

LANGUAGE FOR REVENUE BUDGET AMENDMENTS

FY2011 House 2 Budget Recommendation: Issues in Brief

Deval L. Patrick, Governor
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Temporarily limit film tax credits – House 2 limits total film credits to \$50 million for each of fiscal years 2011 and 2012. The temporary nature of this cap should not interfere with long-term plans to build film studios and will ultimately keep Massachusetts among the most competitive states for this significant industry.

\$75 million

Temporarily limit life sciences tax credits – Although promoting the critical life sciences industry remains one of our top economic development priorities, we will administratively reduce fiscal year 2011 tax credit awards by \$5 million. This will still result in \$20 million of life sciences tax credits being paid out in fiscal year 2011, a significant investment for an important Massachusetts industry.

\$5 million

Repeal aircraft sales tax exemption – This exemption can no longer be justified, especially since cars and boats are not exempt, and other states are likely to apply use taxes to aircraft if we do not. We do not seek to repeal the exemption for aircraft parts, because of the benefit that serves for our small airports. Repealing the exemption generates \$5 million, and \$800,000 is used to support school building construction.

\$4.2 million

Repeal sales tax exemption for candy and soda – Repealing this exemption serves important public health purposes and will support critical wellness and prevention programs, as described in a separate budget brief. Repealing the exemption generates \$61.6 million, and nearly \$10 million is used to support school building construction.

\$51.7 million

Remove exemption of cigars and smoking and smokeless tobacco from 2008 tobacco excise rate – The new cigarette excise rate passed by the Legislature in 2008 did not apply to these other tobacco products. We cannot justify this distinction in view of the important health and revenue benefits. The Governor's budget directs these revenues to the Commonwealth Care Trust Fund to support the state's health reform initiatives.

\$15 million

1. CAP THE FILM TAX CREDIT TO SAVE \$75 million: http://www.mass.gov/?pageID=gov3terminal&L=3&L0=Home&L1=Legislation+%26+Executive+Orders&L2=Legislation&sid=Agov3&b=terminalcontent&f=legislation_legis_012710suppbudget&csid=Agov3 (see Section 9 -- if you want only for one year, you should remove references to FY12)

Temporarily Limit Film Tax Credits

SECTION 9. (A) Subsection (I) of section 6 of chapter 62 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding the following paragraph:-

(8) Notwithstanding any other provision of this section, the cumulative amount of credits allowed under this subsection together with section 38X of chapter 63 for all productions, shall not exceed \$50,000,000 for credits deemed attributable to the fiscal year July 1, 2010 through June 30, 2011 and shall not exceed \$50,000,000 for credits deemed attributable to the fiscal year July 1, 2011 through June 30, 2012.

(B) Section 38X of chapter 63 of the General Laws, as so appearing, is hereby amended by adding the following subsection:-

(g) Notwithstanding any other provision of this section, the cumulative amount of credits allowed under this section together with subsection (I) of section 6 of chapter 62 for all productions, shall not exceed \$50,000,000 for credits deemed attributable to the fiscal year July 1, 2010 through June 30, 2011 and shall not exceed \$50,000,000 for credits deemed attributable to the fiscal year July 1, 2011 through June 30, 2012.

(C) In order to implement paragraph (8) of subsection (I) of section 6 of chapter 62 and subsection (g) of section 38X of chapter 63 of the General Laws, with respect to the fiscal years July 1, 2010 through June 30, 2011 (in this section called FY 2011) and July 1, 2011 through June 30, 2012 (in this section called FY 2012) the department of revenue shall issue and implement rules or guidelines which may include but are not limited to the following:

(1) Any motion picture production company (in this subsection called a "production company") seeking a credit for a production that commences filming after January 27, 2010 and before January 28, 2011, shall file a notice (in this subsection called a "production notice") with the department, stating the amount of estimated expenses qualifying for the credit for the production and such other information required by the department. Any production company seeking a credit for a production that commences filming after January 27, 2011, and before January 28, 2012, shall file a production notice after January 27, 2011 with the Department, stating the amount of estimated expenses qualifying for the credit for the production and such other information required by the department.

(2) Production notices received by the department after January 27, 2010 and before January 28, 2011 shall be considered to be attributable to FY 2011 and shall reduce the available credit for FY 2011, as first reduced by amounts of credits attributable to FY 2011 as described in paragraph (5) of this subsection (C), in the order in which they are received, by not more than the amount of the credit calculated with respect to the estimated qualifying expenses stated in the notices. Production notices received by the Department after January 27, 2011 and before January 28, 2012, shall be considered to be attributable to FY 2012 and shall reduce the available credit for FY 2012, in the order in which they are received, by not more than the amount of the credit calculated with respect to the estimated qualifying expenses stated in the notices.

(3) A production company shall not be allowed a credit for a production commencing filming after January 27, 2010, and before January 28, 2012, unless filming commences within 90 days after

the department has responded favorably to the notice and any credit shall not be allowed in excess of the amount of credit calculated with respect to the estimated qualifying expenses stated in the notice. A production company that does not commence filming within the required 90 day period will not be allowed a credit for that production and the credit otherwise attributable to that production will be available to other productions subject to the notice procedures and credit limits contained in this subsection (C).

(4) All productions commencing filming after January 27, 2010, and before January 28, 2012, are subject to the notice procedures and credit limits provided in this subsection (C) and shall not qualify for any credit under subsection (l) of section 6 of chapter 62 or section 38X of chapter 63 in any fiscal year except as allowed through such notice procedures and subject to such credit limits.

(5) Credit amounts associated with productions that commenced filming in the commonwealth before January 28, 2010, are not subject to the credit caps for FY 2011 or FY 2012 if credit applications for such productions are received by the department on or before March 15, 2010. Credit amounts associated with productions that commenced filming in the commonwealth before January 28, 2010, shall be treated as credits attributable to FY 2011, regardless of the production dates to which such credit applications relate, if credit applications for such productions are not received by the department by March 15, 2010. However, credits attributable to FY 2011 for productions commencing filming before January 28, 2010, shall be allowed before credits for productions that commence filming at a later date.

(6) The department shall not, before July 1, 2012, issue any credit certificate to a production company that commences filming after January 27, 2012 and before July 1, 2012.

2. LIMITING LIFE SCIENCES TAX CREDITS BY \$5 million:

No legislation needed; the Administration will accomplish administratively.

3. REPEAL OF THE AIRCRAFT SALES TAX EXEMPTION (\$4.5 million):

http://www.mass.gov/bb/h1/fy11h1/os_11/h18.htm

Repeal Sales Tax Exemption for Aircraft

SECTION 18. (A) The definition of "Tangible personal property" in [section 1 of chapter 64H](#) of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding the following sentence:- A transfer of an interest in an aircraft may be considered a transfer of tangible personal property under rules determined by the commissioner.

(B) [Section 6 of said chapter 64H](#), as so appearing, is hereby amended by striking out paragraph (v v).

(C) [Section 7 of chapter 64I](#) of the General Laws, as so appearing, is hereby amended by striking out paragraph (e).

(D) This section shall take effect on August 1, 2010.

4. REMOVING THE SALES TAX EXEMPTION FOR CIGARS AND SMOKELESS TOBACCO (\$15 million):

http://www.mass.gov/bb/h1/fy11h1/os_11/h17.htm

Extend Cigarette Excise Rate to Cigars and Tobacco

SECTION 17. (A) [Section 7B of chapter 64C](#) of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding the following subsection:-

(m) In addition to the excise imposed by subsection (b), an excise shall be imposed on all cigars weighing more than 3 pounds per 1,000 units held in the commonwealth at the rate of 80 per cent of the wholesale price of that product. In addition to the excise imposed by subsection (b), an excise shall be imposed on all smoking tobacco held in the commonwealth at the rate of 90 per cent of the wholesale price of that product.

(B) [Section 7C of said chapter 64C](#) is hereby amended by striking out in line 17, the word "twenty-five" and inserting in place thereof the following figure:- 45.

(C) Subsection (A) shall apply to sales of cigars and smoking tobacco occurring on or after the first day of the calendar quarter that begins at least 30 days after passage.

(D) Subsection (B) shall apply to sales of smokeless tobacco occurring on or after the first day of the calendar month that begins at least 30 days after passage.

(E) Notwithstanding [section 28 of chapter 64C](#) of the General Laws, the department of revenue shall reasonably determine on a quarterly basis the increase, if any, in the excise amounts collected under [sections 7B and 7C of said chapter 64C](#), that are attributable to the enactment of subsections (A) and (B), respectively. The commissioner shall annually credit any such increased excise amounts to the Commonwealth Care Trust Fund, established in [section 2000 of chapter 29](#) of the General Laws.

5. SALES TAX ON CANDY AND SODA (\$51 million):

http://www.mass.gov/bb/h1/fy11h1/os_11/h11.htm

Repeal Sales Tax Exemptions for Candy and Soft Drinks

SECTION 11. (A) [Chapter 29](#) of the General Laws is hereby amended by inserting after section 2AAA the following section:-

Section 2BBB. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Commonwealth Health and Prevention Fund. The fund shall be credited with all sales tax revenues collected from the sale of candy, soft drinks and alcoholic beverages under [chapter 64H](#). Amounts credited to the fund shall be expended, subject to appropriation, to support alcohol and tobacco addiction services, health promotion, school-based health programs, teenage pregnancy prevention, domestic violence and sexual assault prevention, work force expansion services and other critical programs that support the wellness of residents of the commonwealth.

(B) [Section 1 of chapter 64H](#) of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding the following definitions:

"Candy", a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" shall not include any preparation containing flour and shall require no refrigeration.

"Soft drinks", non-alcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" do not include beverages that contain milk or milk products, soy, rice or similar milk substitutes, or vegetable or fruit juice.

(C) [Section 6 of said chapter 64H](#), as so appearing, is hereby amended by striking out, in line 77, the words ", soft drinks".

(D) Said [section 6 of said chapter 64H](#), as so appearing, is hereby further amended by striking out, in line 78, the words ", candy and confectionary".

(E) Said [section 6 of said chapter 64H](#), as so appearing, is hereby further amended by inserting, after the word "include", in line 80, the following words:- soft drinks and candy, as defined in section 1,.

(F) Said [section 6 of said chapter 64H](#), as so appearing, is hereby further amended by striking out, in lines 115 to 116, the words "in the instance in which it sells only snacks and candy with a sales price of less than \$3.50" and inserting in place thereof the following words:- to the extent that it sells food products with a sales price of less than \$3.50; provided further that candy and soft drinks as defined in section 1 are subject to tax regardless of whether the vending machine from which they are sold is considered an eating establishment or not.

(G) Said [section 6 of said chapter 64H](#), as so appearing, is hereby further amended by inserting after the word "Beverages", in line 127, the following words:- , except soft drinks,.

6. TAX CREDIT TRANSPARENCY

http://www.mass.gov/bb/h1/fy11h1/os_11/h16.htm

Tax Credit Transparency

SECTION 16. (A) [Section 1 of chapter 62C](#) of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting before the definition of "Building contractor" the following definition:-

"Administering agency head", the agency head responsible for administering the applicable state tax credit program. For the brownfields tax credit and the film tax credit the administering agency head is the department of revenue. For the medical device tax credit, the administering agency head is the Massachusetts life sciences center.

(B) Said [section 1 of chapter 62C](#), as so appearing, is hereby further amended by striking out the definition of "Code".

(C) Said [section 1 of chapter 62C](#), as so appearing, is hereby further amended by inserting after the definition of "Promoter" the following definition:-

"Secretary", the secretary of administration and finance.

(D) Said [section 1 of chapter 62C](#), as so appearing, is hereby further amended by inserting after the definition of "Show" the following definition:-

"Tax credit program", 1 of the following credits against the state income tax to stimulate economic development and other policy goals: the brownfields tax credit in [section 38Q of chapter 63](#) and subsection (j) of [section 6 of chapter 62](#); the dairy farmer tax credit in [section 38Z of chapter 63](#) and subsection (o) of [section 6 of chapter 62](#); the FDA user fees credit in [section 31M of chapter 63](#) and subsection (n) of [section 6 of chapter 62](#); the film tax credit in subsection (b) of [section 38X of chapter 63](#) and subsection (l) of [section 6 of chapter 62](#); the historic rehabilitation tax credit in [section 38R of chapter 63](#) and [section 6J of chapter 62](#); the life sciences investment tax credit in [section 38U of chapter 63](#) and subsection (m) of [section 6 of chapter 62](#); the low-income housing tax credit in [section 31H of chapter 63](#) and [section 6I of chapter 62](#); the medical device

tax credit in [section 31L of chapter 63](#) and [section 6 1/2 of chapter 62](#); and the refundable research credit in subsection (j) of [section 38M of chapter 63](#).

(E) Said [chapter 62C](#) is hereby further amended by adding the following section:-

Section 88. (a)(1) On or before May 15 each year, the administering agency head of each tax credit program shall submit a report to the commissioner on each tax credit program authorized for the previous calendar year, in this section called the report, which shall be a public record.

(2) The report shall contain the following information:

(i) the identity of each taxpayer authorized by the administering agency head to receive a tax credit;

(ii) the amount of tax credit award and issued tax credit for each taxpayer and each project, if applicable;

(iii) the date of the tax credit award or issued tax credit for each taxpayer and each project; and

(iv) additional data and criteria that the secretary determines to be relevant to analyzing the effectiveness of that tax credit program.

(b)(1) On or before February 15 of every year, each taxpayer receiving an authorized tax credit from the administering agency head in the previous calendar year shall submit data and analysis reasonably determined by the Secretary to be relevant to analyzing the effectiveness of the tax credit program.

(2) On or before May 15 of each year, or by another date that the secretary determines to be practicable, the administering agency head shall submit to the commissioner, in a form prescribed by the commissioner, copies of any data and analysis required by paragraph (1), with the report required by subsection (a). The commissioner shall provide this information on a government internet website for public disclosure.

7. DIVIDENDS AND INTERESTS

SECTION XX: Section 4 of Chapter 62 of the General Laws as appearing in the 2008 Official edition is hereby amended by striking subsection (a) (2) and inserting in place thereof the following subsection (a) (2) Part A taxable income consisting of interest and dividends shall be taxed at the rate of 12% provided that for any taxpayer who is 65 years of age or older and is not a dependent of another taxpayer the first \$5000 of interest and dividends shall be exempt.”