



## Summary of Recent House Action on Tax Loopholes

On Wednesday, June 15, the House of Representatives passed House Bill No. 4169, which would close a variety of tax loopholes and would address issues arising from this spring's Supreme Judicial Court ruling regarding the taxation of capital gains. While House 4169 contains many of the same loophole-closing provisions originally included in the bill (House 21) proposed by Governor Romney in January, it still leaves open some of the major loopholes identified in that initial proposal. Consequently, where House 21 would generate \$170 million in FY 2006, House 4169 would produce closer to \$105 million in the coming fiscal year. More to the point, if enacted, House 4169 would continue to allow some large, multi-state corporations to bend tax law to their advantage and to shift the Massachusetts tax burden onto working families and local businesses. (For more on the Governor's original House 21 proposal, see <http://www.massbudget.org/changingcourse.pdf>)

The provisions **included** in House 4169 would, among other things:

- **Apply the sales tax to sales of computer software delivered electronically**
- **Ensure that out-of-state owners of Massachusetts real estate pay personal income taxes when such property is sold**
- **Prevent companies from using intermediaries to avoid the deeds excise when selling real estate**
- **Impose new penalties on the promoters and users of abusive tax shelters**

**Excluded** from House 4169 are two sets of provisions that would:

- **Prevent companies from avoiding taxes by claiming to be corporations for federal tax purposes (and in other states) while being classified as partnerships or trusts for Massachusetts tax purposes** – Almost every other state requires that companies be classified for state tax purposes as the same type of entity that they claim to be for federal tax purposes. By not requiring this type of conformity, Massachusetts allows multi-state companies to use a series of tax avoidance techniques that exploit the differences between the taxation of certain business entities. Allowing this type of tax avoidance costs the state \$15 million a year.
- **Enhance the Department of Revenue's authority to combat distortionary tax planning practices** – This set of provisions would improve the Department of Revenue's ability to address situations in which a corporation uses transactions with one of its subsidiaries or with other related entities to reduce the income it reports on its Massachusetts tax return. Under the amendment, the Department of Revenue (DoR) would be permitted, in such situations, to adjust the corporation's return to reflect more accurately the income the enterprise earns from doing business in the Commonwealth. This set of provisions, if adopted, would put an end to \$50 million worth of tax avoidance per year.

In addition, House 4169 would make two changes pertaining to the taxation of capital gains. On April 26, the Supreme Judicial Court, in *Peterson vs. Commissioner of Revenue*, established January 1, 2002 as the effective date for the change in the tax rate on capital gains income, originally adopted in conjunction with the FY 2003 budget. Given that the effective date originally adopted by the Legislature was May 1, 2002, the SJC's ruling means that taxpayers who realized capital gains between January 1 and April 30 of that year now owe taxes on those gains. However, House 4169 would alter a provision of current law that permits the Department of Revenue to forego collecting the unpaid portion of any tax liability provided such liability does not exceed a given threshold; House 4169 would raise that threshold from \$50 to \$100, thus reportedly exempting two-thirds of the taxpayers who would be affected by the change in the effective date. House 4169 would also waive any interest or penalties on any additional taxes people might owe as a result of the change in effective date. (Additional information on the SJC's ruling can be found at: <http://www.massbudget.org/CapitalGainsRulingFactsataGlance.pdf>)