



The Commonwealth of Massachusetts

IN THE YEAR TWO THOUSAND AND FIVE

AN ACT TO UPDATE AND IMPROVE CERTAIN TAX PROVISIONS OF THE COMMONWEALTH.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is forthwith to make certain changes in the tax laws and other laws relating to the department of revenue, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and the House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 3A of chapter 14, of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the second sentence, and inserting in place thereof the following sentence:- No such agreement shall be entered into unless proposals for the same have been invited in accordance with regulations governing the procurement by state agencies of contracts of similar value.

SECTION 2. Section 6 of chapter 14 of the General Laws, as so appearing, is hereby amended by adding after subsection 6. the following subsection:-

7. Shall establish written standards and procedures regarding the confidentiality and security of information disclosed by the commissioner to other agencies or entities, whether such disclosure is by means of an interdepartmental service agreement, contract or otherwise, and may suspend or decline to initiate the disclosure of such information if, in the commissioner's judgment, any such agency or entity has not fully complied with all such standards and procedures or is unable to so comply.

SECTION 3. Clause Sixteenth A of section 5 of chapter 59 of the General Laws, as appearing in the 2002 Official Edition, is hereby repealed.

SECTION 4. Section 5 of chapter 59 of the General Laws, as amended, is hereby further amended by striking out paragraph (2) of clause sixteenth and inserting in place thereof the following:-

(2) In the case of a business corporation subject to tax under section 39 of chapter 63 that is not a manufacturing corporation, all property owned by such corporation other than the following:-- real estate, poles, underground conduits, wires and pipes, and machinery used in the conduct of the business, which term, as used in this clause, shall not be deemed to include stock in trade or any personal property directly used in connection with dry cleaning or laundering processes or in the refrigeration of goods or in the air-conditioning of premises or in any purchasing, selling, accounting or administrative function.

SECTION 5. Paragraph (3) of clause sixteenth of section 5 of chapter 59 of the General Laws, as so appearing, is hereby amended by striking out in lines 247-249, the words "(3) In the case of (a) a domestic manufacturing corporation as defined in section 38C of chapter 63 or (b) a foreign manufacturing corporation as defined in section 42B of said chapter," and replacing them with the following:-

(3) In the case of a manufacturing corporation as defined in section 42 B of chapter 63,

SECTION 6. Section 5 of chapter 59 of the General Laws, as amended, is hereby further amended by striking out paragraph (5) of clause sixteenth and inserting in place thereof the following:-

(5) The classification by the commissioner, or the appellate tax board, as the case may be, of a corporation as a business corporation or a manufacturing corporation as respectively defined as aforesaid, shall be followed in the assessment under this chapter of machinery used in the conduct of the business.

SECTION 7. Section 18 of chapter 59 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the words "domestic business and foreign

corporations as defined in section thirty of chapter sixty-three" in lines 18-19 and inserting in place thereof the following:- business corporations subject to tax under section 39 of chapter 63.

SECTION 8. Section 18 of chapter 59 of the General Laws, as appearing in the 2002 Official Edition, is hereby further amended by striking out the words "domestic business or foreign corporation, as defined in section thirty of chapter sixty-three" in lines 38-39, and inserting in place thereof, the following:- business corporation subject to tax under section 39 of chapter 63.

SECTION 9. Section 33 of chapter 59 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the words "except domestic business corporations and foreign corporations as respectively defined in section thirty of chapter sixty-three, and domestic manufacturing corporations and foreign manufacturing corporations as respectively defined in sections thirty-eight C and forty-two B of said chapter;" in lines 6 - 10 and inserting in place thereof the following:- except business corporations subject to tax under section 39 of chapter 63;.

SECTION 10. Section 83 of chapter 59 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the phrase "domestic and foreign" in line 2.

SECTION 11. Section 1 of chapter 62 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding after the number "72," in line 13 of paragraph (c), the following:- 223,.

SECTION 12. Section 1 of chapter 62 of the General Laws, as so appearing, is hereby amended by striking out paragraph (c) and inserting in place thereof the following:-

(c) "Code", the Internal Revenue Code of the United States as amended and in effect for the taxable year, unless otherwise provided.

SECTION 13. Section 1 of chapter 62 of the General Laws, as so appearing, is hereby amended by inserting after paragraph (o) the following paragraphs:-

(p) "Partnership", an entity that is classified for the taxable year as a partnership for federal income tax purposes, except as otherwise provided in this chapter.

(q) "Disregarded entity", an entity that is disregarded as a separate entity from its owner for federal income tax purposes. Such an entity shall similarly be disregarded for purposes of this chapter, and without limitation, all income, assets, and activities of such entity shall be considered to be those of the owner.

(r) "Tax free earnings and profits", earnings and profits that were considered tax free earnings and profits under section 8 of this chapter as in effect on December 31, 2004 or under equivalent rules in the case of a corporate trust subject to excise under section 38U of chapter 63.

SECTION 14. Subsection (a)(1) of section 2 of chapter 62 of the General Laws, as so appearing, is hereby amended by striking out subparagraph (E) and inserting in place thereof the following:-

(E) Amounts excluded under subchapter S of the Code with respect to a federal S corporation which is subject to tax under section 38U of chapter 63 as a corporate trust or which has been subject to tax under this chapter as a corporate trust and amounts received by the taxpayer that are attributable to tax free earnings and profits of a corporate trust to the extent not already included in federal gross income.

SECTION 15. Subsection (a)(2) of section 2 of chapter 62 of the General Laws, as so appearing, is hereby amended by striking out in paragraph (B) the words "this chapter" and inserting in place thereof the following:- "section 38U of chapter 63".

SECTION 16. Subsection (a)(2) of section 2 of chapter 62 of the General Laws, as so appearing, is hereby amended by striking out paragraph (D) and inserting in place thereof the following:-

(D) Dividends received from a corporate trust subject to taxation under section 38U of chapter 63 or under section 8 of this chapter as in effect on December 31, 2004, to the extent that they are derived from earnings and profits previously taxed to such trust under such chapters but only to the extent such trust properly filed returns and paid all taxes due.

SECTION 17. Paragraph (1) of subsection (d) of section 2 of chapter 62 of the General Laws, as so appearing, is hereby amended by striking out in paragraph (J) the words, "this chapter" and inserting in place thereof the following:- section 38U of chapter 63.

SECTION 18. Subsection (B)(a)(11) of section 3 of chapter 62 of the General Laws, as so appearing, is hereby amended by adding at the end thereof the following:-

Provided however, that the deduction shall be limited in the manner provided in section 222(d)(3) of the Code as amended and in effect for the taxable year.

SECTION 19. Subsection 3(B)(a) of section 3 of chapter 62 of the General Laws, as so appearing, is hereby amended by adding a new subparagraph as follows:-

(14) Such amount as is described in section 1341(a)(2) of the Code, to the extent, if any, that such amount (i) was previously included in Massachusetts taxable income and (ii) is not otherwise deductible under section 2(d)(1) of this chapter.

SECTION 20. Section 4 of chapter 62 of the General Laws, as so appearing is hereby amended by striking out the language in lines 1 through 4, inclusive, and inserting in place thereof the following:-

Residents shall be taxed on their taxable income, and non-residents shall be taxed to the extent specified in section 5 A on their taxable income, as follows:

SECTION 21. Section 5A of chapter 62 of the General Laws is hereby amended by adding after subsection (c) the following subsection:-

(d) For purposes of this section, the ownership of an interest in real property located in the commonwealth shall include, without limitation, the ownership of an interest in a partnership, to the extent that the partnership holds an interest in real property located in the commonwealth. The commissioner may promulgate regulations determining when an interest in real property located in the commonwealth may be disregarded as de minimis and, in cases where the partnership is engaged in business or owns real estate both within and outside of the commonwealth, applying reasonable rules of allocation or apportionment.

SECTION 22. Subsection (a) of section 6 of chapter 62 is hereby amended by adding at the end thereof the following paragraph:-

In the case of dividends received out of tax-free earnings and profits of a corporate trust previously subject to tax under this chapter or subject to tax under section 38U of chapter 63, shareholders of such corporate trust shall be entitled to credit for income taxes paid to other jurisdictions on such earnings and profits, either by the corporate trust or by such shareholders, as otherwise calculated under this subsection.

SECTION 23. Section 8 of chapter 62 of the General Laws is hereby repealed.

SECTION 24. Section 17 of chapter 62 of the General Laws, as amended, is hereby further amended by striking out the first paragraph and inserting in place thereof the following:-

A partnership as such shall not be subject to the taxes imposed by this chapter. Individuals carrying on business as partners shall be liable for the taxes imposed by this chapter only in their separate or individual capacities.

SECTION 25. Section 17A of chapter 62 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out in paragraph (e) the words "this chapter" and by inserting in their place the following:- section 38U of chapter 63.

SECTION 26. Section 19 of chapter 62 of the General Laws, as appearing in the 2002 Official Edition, is hereby repealed.

SECTION 27. Section 5 of Chapter 62B of the General Laws, as appearing in the 2002 Official Edition, is hereby further amended by striking out the second paragraph and by inserting in place thereof the following paragraph:-

Every employer who fails to withhold or pay to the commissioner any sums required by this chapter to be withheld or paid shall be personally and individually liable therefore to the commonwealth. The term "employer", as used in this paragraph and in section eleven, includes an officer or employee of a corporation, or a member or employee of a partnership or limited liability company, who as such officer, employee or member is under a duty to withhold and pay over taxes in accordance with this section and section two. Any sum or sums withheld in

accordance with the provisions of section two shall be deemed to be held in trust for the commonwealth.

SECTION 28. Section 6 of chapter 62C of the General Laws, as so appearing, is hereby amended by striking out the word "domestic", in line 32, and inserting in place thereof the following:- business.

SECTION 29. Section 6 of chapter 62C of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out, in lines 8-10, the words "every corporate trust taxable under section eight of chapter sixty-two, and every other corporate trust doing business within the commonwealth."

SECTION 30. Section 7 of chapter 62C of the General Laws, as so appearing, is hereby amended by striking out, in lines 1-2, the words ", other than a corporate trust as defined in chapter sixty-two."

SECTION 31. Chapter 62C of the General Laws, as so appearing, is hereby amended by striking out section 11 and inserting in place thereof the following:-

Except as otherwise provided in this chapter, every business corporation, as defined in section 30 of chapter 63, shall, on or before the fifteenth day of the third month following the close of each taxable year, make a return giving such information as the commissioner may deem necessary for the determination of the taxes imposed upon it by chapter 63.

SECTION 32. Section 12 of chapter 62C of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out subsection (a) and inserting in place thereof the following:-

(a) Every financial institution, as defined in section 1 of chapter 63, shall, on or before the fifteenth day of the third month following the close of each taxable year, make a return to the commissioner giving such information as the commissioner may deem necessary for the determination of the tax imposed by section 2 of chapter 63.

If any financial institution shall have participated in filing a consolidated return of income to the federal government, it shall file with the commissioner a statement of net income showing

its gross income and deductions in accordance with the law and regulations governing the usual federal returns of corporations not so participating.

SECTION 33. Chapter 62C of the General Laws, as so appearing, is hereby amended by inserting after section 21 the following section:-

Section 21A. The unauthorized willful inspection of any information contained in or set forth in any return or document filed with the commissioner, or of any information which can identify a particular taxpayer that is received by the commissioner for the purposes of tax administration from the Internal Revenue Service or any other taxing authority or derived from any other source, by (1) any employee of the commonwealth or any city or town therein, including the commissioner or any deputy, assistant, clerk, or assessor; (2) any employee of another state; (3) any person under contract with the commonwealth or any officer, director, or employee thereof; or (4) any person obtaining unauthorized access to any return, document, or information while such return, document, or information, including any return, document, or information stored in computer systems or computer files, is in the custody of the commissioner or of any other person or entity described in clauses (1) through (3) above; is prohibited.

Any violation of this subsection shall be punished by a fine of not more than \$1,000 per return, document, or taxpayer, as the court determines, with respect to which information was inspected, or by imprisonment for not more than one year, or both, and by disqualification from holding office in the commonwealth for such period, not exceeding 3 years, as the court determines.

The determination by the commissioner that an employee of the department of revenue, or the determination by another agency head that an employee of such other agency has, in contravention of this subsection, willfully inspected information where such inspection was unauthorized and not protected by the good faith provision of this subsection, shall be grounds for dismissal of such employee.

A violation, as determined by the commissioner, of this subsection by any officer, director or employee of any person under contract with the commonwealth shall be grounds for

prohibiting such officer, director or employee from working on such contract. A violation, as determined by the commissioner, of this subsection by any person under contract with the commonwealth, or any officer, director, or employee thereof, shall also be cause for terminating any current contract between the commonwealth and for prohibiting such contractor from entering into any future contract with the commonwealth.

SECTION 34. Section 24 of chapter 62C of the General Laws, as so appearing, is hereby further amended by inserting at the end of the first paragraph the following sentence:-

The taxpayer shall provide to the commissioner all accounting records and information in electronic format, as requested by the commissioner, to the extent that the taxpayer maintains such records in electronic format.

SECTION 35. Section 24 of chapter 62C of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out, in line 3, the word "three" and inserting in place thereof the following:- six.

SECTION 36. Section 30 of chapter 62C of the General Laws is hereby further amended by striking out the last two sentences of the first paragraph and inserting in place thereof the following:-

If from such report or upon investigation it shall appear that any tax under chapter 62, chapter 63 or chapter 65C has not been fully assessed, the commissioner shall, notwithstanding the three-year limitation in section 26, assess an additional tax, if any, with respect thereto, with interest as provided in section 32. An assessment under this section shall be made in the manner provided in section 26 within one year of the receipt of such report or, where no report is filed with the commissioner, within two years of the receipt by the commissioner of information from the federal government that it has made a final determination of such person's federal taxable income or credits or of the federal taxable estate.

SECTION 37. Section 30 of chapter 62C of the General Laws, as so appearing, is hereby further amended by striking out the last sentence of the second paragraph.

SECTION 38. Section 30 of chapter 62C of the General Laws is hereby further amended by inserting after the second paragraph thereof the following:-

The commissioner shall make no assessment under the provisions of this section, nor allow any abatement, nor allow any offset to such assessment or abatement, unless the assessment, abatement, or offset is directly attributable to changes, adjustments, or corrections to the taxpayer's federal taxable income or credits or federal estate resulting in a final determination.

SECTION 39. Section 30 of chapter 62C of the General Laws, as amended by section 1 of chapter 143 of the Acts of 2003, is hereby further amended by striking out the first two sentences of the first paragraph and inserting in place thereof the following:-

If the federal government finally determines that there is a difference from the amount originally reported in (1) the taxable income of a person subject to taxation under chapter 62, or (2) a federal credit to which such person may be entitled, but only if the calculation of such credit has an effect on the computation of the tax imposed under chapter 62, such final determination shall be reported, accompanied by payment of any additional tax due with interest as provided in section 32, to the commissioner within one year of receipt of notice of such final determination. If the federal government finally determines that there is a difference from the amount originally reported in (1) the taxable income of a person subject to taxation under chapter 63, or (2) a federal credit to which such person may be entitled, but only if the calculation of such credit has an effect on the computation of the tax imposed under chapter 63, such final determination shall be reported, accompanied by payment of any additional tax due with interest as provided in section 32, to the commissioner within three months of receipt of notice of such final determination.

SECTION 40. Section 30 of chapter 62C of the General Laws, as so appearing, is hereby further amended by striking out the first sentence of the second paragraph and inserting in place thereof the following:-

If, as a result of the change by the federal government in a person's federal taxable income, federal credits or federal taxable estate, such person or estate believes that a lesser tax was due the

commonwealth than was assessed, such person or estate may apply in writing to the commissioner for an abatement thereof under section 37 within one year of the date of notice of such final determination by the federal government.

SECTION 41. Chapter 62C of the General Laws is hereby amended by inserting after section 35 thereof the following sections:-

Section 35A. (a) If this section applies to any portion of an underpayment of tax required to be shown on a return, there shall be added to the tax an amount equal to 20 percent of the portion of the underpayment to which this section applies. For purposes of this section, the term "underpayment" means the amount by which any tax exceeds the amount shown as the tax by the taxpayer on the return.

(b) This section shall apply to the portion of any underpayment which is attributable to one or more of the following: (1) negligence or disregard of the tax laws of the commonwealth or of public written statements issued by the commissioner; (2) any substantial understatement of liability for a tax referred to in section 2 of chapter 62C .

(c) For purposes of this section, the term "negligence" includes any failure to make a reasonable attempt to comply with the provisions of laws or public written statements, the term "disregard" includes any careless, reckless, or intentional disregard, and there is a substantial understatement of liability for a tax for any tax period if the amount of the understatement for such period exceeds the greater of 10 percent of the tax required to be shown on the return for the period or \$1,000.

(d) For purposes of paragraph (c), the term "understatement" means the excess of the amount of the tax required to be shown on the return for the period over the amount of the tax which is shown on the return. The amount of the understatement shall be reduced by that portion of the understatement which is attributable to (i) the tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment; or (ii) any item if the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or in a statement attached to the return, and there is a reasonable basis for the tax treatment of such item by the

taxpayer, provided, however, that this subparagraph (ii) shall not apply in the case of listed abusive transactions or strategies within the meaning of paragraph (b) of section 35B of this chapter.

(e) The penalty set forth in this section shall apply only in cases where a return of tax is filed.

Section 35B. (a) No penalty shall be imposed under section 35A of this chapter with respect to any portion of an underpayment if it is shown that there was reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion. With respect to listed abusive transactions or strategies within the meaning of paragraph (b) hereof, the commissioner may, by regulation, set forth circumstances under which such penalties otherwise may be waived in the interest of the efficient administration of the tax laws of the commonwealth.

(b) The commissioner may, from time to time, list by regulation items that he considers to be abusive transactions or tax strategies for purposes of section 35A of this chapter and of this section.

Section 35C. (a) If (i) any part of any understatement of liability with respect to any return or claim for abatement or refund is due to a position for which there was not a realistic possibility of being sustained on its merits; (ii) any person who is a return preparer with respect to such return or claim knew or reasonably should have known of such position; and (iii) such position was not disclosed as provided in paragraph (d) of section 35A of this chapter or was frivolous; such person shall pay a penalty of \$1,000 with respect to such return or claim unless it is shown that there is reasonable cause for the understatement and such person acted in good faith. The penalty imposed under this paragraph may be assessed within three years after the return or claim was filed. Any claim for abatement of the penalty shall be filed within three years from the time the penalty was paid. The commissioner may waive or abate the penalty imposed under this subsection if the taxpayer demonstrates that its failure to comply was due to reasonable cause and not willful neglect.

(b) If any part of any understatement of liability with respect to any return or claim for refund is due to (i) a willful attempt in any manner to understate the liability for tax by a person who is a return preparer with respect to such return or claim, or (ii) any careless, reckless or intentional disregard by any such person of the tax laws of the commonwealth or of public written statements issued by the commissioner; such person shall pay a penalty equal to the greater of \$1,000 or 10 percent of the tax attributable to such part of the understatement; provided, however, that if both the penalty imposed under paragraph (a) hereof and the penalty imposed under this paragraph are applicable to the same return or claim, the penalty imposed under this paragraph shall be reduced by the amount of the penalty imposed under paragraph (a). The penalty imposed under this paragraph may be assessed against the preparer at any time. Any claim for abatement of the penalty shall be filed within two years from the time the assessment was made.

(c) Except as otherwise provided in this section, the penalties imposed under this section shall be administered in accordance with the rules set forth in this chapter for the administration of taxes generally.

Section 35D. (a) Any taxpayer subject to the tax imposed under chapter 62 or an excise imposed under chapter 63 that takes an inconsistent position in reporting its income subject to tax under such chapters shall disclose the inconsistency when it files its return.

(b) For purposes of this section, a taxpayer is deemed to have taken an "inconsistent position" when (i) the governing law in another state in which the taxpayer files a return is the same in all material respects as the law in the commonwealth; and (ii) if the taxpayer had interpreted the law of the commonwealth as it interpreted the law of the other state in filing its return in such state, the taxable income attributed to the commonwealth would have been greater.

(c) Any taxpayer that fails to disclose an inconsistency as required under paragraph (a) shall pay a penalty equal to the amount of tax attributable to the inconsistency, which penalty shall be in addition to all other penalties that may apply. The commissioner may waive or abate

such penalty if the inconsistency or the failure to disclose was attributable to reasonable cause and not willful neglect.

SECTION 42. Chapter 62C of the General Laws is hereby further amended by inserting after section 35D thereof, as added by section 41 of this act, the following section:-

Section 35E. (a) If any person (i) organizes or assists in the organization of any plan or arrangement or the sale of any plan or arrangement, and (ii) makes or furnishes, or causes another person to make or furnish, a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit, including but not limited to the avoidance of a filing requirement with respect to a tax return that would otherwise be required to be filed under this chapter, which the person knows or has reason to know is false, fraudulent or deliberately misleading as to any material matter, such person shall pay, with respect to each taxpayer to whom such statement is made, a penalty equal to \$5000, or, if the person establishes that it is lesser, 100 percent of the gross income derived or to be derived from the activity described in this paragraph. The penalty imposed under this paragraph may be assessed against such person within six years after the statement was made. Any claim for abatement of the penalty shall be filed within two years from the time the assessment was made.

(b) Except as otherwise provided in this section, the penalties imposed under this section shall be administered in accordance with the rules set forth in this chapter for the administration of taxes generally.

SECTION 43. Chapter 62C of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting at the end of section 36A the following paragraph:-

If the commissioner determines that he has made any payment in error, he shall notify the person to whom payment was made, in writing, making demand for repayment. If within 30 days thereafter the amount demanded is repaid in full, no interest shall be due. If repayment of the full amount demanded is not made within 30 days, the outstanding sum shall, without further action by the commissioner, be deemed to be a tax assessed under this chapter as of the date of the demand, and subject to all the provisions thereof.

SECTION 44. Section 37 of Chapter 62C of the General Laws, as so appearing, is hereby amended by inserting at the end of the first paragraph the following:-

An abatement of taxes assessed by the commissioner under section 30 of this chapter as a result of a federal change or an abatement of taxes as a result of a federal change causing a reduction in taxes previously assessed shall be limited to the tax related to the items changed in the federal determination.

SECTION 45. Section 49A of Chapter 62C of the General Laws, as so appearing, is hereby amended by striking out subsections (a) and (b) and inserting in place thereof the following:-

(a) Any person applying to any department, board, commission, division, authority, district or other agency of the commonwealth or any subdivision of the commonwealth, including a city, town or district, for a right or license to conduct a profession, trade or business or for the renewal of such right or license, shall certify upon application, under penalties of perjury, that he has complied with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support. Such person shall also obtain a certificate from the commissioner evidencing that the person is in good standing with respect to any and all returns due and taxes payable to the commissioner as of the date of issuance of said certificate. Such right or license shall not be issued or renewed unless such certification is received from the commissioner.

(b) No contract or other agreement for the purposes of providing goods, services or real estate space to any of the foregoing agencies shall be entered into, renewed or extended with any person unless such person certifies in writing, under penalties of perjury, that he has complied with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support, and such person obtains a certificate from the commissioner evidencing that the person is in good standing with respect to any and all returns due and taxes payable to the commissioner as of the date of issuance of said certificate.

SECTION 46. Subsection (a) of section 50 of chapter 62C, as so appearing, is hereby amended by adding after the first sentence thereof, the following:-

Such lien shall also extend to property or rights to property of a trust with respect to tax amounts due from a grantor or other person treated as the owner of any portion of such trust by reason of sections 671-678 of the Code, and to property or rights to property of a disregarded entity as defined in section 1 of chapter 62 with regard to tax amounts due from the owner of such entity.

SECTION 47. Section 51 of chapter 62C of the General Laws, as so appearing, is hereby amended by striking out, in lines 3 and 4, the phrase "domestic or foreign business corporation" and by inserting in place thereof, the following:- business corporation as defined in section 30 of chapter 63.

SECTION 48. Section 4 of chapter 62E of the General Laws, is hereby amended by striking out subsection (a), and inserting in place thereof, the following:-

(a). An institution, as defined in subsection (b) of this section, must, within 30 days of the end of the first quarter of every calendar year, submit to the commissioner a report of the name, record address, social security number and other identifying data, as the commissioner may require, of each person maintaining an account at such institution. Within thirty days of the end of each subsequent quarter of every calendar year, every institution shall submit to the commissioner a supplemental report regarding each new account opened by a person during such quarter and each account reported in a prior quarter that has been closed during the most recent quarter. All information shall be in a form satisfactory to the commissioner.

SECTION 49. Section 4 of said chapter 62E is hereby amended by striking out subsections (b) through (d), inclusive.

SECTION 50. Section 4 of chapter 62E, as most recently amended by sections 32 and 33 of chapter 262 of the Acts of 2004 is hereby further amended by re-designating subsections (e) and (f) as subsections (b) and (c) respectively.

SECTION 51. Section 1 of chapter 63 of the General Laws, as amended by section 3 of chapter 143 of the Acts of 2003, is hereby further amended by adding after the last sentence in the definition of "Financial institution" the following:-

The term "corporation" as used in this definition shall mean any corporation, or any "other entity" as defined in section 1.40 of chapter 156D, whether such corporation or other entity may be formed, organized, or operated in or under the laws of Massachusetts or any other jurisdiction, that is classified for the taxable year as a corporation for federal income tax purposes.

SECTION 52. Section 2 of chapter 63 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the words "subsection (b)" in line 1, and inserting in place thereof, the following:- subsections (b) and (d).

SECTION 53. Section 2 of chapter 63 of the General laws, as so appearing, is hereby further amended by adding after subsection (c) the following subsections:-

(d) Any financial institution that is an S corporation, as defined in section 1361 of the Code, as amended and in effect for the taxable year, shall not be subject to the tax provided in subsections (a) and (b), and shall instead be subject to the excise set forth in section 2B.

SECTION 54. Chapter 63 of the General Laws, as so appearing, is hereby amended by inserting after section 2A, the following section:-

Section 2B. (a) Any financial institution which is an S corporation, as defined under section 1361 of the Code, shall pay, on account of each taxable year, an excise measured by its net income determined to be taxable under section 2A as follows:

(i) The net income shall be determined by taking into account subchapter S of the Code. Income or loss shall be determined as if it were realized or incurred directly by an owner subject to taxation under chapter 62 or 63, as applicable. In the case of an S corporation, income shall be included in the net income measure under this subsection and subject to tax at a rate of 10.5 percent to the extent that such income is taxed to the S corporation for federal income tax purposes; and

(ii) Any such financial institution which is an S corporation and has total receipts for the taxable year of \$6,000,000 or more shall also include in its excise an amount determined by multiplying its net income determined to be taxable in accordance with this chapter by one of the following rates:

(1) if total receipts for the taxable year are at least \$6,000,000 but less than \$9,000,000, 3.31 percent; and

(2) if total receipts for the taxable year are \$9,000,000 or more, 4.97 percent.

For purposes of this subsection (a)(ii), net income determined to be taxable in accordance with this chapter shall be determined without taking into account subchapter S of said Code, and shall not include income that is taxed to the S corporation at the entity level under paragraph (i) of subsection (a). The term "total receipts" shall mean gross receipts or sales, less returns and allowances, and shall include dividends, interest, royalties, capital gain net income, rental income and all other income. The cost of goods sold or the cost of operations shall not be deductible in determining such total receipts. The commissioner shall, by regulation, apply such limits on an aggregate basis to S corporations engaged in a unitary business with majority direct or indirect ownership by common stockholders. Such aggregating shall also include any other type of entity so engaged and so owned which the commissioner finds was established for the purpose of avoiding the foregoing limit.

(iii) Qualified subchapter S subsidiaries shall not be subject to separate entity level taxation under this section. Rather, the parent S corporation shall be subject to tax under this section, and shall include the income and take into account the activities of all qualified subchapter S subsidiaries for purposes of calculating the excise due under subsections (a)(i) and (ii) of this section. The parent S corporation and its qualified subchapter S subsidiaries shall be jointly and severally liable for the tax due under this chapter.

(b) The excise imposed under this section for each taxable year shall be no less than \$456.

SECTION 55. Section 30 of Chapter 63 of the General Laws is hereby amended by striking out the preamble together with paragraphs 1. and 2. and inserting in place thereof, the following:-

Section 30. When used in this section and sections 31 to 52, inclusive, the following terms shall have the following meanings, provided that the terms "business corporation," "disregarded entity," and "partnership" in paragraphs 1, 2, and 16 of this section shall, unless otherwise provided, also have the following meanings and effect for purposes of this chapter in its entirety:

1. "Business corporation", any corporation, or any "other entity" as defined in section 1.40 of chapter 156D, whether such corporation or other entity may be formed, organized, or operated in or under the laws of Massachusetts or any other jurisdiction, and whether organized for business or for non-profit purposes, that is classified for the taxable year as a corporation for federal income tax purposes.

2. "Disregarded entity", an entity that is disregarded as a separate entity from its owner for federal income tax purposes. Such an entity shall similarly be disregarded for purposes of this chapter, and without limitation, all income, assets, and activities of such entity shall be considered to be those of the owner.

SECTION 56. Section 30 of chapter 63 of the General Laws, as amended, is hereby further amended by striking paragraph 16. and inserting in place thereof, the following paragraphs:-

16. "Partnership", any entity that is classified as a partnership for federal income tax purposes for the taxable year.

17. Except as otherwise provided in this chapter, the term "Code" shall mean the Internal Revenue Code of the United States, as amended and in effect for the taxable year.

SECTION 57. Subsection 4 of Section 30 of Chapter 63 of the General Laws, as appearing in the 2002 Official Edition, is further amended by inserting, in line 72, immediately after the phrase "not be allowed.", the following sentence:- In the case of a corporation exempt

from taxation under the provisions of section 501 of the Code, "net income" means unrelated business taxable income, as defined in section 512 of the Code.

SECTION 58. Section 30 of chapter 63 of the General Laws, as amended, is hereby further amended by striking out, in paragraph 5 (c)(iii) the word "foreign" and inserting in place thereof the following:- business.

SECTION 59. Section 30 of chapter 63 of the General Laws, as amended, is hereby further amended by striking out in the first sentence of subsection 7 the words "section thirty-two or".

SECTION 60. Subsection 7 of section 30 of chapter 63 of the General Laws, as amended, is hereby further amended by striking out in the third sentence the words "section thirty-two or".

SECTION 61. Section 30 of chapter 63 of the General Laws, as amended, is hereby further amended by striking out in the first sentence of paragraph 8 the words, "The net worth of a domestic business corporation taxable under clause (1) of subsection (a) of section 32 or of a foreign corporation taxable under clause (1) of subsection (a) of section 39 shall be such portion of the book value of its total assets on the last day of the taxable year," and inserting in place thereof, the following:- The net worth of a business corporation taxable under section 39 shall be such portion of the book value of its total assets on the last day of the taxable year,.

SECTION 62. Subsection (a) of section 31A of chapter 63 of the General Laws, as so appearing is hereby amended by striking out, in line 17, the parenthetical "(1)" and is further amended, by striking out in lines 18-20 inclusive, the words ", or (2) is considered recovery property under section one hundred and sixty-eight of said Code".

SECTION 63. Subsection (i) of section 31A of chapter 63 of the General laws, as so appearing, is hereby amended, in line 155, the parenthetical "(1)" and is further amended by striking out, in lines 156-158 inclusive, the words ", or (2) is considered recovery property under section one hundred and sixty-eight of said Code".

SECTION 64. Section 31E of chapter 63 of the General Laws, as so appearing, is hereby amended by striking out, in line 1, the phrase "domestic or foreign" and inserting in place thereof, the following:- business.

SECTION 65. Chapter 63 of the General Laws, as amended, is hereby further amended by adding after section 3IK the following section:-

Section 31L. In determining gross income under this chapter, if the federal gross income includes any item of gain or has been reduced by any item of loss, with respect to property, then the federal gross income shall be increased by the excess of the federal adjusted basis of such property over the Massachusetts adjusted basis thereof, and shall be decreased by the excess of the Massachusetts adjusted basis of such property over the federal adjusted basis thereof, so that the gain or loss realized for Massachusetts purposes takes into account all applicable differences in the Massachusetts and federal tax rules over the life of an asset that should, in principle, give rise to differences in basis. The Massachusetts adjusted basis of property shall be the federal adjusted basis, except that (i) any federal adjustment resulting from provisions of the Code that were not applicable in determining Massachusetts gross income at the time such federal adjustments were made shall be disregarded; and (ii) adjustments shall be made for any item that was applicable in determining Massachusetts gross income but that was not so applicable in determining federal gross income and for which a federal adjustment would be allowed under the provisions of the Code if the item had been applicable in determining federal gross income. Without limitation of the foregoing, the federal basis of shares in a business corporation that was formerly treated as a corporate trust or of shares in a successor of such entity shall be reduced in computing Massachusetts adjusted basis to take into account any tax-free earnings and profits accumulated by the former corporate trust.

SECTION 66. Section 32 of chapter 63 of the General Laws, as appearing in the 2002 Official Edition, is hereby repealed.

SECTION 67. Section 32B of chapter 63 of the General Laws, as amended, is hereby further amended by striking out in the first sentence of the second paragraph the words "thirty-two or".

SECTION 68. Section 32B of chapter 63 of the General Laws, as amended, is hereby further amended by striking the first paragraph and inserting in place thereof, the following:-

If two or more business corporations subject to the excise under section 39 participated in the filing of a consolidated return of income to the federal government, the net income measure of their excises imposed under section 39 may, at their option, be assessed upon their combined net income, in which case the entire excise under this chapter shall be assessed to all said corporations and collected from any one or more of them. The commissioner may require corporations that have made such election to report the income measure and the non-income measure of the excise, and the minimum excise if applicable, all as set forth in section 39, on a single form; provided, however, that nothing in this section shall be construed to eliminate the requirement that each corporation participating in a combined return compute its non-income measure and the minimum excise if applicable in accordance with said section 39.

SECTION 69. Section 32D of chapter 63 of the General Laws, as amended, is hereby further amended by striking in the second full paragraph of subsection (a)(ii) the words "or qualified subchapter S subsidiary".

SECTION 70. Section 32D of chapter 63 of the General Laws, as amended, is hereby further amended by striking out the introductory paragraph of subsection (a)(ii) and inserting in place thereof, the following:-

(ii) Any such business corporation which is an S corporation and has total receipts for the taxable year of \$6,000,000 or more shall also include in the net income measure of the excise imposed under section 39 an amount determined by multiplying its net income determined to be taxable in accordance with this chapter by one of the following rates, in lieu of the rate provided in said section 39:.

SECTION 71. Section 32D of chapter 63 of the General Laws, as amended, is hereby further amended by striking out the fourth sentence of subsection (a)(i).

SECTION 72. Section 32D of chapter 63 of the General Laws, as amended, is hereby further amended by striking out the first paragraph of subsection (a) and inserting in place thereof, the following:-

(a) Any business corporation subject to an excise under section 39 which is an S corporation, as defined under section 1361 of the Code, as amended and in effect for the taxable year, shall determine the net income measure of the excise as follows:.

SECTION 73. Section 32D of chapter 63 of the General Laws, as amended, is hereby further amended by striking out subsection (b).

SECTION 74. Section 32D of chapter 63 of the General Laws, as amended, is hereby further amended by inserting after subsection (a) the following subsection:-

(b) Qualified subchapter S subsidiaries shall not be subject to separate entity level taxation under this section or section 39. Rather, the parent S corporation shall be subject to tax under this section and section 39, and shall include the income and take into account the activities of all qualified subchapter S subsidiaries for purposes of determining the excise due under subsections (a)(i) and (ii) of this section, and shall include the value of the property or the net worth of all qualified subchapter S subsidiaries for purposes of determining the non-income measure of the excise under subsection (a)(1) of chapter 39. The parent S corporation and its qualified subchapter S subsidiaries shall be jointly and severally liable for the tax due under this chapter.

SECTION 75. Chapter 63 of the General Laws is hereby amended by striking out section 33.

SECTION 76. Section 38 of chapter 63 of the General Laws, as amended, is hereby further amended by striking out the introductory sentence and inserting in place thereof, the following:- The commissioner shall determine the part of the net income of a business corporation derived from business carried on within the commonwealth as follows:

SECTION 77. Section 38 of chapter 63 of the General Laws, as amended, is hereby further amended by striking out subsection (a)(1)(i) and inserting in place thereof the following:-

(i) shares in a corporate trust, as defined in section one of chapter sixty-two, to the extent such dividends represent tax free earnings and profits, as defined in section 8 of chapter 62 in effect on December 31, 2004, or shares of a corporate trust subject to section 38U.

SECTION 78. Section 38 of chapter 63 of the General Laws, as amended, is hereby further amended by striking out in the second paragraph of subsection (e) the following:- section thirty-eight C or.

SECTION 79. Section 38 of chapter 63 of the General Laws, as amended, is hereby further amended by striking out subparagraph (f) and inserting in place thereof, the following:-

(f) The sales factor is a fraction, the numerator of which is the total sales of the corporation in this commonwealth during the taxable year, and the denominator of which is the total sales of the corporation everywhere during the taxable year. As used in this subsection, unless specifically stated otherwise, "sales" means all gross receipts of the corporation (including deemed receipts from transactions treated as sales or exchanges under the Code) except interest, dividends, and gross receipts from the maturity, redemption, sale, exchange or other disposition of securities, provided, however, that "sales" shall not include gross receipts from transactions or activities to the extent that a non-domiciliary state would be prohibited from taxing the income from such transactions or activities under the Constitution of the United States. Sales of tangible personal property are in this commonwealth if:

1. the property is delivered or shipped to a purchaser within this commonwealth regardless of the f. o. b. point or other conditions of the sale; or

2. the corporation is not taxable in the state of the purchaser and the property was not sold by an agent or agencies chiefly situated at, connected with or sent out from premises for the transaction of business owned or rented by the corporation outside this commonwealth.

"Purchaser", as used in clauses 1 and 2 of this paragraph, shall include the United States government.

Sales, other than sales of tangible personal property, are in this commonwealth if:

1. the income-producing activity is performed in this commonwealth; or
2. the income-producing activity is performed both in and outside this commonwealth and a greater proportion of this income-producing activity is performed in this commonwealth than in any other state, based on costs of performance.

For the purposes of this subsection: (1) in the case of the licensing of intangible property, the income-producing activity will be deemed to be performed in the commonwealth to the extent that the intangible property is used in the commonwealth; (2) the corporation will be deemed to be taxable in the state of the purchaser if the tangible personal property is delivered or shipped to a purchaser in a foreign country; (3) sales of tangible personal property to the United States government or any agency or instrumentality thereof for purposes of resale to a foreign government or any agency or instrumentality thereof are not sales made in the commonwealth; (4) in the case of the sale, exchange or other disposition of a capital asset, as defined in section 1(m) of chapter 62, used in a taxpayer's trade or business, including a deemed sale or exchange of such asset, "sales" are measured by the gain from such transaction; and (5) "security" means any interest or instrument commonly treated as a security as well as other instruments which are customarily sold in the open market or on a recognized exchange, including, but not limited to, transferable shares of a beneficial interest in any corporation or other entity, bonds, debentures, notes, and other evidences of indebtedness, accounts receivable and notes receivable, cash and cash equivalents including foreign currencies, and repurchase and futures contracts.

SECTION 80. Section 38 of chapter 63 of the General Laws, as amended, is hereby further amended by striking out in the definition of "Defense corporation" in subsection (k)(1) the words "domestic or foreign" and inserting in place thereof, the following:- business.

SECTION 81. Section 38 of chapter 63 of the General Laws, as amended, is hereby further amended by striking the words "domestic or foreign" from the first sentence in subsection (k)(2).

SECTION 82. Subsection (1)(1) of Section 38 of chapter 63 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out, in line 296, the words "domestic or foreign".

SECTION 83. Subsection (I)(1) of section 38 of chapter 63 of the General Laws, as so appearing, is hereby amended by striking out, in line 302, the words "domestic or foreign".

SECTION 84. Section 38A of chapter 63 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out in line 1 thereof, the word "domestic".

SECTION 85. Section 38B of chapter 63 of the General Laws, as amended, is hereby further amended by striking out in subsection (a) the phrase ", domestic business corporation or foreign corporation" and inserting in place thereof the following:- or business corporation.

SECTION 86. Section 38B of chapter 63 of the General Laws, as amended, is hereby further amended by striking out in subsection (b) the phrase ", domestic business corporation or foreign corporation" and inserting in place thereof the following:- or business corporation.

SECTION 87. Section 38B of chapter 63 of the General Laws, as amended, is hereby further amended by striking out subsection (c) and inserting in place thereof the following:-

(c) Any corporation taxable under this section shall not be subject to the excise imposed by section 2, 2B, 32D, or 39.

SECTION 88. Section 38C of chapter 63 of the General Laws is hereby repealed.

SECTION 89. Section 38D of chapter 63 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out, in line 2, the phrase "domestic or foreign".

SECTION 90. Section 38D of chapter 63 of the General Laws, as so appearing, is hereby amended by striking out, in lines 86 and 87, the phrase "(1)(i) of subsection (a) of section thirty-two or clause".

SECTION 91. Section 38E of chapter 63 of the General Laws, as so appearing, is hereby amended by striking out, in line 1, the phrase "domestic or foreign".

SECTION 92. Section 38F of chapter 63 of the General Laws, as so appearing, is hereby amended by striking out, in line 2, the phrase "domestic or foreign" and inserting in place thereof, the following:- business.

SECTION 93. Section 38H of chapter 63 of the General Laws, as so appearing, is hereby amended by striking out, in line 2, the phrase "domestic or foreign".

SECTION 94. Section 38H of chapter 63 of the General Laws, as so appearing, is hereby amended by striking out, in lines 55 and 56, the phrase "(1)(i) of subsection (a) of section thirty-two or clause".

SECTION 95. Section 38I of chapter 63 of the General Laws, as so appearing, is hereby amended by striking out, in line 2, the phrase "domestic or foreign" and inserting in place thereof, the following:- business.

SECTION 96. Section 38J of chapter 63 of the General Laws, as so appearing, is hereby amended by striking out, in line 2, the phrase "domestic or foreign".

SECTION 97. Section 38M of chapter 63 of the General Laws, as so appearing, is hereby amended by striking out, in line 1, the phrase "domestic or foreign" and inserting in place thereof, the following:- business.

SECTION 98. Section 38M of chapter 63 of the General Laws, as so appearing, is hereby amended by striking out, in lines 28 and 29, the phrase "subsection (b) of section 32," and further by striking out in line 29, the comma after the word "thirty-nine".

SECTION 99. Section 38M of chapter 63 of the General laws, as so appearing, is hereby amended by striking out, in lines 44 and 45, the words "thirty-two or".

SECTION 100. Section 38M of Chapter 63 of the General Laws, as so appearing, is hereby amended by striking out the second sentence of subsection (a), and inserting in place thereof, the following:-

The terms, "qualified research expenses", "base amount", "qualified organization base period amount", "basic research", and any other terms affecting the calculation of said credit shall, unless the context otherwise requires, have the same meanings as under said section 41 of

said Code as amended and in effect on August 12, 1991 but shall only apply to expenditures for research conducted in the commonwealth; provided, however, that with respect to the term "base amount", the term "fixed-base percentage" shall mean a fraction, the numerator of which is the aggregate qualified research expenses of the corporation for the three taxable years preceding the taxable year for which the credit is being determined, and the denominator of which is the aggregate gross receipts of the corporation for the three taxable years preceding the taxable year for which the credit is being determined.

SECTION 101. Section 38Q of chapter 63 of the General Laws, as amended by section 28 of chapter 141 of the Acts of 2003, is hereby further amended by striking out the first paragraph of subsection (a) and inserting in place thereof, the following:-

(a) A business corporation which commences and diligently pursues an environmental response action on or before August 5, 2005 and which achieves and maintains a permanent solution or remedy operation status in compliance with chapter 21E and the regulations promulgated thereunder which includes an activity and use limitation shall, at the time such permanent solution or remedy operation status is achieved, be allowed a base credit of 25 per cent of the net response and removal costs incurred between August 1, 1998 and January 1, 2007 for any property it owns or leases for business purposes and which is located within an economically distressed area as defined in section 2 of chapter 21E; provided, however that these costs shall be no less than 15 per cent of the assessed value of the property prior to remediation provided further that the site was reported to the department of environmental protection; and provided further, that a credit of 50 per cent of such costs shall be allowed for any such corporation which achieves and maintains a permanent solution or remedy operation status in compliance with chapter 21E and the Massachusetts Contingency Plan provided in 310 CMR 40.00, as amended, which does not include an activity and use limitation. Only a business corporation that is an eligible person as defined by section 2 of chapter 21E, and not subject to any enforcement action brought pursuant to chapter 21E shall be allowed a credit.

SECTION 102. Section 38Q of chapter 63 of the General Laws, as amended, is hereby further amended by striking out, in subsection (e), the words "subsection (b) of section 32 or".

SECTION 103. Section 38S of chapter 63 of the General Laws, as added by section 4 of chapter 304 of the Acts of 2004, is hereby amended by striking out, in the first sentence, the phrase "domestic or foreign".

SECTION 104. Chapter 63 of the General Laws is hereby amended by inserting after section 38S, the following sections:-

Section 38T. Every business corporation which is exempt from taxation under section five hundred and one of the Code shall be subject to tax under section 39 on its unrelated business taxable income, as defined in section five hundred and twelve of the Code. The property or net worth of such a corporation shall not be subject to tax under this chapter and the minimum excise under section 39 shall not apply. If a corporation has unrelated business taxable income that is taxable both within and without the commonwealth, it may apportion its net income to the commonwealth pursuant to section 38, provided that its apportionment factors shall be determined by reference only to the unrelated business activity of the corporation. The credits allowed under this chapter shall be determined only with respect to the unrelated business activity of the corporation.

An entity that is exempt from taxation under section five hundred and one of the Code shall not be considered to be a business corporation for purposes of chapter 59.

Section 38U. (a) Notwithstanding any other provision of this chapter, the excise under this chapter of a business corporation that is a corporate trust shall be determined under this section.

(b) For purposes of this chapter, a corporate trust is a business corporation as defined in section 30 that is organized, for its full taxable year, as a partnership, association, or trust with transferable shares. However, the term "corporate trust" shall not include any incorporated entity, any limited liability company, any insurance company, any business corporation within the definition of a utility corporation under section 52A, any regulated investment company as defined under section 851 of the Code, any business corporation that would have been subject to

an excise under this chapter if it had been organized in its current form and doing business in the commonwealth on January 1, 2004 (whether or not it was actually so organized or doing business on such date), or any entity expressly exempted by the General Laws from the excise under this chapter. The definition of a partnership in section 30 shall not apply for purposes of this subsection.

(c) A corporate trust that does business in the commonwealth within the meaning of section 1 or 39, as applicable, shall be subject to an excise with respect to each taxable year of the greater of: (1) 5.3 percent of its taxable net income determined under section 2A or 38A, and as further modified by this section; or (2) a minimum excise of four hundred and fifty-six dollars. Notwithstanding other provisions of law, the excise determined under this subsection shall not be subject to surtaxes imposed by existing law. A corporate trust shall not be entitled to any credits under this chapter except to the extent that equivalent credits are also available to individuals under chapter 62.

(d) In determining taxable net income of a corporate trust, there shall be excluded interest received on obligations of the United States exempt from state income taxation to the extent included in federal gross income. There shall be no deduction for dividends received. There shall be no deduction for losses incurred in other taxable years, provided that capital losses may be carried forward and, as reduced from year to year, may offset capital gains.

(e) A corporate trust shall not be treated as a business corporation for purposes of chapter 59.

(f) A corporate trust shall not be treated as a subsidiary corporation for purposes of determining the net worth of a business corporation under section 30.

(g) A corporate trust that is an S corporation as defined under section 1361 of the Code shall, in addition to the excise due under subsection (c), pay an excise with respect to each taxable year under sections 2B or 32D of this chapter, at the rates applicable thereunder (including surtax applicable with respect to section 32D), if at any time during the taxable year (i) such corporate trust owns directly or by attribution, under such rules as the commissioner may determine by

regulation or otherwise, fifty percent or more (by vote or value) of the shares or other beneficial interest of a qualified subchapter S subsidiary, a limited liability company, a limited partnership, a limited liability partnership, or any similar entity providing limited liability for its holders of shares or other beneficial interest, or (ii) shares or other beneficial interest of such corporate trust are owned by a limited liability company or other entity that provides limited liability, not available at common law, for its holders of shares or other beneficial interest.

SECTION 105. Chapter 63 of the General Laws is hereby amended by striking out section 39 and inserting in place thereof, the following section:

Section 39. Except as otherwise provided herein, every business corporation, organized under the laws of the commonwealth, or exercising its charter or other means of legal authority, or qualified to do business or actually doing business in the commonwealth, or owning or using any part or all of its capital, plant or any other property in the commonwealth, shall pay, on account of each taxable year, the excise provided in subsection (a) or (b) of this section, whichever is greater, except that an insurance mutual holding company established pursuant to chapter 175 or pursuant to the equivalent law of another state shall pay, on account of each taxable year, only the excise provided in clause (2) of subsection (a) or subsection (b), whichever is greater.

Without limitation, the excise levied herein is due and payable on any one or all of the following alternative incidents:

(1) The authority or qualification to carry on or do business in this state or the actual doing of business within the commonwealth. The term "doing business" as used herein shall mean and include each and every act, power, right, privilege, or immunity exercised or enjoyed in the commonwealth, as an incident to or by virtue of the powers and privileges acquired by the nature of such organizations, as well as, the buying, selling or procuring of services or property.

(2) The exercising or continuance of a business corporation's charter or other means of legal authority within the commonwealth.

(3) The owning or using any part or all of its capital, plant or other property in the commonwealth.

It is the purpose of this section to require the payment of this excise to the commonwealth by a business corporation for the enjoyment under the protection of the laws of the commonwealth, of the powers, rights, privileges and immunities derived by reason of its existence and operation.

In the case of a business corporation whose taxable year is a period of less than twelve calendar months, the portion of the amount determined under clause (1) of subsection (a) shall be multiplied by a fraction whose numerator is the number of months included in the taxable year and whose denominator is 12.

(a) An amount equal to the sum of:--

(1) Seven dollars per thousand upon the value of--

(i) its tangible property as determined to be taxable under paragraph 7 of section 30 if a tangible property corporation, or

(ii) its net worth as determined to be taxable under paragraph 9 of section 30 if an intangible property corporation; and

(2) Eight and thirty-three one hundredths per cent of its net income determined to be taxable in accordance with the provisions of this chapter.

(b) Four hundred dollars.

A business corporation shall not be subject to the income measure of tax under subsection (a)(2) if it is engaged in the business of selling tangible personal property and taxation of that business corporation under this chapter is precluded by the Constitution or laws of the United States, or would be so precluded except for the fact that the business corporation stored tangible personal property in a licensed public storage warehouse, provided, that no portion of any warehouse which is owned or leased by a consignor or consignee of the tangible personal property shall be deemed a licensed public warehouse. A business corporation exempt from the

income measure of the excise under this paragraph pursuant to federal Public Law 86-272 shall nevertheless be subject to the excise under subsection (a)(1) or (b), whichever is greater.

SECTION 106. Chapter 63 of the General Laws is hereby amended by striking out section 39A and inserting in place thereof the following section:-

Section 39A. 1. In any case in which a taxpayer subject to this chapter participates in one or more arrangements or transactions with a related person whereby the taxable net income or property of the taxpayer reportable under this chapter is distorted or otherwise fails to reflect accurately the net income or property associated with doing business in the commonwealth, the commissioner may determine the taxable net income or property of the taxpayer, as applicable, by allocating, distributing, or apportioning items of income, deduction, credit, loss, property, or liability, or other pertinent items, so as to more accurately reflect the taxpayer's taxable net income or property under this chapter. In making this determination, the commissioner (a) may consider adjustments to be appropriate where property, income, deductions, or other items have been transferred or shifted among related persons, whether or not any such transactions may have otherwise qualified for non-recognition of income or gain for tax purposes, and (b) may, in his discretion, utilize provisions of Internal Revenue Code § 482 and rules promulgated thereunder.

SECTION 107. Section 39A of chapter 63 of the General Laws, is hereby amended by adding after subsection 1. the following subsection:-

2. The commissioner may conclude, without recourse to paragraph 1, that an apportionment by reasonable rules of the consolidated net income of business corporations participating in the filing of a consolidated return of net income to the federal government fairly reflects the taxable net income of a taxpayer under this chapter and may, to the extent permissible under the constitution of the United States, so determine the taxable net income of any taxpayer subject to tax under this chapter. In making such a determination, the commissioner may, as he deems necessary, also take into account the net income and apportionment factors of any related entity not participating in such consolidated return that does business in the United States. This subsection shall apply if:

(a) There are substantial related party transactions between or among the taxpayer and related entities, as measured by volume or value; or

(b) The commissioner determines that the course of dealings between or among a taxpayer and its related entities, taken as a whole and taking into account any transfers of property or liabilities among the related entities, whether or not such transfers may qualify for non-recognition of income or gain under the Code, has the effect of distorting the taxable net income of the taxpayer under this chapter or of otherwise failing to reflect fairly the net income associated with doing business in the commonwealth.

SECTION 108. Section 42A of chapter 63 of the General Laws is hereby repealed.

SECTION 109. Section 42B of Chapter 63 of the General Laws is hereby amended by striking out section 42B and inserting in place thereof the following:-

Section 42B. Every business corporation subject to taxation under section 39 that has a usual place of business in the commonwealth, and is engaged in manufacturing therein, or engaged therein in research and development shall, for the purposes of this chapter, be deemed to be a manufacturing corporation or a research and development corporation. Every manufacturing corporation shall be taxed in the same manner and shall have the same duties under this chapter and chapter 62C as other business corporations subject to taxation under section 39, except insofar as the determination of the excise under this chapter may be affected by reason of the exemption from local taxation of the machinery of a manufacturing corporation.

A research and development corporation for the purposes of this section is a business corporation subject to tax under section 39 whose principal activity herein is research and development and which, during the taxable year, derives more than 2/3 of its receipts attributable to the commonwealth from the activity or incurs more than 2/3 of its expenditures attributable to the commonwealth allocable to the activity; provided however, that a corporation that qualifies as a research and development corporation only by reason of its expenditures shall not be entitled to the credit provided in section 31A of chapter 63 by virtue of its qualification as a research and development corporation. A corporation that is engaged in research and development and that

conducts manufacturing activities shall exclude expenditures related to manufacturing from total expenditures for the purpose of assessing whether 2/3 of expenditures are allocable to research and development, whether or not the manufacturing activities of the corporation are substantial. Receipts from research and development shall include receipts from the provision of research and development services and from royalties or fees derived from the licensing of patents, know-how or other technology developed from research and development. For purposes of this section, research and development is experimental or laboratory activity having as its ultimate goal the development of new products, the improvement of existing products, the development of new uses for existing products, the development or improvement of methods for producing products; and does not include testing or inspection for quality control purposes, efficiency surveys, management studies, consumer surveys or other market research, advertising or promotional activities, or research in connection with literacy, historical or similar projects. Nothing in this section shall be construed to provide for an exemption from local taxation of the machinery of a corporation deemed to be a research and development corporation which is not deemed to be a manufacturing corporation.

For purposes of this section and section 38, the development and sale of standardized computer software shall be considered a manufacturing activity, without regard to the manner of delivery of the software to the customer.

SECTION 110. Section 52 of chapter 63 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the first four sentences and inserting in place thereof the following:- If any of the provisions of this chapter imposing an excise on business corporations as defined in subsection (1) of section 30 are declared unconstitutional or inoperative by a final judgment, order or decree of the supreme court of the United States or of the supreme judicial court of the commonwealth, such portion of the provisions as was found to be unconstitutional or inoperative shall be null and void and shall become inapplicable to such corporations. In such event, the provisions of law, whether pursuant to this chapter or chapter 62, that (a) were applicable to such business corporations immediately prior to the enactment of the

provision found to be unconstitutional or inoperative and (b) became inoperative or inapplicable in connection with the enactment of the provision found to be unconstitutional or inoperative, shall thereupon be revived and become operative and applicable in respect to such business corporations and shall be continued in full force and effect from the first day of January antedating by six years the first day of January of the calendar year in which such final judgment, order or decree is entered, to the same extent as if the provision found to be unconstitutional or inoperative had not been enacted.

SECTION 111. Said section 52 of said chapter 63, as so appearing, is hereby further amended by striking the last three sentences and inserting in place thereof the following:- Excises declared invalid by reason of the foregoing premises, which were assessed on or after the date when predecessor provisions of laws are revived, made operative or applicable or continued in force as herein provided, shall, to the extent that such excises have been paid and are unrefunded, be credited against the taxes assessed for the same period under the provisions of laws revived and again made operative, applicable and continued in force; provided, that if such credit exceeds the taxes due, the excess shall be refunded upon warrant of the commissioner to the state treasurer. There shall be no further or other recovery of the amounts thus credited or refunded. If any provision of this chapter other than the provisions imposing an excise shall be declared unconstitutional or inoperative, the remaining provisions shall not be affected thereby.

SECTION 112. Section 52A of chapter 63 of the General Laws, as amended, is hereby further amended by striking out subsection (1)(a) and inserting in place thereof the following:-

(a) "Utility corporation" means every business corporation that is (i) an electric company and gas company subject to chapter 164; (ii) a water company and aqueduct company subject to chapter 165; (iii) a telephone and telegraph company subject to chapter 166; (iv) a railroad and railway company subject to chapter 160; and every business corporation qualified under section 131A of said chapter 160 to acquire, own and operate terminal facilities for steam, electric or other types of railroad; (v) a street railway subject to chapter 161; (vi) an electric railroad subject to chapter 162; (vii) a trackless trolley company subject to chapter 163; (viii) a pipe line company

engaged in the transportation or sale of natural gas within the commonwealth; and (ix) every foreign corporation which is not subject to the above chapters but which does an electric, gas, water, aqueduct, telephone, telegraph, railroad, railway, street railway, electric railroad, trackless trolley or bus business within the commonwealth and has, prior to January 1, 1952 been subject to taxation under sections 53 to 60, inclusive.

SECTION 113. Chapter 63 of the General Laws is hereby amended by inserting after section 68A, the following section:-

Section 68B. In general, a business corporation as defined in section 30 is subject to an excise under section 39, as provided therein, and as modified by section 32D in the case of S corporations and by section 38T in the case of entities qualifying under section 501 of the Code. Notwithstanding this general rule or any other provision of this chapter, the excise under section 39 shall not apply in the case of a business corporation that is: (1) a financial institution, as defined in section 1, that is subject to excise under section 2 or 2B; (2) a security corporation as defined in section 38B and subject to excise under that section; (3) a corporate trust subject to excise under section 38U; (4) a utility corporation as defined in section 52A and subject to excise under that section; (5) an insurance company subject to excise under sections 20 - 29E; (6) an urban redevelopment corporation subject to excise under section 10 of chapter 121A; (7) a corporation described in sections 10 or 18 of chapter 157; (8) a corporation described in section 1 of chapter 171; (9) a corporation or other entity that qualifies as a regulated investment company under section 851 of the federal Internal Revenue Code, as amended and in effect for the taxable year; or (10) a business corporation otherwise expressly exempted from the excise under this chapter by any other provision of the General Laws.

The commissioner may promulgate regulations determining which of the above excises will apply to business corporations based upon the nature of their activities. In the case of corporations engaged (directly or through partnerships or disregarded entities) in two or more lines of business, the commissioner may promulgate regulations determining which excise or excises shall apply to such individual corporations and the manner of such application. To the

extent that more than one excise may apply to a single corporation pursuant to such regulations, the income and property attributable to each such line of business shall be subject to separate taxation under the section that applies to that activity, and similar rules shall apply for purposes of chapter 59.

SECTION 114. Section 10 of chapter 63B of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out, in line 3, the word "domestic".

SECTION 115. Chapter 64D of the General Laws is hereby amended by striking out section 1 and inserting in place thereof the following section:-

Section 1. There shall be levied, collected and paid the excise herein specified on each conveyance of real property or interest in real property: when the consideration for the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of the sale, exceeds one hundred dollars and does not exceed five hundred dollars, two dollars; and for each additional five hundred dollars or fractional part thereof, two dollars; provided, however, that in Barnstable county, the excise herein specified shall be one dollar and fifty cents for each five hundred dollars or fractional part of said consideration, excluding a consideration of between zero and one hundred dollars. Said excise shall be payable at the registry of deeds in the county in which the real property lies, regardless of whether the conveyance is evidenced by a deed, instrument, or other writing or whether such deed, instrument, or other writing is otherwise recorded. Notwithstanding any other provisions of this section or any other general or special law to the contrary, Nantucket county may disburse and expend deposits in said Funds for the purpose of facilities and programs related to law enforcement, including the planning, improving or constructing of police stations and other related facilities and programs. This chapter shall not apply to any instrument or writing given to secure a debt or to any conveyance to which the commonwealth, a city or town of the commonwealth, or the United States or any of their agencies are a party.

For purposes of this chapter, unless otherwise expressly stated:

(a) "Conveyance" means the transfer or transfers of any interest in real property by any method, including but not limited to sale, exchange, grant, assignment, trust indenture, or transfer or acquisition of a controlling interest in any entity with an interest in real property.

(b) "Interest in real property" includes, but is not limited to, an estate in fee simple, a beneficial interest, a life estate, a perpetual easement, or a leasehold or sublease interest, ordinary or proprietary, but only where the sum of the term of the lease or sublease and any options for renewal, extension, or the like exceeds 49 years.

(c) "Transfer or acquisition of a controlling interest" occurs, in the case of a corporation which has an interest in real property, when a person, or group of persons acting in concert, transfers or acquires a total of 50% or more of the total combined voting stock of such corporation, or 50% or more of the capital, profits, or beneficial interest in such voting stock of such corporation. In the case of any partnership, limited liability company, association, trust, or other entity having an interest in real property, the transfer or acquisition of a controlling interest therein occurs when a person, or group of persons acting in concert, transfers or acquires a total of 50% or more of the capital, profits, or beneficial interest in such entity.

Persons are deemed to be "acting in concert" when, in accordance with regulations promulgated by the commissioner, they have a relationship such that one person influences or controls the actions of another. Where the individuals or entities are not commonly controlled or owned, persons shall be deemed to be acting in concert when, in accordance with regulations promulgated by the commissioner, the unity with which the sellers or purchasers have negotiated and will consummate the transfer of ownership interests indicates that they are acting as a single entity. If the transfers or acquisitions are completely independent, each seller selling or purchaser buying without regard to the identity of the other sellers or purchasers, then the transfers or acquisitions shall be treated as separate transfers or acquisitions.

For purposes of determining whether a controlling interest is transferred or acquired, only transfers or acquisitions of interests occurring on or after September 1, 2005 shall be added together. Where there is a transfer or acquisition of an interest in an entity that has an interest in

real property on or after September 1, 2005, and subsequently there is a transfer or acquisition of an additional interest or interests in the same entity, the transfers or acquisitions shall be added together to determine if a transfer or acquisition of a controlling interest has occurred. No transfer or acquisition of an interest in an entity that has an interest in real property will be added to another transfer or acquisition in the same entity if they occur more than three years apart, unless the transfers or acquisitions are so timed as part of a plan to avoid the excises herein specified.

Notwithstanding the above, no bona fide pledge of stock, partnership, or other interest as loan collateral nor any conveyance of publicly traded stock, partnership, or other interest, shall be deemed subject to taxation under this chapter.

SECTION 116. Section 2 of chapter 64D of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking the section and inserting in its place the following:-

Section 2. The excise imposed by this chapter shall be paid by the person who conveys the real property or interest therein, or for whose benefit the real property or interest therein is conveyed. When the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in real property, the "person who conveys" such interest means, but is not limited to, a shareholder, partner, or other interest-holder transferring stock, a partnership interest, or another equity interest, respectively. The payment of the excise shall be denoted by "stamps," as that term is defined in section three of this chapter, affixed to or printed directly on the deed, instrument or writing evidencing the conveyance, or if none, to a form prescribed by the commissioner for such purpose. In any case in which a conveyance subject to the excise imposed herein is not evidenced by a deed, instrument, or writing that will be recorded, the same shall be evidenced by recording the stamp form required by this section. The person affixing or printing a stamp shall cancel the same by writing or stamping thereon the initials of his name and the date when the same is affixed or printed, in such manner that it cannot be used again; provided,

however, that the stamp shall not be so defaced as to prevent determination of its denomination and genuineness.

The word "person" shall, for the purposes of this chapter, include political subdivisions of the commonwealth, individuals, partnerships, corporations, trusts, limited liability companies, societies, associations, or any other form of unincorporated enterprise.

SECTION 117. Section 3 of chapter 64D of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking the section and inserting in its place the following:-

Section 3. Stamps for the purpose of paying the excise under this chapter shall be prepared in such form, of such denominations and in such quantities as the commissioner may prescribe. He shall make provision for the sale of such stamps in such places and at such times as he deems necessary. He shall provide for the custody of the stamps and other equipment used in the production of said stamps in such manner as he deems expedient. For purposes of this section, the term "stamps" shall include both adhesive stamps and computer generated images printed directly on a deed, instrument, writing, or form required by section 2 of this chapter.

The commissioner may cause to be installed in any registry of deeds one or more metering machines, so called, through which said stamps can be sold and may remove any such machine if he deems it expedient. The commissioner may also approve computer hardware and software, purchased at the expense of the registry, to produce stamps. Upon the installation of such a metering machine or machines or approved computer hardware and software the register of deeds of said registry shall sell stamps to persons requiring the same for affixation or printing to deeds, instruments, writings, or forms in accordance with the provisions of this chapter.

Each register of deeds shall on or before the tenth day of each month account to the commissioner on a form prescribed and furnished by him for all sales made by said register during the preceding calendar month and shall turn over to the commissioner all moneys received from said sales, less any adjustments approved by him. Each register of deeds, with the approval of the advisory board on county expenditures and the county commissioners, shall for the

purposes of purchasing equipment or services relative to electronic reporting, indexing, computers and systems designed to modernize and maintain registry records, retain interest earned on the deposit of excise stamp fees. Each such register shall, annually, furnish to the county treasurer a financial report regarding such interest and the expenditure thereof in accordance with accepted accounting procedures.

The machines or computer equipment shall, upon installation, be subject to inspection by the commissioner or his duly appointed agent or agents at any time.

Each register of deeds shall give to the commissioner a bond, in a penal sum and with sureties approved by the commissioner, conditioned satisfactorily to account for money received by said register in his official capacity from the sale of said stamps. The premium for such bond shall be paid by the state treasurer upon certification by the commissioner.

The provisions of sections three A and three B of this chapter shall not be applicable to any registry of deeds during the period within which a metering machine or approved computer hardware or software is installed therein, nor to any registry operated by the state secretary.

SECTION 118. Section 3A of chapter 64D of the general laws, as appearing in the 2002 Official Edition, is hereby amended by striking in line 5 the following word:- adhesive.

SECTION 119. Section 4 of chapter 64D of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding after the word "affixed" in line 1 the following words:- or printed.

SECTION 120. Section 6 of chapter 64D of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking the section and inserting in its place the following:-

Section 6. The commissioner shall administer and enforce the excise imposed by this chapter and shall promulgate such regulations as are necessary to implement the provisions of this chapter. At any time after the making of a conveyance subject to the excise imposed by this chapter, he may investigate and ascertain whether said excise, in the proper amount, was paid. For this purpose, the commissioner may exercise all powers granted to him under section 70 of

chapter 62C. Whoever refuses to produce the books, papers, records, or other data required to be produced under section 70, or fails to preserve the same for three years or such longer period as the commissioner may by regulation provide, or alters, cancels or obliterates any part thereof, or makes any false entry therein, shall be punished by a fine of not less than five hundred nor more than five thousand dollars, or by imprisonment for not less than three months nor more than two years, or both.

SECTION 121. Section 6A of chapter 64D of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking the first sentence thereof and inserting in its place the following:-

Whoever signs and delivers to a purchaser or purchasers, or to any person or persons designated by such purchaser or purchasers, a deed, instrument, writing, or form required by section 2 of this chapter which does not have the stamps required by this chapter affixed thereto or printed thereon, or whoever leaves or causes to be left for recording or registration in any registry of deeds within the commonwealth an original deed, instrument, writing, or form which does not have the stamps required by this chapter affixed thereto or printed thereon, or a duplicate deed, instrument, writing, or form without first having left or caused to be left for recording or registration in a registry of deeds within the commonwealth the original thereof, shall be subject to such penalty, not exceeding one hundred dollars, as the commissioner may determine.

SECTION 122. Section 6B of chapter 64D of the General Laws, as appearing in the 2003 Supplement to the Official Edition, is hereby amended ,by striking the section and inserting the following in its place:-

Section 6B. The register of deeds may refuse to record or register any deed, instrument, writing, or form required by section 2 of this chapter which does not have the stamps required by this chapter, as determined by the register, affixed thereto printed thereon.

SECTION 123. Section 8 of chapter 64D of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding after the word "affixed" in line 7 the following words:- or printed.

SECTION 124. Section 9 of chapter 64D of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking the words "an adhesive" in 1 and replacing them with the following:- a stamp.

SECTION 125. Section 10 of chapter 64D of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking the word "taxes" in line 1 and replacing it with the following:- excise.

SECTION 126. Section 11 of chapter 64D of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking the section and inserting in its place the following:-

Section 11. There shall be established upon the books of each county that has not been abolished pursuant to the provisions of chapter 34B a separate fund, maintained separate and apart from all other funds and accounts of each county, to be known in each case as the Deeds Excise Fund.

Notwithstanding the provisions of any general or special law and of this chapter to the contrary, and except for Barnstable county and all counties that have been abolished pursuant to the provisions of chapter 34B or other applicable provision of law, on the first day of each month, 42.5% of the excises collected pursuant to the provisions of this chapter shall be transmitted to the Deeds Excise Fund for each county. For Barnstable county, on the first day of each month, 28.33% of the excises collected pursuant to the provisions of this chapter, but not including the additional excise authorized under the provisions of section 2 of chapter 163 of the acts of 1988, shall be transmitted to the Deeds Excise Fund. Notwithstanding the provisions of any general or special law and of this chapter to the contrary, and except for Barnstable county and all counties that have been abolished pursuant to the provisions of chapter 34B or other applicable provision of law, on the first day of each month, 7.5% of the excises collected pursuant to the provisions of this chapter shall be transmitted to the County Correction Fund established in section 13. For Barnstable county, on the first day of each month, 5% of the excises collected pursuant to the provisions of this chapter, but not including the additional excise authorized under the provisions

of said section 2 of said chapter 163, shall be transmitted to said County Correction Fund. The remaining percentage of excises collected under the provisions of this chapter, including all excises collected under the provisions of this chapter in all counties that have been abolished pursuant to the provisions of chapter 34B or other applicable provision of law shall be transmitted to and retained by the general fund in accordance with the provisions of section 10.

SECTION 127. Chapter 64G of the General Laws, as appearing in the 2002 Official Edition, is hereby further amended by striking Section 7B thereof and inserting in place thereof the following section:-

Section 7B. Every operator who fails to pay to the commissioner any sums required to be paid by this chapter shall be personally and individually liable therefor to the commonwealth. The term "operator" , as used in this section, includes an officer or employee of a corporation, or a member or employee of a partnership or a limited liability company, who as such officer, employee or member is under a duty to pay over the taxes imposed by this chapter.

SECTION 128. The definition of "tangible personal property" in Section 1 of chapter 64H of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by striking the word "also" in the last sentence thereof and by adding the following at the end:- Any transfer of standardized computer software, including but not limited to electronic, telephonic, or similar transfer, shall also be deemed a transfer of tangible personal property. The commissioner may, by regulation, provide rules for apportioning tax in those instances in which software is transferred for use in more than one state.

SECTION 129. Section 1 of chapter 64H of the General Laws, as appearing in the 2002 Official Edition, is hereby further amended in line 198 by striking the word "and" and by inserting the following at the end of line 200:- and (vii) a "service charge" or "tip" that is distributed by a vendor to service employees, wait staff employees or service bartenders as provided in section 152A of chapter 149.

SECTION 130. Subsection (q) of section 6 of chapter 64H, as appearing in the 2002 Official Edition, is hereby amended by striking out subsection (1) and inserting in its place the following:-

(1) sales of both returnable and nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container.

SECTION 131. Subsection (qq) of Section 6 of Chapter 64H of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking the first sentence and inserting in its place the following sentence:

(qq) Sales of gas, steam, electricity or heating fuel for use by any business that has five or fewer employees that had gross income of less than \$1,000,000 for the preceding calendar year, and that reasonably expects gross income of less than \$1,000,000 for the current calendar year.

SECTION 132. Chapter 64H of the General Laws, as appearing in the 2002 Official Edition, is hereby further amended by striking section 16 thereof and inserting in place thereof the following section:-

Section 16. Every person who fails to pay to the commissioner any sums required by this chapter shall be personally and individually liable therefor to the commonwealth. The term "person", as used in this section, includes an officer or employee of a corporation, or a member or employee of a partnership or limited liability company, who as such officer, employee or member is under a duty to pay over the taxes imposed by this chapter.

SECTION 133. Section 17 of chapter 64I, as appearing in the 2002 Official Edition, is hereby amended by striking the section and by replacing it with the following:-

Section 17. Every person who fails to pay to the commissioner any sums required by this chapter shall be personally and individually liable therefor to the commonwealth. The term "person", as used in this section, includes an officer or employee of a corporation, or a member or employee of a partnership or limited liability company, who as such officer, employee or member is under a duty to pay over the taxes imposed by this chapter. No person shall be personally or individually liable for uncollected use tax due from a corporation, partnership, or limited liability

company on its purchases of tangible personal property purchased for use of the corporation, partnership or limited liability company unless the person's failure to pay the tax was willful or unless the person made personal use of the property subject to tax.

SECTION 134. Section 17 of Chapter 64I of the General Laws, as so amended is hereby further amended by striking the last sentence thereof and inserting in its place the following:-

Section 17. The term "person", as used in this section, includes an officer or employee of a corporation, or a member or employee of a partnership or limited liability company, who as such officer, employee or member is under a duty to pay over the taxes imposed by this chapter.

SECTION 135. Chapter 93 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out section 52A, as so appearing, and inserting in place thereof the following section:-

Section 52A. The IV-D agency, as set forth in chapter 119A, shall report periodically to consumer reporting agencies the name of any noncustodial parent who is delinquent in the payment of child support, and the amount of overdue support owed by such parent, subject to the requirements of the following paragraph. The IV-D agency shall report information only to an entity that has furnished satisfactory evidence that the entity is a consumer reporting agency.

Prior to reporting the name of any person who is delinquent in the payment of child support to a consumer reporting agency, the IV-D agency shall afford such person notice and due process pursuant to sections 6 and 17 of chapter 119A. Nothing in this section shall impair the rights of any obligor under federal or state law regarding consumer credit reports or consumer credit reporting agencies.

SECTION 136. Section 23 of chapter 119 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the words "the Social Security Act", in line 181, the following:- The department shall be subrogated to the rights of each such child and shall obtain and provide to the IV-D agency information that may be reasonably necessary to enforce the department's right.

SECTION 137. Said section 23 of said chapter 119, as so appearing, is hereby further amended by striking out, in lines 186 and 187, the words "for whom support is collected", and inserting in place thereof the following words:- whose rights to support are subrogated.

SECTION 138. Section 2 of chapter 119A of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the period, in line 27, the following sentence:- In enforcing such subrogation rights, the IV-D agency may proceed to establish a support order pursuant to section 32F of chapter 209, or to establish paternity or a support order pursuant to chapter 209C, notwithstanding the failure of the obligee whose rights to support have been subrogated to the commonwealth to attend a hearing in an action pursuant to said chapters, upon a showing that written notice of the hearing was provided to the obligee by first class mail to the most recent residential address that the obligee has provided to the department of transitional assistance, the department of social services or the division of medical assistance.

SECTION 139. Section 3 of said chapter 119A of the General Laws, as so appearing, is hereby amended by striking out, in line 15, the words "rule 4(d)(2) of the Massachusetts Rules of Domestic Relations Procedure", and inserting in place thereof the following:- section 4.

SECTION 140. Section 3B of said chapter 119A of the General Laws, as so appearing, is hereby amended by inserting after the words "subsection (a)", in line 69, the following words:- , the notice pursuant to subsection (b) shall specify the threshold for modification and shall identify the sources of the financial information relating to the parties, including tax information pursuant to chapter 62C and wage reporting information pursuant to chapter 62E that serves as the basis for the calculation of the amount of support in the proposed stipulation.

SECTION 141. Said section 3B of said chapter 119A, as so appearing, is hereby further amended by striking out subsection (f).

SECTION 142. Said section 4 of said chapter 119A, as so appearing, is hereby further amended by inserting after the words "written notice", in line 52, the following words:- by first class mail.

SECTION 143. Section 4 of chapter 119A of the General Laws, as so appearing, is hereby amended by inserting, after the words "child support enforcement", in line 48, the following words:- or modification.

SECTION 144. Section 6 of chapter 119A of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out, in each of lines 119 and 121, the word, "six", and inserting in place thereof the following:- 10.

SECTION 145. Section 6 of chapter 119A of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting before the word "attachment", in line 16, the following words:- seeking a warrant pursuant to section 34A of chapter 215 in appropriate situations.

SECTION 146. Section 10 of chapter 200A of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after subsection (h) the following subsection:-

(i) Prior to disbursement of a payment in excess of \$500, the treasurer shall review information made available by the IV-D agency, as set forth in chapter 119A, and by the department of revenue to ascertain whether the claimant owes past due child support to the commonwealth or to an individual to whom the IV-D agency is providing services, and to ascertain whether the claimant owes any past due tax liability to the commonwealth. If the claimant owes past due child support or a past due tax liability, the treasurer shall notify the IV-D agency or the department of revenue, respectively, of the claimant's name, address and social security number. The treasurer shall first disburse to the IV-D agency the full amount of the payment or such portion of the payment that satisfies the claimant's past due child support obligation and, if funds remain available after that disbursement, the treasurer shall disburse to the department of revenue the full amount of the payment or such portion of the payment that satisfies the claimant's past due tax liability. The treasurer shall disburse to the claimant only that portion of the payment, if any, remaining after the claimant's past due child support obligation, past due tax liability, and any other valid liens have been satisfied.

SECTION 147. Section 32F of chapter 209 of the General Laws, as so appearing, is hereby amended by inserting at the end of subsection (a) the following sentences:- In an action pursuant to this section where the rights to support of a party have been subrogated to the commonwealth pursuant to chapters 18, 119, or 118E, or Title IV, Parts A or E, or Title XIX of the Social Security Act, or any other public assistance program as required by federal or state law, the court shall proceed to establish an order for support pursuant to this section, notwithstanding the failure of such party to attend a hearing, upon a showing that written notice of the hearing was provided to the party by first class mail to the most recent residential address that the party has provided to the department of transitional assistance, the department of social services or the division of medical assistance. For good cause shown, the court may set aside an entry of default and, if an order or judgment has been entered, may likewise set aside such order or judgment in accordance with rule 60(b) of the rules of domestic relations procedure.

SECTION 148. Section 4 of chapter 209C of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the first two sentences and inserting in place thereof the following:- Actions under this chapter to establish paternity, support, custody or visitation of a child shall be filed in the judicial district or county in which the child and one of the parents lives and if neither of the parents lives in the same judicial district or county as the child then the complaint shall be filed in the judicial district or county where the child lives; provided that if the parents have been parties to a prior action under this chapter and such action has not been dismissed, a subsequent action under this chapter may be filed in the judicial district or county where the earlier action was filed.

SECTION 149. Section 16 of chapter 209C of the General Laws, as so appearing, is hereby amended by inserting after subsection (g) the following subsections:-

(h) In an action pursuant to this chapter where the rights to support of a party have been subrogated to the commonwealth pursuant to chapters 18, 119, or 118E, or Title IV, Parts A or E, or Title XIX of the Social Security Act, or any other public assistance program as required by federal or state law, the court shall proceed to establish orders pursuant to this chapter,

notwithstanding the failure of such party to attend a hearing, upon a showing that written notice of the hearing was provided to the party by first class mail to the most recent residential address that the party has provided to the department of transitional assistance, the department of social services or the division of medical assistance. For good cause shown, the court may set aside an entry of default and, if an order or judgment has been entered, may likewise set aside such order or judgment in accordance with rule 60(b) of the rules of domestic relations procedure.

(i) In an action pursuant to this chapter in a case receiving IV-D services, the court shall, upon good cause shown and upon verification of identity satisfactory to the court, permit a party to testify in an action pursuant to this chapter by telephone; and upon a showing that a party is incarcerated, permit such party to submit testimony by affidavit.

SECTION 150. Section 23 of chapter 209C of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting, after the words "null and void", in line 4, the following words:- , except as to any support arrearage which is owed to the Commonwealth as reimbursement for public assistance and which accrued prior to the date that the parents intermarry.

SECTION 151. Section 34A of chapter 215 of the General Laws, as so appearing, is hereby amended by designating such section as subsection (a).

SECTION 152. Said section 34A of said chapter 215, as so appearing, is hereby further amended by adding at the end the following new subsection:-

(b) Upon the request of the IV-D agency as set forth in chapter 119A, when a total arrearage amounting to the support owing for a 6-month period has accrued under the defendant's most recent order or judgment for support and the IV-D agency has been unable to bring the defendant before the court on a *capias*, the court shall issue a warrant for the arrest of the defendant. The IV-D agency shall file an affidavit accompanying the request for a warrant that states (1) a total arrearage amounting to the support owing for a 6-month period has accrued under the defendant's most recent order or judgment for support, (2) the amount of the total arrearage, (3) the date of the last payment, if any, and (4) a description of the efforts made to

serve the *capias* on the defendant. The IV-D agency shall also provide the court with identifying information on the defendant's name, last known address, date of birth, gender, race, height, weight, hair and eye color, any known aliases and any such information as shall be required for a warrant to be accepted by the criminal justice information system maintained by the criminal history systems board. A warrant that contains the above identifying information as provided by the IV-D agency to the court shall not be nullified if the information is later found to be inaccurate. If any of the above identifying information is not known to the IV-D agency, the IV-D agency may apply to the court for an exemption from the requirement to provide such information. The court shall grant the exemption if the court deems that the unknown information is not essential to identifying the defendant. The defendant may not challenge the validity of a warrant based on the granting of such exemption. The court shall enter the warrant, including the identifying information provided by the IV-D agency to the court and the name of the court that issued the warrant, into the warrant management system as set forth in section 23A of chapter 276. The warrant shall consist of the information that appears in the warrant management system, and a printout of the warrant from the criminal justice information system shall constitute a true copy of the warrant. The entry of the warrant into the warrant management system and the criminal justice information system shall constitute notice and delivery of the warrant to all law enforcement agencies who have arresting authority pursuant to section 23 of chapter 276.

Upon arrest, the arresting authority shall arrange for transportation of the defendant to the court that issued the warrant. If the defendant is arrested when the court is not in session, the defendant shall be held by the arresting authority or county jail facility, and transported to the issuing court during the next session and presented to the court. If the defendant voluntarily submits his person to the court, he shall likewise be brought before the court. The court shall notify the IV-D agency and conduct a hearing to recall the warrant and shall issue an order for the defendant to do one or more of the actions set forth in clauses (1) to (6) of section 34 of this chapter.

Whenever a warrant is recalled or removed, the court shall, without unnecessary delay, enter the recall or removal in the warrant management system which entry shall be electronically transmitted to the criminal justice information system. The court shall also provide to the defendant a notice of recall of warrant.

No law enforcement officer who in the performance of his duties relies in good faith on the warrant appearing in the warrant management system shall be liable in any criminal prosecution or civil action alleging false arrest, false imprisonment, or malicious prosecution or arrest by false pretense.

The issuing court shall provide notice no later than 30 days after the issuance of the warrant to the defendant. Such notice shall contain information on the name and address of the issuing court, the date of the last payment of child support, if any, the amount of the total child support arrearage, a description of the method by which the defendant may clear the warrant and a summary of the consequences the defendant may face for not responding to the warrant. Such notice shall be deemed satisfactory if mailed to the address stated on the warrant.

If a warrant remains outstanding for 1 year following the date that the warrant is entered into the warrant management system it shall constitute evidence of willful nonsupport in a criminal action pursuant to chapter 273.

SECTION 153. Chapter 258 of the General Laws is hereby amended by inserting after section 13 the following section:-

Section 14. For the purpose of satisfying liens for past due child support, securing repayment of public assistance benefits, and past taxes, a public employer shall comply with the provisions of sections 24D, 24E, and 24F of chapter 175 and any regulations promulgated thereunder in the same manner as if it were a company authorized to issue policies of insurance pursuant to said chapter 175.

SECTION 154. Section 15A of chapter 273 of the General Laws, as so appearing, is hereby amended by inserting after the words "both of them", in line 5, the following word:- or.

SECTION 156. Section 23 of chapter 276 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting, after the word "crime", in the first sentence, the following words:- and child support warrants issued pursuant to section 34A of chapter 215.

SECTION 157. It is the intent of provisions of this act that modify the tax treatment of corporate trusts to create general conformity with federal classification rules. It is also the intent of these provisions to ensure that any tax-free earnings and profits accumulated by an entity formerly treated as a corporate trust be subject to tax under chapter 62 or chapter 63 of the General Laws. To that end, the commissioner of revenue may adopt reasonable rules, by regulation or otherwise, to determine the method or methods by which previously untaxed amounts will be taxed to the entity, its successor, or its direct or indirect owners, partners, or beneficiaries. The commissioner may also determine reasonable transition rules for entities, including but not limited to corporate trusts and qualified subchapter S subsidiaries, and the successors, and direct or indirect owners, partners, or beneficiaries of such entities, whose tax classification is altered by this act. Such transition rules may include providing for nonrecognition of gain or loss in the event of a conversion of an entity's Massachusetts tax status resulting from the provisions of this act, with corresponding adjustments to basis or other tax attributes if and as determined by the commissioner to be appropriate.

SECTION 158. Notwithstanding any provisions of this act to the contrary, in any case in which a federal consolidated return group included, on October 27, 2004, an entity doing business in the commonwealth that was treated as a partnership for Massachusetts income tax purposes but as a corporation for federal income tax purposes and the owners of such entity were corporations reporting their Massachusetts corporation excise on a combined return pursuant to section 32B of chapter 63, the principal reporting corporation within the Massachusetts combined return group may request permission from the commissioner to determine the taxable net income of the group by apportioning, according to reasonable rules determined by the commissioner, the consolidated net income of business corporations participating in the federal consolidated return group. Such request must be made on or before the due date, including extensions, of such corporation's

corporate excise return for its first taxable year beginning on or after January 1, 2006, and may not be made by application for abatement. The commissioner shall grant such permission if but only if the principal reporting corporation demonstrates to his satisfaction that the organization and operation of such entity in a manner so as to be treated as a partnership for Massachusetts tax purposes but as a corporation for federal tax purposes was not intended to avoid Massachusetts tax. If such permission is granted (1) the commissioner may, for purposes of determining the taxable net income of the combined return group, include the net income and apportionment factors of any related entity not participating in the federal consolidated return that does business in the United States; (2) the excise of the group shall be determined under section 39 on a consolidated basis for all entities participating in the return; (3) all corporations or other entities participating in the return shall be jointly and severally liable for the tax determined under this chapter; and (4) the election shall be binding such that the combined return group shall determine its taxable net income by the method approved by the commissioner in the year of election and in the subsequent four taxable years (representing a total of 60 months in the event of any short taxable periods), unless the commissioner in his discretion, based on a valid business purpose, grants prior written permission to the group to discontinue the use of such method.

SECTION 159. Except as otherwise provided in sections 160-168 the provisions of this act shall be effective upon passage.

SECTION 160. Sections 3-10 inclusive, 13-17 inclusive, 20, 22-26 inclusive, 28-31 inclusive, 47, 52-55 inclusive, 56-61 inclusive, 64, 66-78 inclusive, 80-99 inclusive, 101-105 inclusive, 108, 109, 112-114, and 158 this act shall apply to taxable years beginning on or after January 1, 2006.

SECTION 161. Sections 11, 12, 18, 19, 21, 79 and 100 of this act shall apply to taxable years beginning on or after January 1, 2005.

SECTION 162. Sections 45, 48-50 inclusive, 115-126 inclusive of this act shall be effective the first day of the fourth month following the date of passage.

SECTION 163. Sections 36-40 inclusive, and section 44 of this act shall apply to final federal determinations made on or after the date of passage.

SECTION 164. Section 41 of this Act shall apply to returns filed on or after the date of passage.

SECTION 165. Section 42 of this act shall apply to statements made on or after the date of passage.

SECTION 166. Sections 65 and 106 of this act clarify existing law and shall take effect upon passage.

SECTION 167. Section 107 of this act shall apply to assessments made with respect to taxable years ending on or after the date of passage.

SECTION 168. Sections 146 and 153 shall be effective six months after the date of passage.