

Accompanying the thirteenth recommendation of the Department of Revenue (House, No. 290). Taxation.

The Commonwealth of Massachusetts

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

AN ACT MAKING CORRECTIVE CHANGES IN THE CAPITAL GAINS DEDUCTION UNDER THE PERSONAL INCOME 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 1 of chapter 62 of the General Laws, as
2 most recently amended by section 11 of chapter 233 of the acts of
3 1983, is hereby further amended by adding after subsection (1) the
4 following subsection:—

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

1 SECTION 2. Subsection (a) of section 2 of said chapter 62, as
2 most recently amended by sections 12 to 16, inclusive, of chapter
3 233 of the acts of 1983, is hereby further amended by striking out,
4 in line 2, the word "seven" and inserting in place thereof the
5 word:— seven A.

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

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

1 SECTION 4. Subsection (c) of section 2 of said chapter 62, is
2 hereby further amended by striking out paragraph (2), as appearing
3 in section 2 of chapter 723 of the acts of 1973, and inserting in place
4 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 one 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 one thousand dollars, then the excess, if any, of
10 the net long-term capital loss for the year over the net short-term
11 capital gain for the year shall be applied against the balance of such
12 interest and dividends; provided, however, that the aggregate
13 amount of the deduction under this paragraph shall not be more
14 than one thousand dollars. The excess of the net short-term capital
15 loss over the net long-term capital gain, reduced by the amount
16 allowed under this paragraph which is attributable to such excess,
17 shall be a short-term capital loss in the succeeding taxable year.
18 The excess of the net long-term capital loss over the net short-term
19 capital gain, reduced by the amount allowed under this paragraph
20 which is attributable to such excess, shall be a long-term capital
21 loss in the succeeding taxable year.

1 SECTION 5. Said subsection (c) of said section 2 of said
2 chapter 62, is hereby further amended by striking out paragraph

3 (3), as appearing in section 14 of chapter 233 of the acts of 1983,
4 and inserting in place thereof the following paragraph:—

5 (3) a deduction equal to fifty per cent of the net capital gain.

1 SECTION 6. Said chapter 62 is hereby further amended by
2 inserting after section 6 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
9 Massachusetts adjusted basis of such property over the federal
10 adjusted basis thereof.

11 (b) The Massachusetts adjusted basis of property shall be the
12 Massachusetts initial basis determined under paragraph (c) of this
13 section.

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

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

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

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

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

33 (2) The Massachusetts initial basis of property acquired after

34 December thirty-first, nineteen hundred and seventy shall be
35 determined as follows:—

36 (A) If the taxpayer's federal basis of the property at acquisition
37 is determined without regard to the basis of such property in the
38 hands of the transferor or of other property in the hands of the
39 transferee, hereinafter called the "basis of prior property", the Mas-
40 sachusetts initial basis shall be the federal basis, determined without
41 regard to any federal adjustment made under section one thousand
42 and fifteen (*d*) of the Code.

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

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

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

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

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

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

71 (3) In determining the adjustments to the Massachusetts basis
72 of property there shall be disregarded any federal adjustments to

73 basis under section one thousand three hundred and seventy-six of
74 the Code, and any federal adjustment to basis under section three
75 hundred and one (c) of the Code with respect to distributions under
76 section one thousand three hundred and seventy-five (d) of the
77 Code.

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

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

88 (e) In addition to the rules prescribed in this section, in
89 determining Massachusetts basis of property:

90 (i) There shall be disregarded any federal adjustment resulting
91 from provisions of the Code that were not applicable in determining
92 Massachusetts gross income at the time such federal adjustments
93 were made, and

94 (ii) Adjustments shall be made for any item which was applicable
95 in determining Massachusetts gross income but which was not so
96 applicable in determining federal gross income and for which a
97 federal adjustment would be allowed under the provisions of the
98 Code if the item had been applicable in determining federal gross
99 income.

100 (f) The rules prescribed in this section shall apply to non-
101 residents; except that if any non-resident has owned any items of
102 property during a period when the income or gains from such items
103 were not subject to taxation under this chapter, and if the income
104 or gains from such items subsequently became or become subject
105 to taxation under this chapter, then the special limitations of
106 subparagraphs (2), (3), and (4) of paragraph (d) and paragraph (e)
107 of this section shall not apply as to such period.

1 SECTION 7. The provisions of this act shall apply to taxable
2 years commencing on or after January first, nineteen hundred and
3 eighty-five.

HOUSE

RESOLUTIONS

1. To amend the Constitution of the State of New York in relation to the office of the Governor and the office of the Lieutenant Governor.

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