

By Mr. Moore of Uxbridge, petition of James G. Wheeler, Richard T. Moore and another for legislation to provide for changes in the Massachusetts estate tax to conform more closely with the federal estate tax law. Taxation.

**The Commonwealth of Massachusetts**

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

AN ACT TO PROVIDE FOR CHANGES IN THE MASSACHUSETTS ESTATE TAX TO CONFORM MORE CLOSELY WITH THE FEDERAL ESTATE TAX LAW.

*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 5 of Chapter 65A of the General Laws is  
2 hereby amended by striking out the entire section and inserting in  
3 place thereof the following: —

4 “Whenever it appears upon any accounting, or in any appro-  
5 priate action or proceeding, that an executor, administrator, trustee  
6 or other person acting in a fiduciary capacity, has paid or may be  
7 required to pay an estate tax levied or assessed under the provisions  
8 of chapter sixty-five C, or under the provisions of any estate tax  
9 law of the United States heretofore or hereafter enacted, upon the  
10 transfer of the estate of any person who at the time of his death was  
11 an inhabitant of this commonwealth, the net amount of said tax  
12 shall be apportioned among and borne by recipients and beneficiar-  
13 ies of the property and interest included in the gross estate in the  
14 following manner: —

15 (1) If any portion of the estate passed under the will of the  
16 decedent, such proportion of the net amount of the tax so levied  
17 or assessed (other than any tax payable from property described in  
18 paragraph three of this section) shall, except as otherwise provided  
19 or directed by the will, be charged to and paid from the general  
20 funds of the estate as the net amount of the property passing under  
21 the will and included in the measure of such tax, inclusive of  
22 property over which the decedent had any power of appointment

23 as defined from time to time by the estate tax laws of the United  
24 States, bears to the amount of the net estate as hereafter defined in  
25 this section.

26 (2) If any portion of the property with respect to which such tax  
27 is levied or assessed (other than property described in paragraph  
28 three of this section) is held under the terms of any trust created  
29 inter vivos or is subject to such a power of appointment, such  
30 proportion of the net amount of the tax so levied or assessed (other  
31 than any tax payable from property described in said paragraph  
32 three) shall, except as otherwise provided or directed by the trust  
33 instrument with respect to the fund established thereby, or by the  
34 decedent's will, be charged to and paid from the corpus of the trust  
35 property or the property subject to such power of appointment, as  
36 the case may be, as the net amount of the property of such trust or  
37 property subject to such power of appointment and included in the  
38 measure of such tax bears to the amount of the net estate as  
39 hereafter defined in this section. The amount so charged shall not  
40 be apportioned between temporary and remainder estates.

41 (3) If any portion of the property with respect to which such tax  
42 is levied or assessed is property in which the decedent had a  
43 qualifying income interest for life within the meaning of section 3A  
44 of chapter sixty-five C or section two thousand and forty-four of  
45 the Internal Revenue Code of the United States or any statutes of  
46 similar import which may be in force at the time of the decedent's  
47 death, such portion of the net amount of the tax so levied or  
48 assessed, including, in the case of the Massachusetts estate tax, any  
49 tax imposed under the provisions of subsection (b) of section 2 of  
50 said chapter sixty-five C, shall, except as otherwise provided or  
51 directed by the decedent's will, be charged to and paid from the  
52 corpus of such property as equals the amount by which the total net  
53 amount of such tax levied or assessed exceeds the total net amount  
54 of such tax which would have been levied or assessed if the value of  
55 such property which is included in the measure of such tax had not  
56 been so included. The amount so charged shall not be apportioned  
57 between temporary and remainder estates.

58 (4) The balance of the net amount of the tax so levied or  
59 assessed, or if paragraphs one, two and three of this section are  
60 inapplicable the whole of the net amount of such tax shall, except  
61 as otherwise provided or directed by the decedent's will, be equita-

62 bly apportioned among and charged to and paid by the recipients  
63 and beneficiaries of property or interests included in the measure of  
64 such tax and passing or arising otherwise than under the will of the  
65 decedent or by virtue of any such trust or by the exercise or  
66 nonexercise of any such power of appointment or by reason of the  
67 termination of any such qualifying income interest for the dece-  
68 dent's life in the proportion that the net amount of such property or  
69 interests bears to the amount of the net estate as hereafter defined  
70 in this section; provided, that where any provision is made whereby  
71 any person is given an interest in income or an estate for years or  
72 for life or other temporary interest in any property or fund the  
73 amount so charged to such recipients or beneficiaries shall not be  
74 apportioned between temporary and remainder estates but shall be  
75 charged to and paid out of the corpus of such property or fund; and  
76 provided further, that any apportionment made under this section  
77 shall accord with applicable estate tax laws of the United States  
78 where such laws specify with respect to an apportionment or a right  
79 of recovery.

80 (5) For the purposes of the apportionment of the tax levied or  
81 assessed under the provisions of chapter sixty-five C or under the  
82 provisions of any estate tax law of the United States, the term 'net  
83 estate' as used in this section shall mean the gross estate as defined  
84 for purposes of the particular tax less (i) any property described in  
85 paragraph three of this section which is included in the gross estate  
86 for purposes of the particular tax and (ii) any deductions, other  
87 than specific exemptions, allowed for purposes of the particular  
88 tax other than deductions attributable to such property described  
89 in said paragraph three.

90 (6) If the court shall determine that it is inequitable, because of  
91 special circumstances, to apportion interest and penalties in con-  
92 nection with estate taxes as provided herein, it may direct appor-  
93 tionment thereof in such manner as it shall find equitable."

1 SECTION 2. Section 5A of Chapter 65A of the General Laws is  
2 hereby amended by striking out all of the language through the  
3 words "chargeable under the provisions of section five;" and by  
4 inserting in place thereof the following:—

5 "In all cases in which any property required to be included in the  
6 gross estate as defined by the applicable estate tax laws of the

7 United States does not come into the possession of the executor or  
8 administrator as such, he shall, in cases where property of a trust  
9 created inter vivos, property subject to a power of appointment, or  
10 property in which the decedent had a qualifying income interest for  
11 life is included in such gross estate, be entitled to recover from the  
12 fiduciary in possession of the corpus of such trust or of such  
13 property and in all other cases from the recipients or beneficiaries  
14 of property or interests with respect to which such tax is levied or  
15 assessed the proportionate amount of such tax payable by such  
16 fiduciary or persons with which they are chargeable under the  
17 provisions of section five.”

1 SECTION 3. Section I of Chapter 65C of the General Laws is  
2 hereby amended by striking out subsection (d) and inserting in  
3 place thereof the following new subsection (d): —

4 “(d) ‘Federal gross estate’, the gross estate as defined under the  
5 Code, except that the provisions of section two thousand and forty  
6 of the Internal Revenue Code of the United States, as amended and  
7 in effect on January first, nineteen hundred and eighty-two, shall  
8 apply in place of the provisions of said section of the Internal  
9 Revenue Code as amended and in effect on January first, nineteen  
10 hundred and seventy-five.”

1 SECTION 4. Section I of Chapter 65C of the General Laws is  
2 hereby amended by striking out subsection (f) and inserting in  
3 place thereof the following new subsection (f): —

4 “(f) ‘Massachusetts gross estate’, the federal gross estate,  
5 whether or not a federal estate tax return is required to be filed,  
6 plus the value of any property (i) in which the decedent had at death  
7 a qualifying income interest for life described in subsection (c) of  
8 section 3A of this chapter, or to the extent of any such interest  
9 therein of which the decedent has at any time made a transfer, by  
10 trust or otherwise, for less than adequate and full consideration in  
11 money or money’s worth, in contemplation of the decedent’s death,  
12 and within three (3) years of death, and (ii) for which a deduction  
13 was allowed for Massachusetts estate tax purposes with respect to  
14 the transfer of such property to the decedent, and less the value of  
15 real and tangible personal property having an actual situs outside  
16 the commonwealth. The Massachusetts gross estate shall not

17 include the value of any property in which the decedent had a  
18 qualifying income interest for life which is not otherwise includable  
19 in the Massachusetts gross estate under the first sentence of this  
20 subsection, notwithstanding the right of the executor of the dece-  
21 dent's estate to recover federal or Massachusetts estate taxes from  
22 such property."

1 SECTION 5. Subsection (b) of Section 2 of Chapter 65C of the  
2 General Laws is hereby amended by adding to the end of the final  
3 sentence thereof the following: —

4 "and shall also include the value of qualified terminable interest  
5 property, as defined in subsection (b) (7) (B) of section two thou-  
6 sand and fifty-six of the Internal Revenue Code of the United  
7 States or any statutes of similar import which may be in force at the  
8 time of the decedent's death, to the extent that such property has  
9 been included in the gross estate of the decedent as finally deter-  
10 mined for federal estate tax purposes but has not been included in  
11 the gross estate of the decedent as finally determined for Massa-  
12 chusetts estate tax purposes, in each case less the deductions des-  
13 cribed in subsection (b) of section 3 of this chapter attributable  
14 thereto and the value of real and tangible personal property inclu-  
15 dable therein and having an actual situs outside the common-  
16 wealth."

1 SECTION 6. Chapter 65C of the General Laws is hereby  
2 further amended by adding after Section 3 thereof the following  
3 new Section 3A: —

4 §3A. *Marital deduction for qualified terminable interest prop-*  
5 *erty.*

6 (a) In the case of qualified terminable interest property

7 (i) for purposes of subsection (a) of section two thousand and  
8 fifty-six of the Code, such property shall be treated as passing to  
9 the surviving spouse, and

10 (ii) for purposes of subsection (b) (1) (A) of section two thou-  
11 sand and fifty-six of the Code, no part of such property shall be  
12 treated as passing to any person other than the surviving spouse,  
13 to the extent that a deduction with respect to such qualified termi-  
14 nable interest property which, when added to the value of all other  
15 property which has passed or passes to the surviving spouse, will

16 not cause the total deductions for property which has passed or  
17 passes to the surviving spouse to exceed fifty percent of the Massa-  
18 chusetts adjusted gross estate.

19 (b) For purposes of this section, the term 'qualified terminable  
20 interest property' means property

21 (i) which is included in the Massachusetts gross estate,

22 (ii) which passes from the decedent,

23 (iii) in which the surviving spouse has a qualifying income inter-  
24 est for life, and

25 (iv) to which an election under this section applies.

26 (c) The surviving spouse has a qualifying income interest for life  
27 if

28 (i) the surviving spouse is entitled to all the income from the  
29 property, payable annually or at more frequent intervals, and

30 (ii) no person has a power to appoint any part of the property to  
31 any person other than the surviving spouse.

32 Clause (ii) shall not apply to a power exercisable only at or after  
33 the death of the surviving spouse.

34 (d) The term 'property' includes an interest in property.

35 (e) A specific portion of property shall be treated as separate  
36 property.

37 (f) An election under this section with respect to any property  
38 shall be made by the executor on the Massachusetts estate tax  
39 return filed within the time prescribed for filing such return, or any  
40 extension of such time, to have the property treated as qualified  
41 terminable interest property for Massachusetts estate tax pur-  
42 poses. Such an election, once made, shall be irrevocable and shall  
43 be separate from and independent of any election made by the  
44 executor for federal estate tax purposes.

45 (g) If the surviving spouse of the decedent is the only noncharit-  
46 able beneficiary of a qualified charitable remainder trust, subsec-  
47 tion (b) (1) of section two thousand and fifty-six of the Code shall  
48 not apply to any interest in such trust which passes or has passed  
49 from the decedent to such surviving spouse. For purposes of the  
50 preceding sentence, the term 'noncharitable beneficiary' means any  
51 beneficiary of the qualified charitable remainder trust other than  
52 an organization described in subsection (c) of section one hundred  
53 and seventy of the Code and the term 'qualified charitable  
54 remainder trust' means a charitable remainder annuity trust or

55 charitable remainder unitrust (described in section six hundred  
56 and sixty-four of the Code).”

1 SECTION 7. The provisions of this Act shall apply only with  
2 respect to estates of decedents dying after December 31, 1982 and  
3 with respect to such estates of Massachusetts residents any provi-  
4 sions of Section 1 of Chapter 65A of the General Laws imposing a  
5 tax upon the transfer of the estate shall have no force and effect.

