



Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

Official Audit Report – Issued September 20, 2016

Determination of Whether Net State Tax Revenues Exceeded Allowable State Tax Revenues

For the period July 1, 2015 through June 30, 2016





Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

September 20, 2016

His Excellency Charles D. Baker Jr., Governor of the Commonwealth
Honorable Stanley C. Rosenberg, President of the Senate
Honorable Robert A. DeLeo, Speaker of the House of Representatives
Senator Karen E. Spilka, Chair of the Senate Ways and Means Committee
Representative Brian S. Dempsey, Chair of the House Ways and Means Committee
Michael J. Heffernan, Commissioner of Revenue

In accordance with the provisions of Chapter 62F of the Massachusetts General Laws, we have reviewed the Report of the Net State Tax Revenues and Allowable State Tax Revenues for the fiscal year ended June 30, 2016, as prepared by the Commissioner of Revenue.

Our review was conducted for the purposes of ensuring the completeness and accuracy of the report and determining whether the net state tax revenues for the fiscal year ended June 30, 2016 exceeded allowable state tax revenues for that fiscal year.

As a result of our review and as disclosed in the accompanying report, we have determined that the net state tax revenues of \$25,801,807,368 for the fiscal year ended June 30, 2016 were below the allowable state tax revenues of \$29,477,204,724 (as defined in Chapter 62F of the General Laws) by the amount of \$3,675,397,356.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMB", written over a light blue circular stamp.

Suzanne M. Bump
Auditor of the Commonwealth

cc: Honorable William F. Galvin, Secretary of the Commonwealth
Honorable Deborah B. Goldberg, State Treasurer and Receiver General
Kristen Lepore, Secretary of Administration and Finance
Thomas G. Shack III, Comptroller of the Commonwealth
Daniel R. Judson, Commissioner, Division of Insurance
Matt Carlin, Commissioner, Department of Public Safety
Deirdre Ann Hosler, General Counsel, State Athletic Commission
Stephen Crosby, Chair, Massachusetts Gaming Commission
Michael R. Sweeney, Executive Director, State Lottery Commission
Ronald L. Walker II, Secretary, Executive Office of Labor and Workforce Development
Robert T. Cunningham, Director, Department of Unemployment Assistance
Marcel Vernon, Chief Financial Officer, Department of Revenue

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INTRODUCTION

Chapter 555 of the Acts of 1986 inserted Chapter 62F into the Massachusetts General Laws. This chapter provides for the establishment, for each fiscal year beginning with the fiscal year ended June 30, 1987, of a state tax revenue growth limit, calculated on the basis of the level of growth in total wages and salaries of the citizens of the Commonwealth. In addition, the law requires that the Commissioner of Revenue, annually on or before September first, prepare and submit to the State Auditor a report of the net state tax revenues and the allowable state tax revenues of the Commonwealth for the preceding fiscal year.

Chapter 555 gives oversight responsibilities to the State Auditor for each fiscal year. Specifically, the Auditor is responsible for reviewing the Commissioner's report for completeness and accuracy and, in doing so, may make, or request that the Commissioner make, any necessary adjustments or modifications to ensure its completeness and accuracy. Further, the Auditor, annually on or before the third Tuesday of September, shall independently determine whether net state tax revenues for the fiscal year exceeded allowable state tax revenues. If the State Auditor determines an excess of state tax revenues, she shall report that determination and the amount by which allowable state tax revenues were exceeded to the Governor, the President of the Senate, the Speaker of the House, the respective Chairs of the Committees on Ways and Means of the Senate and House, and the Commissioner. The law further states that the determination of the State Auditor as to the existence and the amount of excess state tax revenues shall be conclusive. Thereafter, the Commissioner shall take all the necessary action to effectuate a tax credit equal to the total amount of such excess.

On July 30, 1987, the Commissioner of Revenue prepared his first annual report, as required by Chapter 62F of the General Laws, on net state tax revenues and allowable state tax revenues and submitted it to the State Auditor for review.

The State Auditor reviewed the report for completeness and accuracy and determined, on August 15, 1987, that state tax revenues for the fiscal year ended June 30, 1987 exceeded allowable state tax revenues by \$29,221,675 (Audit Report No. 88-5004-9).¹ Accordingly, the State Auditor requested that the Commissioner effectuate a tax credit of \$29,221,675. The Commissioner responded by adding a line

1. All figures disclosed in this report have been rounded for presentation purposes.

on the 1987 version of the Massachusetts Individual Income Tax Return, upon which each individual taxpayer could insert his or her individually calculated share of the \$29,221,675 credit.

As of December 19, 1988, the Department of Revenue (DOR) had processed credits to individual taxpayers of approximately \$16,823,000 of the \$29,221,675 in fiscal year 1987 excess state tax revenues. At that time, the DOR ceased compiling data on the credit. The time limit for filing for refunds with the DOR has since expired, and any funds remaining unclaimed will remain within the General Fund. Chapter 62C, Section 37, of the General Laws, which sets the time limit for filing for refunds, states, in part,

Any person aggrieved by the assessment of a tax, other than a tax assessed under chapters sixty-five or sixty-five A, may apply in writing to the Commissioner, on a form approved by him, for an abatement thereof at any time within three years from the last day for filing the return for such tax, determined without regard to any extension of time, within two years from the date the tax was assessed or deemed to be assessed, or within one year from the date that the tax was paid, whichever is later. . . .

For the fiscal years ended June 30, 1988 through 2015, the State Auditor determined that net state tax revenues were less than allowable state tax revenues; therefore, no tax credit was required to be effectuated by the Commissioner of Revenue for those years.

For the fiscal year ended June 30, 2016, we have determined that the net state tax revenues of \$25,801,807,368 were below allowable state tax revenues of \$29,477,204,724 by \$3,675,397,356, resulting in no excess state tax revenues. (See Exhibit I.)

For fiscal years 1987 through 2016, net state tax revenues increased approximately 218%, from \$8,102,373,437 to \$25,801,807,368. Allowable state tax revenues increased approximately 265%, from \$8,073,151,761 to \$29,477,204,724, during the same time period.

For fiscal year 2016, \$20,498,123,088, or 79.4%, of the net state tax revenue was derived from income and sales and use taxes, which are traditionally the largest sources of revenue received by the Commonwealth. (See Exhibit III.)

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

Pursuant to Chapter 62F of the Massachusetts General Laws (inserted by St. 1986, C, 555, S. 2), the State Auditor is required to (1) review and ensure the completeness and accuracy of the Commissioner of Revenue's Report of the Net State Tax Revenues and Allowable State Tax Revenues for the fiscal year ended June 30, 2016 and (2) independently determine whether net state tax revenues exceeded allowable state tax revenues and report the determination and amount of any excess state tax revenues for the fiscal year ended June 30, 2016.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our audit methodology encompassed the following procedures:

- Observing and reviewing the Department of Revenue's (DOR's) compliance with the Official Year-End Closing Instructions issued by the Office of the State Comptroller (OSC) to ensure that state tax revenue on hand as of June 30, 2016 was deposited, recorded, and reported in fiscal year 2016.
- Reconciling tax revenue sources among the OSC, Office of the State Treasurer, and other state agencies identified as receiving tax revenues. (See Exhibit II and Exhibit VI.)
- Testing not only tax data to the extent practicable and feasible under the circumstances and in a manner consistent with privacy and confidentiality statutes, but also the related tax collecting, depositing, recording, and reporting systems within the state's accounting system in order to determine the degree of reliance we would place thereon to ultimately render conclusions on the Report of the Net State Tax Revenues and Allowable State Tax Revenues, including the related calculations and methodology. (See Exhibit IV and Exhibit V.)
- Obtaining the most recent Massachusetts wage and salary data of the citizens of the Commonwealth for calendar year 2015 from the United States Department of Commerce, Bureau of Economic Analysis.
- Reviewing and analyzing applicable state statutes to determine state tax revenue sources.
- Performing internal control overviews, fraud risk assessments, and other procedures we considered applicable and feasible under the circumstances.

We conducted fieldwork at the DOR, the primary source of tax revenue for the Commonwealth, and at other agencies identified as sources of state tax revenue (i.e., the Massachusetts Gaming Commission, the Massachusetts State Lottery Commission, the State Athletic Commission, the Division of Insurance, the Office of the Secretary of the Commonwealth, and the Department of Unemployment Assistance) as we considered it practicable and feasible under the circumstances.

To accomplish our objectives, we reviewed and reconciled state tax revenue information at the DOR and other state agencies identified as sources of state tax revenue and state accounting records in the Massachusetts Management Accounting and Reporting System to identify Commonwealth state tax revenues for the purposes of Chapter 62F, Section 2, of the General Laws. The electronic data sources used for this analysis constitute the official accounting records of the Commonwealth, are widely accepted as accurate, and form the basis for the Commonwealth's audited annual financial statements. Accordingly, our audit did not involve a comprehensive assessment of the reliability of source Commonwealth data. However, we did perform analytical procedures, such as comparisons and reconciliations to available revenue summary totals in the applicable agency accounts, to confirm that the Commonwealth database information we used was consistent with other available information. Based on that analysis, we concluded that the data used were of sufficient reliability for the purposes of our audit.

As a result of our audit, we have determined that the net state tax revenues of \$25,801,807,368 for the fiscal year ended June 30, 2016 were below the allowable state tax revenues of \$29,477,204,724 (as defined in Chapter 62F of the General Laws) by the amount of \$3,675,397,356.

LEGISLATIVE HISTORY

In November 1986, “An Act Phasing Out the Surtax on the State Personal Income Tax and Limiting State Tax Revenue Growth to the Level of Growth in State Wages and Salaries” was approved by the voters of the Commonwealth. On December 4, 1986, it became law as Chapter 555 of the Acts of 1986, which added Chapter 62F to the Massachusetts General Laws.

As shown below, the history of tax legislation related to Chapter 555 is complex.

On November 8, 1975, Chapter 684 of the Acts of 1975 became law and imposed, beginning in calendar year 1975, a 7.5% surtax.

In September 1985, the law that was proposed by initiative petition and that ultimately became Chapter 555 of the Acts of 1986 was drafted by the Citizens for Limited Taxation (CLT) and the Massachusetts High Technology Council, and on December 4, 1985, the signatures necessary for the initiative petition to become a legislative referendum were filed with the Secretary of the Commonwealth.

On December 18, 1985, Chapter 593 of the Acts of 1985 repealed the 7.5% surtax imposed by Chapter 684 of the Acts of 1975 and imposed a 3.75% surtax for calendar year 1986.

On January 3, 1986, the initiative petition was introduced as a legislative referendum (H4004).

On May 6, 1986, the initiative petition was rejected in the House of Representatives. It was not acted upon in the Senate by the May 7, 1986 deadline.

On August 7, 1986, sufficient additional signatures were collected by CLT, and the initiative petition was submitted to the Secretary of the Commonwealth for placement on the November 4, 1986 state election ballot and became known as Question Number 3: “Limiting State Tax Revenue Increases.”

On October 25, 1986, Chapter 488 of the Acts of 1986 repealed the 3.75% surtax imposed by Chapter 593 of the Acts of 1985 for calendar year 1986 and imposed controls over the growth of state revenue.

On November 4, 1986, the electorate voted in favor of limiting the growth of state tax revenues, repealing the 7.5% surtax of Chapter 684 of the Acts of 1975 and imposing a new 3.75% surtax for calendar year 1986.

On December 4, 1986, the Secretary of the Commonwealth certified the initiative petition as Chapter 555 of the Acts of 1986 (An Act Phasing Out the Surtax on the State Personal Income Tax and Limiting State Tax Revenue Growth to the Level of Growth in State Wages and Salaries.)

On December 9, 1986, Chapter 577 of the Acts of 1986 became effective immediately as an emergency law and repealed all surtaxes retroactively, beginning January 1, 1986.

On July 16, 1988, Chapter 163 of the Acts of 1988 authorized Barnstable County to enact a county deeds excise not to exceed the excise tax imposed by the Commonwealth.

On June 30, 1989, Chapter 193 of the Acts of 1989 provided for a temporary increase to the excise deeds rate set to expire on June 30, 1992. It stipulated that 85% of the increase in receipts would be retained by the county in which it was accrued and that 15% of the increase in receipts would be deposited in the Commonwealth's County Correction Fund. Chapter 61, Section 2, of the Acts of 2009 repealed Chapter 64D, Section 13, of the General Laws.

On October 27, 1989, Chapter 448 of the Acts of 1989 became effective immediately as an emergency law and extended the reporting date for the filing of certain financial statements for the Commissioner of Revenue (September first) and the State Auditor (third Tuesday of September).

On March 9, 1993, Chapter 19, Section 42, of the Acts of 1993 amended and extended Chapter 193 of the Acts of 1989's temporary deeds excise rate increase set to take effect on July 1, 1992.

On July 1, 1993, Chapter 64K, Section 127, of the Acts of 1993 became effective and imposed a stamp tax on the possession of controlled substances.

On July 27, 1995, Chapter 81 of the Acts of 1995 was enacted, amending Chapter 63 of the General Laws, which provides for the taxation of financial institutions doing business in Massachusetts.

On June 30, 1996, Chapter 151 of the Acts of 1996 became effective and abolished Franklin County as of July 1, 1997. Deed excises previously collected by the county were thereafter collected by the Commonwealth.

On July 11, 1997, Chapter 48 of the Acts of 1997 became effective and abolished Middlesex County immediately and Hampden and Worcester counties as of July 1, 1998. Deed excises previously collected by the counties were thereafter collected by the Commonwealth.

On November 17, 1997, Chapter 152 of the Acts of 1997 became effective and imposed, in addition to the excises levied under Chapter 64G, a convention center financing fee at the rate of 2.75% upon the transfer or occupancy of any rooms in any hotel or motel in the cities of Boston, Cambridge, Springfield, and Worcester, as well as a 5% surcharge on the purchase price of any ticket for a sightseeing tour and a \$10 surcharge on each vehicular rental transaction contract in the City of Boston, \$1 of which is to be paid to the City of Boston, and a \$2 per day surcharge for parking in a facility built in conjunction with an authorized convention project in the cities of Boston, Springfield, and Worcester. Chapter 45 of the Acts of 2001 added the convention center financing fee to the cities of Chicopee and West Springfield. Except for the \$1 vehicular rental surcharge that is paid to the City of Boston, these revenues are includable as state tax revenues as defined in Chapter 555. For fiscal year 2016, net state tax revenue included \$49,681,406 in convention center financing fees for room occupancy transfer; \$14,481,097 in vehicular rental transaction fees; and \$2,685,872 in sightseeing tour surcharges. The \$2 per day charge for parking is not included because a parking facility has not been built in conjunction with an authorized convention project in the cities of Boston, Springfield, or Worcester.

On July 21, 1998, Chapter 175 of the Acts of 1998 was enacted, amending Chapter 151A of the General Laws by inserting Section 14L and imposing a Workforce Training Contribution of 0.075% on wages. The Director of Workforce Development is required to adjust the rate of contribution (consistent with federal law) so that the total amount of the contribution in a year substantially equals \$18 million. The contributions are to be deposited in the Workforce Training Fund, a separate fund on the books of the Commonwealth, codified in Chapter 29, Section 2RR, of the General Laws, and are to be used for workforce training. Contributions deposited in the Workforce Training Fund are subject to appropriation. Chapter 175 also repealed Section 14L as of December 31, 2001 and increased the amount of all personal income tax exemptions. On December 30, 1999, Chapter 172 of the Acts of 1999 was enacted, amending the repeal of Chapter 151A, Section 14L, to December 31, 2002. Effective July 1, 2002, Chapter 184, Section 159, of the Acts of 2002 further amended Chapter 172 of the Acts of 1999 by extending the repeal to December 31, 2005. On June 30, 2005, Chapter 45, Section 8, of the Acts of 2005 further amended Chapter 172 of the Acts of 1999 by extending the repeal of Chapter 151A, Section 14L, to December 31, 2008. Effective June 24, 2006, Chapter 123, Section 78, of the Acts of 2006 further amended Chapter 45, Section 8, of the Acts of 2005 by extending the repeal to December 31, 2010. Effective May 22, 2010, Chapter 112, Section 33, of the Acts of 2010 further amended Chapter 123, Section 78, of the Acts of 2006 by extending the repeal to December 31, 2012. Effective October 27,

2011, Chapter 29, Section 2RR, was amended by Chapter 142, Section 5, of the Acts of 2011 to change the designation of the Workforce Training Fund to the Workforce Training Trust Fund. The director of the Department of Career Services may contract with the Commonwealth Corporation to administer the fund. Moreover, as the trustee of the fund, the director of the Department of Career Services, without further appropriation, shall make expenditures from the fund to provide grants to employers, employer groups, labor organizations, and training providers for projects to provide education and training to existing employees and newly hired workers.

On August 31, 1998, Chapter 300 of the Acts of 1998 became effective, transferring Hampshire County's functions, duties, and responsibilities to the Commonwealth effective September 1, 1998 and abolishing Hampshire County as of January 1, 1999; Essex County as of July 1, 1999; and Berkshire County as of July 1, 2000. On November 16, 1999, Chapter 127 of the Acts of 1999 transferred the Berkshire County and Suffolk County registries of deeds to the Commonwealth effective July 1, 1999. Deeds excises previously collected by Berkshire County were thereafter collected by the Commonwealth.

On December 13, 2000, Chapter 267 of the Acts of 2000 (The Massachusetts Community Preservation Act) became effective, establishing Chapter 44B and authorizing a \$20 surcharge on certain fees of the registers of deeds and assistant recorders for instruments left for recording, filing, depositing, registering, or entering, and a \$10 surcharge for recording, filing, depositing, registering, or entering a municipal lien certificate.

On April 12, 2006, Chapter 58 of the Acts of 2006 (An Act Providing Access to Affordable, Quality, Accountable Health Care) became effective, establishing Chapter 111M, which required each resident of the Commonwealth who filed a Massachusetts personal income tax return, beginning with taxable year 2007, to designate on his or her return whether he or she had health insurance coverage. A resident who had access to affordable health insurance coverage but did not obtain and maintain the coverage, and to whom an exemption did not pertain, was subject to penalties prescribed under Chapter 111M, Section 2. All penalties assessed and collected under Section 2 were designated for deposit in the Commonwealth Care Trust Fund, established by Chapter 29, Section 2000, of the General Laws.

On January 3, 2007, Chapter 422 of the Acts of 2006 (An Act Relative to the Worcester DCU Arena and Convention Center) became effective and designated receipts from excises levied under Chapters 64G and 64H (from establishments located in the DCU center finance district) for deposit in a separate fund

titled the City of Worcester DCU Capital Improvement Fund solely to pay or provide for the principal of, and premium and interest on, all bonds or notes issued by the City to finance DCU center improvement costs authorized under the act. In addition, the act provides that if, in any fiscal year, total revenues deposited in the DCU Capital Improvement Fund are insufficient to pay or provide for the principal of, and the premium and interest payable on, all bonds and notes, the City may impose an administrative parking surcharge in an amount not to exceed \$3 per day upon any vehicle that parks during the two-hour period before the starting time of any event at the DCU center, or a facility betterment fee of not more than \$3 on each ticket to each event held at the DCU center, or any combination thereof as determined by the city council. During fiscal year 2016, excise tax receipts collected and deposited in the DCU Capital Improvement Fund totaled \$35,024 from sales taxes, \$721,815 from meals taxes, \$713,957 from room occupancy taxes, and \$265 for service fees. Neither an administrative parking surcharge nor a facility betterment fee was imposed during fiscal year 2016.

On July 3, 2008, Chapter 173 of the Acts of 2008 (An Act Relative to Tax Fairness and Business Competitiveness) was enacted and put into effect various corporate excise rate cuts to be implemented over a period of years for business corporations (Chapter 63, Section 39), financial institutions (Chapter 63, Section 2), S corporations (Chapter 63, Section 32D), and financial institutions that operate as S corporations (Chapter 63, Section 2B). The applicable rate reductions were effective for taxable years beginning on or after January 1, 2009. The act, under Sections 48 and 101, also amended Chapter 63, Section 32B, by allowing for combined reporting for multi-state corporate filers for the purpose of taxing corporations that operate both within and outside the state. This change also became effective for tax years beginning on or after January 1, 2009.

On July 31, 2009, Chapter 523 of the Acts of 2008 (An Act Relative to the Operation of Low-Speed Motor Vehicles) became effective and directed the Massachusetts Registry of Motor Vehicles (RMV) to begin registering two classes of motor vehicles not previously required to be registered in Massachusetts. As of July 31, 2009, the RMV requires low-speed vehicles and limited-use vehicles to be registered as motor vehicles. In addition, since these vehicles are considered motor vehicles, casual and isolated sales of these vehicles are not exempt from the use tax (Chapter 64I, Section 7), which therefore must be paid on the transfer of these vehicles unless the purchaser is the spouse, mother, father, brother, sister, or child of the seller, or another exemption applies. As a result of this change, tax is now required and paid directly to the RMV for these sales.

On August 1, 2009, Chapter 27, Sections 53, 55 through 57, and 59, of the Acts of 2009 amended Chapter 64H (sales tax) and Chapter 64I (use tax) by changing the rate of tax for sales and use of tangible personal property and telecommunication services from 5% to 6.25%. The legislation also repealed the existing exemption for alcoholic beverages, including beer, wine, and liquor, sold at retail by amending Chapter 64H, Section 6(g). However, as a result of a referendum question on the November 2, 2010 ballot, the above law that extended the Massachusetts sales and use tax to alcoholic beverages sold at package stores and liquor stores was repealed, and the sales tax exemption in Chapter 64H, Section 6(g), was reinstated and became effective for sales on or after January 1, 2011.

On August 1, 2009, Chapter 27, Section 61, of the Acts of 2009 was enacted and amended the General Laws by inserting Chapter 64M (Taxation of Direct Broadcast Satellite Service) and imposing a 5% excise tax on the gross revenues of providers of direct broadcast satellite service to a subscriber or customer in Massachusetts. The tax applies to actual receipts on or after August 1, 2009 and was passed along to subscribers or customers as a separately stated item on their bills. During fiscal year 2016, the Commonwealth collected \$11,772,541 from direct broadcast satellite service providers.

On August 6, 2009, Chapter 61 of the Acts of 2009 (An Act Transferring County Sheriffs to the Commonwealth) was enacted. Under Section 2 of the aforementioned act, which became effective on January 1, 2010 and amended Chapter 64D, Sections 11 through 13, of the General Laws, with the exception of Barnstable and Suffolk Counties (which shall transmit all taxes collected under Chapter 64D to the Commonwealth's General Fund), on the first day of each month, 10.625% of the taxes collected in the counties of the other transferred sheriffs (i.e., Bristol, Dukes, Nantucket, Norfolk, and Plymouth) shall be transmitted to a fund known as the Deeds Excise Fund that shall be maintained separate and apart from other funds and accounts of each county to satisfy the unfunded county pension liabilities and other benefit liabilities of retired employees of the sheriffs' offices. Beginning in fiscal year 2011, if the minimum obligation² is insufficient to satisfy the unfunded pension and other benefit liabilities, the county shall retain and transfer to its Deeds Excise Fund an additional amount of the deeds excise collected necessary to meet its annual retirement assessment and to satisfy the unfunded county pension and other benefit liabilities until the minimum obligation is sufficient or until the county has paid the unfunded pension liability in full. Once the liabilities are satisfied, the county shall go back to

2. In accordance with Chapter 64D, Section 11, of the General Laws, the minimum obligation is determined by agreement of the Secretary of Administration and Finance, the actuary of the Public Employee Retirement Administration Commission, the retirement associations and their actuaries, and the county treasurers.

retaining 10.625%. Further, with regard to the county of Nantucket, an additional 30.552% of the taxes collected shall be transferred to its Deeds Excise Fund on the first of each month through June 1, 2029. If, however, in a fiscal year, the dollar amount that equals 30.552% exceeds \$250,000, the excess amount shall be transmitted to the Commonwealth's General Fund. The remaining percentage of taxes collected under Chapter 64D, including all counties whose governments were abolished by Chapter 34B or another law, but not including the additional excise authorized in Chapter 163, Section 2, of the Acts of 1988, shall be transmitted to the Commonwealth's General Fund. During fiscal year 2016, \$7,911,219 was collected and retained by the counties required to maintain a Deeds Excise Fund.

On October 1, 2009, Chapter 27, Section 60, of the Acts of 2009 added a new chapter to the General Laws: Chapter 64L (Local Option Meals Excise). Under this chapter, a city or town that accepted the provisions of this chapter imposed a local sales tax on the sale of restaurant meals originating within the city or town by a vendor at the rate of 0.75% of the vendor's gross receipts from the sale of restaurant meals. This new local option sales tax is in addition to the 6.25% state sales tax on meals and took effect on the first day of the calendar quarter following 30 days after acceptance by the city or town or on the first day of a later calendar quarter as designated by the city or town. During fiscal year 2016, the Commonwealth collected and returned \$119,730,494 to 208 cities and towns that had accepted and imposed this local sales tax.

On October 1, 2009, Chapter 27, Sections 51 and 52, of the Acts of 2009 became effective and amended Chapter 64G, Section 3A, of the General Laws by increasing the maximum rate of the local option room occupancy excise from 4% to up to 6% (from 4.5% to up to 6.5% in the City of Boston) provided that each city or town voted to accept the increased rate. This new rate could be imposed on the first day of the calendar quarter following 30 days after acceptance of the increased rate, or on the first day of a later calendar quarter as designated by the city or town. During fiscal year 2016, the Commonwealth collected and returned a total of \$199,080,467 in local option room occupancy excise taxes, which includes 181 cities and towns that also accepted the increased rate.

On July 1, 2010, Chapter 131, Section 16, of the Acts of 2010 became effective and amended Chapter 29 of the General Laws by inserting Section 2BBBB, after Section 2AAAA (previously inserted by Chapter 169, Section 2, of the Acts of 2009). Section 2BBBB established a separate fund to be known as the Commonwealth Substance Abuse Prevention and Treatment Fund, which would be credited with all sales tax revenues collected from the sale of alcoholic beverages under Chapter 64H that are not part of

the dedicated sales tax revenue amount described in Chapter 10, Section 35T or 35BB. Subject to appropriation, this fund would be expended to support substance abuse treatment and prevention services.

On November 22, 2011, Chapter 194 of the Acts of 2011 became effective and established expanded gaming in the Commonwealth. Section 16 of the act added a new chapter to the General Laws: Chapter 23K, which established the Massachusetts Gaming Commission and granted the commission the power and authority to implement, administer, and enforce the chapter. Section 55 of the act established daily taxes and an assessment payable by Category 1³ and Category 2⁴ licensees as follows:

- (a) A category 1 licensee shall pay a daily tax of 25 per cent on gross gaming revenues.*
- (b) A category 2 licensee shall pay a daily tax of 40 per cent on gross gaming revenue.*
- (c) In addition to the tax imposed under subsection (b), a category 2 licensee shall pay a daily assessment of 9 per cent of its gross gaming revenue to the Race Horse Development Fund established in section 60.*
- (d) Taxes imposed under this section shall be remitted to the commission by a gaming licensee the day following each day of wagering.*

During fiscal year 2016, the Massachusetts Gaming Commission collected \$64,356,445 in daily taxes and assessments.

3 A Category 1 license is issued by the commission and permits the licensee to operate a gaming establishment with table games and slot machines.

4 A Category 2 license is issued by the commission and permits the licensee to operate a gaming establishment with no table games and no more than 1,250 slot machines.

EXHIBIT I

Calculation to Determine Whether Net State Tax Revenues Exceeded Allowable State Tax Revenues for the Fiscal Year Ended June 30, 2016

Allowable State Tax Revenues for the Fiscal Year Ended June 30, 2016 (see Exhibit IV)	\$ 29,477,204,724
Less:	
Net State Tax Revenues for the Fiscal Year Ended June 30, 2016 (see Exhibit II)	25,801,807,368
Net State Tax Revenues (under) Allowable State Tax Revenues for the Fiscal Year Ended June 30, 2016	\$ (3,675,397,356)

EXHIBIT II

Net State Tax Revenues for the Fiscal Year Ended June 30, 2016

Type of State Tax Collected (by Agency)	Gross State Tax Revenues	Refunds and Abatements	Net State Tax Revenues
Department of Revenue:			
Alcoholic Beverages	\$ 82,707,414	\$ 95,982	\$ 82,611,432
Financial Institutions	39,299,896	15,834,783	23,465,113
Cigarettes*	642,005,024	1,166,184	640,838,840
Corporations	3,086,388,286	774,357,183	2,312,031,103
Deeds	191,613,091	97,576	191,515,515
Estate and Inheritance	419,897,265	20,468,363	399,428,902
Income*	16,724,305,717	2,316,788,111	14,407,517,606
Insurance	419,049,034	49,657,534	369,391,500
Motor Fuels and I.F.T.A. †	769,031,747	2,478,851	766,552,896
Public Utilities	(1,213,247)	390,484	(1,603,731)
Room Occupancy ‡	247,026,425	502,535	246,523,890
Sales and Use ‡	6,136,039,106	45,433,624	6,090,605,482
Club Alcoholic Beverages	804,814	20,674	784,140
Motor Vehicle Excise	103,965	4,368	99,597
Convention Center Surcharges	16,496,104	2,962	16,493,142
Community Preservation Trust	25,509,150	0	25,509,150
Controlled Substances	70	0	70
Satellite	11,781,478	8,937	11,772,541
Subtotals	\$ 28,810,845,339	\$ 3,227,308,151	\$ 25,583,537,188
Massachusetts Gaming Commission:			
Pari-Mutuel Taxes	1,325,854	0	1,325,854
Gaming Revenue Tax	64,356,445	0	64,356,445
Lottery Commission:			
Beano	845,383	0	845,383
Raffles and Bazaars	896,988	0	896,988
State Athletic Commission:			
Boxing Contests	182,454	0	182,454
Boxer's Fund	18,556	0	18,556
Division of Insurance:			
Excess and Surplus Lines Insurance	37,405,245	0	37,405,245
Secretary of State:			
Deeds Excise Stamp Tax Fees	90,425,594	0	90,425,594
Department of Unemployment Assistance:			
Workforce Training Contribution	22,813,661	0	22,813,661
Totals	\$ 29,029,115,518[§]	\$ 3,227,308,151	\$ 25,801,807,368

* Includes income tax penalties assessed under Chapter 111M, Section 2, of the Massachusetts General Laws (totaling \$13,807,370) and cigarette excise revenue assessed in accordance with Chapter 302, Sections 12 and 70, of the Acts of 2008 (totaling \$135,277,867) credited to Commonwealth Care Trust Fund (CCTF). Fiscal year 2016 tax revenues credited to the CCTF totaled \$149,085,237.

† International Fuel Tax Agreement.

‡ Includes sales, meals, room occupancy excise taxes, and service fees for the City of Worcester DCU Capital Improvement Fund, as well as sales tax revenue collected from the sale of alcoholic beverages under Chapter 64H of the General Laws and credited to the Substance Abuse Prevention and Treatment Fund.

§ Minor discrepancies in totals are due to rounding.

EXHIBIT III

Net State Tax Revenue Sources for the Fiscal Year Ended June 30, 2016

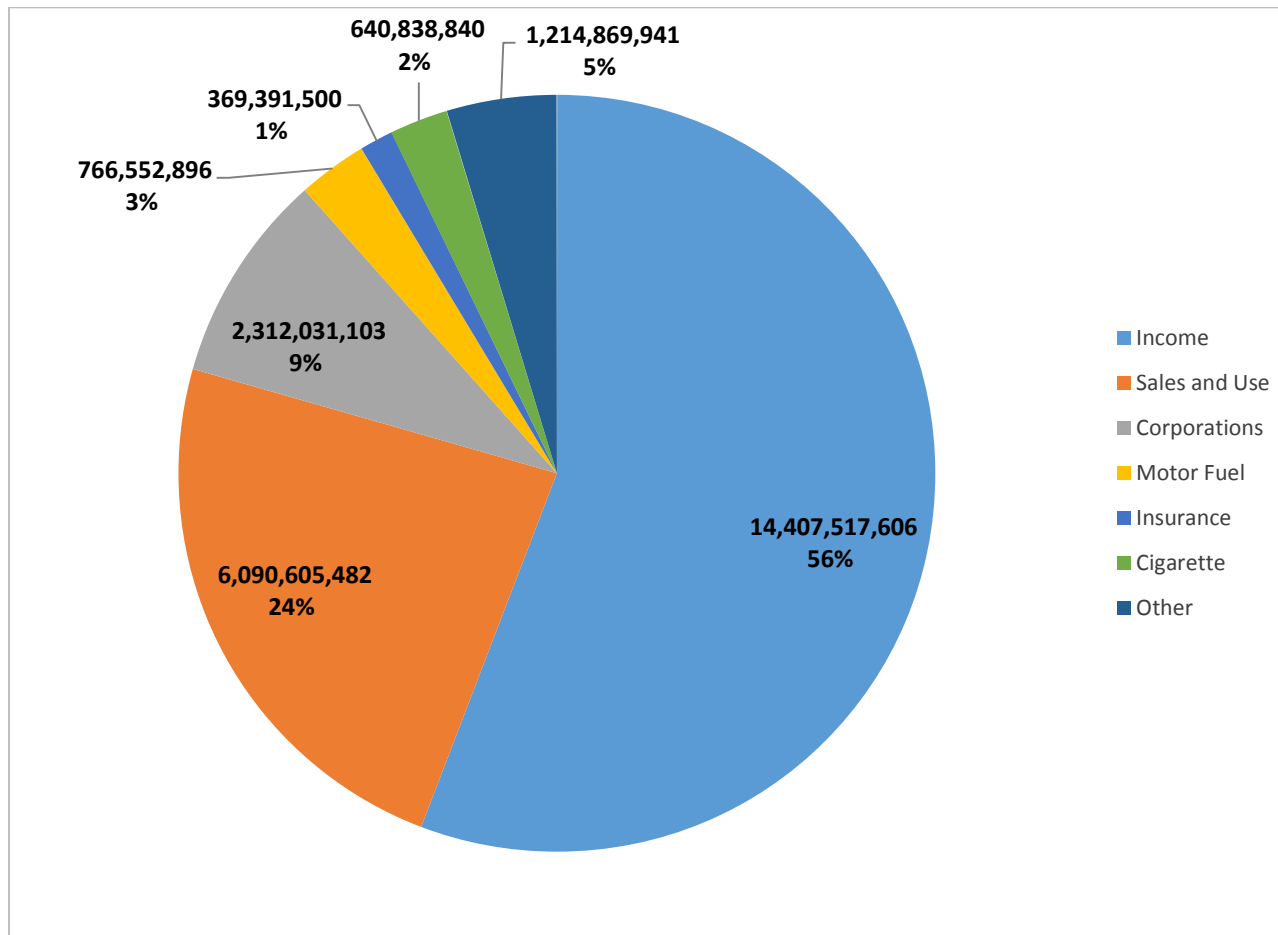


EXHIBIT IV

Calculation of Allowable State Tax Revenues for the Fiscal Year Ended June 30, 2016

Allowable State Tax Revenues for the Fiscal Year Ended June 30, 2015*	\$ 28,071,638,151
Allowable State Tax Growth Factor for the Fiscal Year Ended June 30, 2016	X 1.0500707
Allowable State Tax Revenues for the Fiscal Year Ended June 30, 2016	<u>\$ 29,477,204,724[†]</u>

* As defined in Chapter 62F, Section 2, "allowable state tax revenues" for fiscal year means the following: beginning after June 30, 1986, an amount equal to the greater of the allowable state tax revenues for the immediately preceding fiscal year multiplied by the allowable state tax growth for the current year, or in any case no less than the allowable state tax revenues for the preceding fiscal year. Allowable state tax revenues as disclosed in our prior report (No. 2016-5555-3S) totaled \$28,071,638,151.38.

† This figure has been rounded: $\$28,071,638,151.38 \times 1.0500707 = \$29,477,204,723.77$

EXHIBIT V

Calculation of Allowable State Tax Growth Factor for the Fiscal Year Ended June 30, 2016

Calendar Year	Massachusetts Wages and Salaries* (in Thousands)	Wages and Salaries Yearly Growth Rate [†]
2012	\$201,616,694	
2013	\$210,144,156	1.0422954
2014	\$220,037,132	1.0470771
2015	\$233,424,075	1.0608395
Sum of 2013–2015 Calendar Year Growth Increase		3.1502120
Allowable State Tax Growth Factor for Fiscal Year 2015 (3.1502120)/3		1.0500707

* Source: U.S. Department of Commerce, Bureau of Economic Analysis, Regional Income Division, Washington, D.C. (pursuant to Chapter 62F, Section 2).

† Wage and yearly growth ratio is calculated by dividing each calendar year's wages and salaries by those of the previous calendar year.

Note: Chapter 62F requires that, in calculating the allowable state tax growth factor for any fiscal year, the same total for Massachusetts's wages and salaries for a calendar year utilized in prior calculations involving that calendar year shall be utilized in subsequent calculations involving that calendar year, notwithstanding periodic adjustments by the Bureau of Economic Analysis.
 The fiscal year 2016 allowable state tax growth factor increased 0.0122514 from the prior year's factor (1.0500707 – 1.0378193).

EXHIBIT VI

Comparison of Net State Tax Revenues for the Two Fiscal Years Ended June 30, 2016

Type of State Tax Collected (by Agency)	Net State Tax Revenues for the Fiscal Year Ended June 30, 2016	Net State Tax Revenues for the Fiscal Year Ended June 30, 2015	Increase/ (Decrease)	Percentage Increase/ (Decrease)
Department of Revenue:				
Alcoholic Beverages	\$ 82,611,432	\$ 79,861,598	\$ 2,749,834	3.44%
Financial Institutions	23,465,113	51,896,330	(28,431,217)	-54.78%
Cigarettes*	640,838,840	647,100,932	(6,262,092)	-0.97%
Corporations	2,312,031,103	2,172,075,771	139,955,332	6.44%
Deeds	191,515,515	164,355,985	27,159,530	16.52%
Estate and Inheritance	399,428,902	340,903,166	58,525,736	17.17%
Income*	14,407,517,606	14,468,332,036	(60,814,430)	-0.42%
Insurance	369,391,500	333,168,305	36,223,195	10.87%
Motor Fuels and I.F.T.A. †	766,552,896	756,193,519	10,359,377	1.37%
Public Utilities	(1,603,731)	3,409,270	(5,013,001)	-147.04%
Room Occupancy ‡	246,523,890	230,198,099	16,325,791	7.09%
Sales and Use ‡	6,090,605,482	5,804,688,553	285,916,929	4.93%
Club Alcoholic Beverages	784,140	953,337	(169,197)	-17.75%
Motor Vehicle Excise	99,597	80,206	19,391	24.18%
Convention Center Surcharges	16,493,142	15,657,112	836,030	5.34%
Community Preservation Trust	25,509,150	23,608,330	1,900,820	8.05%
Controlled Substances	70	112	(42)	-37.50%
Satellite	11,772,541	11,251,575	520,966	4.63%
Subtotals	<u>\$ 25,583,537,188</u>	<u>\$ 25,103,734,236</u>	<u>\$ 479,802,952</u>	<u>1.91%</u>
Massachusetts Gaming Commission:				
Pari-Mutuel Taxes	1,325,854	1,202,769	123,085	10.23%
Gaming Revenue Taxes	64,356,445	0	64,356,445	100.00%
Lottery Commission:				
Beano	845,383	848,767	(3,384)	-0.40%
Raffles and Bazaars	896,988	915,308	(18,320)	-2.00%
State Athletic Commission:				
Boxing Contests	182,454	179,344	3,110	1.73%
Boxer's Fund	18,556	19,516	(960)	-4.92%
Division of Insurance:				
Excess & Surplus Lines Insurance	37,405,245	34,663,566	2,741,679	7.91%
Secretary of State:				
Deeds Excise Stamp Tax Fees	90,425,594	73,934,130	16,491,464	22.31%
Department of Unemployment Assistance:				
Workforce Training Contribution	22,813,661	23,568,226	(754,565)	-3.20%
Totals	<u>\$ 25,801,807,368</u>	<u>\$ 25,239,065,862</u>	<u>\$ 562,741,506</u>	<u>2.23%</u>

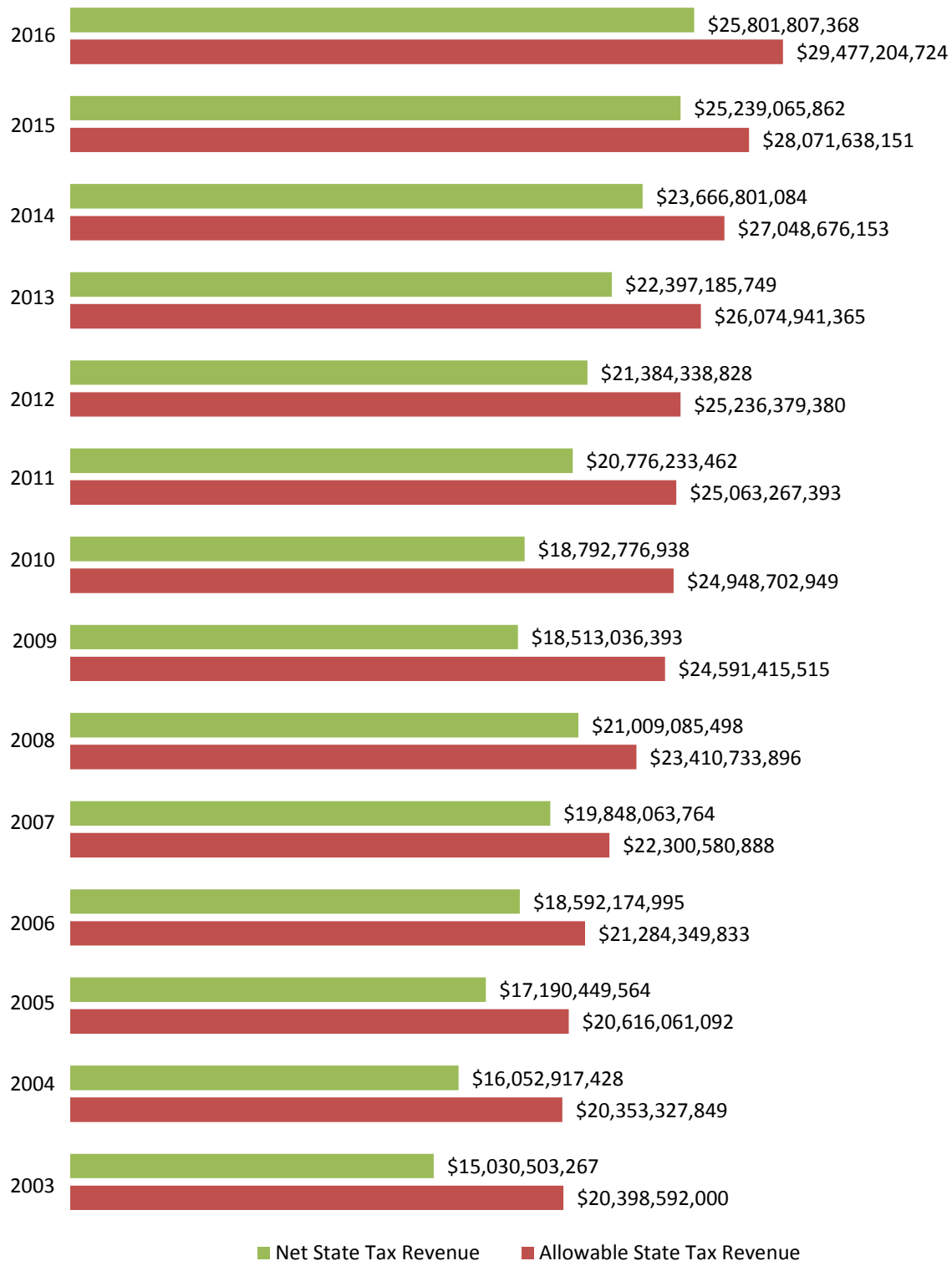
* Includes income tax penalties assessed under Chapter 111M, Section 2, of the Massachusetts General Laws and cigarette excise revenues credited to the Commonwealth Care Trust Fund in accordance with Chapter 302, Sections 12 and 70, of the Acts of 2008.

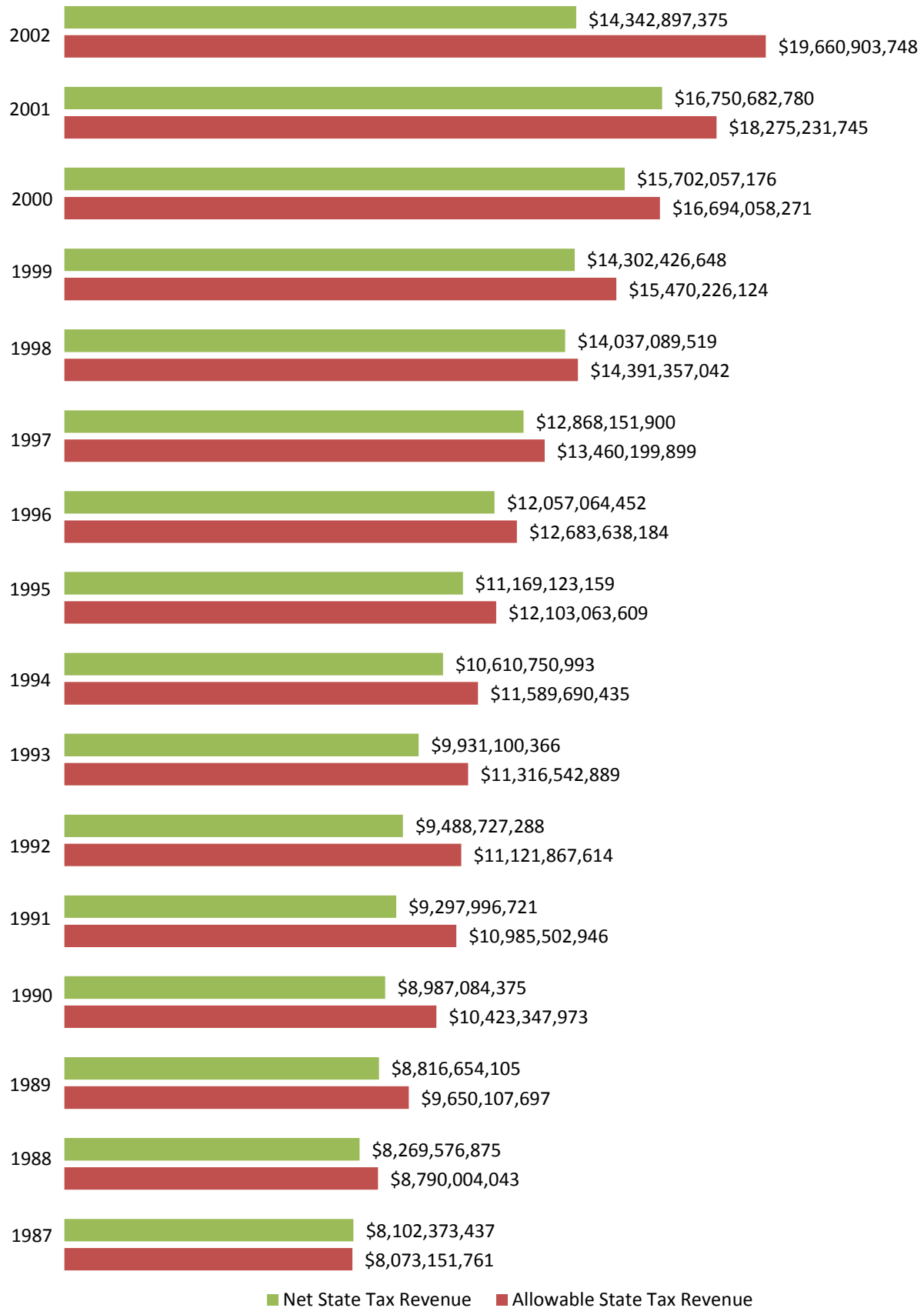
† International Fuel Tax Agreement.

‡ Includes sales, meals, and room occupancy excise taxes; and service fees for the City of Worcester DCU Capital Improvement Fund; and sales tax revenue collected from the sale of alcoholic beverages under Chapter 64H of the General Laws and credited to the Substance Abuse Prevention and Treatment Fund.

EXHIBIT VII

History of Net State Tax Versus Allowable State Tax Revenue





AUTHORITY BY TAX SOURCE

- Alcoholic Beverages, excise tax imposed by Chapter 138, Section 21, of the Massachusetts General Laws.
- Commercial Banks, excise tax and income taxes established by Chapter 63, Sections 1, 2, and 7, and Chapter 63B, of the General Laws.
- Savings Banks, excise and income taxes imposed by Chapter 63, Sections 1, 2, and 7, and Chapter 63B, of the General Laws.
- Cigarettes, excise tax established by Chapter 64C of the General Laws and amended by Chapter 302, Sections 12 and 70, of the Acts of 2008.
- Corporations, excise and income taxes imposed under Chapter 63, Sections 30 through 52 and 55 through 67, and Chapter 63B, of the General Laws and amended by Chapter 173 of the Acts of 2008.
- Deeds, excise tax established by Chapter 64D of the General Laws; amended by Chapter 61, Section 2, of the Acts of 2009; and further amended by Chapter 112, Section 20, of the Acts of 2010.
- Estate and Inheritance, legacies, successions, and transfer tax imposed by Chapters 65, 65A, 65B, and 65C of the General Laws.
- Income, income taxes on individuals, fiduciaries, and corporate trusts established under Chapters 62 and 62B of the General Laws.
- Insurance, excise tax established by Chapter 63, Sections 20 through 29E, and Chapter 15, Section 168, of the General Laws.
- Motor Fuels, excise tax established by Chapters 64A, 64E, and 64F of the General Laws.
- Public Utilities, corporate franchise tax imposed by Chapter 63, Section 52A, and Chapter 63B of the General Laws.
- Room Occupancy, excise tax established by Chapter 64G of the General Laws and amended by Chapter 27, Sections 51 and 52, of the Acts of 2009.
- Sales and Use, personal property, transfer, storage, and use tax imposed by Chapters 64H and 64I of the General Laws; amended by Chapter 27, Sections 53, 55 through 57, and 59 of the Acts of 2009; and further amended as a result of a referendum question on the November 2, 2010 ballot approved by Massachusetts voters.
- Club Alcoholic Beverages, excise tax established by Chapter 63A of the General Laws.
- Motor Vehicle, excise tax imposed by Chapter 60A of the General Laws.

-
- Controlled Substances, stamp tax on the possession of controlled substances imposed by Chapter 64K, Section 127, of the Acts of 1993.
 - Deeds Excise, a Barnstable County excise authorized by Chapter 163 of the Acts of 1988, not to exceed the excise imposed by the Commonwealth.
 - Racing, tax on gross receipts imposed by Chapter 128A, Section 5, of the General Laws. On November 17, 2001, Chapter 139, Section 9, of the Acts of 2001 (An Act for Improvements to the Horse and Greyhound Racing Industry in the Commonwealth and the Regulation Thereof) became effective, authorizing the transfer of all pari-mutuel taxes paid to the State Racing Commission to a separate account under the control and supervision of the commission, to be expended in order of priority for specified purposes. Pursuant to Chapter 194, Section 110, of the Acts of 2011 (the "Gaming Act"), effective May 20, 2012, the Massachusetts Gaming Commission assumed all the duties and responsibilities formerly carried out by the State Racing Commission.
 - Beano, tax on gross receipts established by Chapter 10, Section 39, of the General Laws.
 - Raffles and Bazaars, tax on gross receipts imposed by Chapter 271, Section 7A, of the General Laws.
 - Boxing, tax on gross receipts established by Chapter 147, Section 40, of the General Laws.
 - Convention Center Financing Surcharges established by Chapter 152, Sections 9 and 22, of the Acts of 1997; amended by Chapter 68, Section 13, of the Acts of 1999; codified in Chapter 62C, Section 86, of the General Laws; and amended by Chapter 45 of the Acts of 2001.
 - Unemployment Insurance Workforce Training Contribution imposed by Chapter 175 of the Acts of 1998. Proceeds are to be deposited in the Workforce Training Fund established by Chapter 29, Section 2RR, of the General Laws. Chapter 172 of the Acts of 1999 amended the repeal of Chapter 151A, Section 14L, to December 31, 2002. Chapter 184, Section 159, of the Acts of 2002 further amended Chapter 172 of the Acts of 1999 to December 31, 2005. Chapter 45, Section 8, of the Acts of 2005 further amended Chapter 172 of the Acts of 1999 to December 31, 2008. Chapter 123, Section 78, of the Acts of 2006 amended Chapter 45, Section 8, of the Acts of 2005 by striking out the figure "2008" and inserting in its place "2010." Chapter 112, Section 33, of the Acts of 2010 amended Chapter 123, Section 78, of the Acts of 2006 by inserting "2012" in place of "2010." Chapter 142, Section 5, of the Acts of 2011 amended Chapter 29, Section 2RR, by changing the designation of the Workforce Training Fund to the Workforce Training Trust Fund.
 - Excess and Surplus Lines Insurance Premium Tax established by Chapter 175, Section 168, of the General Laws.
 - Deeds Excise Stamps Tax, Secretary of the Commonwealth, established by Chapter 300 of the Acts of 1998; Chapter 48, Section 1, of the Acts of 1997; and Chapter 151, Section 567(a), of the Acts of 1996.

- Deeds surcharge on fees established by Chapter 267 of the Acts of 2000. Proceeds are to be deposited in the Massachusetts Community Preservation Trust Fund as established by Chapter 44B, Section 9, of the General Laws.
- DCU Center Financing Surcharges established by Chapter 422, Section 3, of the Acts of 2006.
- Commonwealth Care Trust Fund established by Chapter 29, Section 2000, of the General Laws; revenue deposited from penalties assessed and collected under Chapter 111M, Section 2, of the General Laws.
- Local Option Sales Tax on Meals established by Chapter 27, Section 60, of the Acts of 2009, which added Chapter 64L to the General Laws.
- Direct Broadcast Satellite Service excise: Chapter 27, Section 61, of the Acts of 2009 added Chapter 64M and imposed a 5% excise tax on gross revenues of providers of direct broadcast satellite service to a subscriber or customer in Massachusetts.
- Substance Abuse Prevention: Chapter 131, Section 16, of the Acts of 2010 established a separate fund to be known as the Commonwealth Substance Abuse Prevention and Treatment Fund, which would be credited with all sales tax revenues that are collected from the sale of alcoholic beverages under Chapter 64H of the General Laws and are not part of the dedicated sales tax revenue amount described in Section 35T or Section 35BB of Chapter 10 of the General Laws.
- Expanded Gaming daily taxes and assessment: Chapter 194 of the Acts of 2011 expanded gaming in the Commonwealth and added Chapter 23K to the General Laws, establishing the Massachusetts Gaming Commission as well as daily taxes and an assessment payable by Category 1 and Category 2 licensees.