

By Mr. Bickford of Berlin, petition of Walter E. Bickford and other members of the House that provision be made for the acquisition of agriculture preservation restrictions and providing a method of financing such acquisitions. Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty.

AN ACT TO PROTECT AND ENCOURAGE MASSACHUSETTS AGRICULTURE BY MEANS OF ACQUISITION OF AGRICULTURAL PRESERVATION RESTRICTIONS AND PROVIDING A METHOD OF FINANCE.

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. The General Laws are hereby amended by insert-
2 ing after chapter 64I the following chapter: —

3 **CHAPTER 64J**
4 **(Land Sales Excise Tax)**

5 *Section 1. Definitions: —*

6 “Land” means all land, whether or not improved, but does not
7 include land, not exceeding five acres (not more than ten acres if
8 zoning or similar laws or regulations require a minimum of more
9 than five, up to minimum zoning requirement — maximum 10
10 acres) necessary for use of a principal residence used by the taxpay-
11 er or to be used by the purchaser a his principal residence. Build-
12 ings or other structures are not included in this definition of land.

13 “Purchaser’s Principal Residence” means the principal dwelling
14 of a buyer whose domicile is or will be established in the Common-
15 wealth of Massachusetts within sixty days. Where a principal
16 dwelling is to be constructed, such construction shall begin within
17 one year of the date of transfer of title to the land and be completed
18 and occupied by the purchaser within two years from the date of
19 transfer.

20 "Sale or Exchange of Land" means any transfer of title to land
21 held less than 6 years for a consideration. Transfer of an option
22 (but not granting thereof) for the sale or exchange of land shall be
23 considered a transfer of title to land. The sale or exchange is
24 considered to take place at the time any consideration whatsoever,
25 of whatever nature, first passes under a contract. A mere promise
26 to purchase, amounts paid in escrow to which the seller has no
27 immediate right, earnest money, and amounts paid on deposit do
28 not constitute the passing of consideration. Any sale or exchange
29 of shares in a corporation or other entity or of comparable right or
30 property interests in any other form of organization or legal entity,
31 which effectively entitles the purchaser to the use or occupancy of
32 land constitutes a sale or exchange.

33 "Consideration" means the full actual consideration, paid or to
34 be paid, including the amount of any liens or encumbrances on the
35 land existing before the sale or exchange and not removed thereby.

36 "Installment Sales" means sale or exchange of land as defined
37 above for which the total tax due is greater than \$2,000 and the
38 parties agree in advance that payments shall be received by the
39 seller or transferor in more than one installment on a date or dates
40 other than the date of closing. A sale financed by a mortgage, deed
41 or trust, or other financing agreement in which the seller or trans-
42 feror is paid in full on the date of sale or exchange shall not be
43 considered an installment sale.

44 "Withholding" means that the buyer or transferee of any land
45 held by the seller or transferor for less than six years, shall withhold
46 10 percent of the consideration, or partial payment made pursuant
47 to installment sales, and remit the amount of this withholding
48 immediately to the Commissioner of Taxes.

49 *Section 2.* There shall be an excise tax on the sale or exchange
50 of land in accordance with the following schedule. Monies raised
51 by the implementation of said land sales excise tax shall be used
52 exclusively to fund the program established by the secretary of
53 environmental affairs pursuant to section 11A of chapter 132A of
54 the General Laws.

*Gain, as a percentage of basis
(tax cost)

Years Land Held by Transferor	20-99%	100-199%	200% or more
Less than 1 year	30%	45%	60%
1 year, but less than 2	25%	37.5%	50%
2 years, but less than 3	20%	30%	40%
3 years, but less than 4	15%	22.5%	30%
4 years, but less than 5	10%	15%	20%
5 years, but less than 6	5%	7.5%	10%

(*Gain, as a percent of basis, shall be rounded to the next highest whole percentage.)

55 Contracts for the sale of land constitute sales or exchanges of
56 land for all purposes of this chapter. However, contracts shall not
57 constitute sales or exchanges until some sale or exchange is consid-
58 ered to take place at the time any consideration whatsoever, of
59 whatever nature, first passes under the contract. A mere promise to
60 purchase, and amounts paid as earnest money, or amounts paid in
61 deposit or amounts paid in escrow to which the seller has no
62 immediate right, do not constitute the passing or consideration for
63 the purposes of this chapter.

64 Any sale or exchange of shares in a corporation or other entity,
65 or of comparable rights or property interests in any other form of
66 organization or legal entity, which effectively entitles the purchaser
67 to the use or occupancy of land constitutes a sale or exchange of
68 land.

69 The provisions of the Federal Internal Revenue Code shall
70 determine the basis (tax cost) of land sold or exchanged.

71 The amount realized from the sale or exchange shall be the full
72 actual consideration therefor, paid or to be paid, including the
73 amount of any liens or encumbrances on the land existing before
74 the sale or exchange and not removed thereby. The amount realized
75 from the sale or exchange shall be the gross amount thereof,
76 reduced by any expenses of sale and commissions. In the event that
77 a sale includes land and buildings or other structures, the amount
78 realized shall be allocated between the land and buildings or other
79 structures on the basis of fair market value.

80 The taxable gain from the sale or exchange is the amount

81 realized minus the basis (tax cost) of the land. No gain shall be
82 recognized in cases where gain is not recognized under the Federal
83 Internal Revenue Code, as amended, in relation to the sale or
84 exchange of capital assets.

85 The land sold or exchanged shall be deemed to have been held as
86 determined under the Federal Internal Revenue Code. However,
87 as to any person whose holding period is claimed by the seller or
88 exchanger, such holding period shall not exceed the time for which
89 such person has had actual and recorded title thereto in his own
90 name, and shall include the time the land was so held prior to the
91 effective date of this chapter. If a husband and wife are tenants by
92 the entirety there may be added to the holding period the amount
93 of time the land was held by one spouse alone before that spouse
94 created the tenancy by the entirety. Notwithstanding any provision
95 to the contrary under the Federal Internal Revenue Code, if a
96 tenancy by the entirety is dissolved by reason of death, the holding
97 period during the tenancy by the entirety will be added to the
98 holding period of the surviving spouse owning the property in his
99 or her own name. In the case of a gift, the holding period of the
100 donee shall include the time that actual and recorded title was held
101 by the donor.

102 The taxable gain under this chapter from the sale or exchange of
103 land shall not be reduced by any losses incurred in other transac-
104 tions.

105 The department of corporations and taxation shall determine in
106 particular cases whether the transaction involved is a sale or ex-
107 change of land within the intended coverage of this act.

108 The person liable for the tax is the transferor (which includes the
109 owner, seller, or other exchanger) of the land sold or exchanged.

110 The buyer or transferee of any land held by the seller or transfer-
111 or for less than six years, shall withhold ten percent of all consider-
112 ation paid to the seller or transferor for such land, including ten
113 percent of all partial payments made pursuant to installment sales.
114 At the time any payment is made to the seller or transferor, the
115 amounts withheld shall be remitted to the commissioner of taxa-
116 tion.

117 Within 30 days of the sale or exchange of land, for which
118 withholding is required under this section, the seller or transferor

119 shall file a return with the commissioner of taxation setting forth
120 the amount of the tax due and the amount withheld by the buyer or
121 transferee. The seller shall either remit with the return the balance
122 of the tax due or make claim for a refund. Any refund not made by
123 the commissioner within 15 days of receipt by him of a valid claim
124 shall accrue interest at the rate of one-half of one percent per
125 month. For good cause shown and upon conditions set by him, the
126 commissioner may extend the time for filing the return and paying
127 the tax required by this chapter.

128 The seller or transferor may, in advance of the sale or exchange,
129 pay the tax imposed by this chapter or obtain a written ruling from
130 the commissioner of taxation that no tax is due under this chapter.
131 In either case the commissioner shall certify to the seller or trans-
132 feror that such payment has been made or that no tax is due. Upon
133 receipt by the buyer or transferee of such certification from the
134 seller or transferor, the buyer or transferee shall not be required to
135 withhold any consideration.

136 All taxes required to be paid or withheld under this chapter shall
137 constitute a personal debt of the person liable to pay or withhold
138 the same to the state of Massachusetts to be recovered in an action
139 on this statute.

140 An action may be brought by the commissioner of taxation to
141 recover the amount of the taxes to be paid or withheld in the
142 manner prescribed for recovering amounts owed for taxes. The
143 amount of taxes to be paid or withheld shall be a lien in favor of the
144 Commonwealth of Massachusetts upon all property and rights to
145 property, whether real or personal, belonging to the person liable
146 for the tax or for the withholding.

147 Notwithstanding any provision of law to the contrary, the tax
148 under this chapter on any installment sale shall be due within 30
149 days of the date of payment of each installment paid to the seller or
150 transferor. However, except for the first installment the seller or
151 transferor may elect to file his return as part of his Massachusetts
152 income tax return for any year in which subsequent installments
153 are paid or due, and to pay the balance of such tax as part of such
154 income tax; provided that, if the seller or transferor elects to file
155 annual returns no interest shall accrue on any withholding.

156 In an installment sale, the total amount of taxes due under this

157 chapter shall be the amount that would have been due had the total
158 purchase price been paid on the date the sale or exchange took
159 place. The amount of taxes due on each separate installment,
160 including the first installment, shall bear the same proportion to
161 the total amount of taxes due as the amount of that installment
162 bears to the total consideration.

163 The commissioner of taxation shall administer and enforce this
164 chapter and this tax. He may issue, amend, and withdraw from
165 time to time, reasonable regulations to assist such administration
166 and enforcement.

167 Any person who wilfully defeats or evades or attempts to defeat
168 or evade the tax imposed by this chapter shall be imprisoned not
169 more than one year or fined not more than \$10,000.00 or five times
170 the amount of the tax defeated or evaded or attempted to be
171 defeated or evaded, whichever is larger, or may be both thus
172 imprisoned and fined.

173 *Section 3. Exemptions from Tax.*

174 A. When the United States, or an instrumentality or agency
175 thereof, the Commonwealth of Massachusetts or any political
176 subdivision, is the seller of land, no land gains tax will be due.
177 However, if the land sold has been held less than 6 years, a return
178 must be filed and withholding by the buyer will be required unless a
179 withholding tax return and a land gains tax return are filed simul-
180 taneously or a commissioner's certificate has been obtained by the
181 seller.

182 B. Land, not exceeding five acres, necessary for the use of a
183 dwelling which is to be used as the purchaser's principal residence.
184 This exclusion from the definition of land shall not apply unless the
185 purchaser first executes, upon a form supplied by the commission-
186 er of taxation, a certification that he is domiciled in Massachusetts
187 or will be within sixty days, that the dwelling to be purchased will
188 be used as his principal residence.

189 C. Where there is not on the land a dwelling completed and fit
190 for occupancy as the purchaser's principal residence at the time of
191 the transfer of title to the land so excluded from the definition of
192 land:

193 (1) The purchaser shall certify that the dwelling shall commence
194 to be constructed within one year of the date of transfer of title to

195 the land and that it will be completed and occupied within two
196 years from the date of such transfer.

197 (2) The deed or other transfer instrument shall state that the
198 amount of the tax of which the transfer has been relieved by
199 virtue of the purchaser's certifications is a lien running with the
200 land in favor of the Commonwealth of Massachusetts until either
201 the amount of such tax has been paid or the purchaser has filed
202 with the commissioner a statement under the penalties of perjury
203 that the dwelling was constructed and occupied within the terms
204 and conditions previously certified.

205 D. If zoning or similar laws or regulations require a minimum of
206 more than five acres for residential property, that number of acres,
207 instead of five acres, shall be excluded from the definition of land,
208 except that not more than ten acres shall be so excluded.

209 E. Land located in municipalities with a population of fifty
210 thousand or more.

211 F. The sale, lease or agreement to buy and sell land classified
212 and assessed as agricultural where the parties to the transaction
213 enter into a covenant running with the land and revocable only
214 after a period of at least six (6) years declaring that the land will be
215 used exclusively for agricultural or horticultural purposes as de-
216 fined in Chapter 61A, Sections 1 and 2. A copy of the covenant
217 shall be filed with the Department of Corporations and Taxation.
218 If the land is converted to non-agricultural use during the six (6)
219 year period, the transferor's gain shall be recognized under this act
220 and the tax on the gain paid by the transferee.

1 SECTION 2. Section 11 shall apply to sales or exchanges of
2 land made after January 1, 1981.

