transaction, the Massachusetts initial basis shall be
49 the initial federal basis, increased by the excess of the Massachu-
50 setts adjusted basis over the federal adjusted basis of prior proper-
51 ty, or decreased by the excess of the federal adjusted basis over the
52 Massachusetts adjusted basis of prior property, or

53 (ii) otherwise, the Massachusetts initial basis shall be the initial
54 federal basis of the acquired property.

55 (C) Notwithstanding subparagraphs (A) and (B), in the case of
56 property acquired from a decedent within the meaning of section
57 one thousand and fourteen (*b*) of the Code, the initial basis of such
58 property shall be determined under section one thousand and
59 fourteen of the Code, without reference to section one thousand
60 and fourteen (*d*) of the Code.

61 (*d*) (1) The Massachusetts initial basis of property shall be
62 adjusted by applying the same adjustments as are made to the
63 federal basis for periods after determination of the initial basis,
64 except that the federal adjustments specified in subparagraphs (2),
65 (3), (4) and (5) of this paragraph shall not be taken into account.

66 (2) In determining adjustments to the Massachusetts basis of
67 any bond or other evidence of indebtedness the income from which
68 is included in federal gross income but excluded from Massachu-
69 setts gross income there shall be disregarded any federal adjust-
70 ment to basis under subsection one thousand two hundred and
71 thirty-two (*a*) (3) (E) of the Code.

72 (3) In determining adjustments to the Massachusetts basis of
73 property there shall be disregarded any federal adjustment to basis
74 under subsection one thousand three hundred and seventy-six of
75 the Code, and any federal adjustment to basis under section three
76 hundred and one (*c*) of the code with respect to distributions under
77 subsection one thousand three hundred and seventy-five (*d*) of the
78 Code.

79 (4) In determining adjustments to the Massachusetts basis of
80 property there shall be disregarded any federal adjustment under
81 section one thousand and sixteen (a) (6) of the Code to the extent
82 relating to any municipal bond the interest from which is includa-
83 ble in Massachusetts gross income.

84 (5) In determining adjustments to the Massachusetts basis of
85 property and in determining the Massachusetts initial basis of
86 property there shall be disregarded, and the federal basis shall be
87 modified to the extent necessary to disregard, any federal adjust-
88 ment under section one thousand and fifteen (d) of the Code.

89 (e) The rules prescribed in this section shall apply to non-resi-
90 dents; except that if any non-resident has owned any items of
91 property during a period when the income or gains from such items
92 were not subject to taxation under this chapter, and if the income
93 or gains from such item subsequently became or become subject to
94 taxation under this chapter, then the special limitations of subpar-
95 agraphs (2), (3), and (4) of paragraph (d) of this section shall not
96 apply as to such period.

1 SECTION 7. Notwithstanding the provisions of paragraph (3)
2 of subsection (c) of section two of chapter sixty-two of the General
3 Laws, added by section five of this act, for taxable years commenc-
4 ing during nineteen hundred and eighty-one, the amount of deduc-
5 tion shall not exceed forty per cent of the net capital gain. This
6 section shall be inoperative for the taxable year commencing dur-
7 ing nineteen hundred and eighty-two and thereafter.

1 SECTION 8. The provisions of this act shall apply to taxable
2 years commencing on or after January first, nineteen hundred and
3 eighty-one.

