

M A S S A C H U S E T T S
HIGHTECHNOLOGYCOUNCIL
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To: Governor Maura Healey, Secretary of Administration and Finance Matthew Gorzkowicz, Secretary of Housing and Economic Development Yvonne Hao
Senate President Karen Spilka, Ways and Means Chair Michael Rodrigues, Revenue Chair Susan Moran, Minority Leader Bruce Tarr
House Speaker Ronald Mariano, Ways and Means Chair Aaron Michlewitz, Revenue Chair Mark Cusack, Minority Leader Bradley Jones

From: Elizabeth Mahoney, Vice President of Policy & Government Affairs, Massachusetts High Technology Council

Date: May 1, 2023

Subject: Constitutionality of Amending Section 6 of Chapter 62F

The Massachusetts High Technology Council wishes to make you aware of a serious concern regarding the constitutionality of a section of H3770, "An Act to improve the Commonwealth's competitiveness, affordability, and equity."

This bill, recently passed by the House, would provide more than \$1 billion in tax relief, and contains a number of provisions of which the Massachusetts High Technology Council is supportive, including an increase in the estate tax exemption, a reduction in the short-term capital gains rate, and the adoption of single-sales factor apportionment. These are all steps in the right direction, although they should be viewed as a down payment on the further and necessary reforms to improve our competitive position relative to other states and rehabilitate Massachusetts' declining business climate.

However, this bill also includes an unconstitutional provision that would significantly alter the method by which tax credits are allocated to taxpayers under the voter-approved state tax revenue growth limit (Chapter 62F).

Currently, under Section 6 of Chapter 62F, when the allowable state tax revenue limit is exceeded, the excess is returned to taxpayers as credits that are in direct proportion to their personal income tax liability. Last year, under Chapter 62F, the state returned \$2.9 billion to roughly 3 million taxpayers, with each taxpayer receiving a credit of approximately 14% of their tax liability.

Under the House bill's amendment to Section 6, all taxpayers would be allocated the same tax credit regardless of how much they had actually paid in taxes. For example, a taxpayer who had paid \$500 in taxes would receive the same credit as a taxpayer who had paid \$5,000 in taxes. This change (which was not subject to a public hearing) would not only alter a law that was passed by the voters, it would also violate the state's Constitution by effectively taxing income at different rates for different taxpayers.

The enclosed memorandum, prepared by Boston attorney Kevin Martin at Goodwin Procter, explains this "clear violation" of the Constitution in detail. As the memo states, "If the proposed amendment [to Section 6 of Chapter 62F] also is passed by the Senate and signed into law by the Governor, the result would be a clear violation of the "uniformity" requirement of Article 44 of the Massachusetts Constitution."

The High Tech Council applauds the Governor and the House for pursuing significant tax relief for Massachusetts residents and employers and hopes the Senate will take up those reforms. However, given the significant constitutional concerns raised in the enclosed memo, any tax reform bill which reaches the Governor's desk and is signed into law should refrain from altering Section 6 of Chapter 62F.