
To: Christopher R. Anderson
Massachusetts High Technology Council

From: Kevin P. Martin
Goodwin Procter LLP

Re: Article 44 Implications of the House Proposed Amendment to G.L. c. 62F, § 6

Date: April 27, 2023

The House recently voted to pass a proposed amendment to Section 6 of Chapter 62F that would, if enacted, dramatically alter the method by which tax credits are allocated to individual taxpayers in the event of excess tax collections in a fiscal year. Currently, tax credits under Section 6 are allocated to taxpayers in direct proportion to their personal income tax liability. Under the proposed amendment, all taxpayers would be allocated the same tax credit. You asked us to prepare a memorandum that could be made publicly available addressing potential constitutional concerns with the proposed amendment. For the reasons given below, if the proposed amendment 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.

Chapter 62F, And The Proposed Amendment To Chapter 62F

Currently, G.L. c. 62F, § 6, entitled “Effect of net state tax revenues in excess of allowable state tax revenues; tax credit,” provides:

If net state tax revenues in any fiscal year exceed allowable state tax revenues for said fiscal year the amount of such excess, as determined by the State Auditor and reported to the Commissioner pursuant to section five of this chapter, shall result in a credit equal to the total amount of such excess. The credit shall be applied to the then current personal income tax liability of all taxpayers *on a proportional basis to the personal income tax liability incurred by all taxpayers in the immediately preceding taxable year*. (emphasis added).

Under that statutory formulation, adopted by voters in 1986, the amount of the “tax credit” for any given taxpayer is their “proportional” share “of such excess,” determined by comparing that taxpayer’s personal income tax liability to the total personal income tax liability of all taxpayers. To give a very simple two-taxpayer example, if taxpayer A had \$1,000 in income tax liability, taxpayer B had \$2,000 in income tax liability, and the “excess” was \$30, then taxpayer A would receive a \$10 credit and taxpayer B a \$20 credit.

The House’s proposed amendment would strike the last sentence of Section 6 in its entirety, and replace it with the following:

The credit shall be applied against the then current personal income tax liability of each taxpayer who files an income tax return in both the then current and the previous taxable year in an amount determined by dividing the total amount of excess revenues by the total number of taxpayers filing an income tax return in the previous taxable year. For the purposes of this section, a married couple filing a joint return shall be counted as 2 taxpayers. If the amount of the credit allowed under this section exceeds the taxpayer’s liability, the commissioner shall treat the excess as an overpayment and shall pay the taxpayer the amount of the excess without interest.

Under the proposed amendment, the “tax credit” is no longer proportional to the taxpayer’s liability. To continue with the example above, under the proposed amendment, if taxpayer A paid \$1,000 in taxes, taxpayer B paid \$2,000 in taxes, and the “excess” was \$30, then taxpayer A would receive a \$15 credit (\$5 more than under existing law) and taxpayer B would receive the same \$15 credit (\$5 less than under existing law). If taxpayer A had filed jointly with a non-working spouse, then taxpayer A and their spouse would receive a \$20 credit (\$10 more than under existing law), and taxpayer B a \$10 credit (\$10 less than under existing law), despite taxpayer B having twice the income tax liability of taxpayer A and their spouse.

For the fiscal year ending June 30, 2022, the state auditor determined that net state tax revenues exceeded allowable state tax revenues by approximately \$2.9 billion. According to the Department of Revenue, this resulted in about 3 million taxpayers receiving a credit of approximately 14% of their respective tax liabilities. Under the proposed amendment, each of those taxpayers would instead receive a tax credit of about \$1,000. At a state income tax rate of 5%, this credit would eliminate any tax liability—and result in a tax subsidy—for any individual taxpayer with \$20,000 or less in taxable income and any joint filers with \$40,000 or less in taxable income. The following table shows the impact on the effective tax rate of the proposed amendment (for fiscal year 2022) on individual taxpayers at various taxable income levels:

Taxable Income	Tax Under Existing Law After 14% Credit	Effective Tax Rate Under Existing Law	Tax Under Proposed Amendment After \$1,000 Credit	Effective Tax Rate Under Proposed Amendment
\$10,000	\$430	4.3%	(\$500)	(5.0%)
\$20,000	\$860	4.3%	\$0	0.0%
\$30,000	\$1,290	4.3%	\$500	1.7%
\$35,000	\$1,505	4.3%	\$750	2.1%
\$40,000	\$1,720	4.3%	\$1,000	2.5%
\$50,000	\$2,150	4.3%	\$1,500	3.0%
\$100,000	\$4,300	4.3%	\$4,000	4.0%
\$150,000	\$6,450	4.3%	\$6,500	4.3%
\$250,000	\$10,750	4.3%	\$11,500	4.6%
\$500,000	\$21,500	4.3%	\$24,000	4.8%

As can be seen, the result of the proposed amendment would be to introduce a marked graduation in the effective income tax rates of taxpayers based upon the amount of their taxable incomes. Many taxpayers would have a negative effective income tax rate, others would have effective rates that remain close to 5%, and the rate paid by an individual taxpayer with \$150,000 in taxable income (4.3%) would be more than 40% higher than the rate paid by an individual taxpayer with \$50,000 in taxable income (3.0%).

The Massachusetts Constitution Requires “Uniform” Income Taxes

Setting aside the new 4% additional tax, Article 44 of the Massachusetts Constitution generally forecloses graduated income tax rates:

Such [income] tax may be at different rates upon income derived from different classes of property, but shall be levied at a uniform rate throughout the commonwealth upon incomes derived from the same class of property.

The requirement of a “uniform rate” means that if taxpayer A has \$10,000 of income and taxpayer B has \$20,000 of income, then taxpayer B’s income tax must be twice taxpayer A’s. For example, at a 5% rate, taxpayer A would pay \$500 in tax, and taxpayer B \$1,000. As described above, the tax credit calculation mechanism under existing Chapter 62F is consistent with this uniformity requirement, since each taxpayer receives a credit in proportion to their income tax liability, which itself must be proportional to their income.

Exemptions Can Depart From Uniformity Only To A Very Limited Extent

There is one narrow exception to the uniformity requirement: under Article 44, “[t]he general court ... may grant reasonable exemptions and abatements.” The most well-known of these exemptions under Massachusetts law is the personal exemption. To show the impact of exemptions on the uniformity requirement, in the simplified example above, if the personal exemption is \$2,000, then taxpayer A would pay \$400 in tax $((\$10,000 - \$2,000) * .05)$ and taxpayer B would pay \$900 in tax $((\$20,000 - \$2,000) * .05)$. In this example, taxpayer A’s effective tax rate has fallen to 4% and taxpayer B’s effective tax rate has fallen to 4.5%. Their tax rates are no longer “uniform.” The lack of uniformity becomes more dramatic the greater the personal exemption; at \$8,000, taxpayer A has an effective rate of 1%, while taxpayer B is still paying 3%.

Currently, the personal exemption under Massachusetts law is \$4,400 for an individual and \$8,800 for joint filers. An additional \$1,000 exemption is allowed for each dependent. These amounts have increased over time in light of increases in the cost of living.

Recognizing that the Legislature might abuse its ability to provide “reasonable exemptions and abatements” to evade the uniformity requirement, the SJC has vigorously policed the Legislature’s discretion through emphasis on the word “reasonable.” In short, the only “reasonable” income tax exemptions the SJC has recognized are those designed to alleviate the tax burden on those with an “inability to pay”—the desperately working poor and senior citizens—and exemptions designed to counteract existing disparities in tax treatment between home owners and renters.

The SJC has stated in no uncertain terms that exemptions cannot be used to evade Article 44's "dominant" uniformity requirement:

The "reasonable exemptions" provision of art. 44 does not authorize special treatment that undercuts the dominant requirement of uniformity in art. 44. Not only must exemptions be reasonable, therefore, but also they must not conflict with the uniformity requirement. Although the constitutional requirement of a uniform rate cannot be absolute, because it is impossible to achieve a uniform effective rate of taxation where exemptions are allowed, we require that there be a balance between uniformity and reasonableness of the exemption. We must therefore consider the reasonableness of the exemption's deviation from the overarching requirement of uniformity, not just the rationality of the justification for the exemption viewed in isolation, in determining whether an exemption qualifies as "reasonable" under art. 44.

Peterson v. Comm'r of Revenue, 444 Mass. 128, 134 (2005) (emphasis added) (internal quotation marks and citations omitted).

In *Peterson*, the Court reviewed decades of precedent applying the requirement that exemptions "undercut[] the dominant requirement of uniformity." It observed that under this long line of cases, exemptions that graduate income tax rates based on "*relative* ability to pay," rather than "*inability* to pay," are not "reasonable" and so violate Article 44:

Exemptions premised on a taxpayer's inability to pay have passed muster. Exemptions may also be permissible where they operate, in their over-all effect, to remedy inequality in tax treatment. See *Massachusetts Teachers Ass'n v. Secretary of the Commonwealth*, 384 Mass. 209, 245, 424 N.E.2d 469 (1981) (deduction for taxpayers who rent homes permissible where it "tends to reduce the disparate treatment of the home owner and home renter in the operation of the income tax law"). **By comparison, exemptions that are based only on relative ability to pay (as opposed to inability to pay) do not qualify as "reasonable" under art. 44.** See *Massachusetts Taxpayers Found., Inc. v. Secretary of Admin.*, 398 Mass. 40, 46–47, 494 N.E.2d 1311 (1986). There, despite the fact that a graduated income tax system could be viewed as "reasonable" in the abstract, a complex system of graduated exemptions based on levels of income was apparently intended to tax the same class of income at different rates rather than to impose the tax burdens "as nearly equally as possible among those able to bear them," and therefore violated art. 44. *Id.* at 45–46, 494 N.E.2d 1311, quoting *Opinions of the Justices*, 386 Mass. 1223, 1229, 437 N.E.2d 194 (1982).

Peterson, 444 Mass. at 136 (emphasis added). The Court in *Peterson* struck down an exemption for certain capital gains because “[t]he exemption . . . is not premised on any inability to pay, or on any attempt to rectify some other imbalance in the income tax laws. Instead, without regard to ability to pay, it creates a sizeable imbalance in the income tax burdens borne by taxpayers.” *Id.*; see also *Massachusetts Taxpayers Found.*, 398 Mass. at 46–47 (“It can be discerned from the legislative history of the act and its complex scheme of exemptions applicable to very broad ranges of income that § 6 was intended to tax the same class of income at different rates rather than to provide reasonable exemptions from the tax so that the tax burdens may rest as nearly equally as possible among those able to bear them.”)

The Proposed Change To Chapter 62F Would Violate The Uniformity Requirement

Based on the SJC precedent described above, it is clear that the proposed amendment to Chapter 62F, Section 6 would replace the existing formula for calculating tax credits with one that violates Article 44’s uniformity requirement. Taking the numbers for the 2022 fiscal year as illustrative, the proposed amendment would result in dramatically different effective tax rates for taxpayers at different income levels: from a *negative* tax rate for individual taxpayers with taxable incomes under about \$20,000 and joint taxpayers with taxable incomes under about \$40,000, to gradations between about 0% and nearly 5% for everyone else.

Unlike the existing \$4,400/\$8,800 personal exemption for individual and joint filers, there can be no credible argument that the amount of the credit under the proposed amendment is necessary to address “*inability* to pay,” as opposed to “*relative* ability to pay.” *Peterson*, 444 Mass. at 136. If the credit actually were intended to address “inability to pay,” then one would expect (1) the credit to be granted every year, not just in years when Chapter 62F’s triggering mechanism happens to be satisfied, (2) the amount of the credit to be linked to the cost of living, not the amount of excess tax revenues, and (3) the tax credit not to become a subsidy for taxpayers for whom the credit exceeds their income tax liability. Indeed, it cannot be ignored that the amount of the hypothetical credit for fiscal year 2022—about \$1,000 for an individual taxpayer—equates to a \$20,000 exemption at a 5% income tax rate, about *five times* the current \$4,400 exemption. There is no evidence that the current personal exemption is only 1/5 the size it needs to be to address “inability to pay,” nor would it make any sense to address such a gaping shortfall only in the infrequent years when Chapter 62F happens to be triggered. Indeed, under SJC precedent, the sheer size of the unproportional credit proposed by the House counts against it. See *In re Opinion of the Justs.*, 270 Mass. 593, 601 (1930) (“The exemptions proposed are not so large as to bear on their face indications of want of equality between the inhabitants or of a purpose to penalize or to put an undue weight on one part of the community for the benefit of other parts.”); *Opinion of the Justs. to the Senate*, 426 Mass. 1206, 1208 (1998) (recognizing this aspect of the 1930 decision).

In conclusion, it is obvious from the face of the proposed amendment that it is “intended to tax the same class of income at different rates,” *Massachusetts Taxpayers Found.*, 398 Mass. at 46–47, based on “relative ability to pay,” *Peterson*, 444 Mass. at 136. The proposed amendment therefore would violate Article 44’s uniformity requirement.