

AN ACT IMPROVING THE FAIRNESS OF THE TAX LAWS.

SECTION 1. Clause Sixteenth of section 5 of chapter 59 of the General Laws, as amended by sections 42 to 46 of chapter 123 of the acts of 2006, is hereby further amended by striking out paragraph (2) and inserting in place thereof the following paragraph:-

(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 the 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 considered 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 2. Paragraph (3) of said clause Sixteenth of said section 5 of said chapter 59, as so appearing, is hereby amended by striking out the words "(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 inserting in place thereof the following words:- a manufacturing corporation as defined in section 42B of chapter 63.

SECTION 3. Said clause Sixteenth of said section 5 of said chapter 59, as so appearing, is hereby further amended by striking out paragraph (5) and inserting in place thereof the following paragraph:-

(5) The classification by the commissioner or the appellate tax board 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 4. Clause Sixteenth A of said section 5 of said chapter 59 is hereby repealed.

SECTION 5. Section 18 of said chapter 59, as appearing in the 2004 Official Edition, is hereby amended by striking out, in lines 18 to 19, the words "domestic business and foreign corporations

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

SECTION 6. Said section 18 of said chapter 59, as so appearing, is hereby further amended by striking out, in lines 38 to 39, the words "domestic business or foreign corporation, as defined in section thirty of chapter sixty-three" and inserting in place thereof, the following words:- business corporation subject to tax under section 39 of chapter 63.

SECTION 7. Section 33 of said chapter 59, as so appearing, is hereby amended by striking out, in lines 6 to 10, the words "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" and inserting in place thereof the following words:- business corporations subject to tax under section 39 of chapter 63.

SECTION 8. Section 83 of said chapter 59, as so appearing, is hereby amended by striking out, in line 2, the words "domestic and foreign".

SECTION 9. Section 1 of chapter 62 of the General Laws, as amended by section 10 of chapter 58 of the acts of 2006, is hereby further amended by inserting after paragraph (o) the following 3 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 the 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, 2007.

SECTION 10. Paragraph (1) of subsection (a) of section 2 of said chapter 62, as appearing in the 2004 Official Edition, is hereby amended by striking out subparagraph (E).

SECTION 11. Paragraph (2) of said subsection (a) of said section 2 of said chapter 62, as so appearing, is hereby amended by striking out subparagraph (B).

SECTION 12. Said paragraph (2) of said subsection (a) of said section 2 of said chapter 62, as so appearing, is hereby further amended by striking out subparagraph (D) and inserting in place thereof the following subparagraph:-

(D) Dividends received from a corporate trust subject to taxation under section 8 of this chapter as in effect on December 31, 2007, to the extent that they are derived from earnings and profits previously taxed to the trust under said section but only to the extent that the trust properly filed returns and paid all taxes due.

SECTION 13. Paragraph (1) of subsection (d) of said section 2 of said chapter 62, as so appearing, is hereby amended by striking out subparagraph (J).

SECTION 14. Section 4 of said chapter 62, as so appearing, is hereby amended by striking out, in lines 1 to 4, the words “nonresidents shall be taxed, to the extent specified in section five A on their taxable income, and corporate trusts shall be taxed to the extent specified in section eight” and inserting in place thereof the following words:- and nonresidents shall be taxed to the extent specified in section 5 A.

SECTION 15. Subsection (a) of section 6 of said chapter 62, as so appearing, is hereby amended by inserting after the first paragraph 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, shareholders of the corporate trust shall be entitled to credit for income taxes paid to other jurisdictions on those earnings and profits, either by the corporate trust or by the shareholders, as otherwise calculated under this subsection.

SECTION 16. Subsection (h) of said section 6 of said chapter 62, as so appearing, is hereby amended by inserting, after the second sentence, the following sentence:- With respect to a person who is a nonresident for all or part of the taxable year, the credit shall be limited to 15 per cent of the federal credit multiplied by a fraction the numerator of which is the earned income of

the nonresident from Massachusetts sources and the denominator of which is the earned income of the nonresident from all sources.

SECTION 17. Subsection (k) of said section 6 of said chapter 62 is hereby further amended by striking out paragraph (2), as appearing in the 2004 Official Edition, and inserting in place thereof the following paragraph:-

Any owner regardless of age or any tenant who is 65 years of age or older of residential property located in the commonwealth, who is not a dependent of another taxpayer and who occupies the property as his principal residence, shall be allowed a credit equal to the amount by which the real estate tax payment or rent constituting real estate tax payment exceeds 10 per cent of the taxpayer's total income, but the credit shall not exceed \$750.

SECTION 18. Said subsection (k) of said section 6 of said chapter 62, as amended by sections 2 to 4 of chapter 136 of the acts of 2005, is hereby further amended by adding the following paragraph:-

(10) Every board or officer of a city, town, district or local commission responsible for the collection of property taxes, special assessments or water and sewer charges shall annually transmit to the commissioner, in the form and manner that the commissioner prescribes, a report of the amounts billed to every person who is liable during the taxable year to the city, town, district or commission for those taxes, assessments and charges. The commonwealth shall pay to each city, town, district or commission an amount sufficient to defray the additional costs imposed under this subsection. In every year not later than June 1, the state auditor shall determine and deliver to the commissioner a statement of the incremental costs attributed to this subsection and estimated to be incurred by each city, town, district and commission in the next fiscal year. The commissioner shall include in the budget recommendations for the fiscal year a request for an appropriation in an amount equal to these estimated costs, and shall, not later than

September 1, disburse to each city, town, district or commission its share of these appropriated funds.

SECTION 19. Section 8 of said chapter 62 is hereby repealed.

SECTION 20. The first paragraph of section 17 of said chapter 62, as appearing in the 2004 Official Edition, is hereby amended by striking out the third and fourth sentences.

SECTION 21. Section 17A of said chapter 62 of the General Laws, as so appearing, is hereby amended by striking out paragraph (e).

SECTION 22. Section 19 of said chapter 62 is hereby repealed.

SECTION 23. Section 6 of chapter 62C of the General Laws, as so appearing, is hereby amended by striking out, in lines 8 to 11, the words "every corporate trust taxable under section eight of chapter sixty-two, and every other corporate trust doing business within the commonwealth and every other" and inserting in place thereof the following words:- and every.

SECTION 24. Said section 6 of said chapter 62C, as so appearing, is hereby further amended by striking out, in line 32, the word "domestic" and inserting in place thereof the following word:- business.

SECTION 25. Section 7 of said chapter 62C, as so appearing, is hereby amended by striking out, in lines 1 to 2, the words ", other than a corporate trust as defined in chapter sixty-two,".

SECTION 26. Said chapter 62C is hereby further amended by striking out section 11, as so appearing, and inserting in place thereof the following section:-

Section 11. 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 the information that the commissioner may consider necessary for the determination of the taxes imposed upon it by chapter 63.

SECTION 27. Section 16 of said chapter 62C, as so appearing, is hereby amended by inserting after the word "operator", in line 53, as so appearing, the following words: -- or room reseller.

SECTION 28. Section 25 of said chapter 62C, as so appearing, is hereby amended by inserting after the word "operator", in line 6, the following words: -- or room reseller.

SECTION 29. Section 51 of said chapter 62C, as so appearing, is hereby amended by striking out, in lines 3 and 4, the words "domestic or foreign business corporation" and by inserting in place thereof the following words:- business corporation as defined in section 30 of chapter 63.

SECTION 30. Section 67 of said chapter 62C, as so appearing, is hereby amended by inserting after the word "operator", in line 2, the following words: -- or room reseller .

SECTION 31. Section 1 of chapter 63 of the General Laws, as so appearing, is hereby amended by inserting after the last sentence in the definition of "Financial institution" the following sentence:-

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 the 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 32. Section 2 of said chapter 63, as so appearing, is hereby amended by striking out, in line 1, the words "subsection (b)" and inserting in place thereof, the following words:- subsections (b) and (d).

SECTION 33. Said section 2 of said chapter 63, as so appearing, is hereby further amended by inserting, after subsection (c), the following subsection:-

(d) Any financial institution that is an S corporation, as defined in section 1361 of the Code, 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 34. Said chapter 63 is hereby further 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 per cent to the extent that the income is taxed to the S corporation for federal income tax purposes; and

(ii) Any 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 1 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 per cent; and

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

For purposes of this paragraph (ii) of subsection (a), 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 this subsection. 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 these total receipts. The commissioner shall, by regulation, apply limits on an aggregate basis to S corporations engaged in a unitary business with majority direct or indirect ownership by common stockholders. This 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 paragraphs (i) and (ii) of this subsection. 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 not less than \$456.

SECTION 35. Said chapter 63 is further amended by inserting after section 29E the following section:-

Section 29F. Certain Non-Insurance Trade or Business Income.

- (a) An insurance company subject to sections 20 through 29E shall, in addition to the excise determined under those sections, be subject to this section if the company owns, directly or indirectly, 50 per cent or more of the interests in an entity treated as a partnership or disregarded entity that is engaged in a non-insurance trade or business in Massachusetts.
- (b) Without limitation, this section shall not apply to income of an insurance company from the buying, selling, holding, or dealing in securities or other investment intangibles on its own behalf, and not as a broker. Gain from the sale of real property and improvements shall also be excluded to the extent that the gain exceeds cumulative depreciation and similar expenses with respect to the property and improvements that have been deducted in determining income taxable under subsection (c).
- (c) An insurance company with non-insurance trade or business income from a partnership or disregarded entity, as described in subsection (a), shall file a return under this chapter with respect to the income and activities of the partnership or disregarded entity in the manner of a business corporation, financial institution, or utility corporation, as

applicable, and pay the associated excise. The income and activities shall, to the extent applicable, be included in a combined return filed under section 32B.

(d) The commissioner may issue regulations or other guidance as may be needed for the implementation of this section.

SECTION 36. Section 30 of said chapter 63, as amended by sections 19 to 22 of chapter 163 of the acts of 2005, is hereby further amended by striking out the introductory clause and paragraphs 1 and 2 and inserting in place thereof the following introductory clause and 2 paragraphs:-

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

1. "Business corporation", any corporation, or any "other entity" as defined in section 1.40 of chapter 156D, whether the 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 the entity shall be considered to be those of the owner.

SECTION 37. Said section 30 of said chapter 63 is hereby further amended by striking out, in line 178, as appearing in the 2004 Official Edition, the word "foreign" and inserting in place thereof the following word:- business.

SECTION 38. Said section 30 of said chapter 63 is hereby further amended by striking out, in line 184, as so appearing, the words "thirty-two or".

SECTION 39. Said section 30 of said chapter 63 is hereby further amended by striking out, in line 192, as so appearing, the words "thirty-two or".

SECTION 40. Said section 30 of said chapter 63 is hereby further amended by striking out, in lines 196 to 198, as so appearing, the words, "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" and inserting in place thereof, the following words:- business corporation taxable under.

SECTION 41. Section 30 of chapter 63 of the General Laws, as amended by sections 19 to 22 of chapter 163 of the acts of 2005, is hereby further amended by striking out paragraph 16 and inserting in place thereof the following 2 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 42. Section 31E of said chapter 63, as appearing in the 2004 Official Edition, is hereby amended by striking out, in line 1, the words "domestic or foreign" and inserting in place thereof the following word:- business.

SECTION 43. Said chapter 63 is hereby further amended by inserting after section 31L the following section:-

Section 31M. 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 the property over the Massachusetts adjusted basis of the property, and shall be decreased by the excess of the Massachusetts adjusted basis of the property over the federal adjusted basis of the property, 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 the 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 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 that 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 44. Section 32 of said chapter 63 is hereby repealed.

SECTION 45. Said chapter 63 is hereby further amended by striking out section 32B, as so appearing, and inserting in place thereof the following section:-

Section 32B.

(a) Notwithstanding any other provision of this chapter, a corporation subject to tax under this chapter and engaged in a unitary business with 1 or more corporations subject to combination within the meaning of this section shall, under regulations adopted by the commissioner, calculate its taxable net income derived from this unitary business as its share, attributable to the commonwealth, of the apportionable income or loss of the combined group engaged in a unitary business, determined in accordance with a combined report.

(b) (1) For purposes of this section, the term “unitary business” shall mean the activities of a group of 2 or more corporations under common ownership that are sufficiently interdependent, integrated or interrelated through their activities so as to provide mutual benefit and produce a sharing or exchange of value among them and a significant flow of value between the separate

parts. The term unitary business shall be construed to the fullest extent permitted under the United States Constitution.

(2) For purposes of this section, the term “common ownership” shall mean that more than 50 per cent of the voting control of each member of the group is directly or indirectly owned by a common owner or owners, either corporate or non-corporate, whether or not the owner or owners are members of the combined group. A group of corporations under common ownership may be engaged in 1 or more unitary businesses.

(3) Any business conducted by a partnership shall be treated as the business of the partners, whether the partnership interest is directly held or indirectly held through a series of partnerships, to the extent of the partner's distributive share of the partnership's income, regardless of the magnitude of the partner's ownership interest or its distributive share of partnership income. A business conducted directly or indirectly by 1 corporation is unitary with that portion of a business conducted by another, commonly owned corporation through its direct or indirect interest in a partnership if the activities conducted by the former corporation and the partnership are unitary within the meaning of paragraph (1) of subsection (b) regardless of the magnitude of the partner's ownership interest or its distributive or any other share of partnership income.

(c) (1) Corporations that are subject to combination within the meaning of this section shall include, without limitation, an entity of the kind that may be subject to tax under sections 2, 2B, 32D, 39 or 52A, as well as an entity described under sections 20 through 29E in any case in which (i) 50 per cent or more of the entity's total premiums earned during the taxable year on both a gross and net basis are for liability coverage provided to other corporations with which the entity is engaged in a unitary business or (ii) the liability coverage provided by the entity to these other corporations accounts for 50 per cent or more of the total risks borne by the entity. The calculation in the preceding sentence shall not include premiums earned, or risks ensured, by the entity as a result of membership in a reinsurance pool in which the entity cedes and assumes risks

within the same group of corporations. A corporation is subject to combination irrespective of whether the corporation is actually subject to tax under 1 of the sections referenced in this subsection. A corporation subject to combination includes a real estate investment trust as referenced under sections 856 to 859 of the Code and a regulated investment company as referenced under sections 851 to 855 of the Code.

- (2) A corporation subject to combination within the meaning of this section shall not include an entity described under sections 38B or 38T. In addition, an entity subject to combination within the meaning of this section shall not include an entity described under sections 20 through 29E except as provided in paragraph (1) of subsection (c) or otherwise in this chapter.
- (3) A corporation subject to combination within the meaning of this section shall not include an entity that is not incorporated in or organized under the laws of the United States or any state, the District of Columbia, or any territory or possession of the United States, if, in accordance with rules prescribed by the Commissioner, (a) the entity ordinarily has 80 per cent or more of its payroll and property outside the United States, and (b) the following criteria are met: (i) the taxpayer certifies that transactions conducted between the entity and other members of the group are on arm's length terms; and (ii) the taxpayer agrees to report to the commissioner any adjustments as finally determined by the United States Internal Revenue Service with respect to transactions between any related entities that may have a bearing on the comparability of transactions referred to in subparagraph (i).
- (4) Notwithstanding any other provision of this section or this chapter, the commissioner may require that a combined report include the income and associated apportionment factors of any person, corporate or non-corporate, when that person is engaged in a unitary business with the combined group of which the taxpayer is a member and the combined report is necessary to prevent the avoidance or evasion of taxes owed to the

commonwealth. Further, the commissioner may, by regulation, require that a combined report include the income and associated apportionment factors of any person, corporate or non-corporate, when that person is engaged in a unitary business with the combined group of which the taxpayer is a member and the combined report is necessary to reflect a proper apportionment of income of the unitary business.

(d) (1) The taxpayer's share, attributable to the commonwealth, of the apportionable income of each combined group of which it is a member shall be determined by applying the apportionment provisions of this chapter that are applicable to the taxpayer to the apportionable income of the combined group, taking into account the apportionment factors associated with the combined group's unitary business and subject to rules that the Commissioner may adopt under paragraph (1) of subsection (f).

(2) The taxpayer's apportionment percentage shall be determined by including in its apportionment factor numerator a share of the apportionment factors associated with the combined group's unitary business in the state without regard to whether particular members of the group are taxable in the commonwealth and by including in its apportionment factor denominator the apportionment factors associated with the combined group's unitary business, wherever located. Notwithstanding this provision, the numerator shall exclude the factors of any entity described under sections 20 through 29E to the extent that the entity is not subject to tax on its net income under chapter 63. The taxpayer's share of apportionment factors associated with the combined group's unitary business in the state shall be determined based on its pro rata share of the apportionment factor numerators of the group members subject to tax in the commonwealth. With respect to a member of a combined group that has no apportionment factors or whose apportionment factors are not determined under section 38, the commissioner may adopt rules to effect a proper: (a) reflection of the taxpayer's income subject to apportionment and (b) apportionment of the taxpayer's income.

(3) For purposes of this section, “apportionable income” is the unitary business income of the combined group and shall be broadly construed to the fullest extent permitted by the United States Constitution. The income subject to apportionment is the sum of each individual group member’s apportionable net income as determined under this chapter whether or not the member is subject to tax hereunder and subject to rules that the commissioner may adopt under paragraph (1) of subsection (f).

(e) The individual members of the combined group shall be jointly and severally liable for the taxpayer’s tax due under this chapter, including any interest and penalties, to the extent permitted under the United States Constitution.

(f) The commissioner shall adopt regulations to implement this section and to coordinate the application of this section with the other provisions of this chapter. The regulations shall include rules to address, without limitation, the following:

- (1) the elimination of intercompany transactions, including but not limited to the payments of dividends, between or among combined group members, and the elimination or deferral of income, expenses, apportionment factors or other tax items associated with those transactions;
- (2) the application of any carry forwards, including the application of any net operating loss carry forwards, which are attributable to the activities of the combined group’s unitary business, including a preclusion as to the carry forward of losses or other tax benefits that were attributable to entities not subject to tax in the commonwealth;
- (3) the relationship to this section of the provisions set forth in sections 31I through 31K of this chapter; and
- (4) all other matters related to the interpretation and administration of this section.

SECTION 46. Section 32D of said chapter 63, as so appearing, is hereby amended by striking out, in lines 1 to 3, the words “domestic business corporation or foreign corporation subject to an excise under section 32 or 39 which is an S corporation or a qualified subchapter S subsidiary” and inserting in place thereof the following words:- business corporation subject to an excise under section 39 which is an S corporation..

SECTION 47. Said section 32D of said chapter 63, as so appearing, is hereby further amended by striking out, in lines 12 to 16, the words “. In the case of a qualified subchapter S subsidiary, income shall be included in the net income measure under this subsection to the extent that such income would have been taxed to the subchapter S subsidiary for federal income tax purposes had it been treated as a separate corporation”.

SECTION 48. Said section 32D of said chapter 63, as so appearing, is hereby further amended by striking out lines 17 to 23 and inserting in place thereof the following words:-

(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 1 of the following rates, in lieu of the rate provided in said section 39:.

SECTION 49. Said section 32D of said chapter 63, as so appearing, is hereby further amended by striking out, in line 31, the words "or qualified subchapter S subsidiary".

SECTION 50. Said section 32D of said chapter 63, as so appearing, is hereby further amended by striking out subsection (b) and inserting in place thereof 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) 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 clause (1) of subsection (a) of section 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 51. Section 33 of said chapter 63 is hereby repealed.

SECTION 52. Section 38 of said chapter 63, as amended by sections 60 and 61 of chapter 123 of the acts of 2006, is hereby further amended by striking out, in the first sentence, the words “domestic business corporation or of a foreign corporation” and inserting in place thereof the following words:- business corporation.

SECTION 53. Said section 38 of said chapter 63 is hereby further amended by striking out clause (i) of paragraph (1) of subsection (a), as appearing in the 2004 Official Edition, and inserting in place thereof the following clause:-

- (i) shares in a corporate trust, as defined in section 1 of chapter 62, to the extent such dividends represent tax free earnings and profits, as defined in section 8 of chapter 62 in effect on December 31, 2007.

SECTION 54. Said section 38 of said chapter 63 is hereby further amended by striking out, in line 70, as so appearing, the words “thirty-eight C or”.

SECTION 55. Said section 38 of said chapter 63 is hereby further amended by striking out, in line 219, as so appearing, the words "domestic or foreign" and inserting in place thereof the following word:- business.

SECTION 56. Said section 38 of said chapter 63 is hereby further amended by striking out, in lines 235 to 236, as so appearing, the words "domestic or foreign".

SECTION 57. The definition of “manufacturing corporation” in paragraph (1) of subsection (1) of said section 38 of said chapter 63, as amended by section 60 of chapter 123 of the acts of 2006, is hereby further amended by striking out, in the first paragraph, the words "domestic or foreign".

SECTION 58. Said definition of “manufacturing corporation” in said paragraph (1) of said subsection (1) of said section 38 of said chapter 63, as so amended, is hereby further amended by striking out, in the second paragraph, the words "domestic or foreign".

SECTION 59. Section 38A of said chapter 63, as appearing in the 2004 Official Edition, is hereby amended by striking out, in line 1, the word "domestic".

SECTION 60. Section 38B of said chapter 63, as so appearing, is hereby amended by striking out, in lines 1 to 2, the words ", domestic business corporation or foreign" and inserting in place thereof the following words:- or business.

SECTION 61. Said section 38B of said chapter 63, as so appearing, is hereby further amended by striking out, in lines 14 to 15, the words ", domestic business corporation or foreign" and inserting in place thereof the following words:- or business.

SECTION 62. Said section 38B of said chapter 63, as so appearing, is hereby further amended by striking out subsection (c) and inserting in place thereof the following subsection:-

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

SECTION 63. Section 38C of said chapter 63 is hereby repealed.

SECTION 64. Section 38D of said chapter 63, as so appearing, is hereby amended by striking out, in line 2, the words "domestic or foreign".

SECTION 65. Said section 38D of said chapter 63, as so appearing, is hereby further amended by striking out, in lines 86 to 87, the words "(1)(i) of subsection (a) of section thirty-two or clause".

SECTION 66. Section 38E of said chapter 63, as so appearing, is hereby amended by striking out, in line 1, the words "domestic or foreign".

SECTION 67: Section 38F of said chapter 63, as so appearing, is hereby amended by striking out, in line 2, the phrase "domestic or foreign" and inserting in place thereof, the following word:- business.

SECTION 68. Section 38G of said chapter 63, as so appearing, is hereby amended by striking out, in lines 1 and 11, the words "domestic or foreign" and inserting in place thereof, in both instances, the following word:- business.

SECTION 69. Section 38H of said chapter 63, as so appearing, is hereby amended by striking out, in line 2, the words "domestic or foreign".

SECTION 70. Said section 38H of said chapter 63, as so appearing, is hereby further amended by striking out, in lines 55 to 56, the words "(1)(i) of subsection (a) of section thirty-two or clause".

SECTION 71. Section 38I of said chapter 63, as so appearing, is hereby amended by striking out, in line 2, the words "domestic or foreign" and inserting in place thereof, the following word:-
business.

SECTION 72. Section 38J of said chapter 63, as so appearing, is hereby amended by striking out, in line 2, the words "domestic or foreign".

SECTION 73. Section 38M of said chapter 63, as so appearing, is hereby amended by striking out, in line 1, the words "domestic or foreign" and inserting in place thereof the following word:-
business.

SECTION 74. Said section 38M of said chapter 63, as so appearing, is hereby further amended by striking out, in lines 28 to 29, the words "subsection (b) of section 32, subsection (b) of section 39," and inserting in place thereof the following words:- "subsection (b) of section 39.

SECTION 75. Said section 38M of said chapter 63, as so appearing, is hereby further amended by striking out, in lines 44 to 45, the words "thirty-two or".

SECTION 76. Section 38Q of said chapter 63, as amended by section 63 of chapter 123 of the acts of 2006, is hereby further amended by striking out the first paragraph of subsection (a) and inserting in place thereof the following paragraph:-

(a) A business corporation which commences and diligently pursues an environmental response action on or before August 5, 2011 and which achieves and maintains a permanent solution or remedy operation status in compliance with chapter 21E and the regulations adopted under that chapter which includes an activity and use limitation shall, at the time the 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, 2012 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, if these costs shall be not less than 15 per cent of the assessed value of the property before remediation, and if the site was reported to the department of environmental protection. A credit of 50 per cent of these costs shall be allowed for a 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 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 under chapter 21E shall be allowed a credit.

SECTION 77. Said section 38Q of said chapter 63, as so amended, is hereby further amended by striking out, in subsection (e), the words "subsection (b) of section 32 or".

SECTION 78. Section 38S of said chapter 63, as appearing in the 2004 Official Edition, is hereby amended by striking out, in line 2, the words "domestic or foreign".

SECTION 79. Said chapter 63 is hereby further amended by striking out section 38T, as inserted by section 28 of chapter 163 of the acts of 2005, and inserting in place thereof the following section:-

Section 38U. Every business corporation which is exempt from taxation under section 501 of the Code shall be subject to tax under section 39 on its unrelated business taxable income, as defined in section 512 of the Code. The property or net worth of those corporations 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 under section 38, but 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 501 of the Code shall not be considered to be a business corporation for purposes of chapter 59.

SECTION 80. Said chapter 63 is hereby further amended by striking out section 39 and inserting in place thereof, the following section:

Section 39. Except as otherwise provided in this section, 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 under chapter 175 or under 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 in this section is due and payable on any 1 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 those 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 12 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) \$7 per 1000 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) 8.33 per cent of its net income determined to be taxable in accordance with this chapter.

(b) \$400.

A business corporation shall not be subject to the income measure of tax under subsection clause (2) of subsection (a) 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, but no portion of any warehouse which is owned or leased by a consignor or consignee of the tangible personal property shall be considered 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 clause (1) of subsection (a) or subsection (b), whichever is greater.

SECTION 81. Said chapter 63 is hereby further amended by striking out section 42B, as amended by section 29 of chapter 163 of the acts of 2005, and inserting in place thereof the following section:-

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 considered

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 $\frac{2}{3}$ of its receipts attributable to the commonwealth from the activity or incurs more than $\frac{2}{3}$ of its expenditures attributable to the commonwealth allocable to the activity, but 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 $\frac{2}{3}$ 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, or 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 considered to be a research and development corporation which is not considered 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 82. Section 52 of said chapter 63, as appearing in the 2004 Official Edition, is hereby amended by striking out the first 4 sentences and inserting in place thereof the following 2 sentences:- 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, the portion of those provisions that was found to be unconstitutional or inoperative shall be null and void and shall become inapplicable to those corporations. In this event, the provisions of law, whether under this chapter or chapter 62, that (a) were applicable to those business corporations immediately before 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 those business corporations and shall be continued in full force and effect from the first day of January preceding by 6 years the first day of January of the calendar year in which the 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 83. Said section 52 of said chapter 63, as so appearing, is hereby further amended by striking out the last 3 sentences and inserting in place thereof the following 3 sentences:- Excises declared invalid by reason of the foregoing premises, which were assessed on or after the date when predecessor laws are revived, made operative or applicable or continued in force as provided in this section, shall, to the extent that those excises have been paid and are unrefunded, be credited against the taxes assessed for the same period under the laws revived and again made operative, applicable and continued in force, but if this 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.

SECTION 84. Section 52A of said chapter 63, as so appearing, is hereby amended by striking out paragraph (a) of subsection (1) and inserting in place thereof the following paragraph:-

(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, before January 1, 1952, been subject to taxation under sections 53 to 60.

SECTION 85. Said chapter 63 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 in that section, and as modified by section 32D in the case of S corporations and by section 38U 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 utility corporation as

defined in section 52A and subject to excise under that section; (4) an insurance company subject to excise under sections 20 to 29E (except as provided in Section 29F); (5) an urban redevelopment corporation subject to excise under section 10 of chapter 121A; (6) a corporation described in sections 10 or 18 of chapter 157; (7) a corporation described in section 1 of chapter 171; (8) a corporation or other entity that qualifies as a regulated investment company under section 851 of the federal Internal Revenue Code; or (9) a business corporation otherwise expressly exempted from the excise under this chapter by any other General Law.

SECTION 86. Section 10 of chapter 63B of the General Laws, as so appearing, is hereby amended by striking out, in line 3, the word "domestic".

SECTION 87. Chapter 64D of the General Laws is hereby amended by striking out sections 1 to 3, as so appearing, and inserting in place thereof the following 3 sections:-

Section 1. (a) There shall be levied, collected and paid the excise specified in this section on each conveyance of real property located in the commonwealth or interest in real property located in the commonwealth: when the consideration for the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining on the interest or property at the time of the sale, exceeds \$100 and does not exceed \$500, \$2; and for each additional \$500 or fractional part thereof, \$2, but in Barnstable county, the excise specified in this section shall be \$1.50 for each \$500 or fractional part of the consideration, excluding a consideration of between \$0 and \$100 dollars. The 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 the 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 county excise 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.

(b) For purposes of calculating the excise set forth in this chapter, under regulations to be adopted by the commissioner, the commissioner may treat multiple transactions as a single transaction or may otherwise adopt reasonable rules to avoid multiple applications of the excise when the transactions are components of a single project including, but not limited to, projects involving historic rehabilitation tax credits, the Community Preservation Act and the development of affordable housing.

(c) For purposes of this chapter, unless otherwise expressly stated, the following words shall have the following meanings:

"Conveyance", a transfer or transfers, directly or indirectly, 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, but the transfer or acquisition of a controlling interest shall be considered to be a conveyance only if the fair market value of the interest or interests in real property wherever situated that is owned by the entity, whether directly or through subsidiary entities, equals or exceeds 80 per cent of the fair market value of all of the assets of the entity.

"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.

"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, directly or indirectly, including through the transfer or acquisition of an interest in another entity, a total of 50 per cent or more of the total combined stock of the corporation, by vote or value. 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, directly

or indirectly, including through the transfer or acquisition of an interest in another entity, a total of 50 per cent or more of the capital, profits, or beneficial interest in the entity.

(d) Persons are considered to be "acting in concert" when, in accordance with regulations adopted by the commissioner, they have a relationship such that 1 person influences or controls the actions of another. Where the individuals or entities are not commonly controlled or owned, persons shall be considered to be acting in concert when, in accordance with regulations adopted 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.

(e) For purposes of determining whether a controlling interest is transferred or acquired, only transfers or acquisitions of interests occurring on or after January 1, 2008, 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 January 1, 2008, 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 whether 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 shall be added to another transfer or acquisition in the same entity if they occur more than 3 years apart, unless the transfers or acquisitions are so timed as part of a plan to avoid the excises specified in this section. Notwithstanding the foregoing, neither a 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 considered subject to taxation under this chapter.

(f) The commissioner may adopt regulations to implement this section.

Section 2. The excise imposed by this chapter shall be paid by the person who conveys

the real property or interest in real property, or for whose benefit the real property or interest in it 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" the 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 3, 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 the purpose. In any case in which a conveyance subject to the excise imposed in this chapter is not evidenced by a deed, instrument, or writing that will be recorded, the conveyance 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 on it the initials of his name and the date when the stamp is affixed or printed, in such manner that it cannot be used again; but 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 3. (a) Stamps for the purpose of paying the excise under this chapter shall be prepared in the form, of the denominations and in the quantities that the commissioner may prescribe. The commissioner shall provide for the sale of the stamps in the places and at the times that the commissioner considers necessary. The commissioner shall provide for the custody of the stamps and other equipment used in the production of the stamps in the manner that he considers 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.

(b) The commissioner may cause to be installed in any registry of deeds 1 or more metering

machines through which the stamps may be sold and may remove the machine if the commissioner considers 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 a metering machine or approved computer hardware and software, the register of deeds shall sell stamps to persons requiring the same for affixation or printing to deeds, instruments, writings, or forms in accordance with this chapter.

(c) 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 the register during the preceding calendar month and shall turn over to the commissioner all moneys received from the 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 register shall, annually, furnish to the county treasurer a financial report regarding this interest and the expenditure of it 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 the register in his official capacity from the sale of the stamps. The premium for the bond shall be paid by the state treasurer upon certification by the commissioner.

(d) Sections 3A and 3B shall not be applicable to any registry of deeds during the period in which a metering machine or approved computer hardware or software is installed in that registry, nor to any registry operated by the state secretary.

SECTION 88. Section 3A of said chapter 64D, as so appearing, is hereby amended by striking out, in line 5, the word "adhesive".

SECTION 89. Section 4 of said chapter 64D, as so appearing, is hereby amended by inserting after the word "affixed", in line 1, the following words:- or printed.

SECTION 90. Said chapter 64D is hereby further amended by striking out section 6, as so appearing, and inserting in place thereof the following section:-

Section 6. The commissioner shall administer and enforce the excise imposed by this chapter and shall adopt regulations as necessary to implement this chapter. At any time after the making of a conveyance subject to the excise imposed by this chapter, the commissioner may investigate and ascertain whether the 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 3 years or a longer period that the commissioner may by regulation provide, or alters, cancels or obliterates any part of this data, or makes any false entry therein, shall be punished by a fine of not less than \$500 nor more than \$5,000, or by imprisonment for not less than 3 months nor more than 2 years, or both.

SECTION 91. Section 6A of said chapter 64D, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:-

Whoever signs and delivers to a purchaser, or to any person designated by a purchaser, a deed, instrument, writing, or form required by section 2 of this chapter which does not have the stamps required by this chapter affixed to it or printed on it, 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 to it or printed on it, 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 a penalty, not exceeding \$100, that the commissioner may determine.

SECTION 92. Said chapter 64D is hereby further amended by striking out section 6B, as so appearing, and inserting in place thereof the following section:-

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

SECTION 93. Section 8 of said chapter 64D, as so appearing, is hereby amended by inserting after the word "affixed", in line 7, the following words:- or printed.

SECTION 94. Section 9 of said chapter 64D, as so appearing, is hereby amended by striking out, in line 1, the words "an adhesive" and inserting in place thereof the following words:- a.

SECTION 95. Section 10 of said chapter 64D, as so appearing, is hereby amended by striking out, in line 1, the word "taxes" and inserting in place thereof the following word:- excise.

SECTION 96. Said chapter 64D is hereby further amended by striking out section 11, as so appearing, and inserting in place thereof the following section:-

Section 11. There shall be established upon the books of each county that has not been abolished under 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 any general or special law and this chapter to the contrary, and except for Barnstable county and all counties that have been abolished under chapter 34B or other applicable law, on the first day of each month, 42.5 per cent of the excises collected under 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 per cent of the excises collected under this chapter, but not including the additional excise authorized under section 2 of chapter 163 of the acts of 1988, shall be transmitted to the Deeds Excise Fund. Notwithstanding any general or special law and this chapter to the contrary, and except for Barnstable county and all counties that have been abolished under chapter 34B or other applicable law, on the first day of each month, 7.5 per cent of the excises collected under 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 per cent of the excises collected under this chapter, but not including the additional excise authorized under said section 2 of said chapter 163, shall be transmitted to the County Correction Fund. The remaining percentage of excises collected under this chapter, including all excises collected under this chapter in all counties that have been abolished under chapter 34B or other applicable law shall be transmitted to and retained by the General Fund in accordance with section 10.”

SECTION 97. Section 1 of chapter 64G of the General Laws, as so appearing, is hereby amended by inserting after paragraph (b) thereof the following paragraph:--

(b1/2) “Doing business in the commonwealth”, ownership or operation of a bed and breakfast establishment, hotel, lodging house or motel that is located in the commonwealth, maintenance otherwise of a place of business in the commonwealth, the presence of an employee in the commonwealth on more than a de minimis basis, solicitation in the commonwealth of orders for transfer of occupancy of accommodations located in the commonwealth, solicitation in the commonwealth by a reseller of a contract or other cooperative arrangement with an operator with respect to accommodations located in the commonwealth, inspection in the commonwealth of accommodations that may be the subject of a cooperative arrangement between an operator and a reseller, or other exploitation of the market for accommodations or resale of accommodations located in the commonwealth by any means whatsoever, including, but not limited to, salesmen, solicitors or representatives in the commonwealth, whether those salesmen, solicitors or representatives are employed by the operator or reseller, by a person affiliated with the operator

or the reseller by common ownership, or by any other party. This definition is intended to extend the jurisdiction of the commonwealth over operators and resellers to the full extent authorized by the Constitution and the laws of the United States.

SECTION 98. Said section 1 of said chapter 64G, as so appearing, is hereby further amended by inserting after the word “operator”, in line 49, the following words: -- or the room reseller.

SECTION 99. Said section 1 of said chapter 64G, as so appearing, is hereby further amended by adding the following paragraph:-

(k) "Room Reseller" or “Reseller”, any person having any right, permission, license, or other authority from or through an operator to reserve or arrange transfer of occupancy of accommodations the transfer of which is subject to this chapter, such that the occupant pays all or a portion of the rent to the reseller, but the term shall not include a tour operator.

SECTION 100. Said chapter 64G is hereby further amended by striking out section 3, as so appearing, and inserting in place thereof the following section: --

Section 3. An excise is hereby imposed upon the transfer of occupancy of any room or rooms in a bed and breakfast establishment, hotel, lodging house, or motel in this commonwealth by any operator or room reseller doing business in the commonwealth at the rate of 5 per cent of the total amount of rent for each occupancy. No excise shall be imposed if the total amount of rent paid by the occupant is less than \$15 per day or its equivalent.

The operator or room reseller shall pay the excise to the commissioner at the time provided for filing the return required by section 16 of chapter 62C.

SECTION 101. Section 3A of said chapter 64G, as so appearing, is hereby amended by striking out the first 3 sentences and inserting in place thereof the following 3 sentences:-

Any city or town that accepts this section may impose a local excise tax upon the transfer of occupancy of any room or rooms in a bed and breakfast establishment, hotel, lodging house or motel located within the city or town by any operator or room reseller at a rate up to, but not

exceeding, 4 per cent of the total amount of rent paid by the occupant for the occupancy ,but the city of Boston may impose a local excise upon the transfer of occupancy of any room in a bed and breakfast establishment, hotel, lodging house or motel located within the city by any operator or room reseller at the rate of up to but not exceeding 4.5 per cent of the total amount of rent paid by the occupant for the occupancy. No excise shall be imposed if the total amount of rent paid by the occupant is less than \$15 per day or its equivalent or if the accommodation is exempt under section 2 of this chapter. The operator or room reseller shall pay the local excise tax imposed under this section to the commissioner at the same time and in the same manner as the excise tax due the commonwealth.

SECTION 102. Said chapter 64G is hereby further amended by inserting after section 3A the following section:-

Section 3B. Notwithstanding any other provision of this chapter, in cases in which occupancy is transferred through the use of a room reseller, the application of the excise shall be as follows:

If the room reseller is required to register under section 6 to collect the excise, the room reseller shall collect and pay to the commissioner the excise upon the amount of rent paid by the occupant to the room reseller, less the amount of rent that the reseller has paid to the operator.

Whether or not the room reseller is so registered, the operator shall collect and pay to the commissioner the excise upon the amount of rent paid to the operator by the reseller or the occupant.

SECTION 103. Said chapter 64G is hereby further amended by striking out sections 4 to 6, as so appearing, and inserting in place thereof the following 3 sections:--

Section 4. Reimbursement for the excise imposed under sections 3 and 3A shall be paid by the occupant or the room reseller to the operator and by the occupant to the room reseller, as the case may be, and each operator and room reseller doing business in the commonwealth shall add to the rent and shall collect from the occupant or the room reseller the full amount of the excise imposed, in accordance with sections 3 and 3A, and that excise shall be a debt to the operator or

room reseller, when so added to the rent, and shall be recoverable at law in the same manner as other debts.

Section 5. The amount of the excise collected by the operator or the room reseller under this chapter shall be stated and charged separately from the rent and shown separately on any record thereof at the time the transfer of occupancy is made, or on any evidence of the transfer issued or used by the operator or the room reseller. A room reseller shall not be required to disclose to the occupant the amount of tax charged by the operator. The reseller shall represent to the occupant that the separately stated taxes charged by the reseller include taxes charged by the operator.

Section 6. No person shall operate a bed and breakfast establishment, hotel, lodging house or motel in this commonwealth, or do business as a room reseller in the commonwealth, unless a certificate of registration has been issued to him in accordance with section 67 of chapter 62C.

SECTION 104. Section 7A of said chapter 64G, as so appearing, is hereby amended by inserting after the word “operator”, in line 1, the following words:- or room reseller .

SECTION 105. Said section 7A of said chapter 64G, as so appearing, is hereby further amended by inserting after the word “operator”, in line 7, the following words:- or room reseller .

SECTION 106. Said chapter 64G is hereby further amended by striking out section 7B, as inserted by section 30 of chapter 163 of the acts of 2005, and inserting in place thereof the following section:-

Section 7B. Every operator or room reseller who fails to pay to the commissioner any sums required to be paid by this chapter shall be personally and individually liable for those amounts to the commonwealth. The terms “operator” and “room reseller”, as used in this section, include an officer or employee of a corporation, or a member or employee of a partnership, who as an officer, employee or member is under a duty to pay over the taxes imposed by this chapter.

SECTION 107. Section 12 of said chapter 64G, as appearing in the 2004 Official Edition, is hereby amended by inserting after the word “operator”, in line 5, the following words:- and each room reseller .

SECTION 108. The definition of “sale at retail” or “retail sale” in section 1 of chapter 64H of the General Laws, as so appearing, is hereby amended by inserting after the word “business.”, in line 129, the following sentence:- A sale for resale in the regular course of business does not include a lease, rental or sale to a leasing or procurement entity for subsequent lease, rental or sale to any related entity, related member as defined in section 31I of chapter 63, or affiliate, including persons described in. section 267(b) or 707(b)(1) of the Internal Revenue Code of the United States. The previous sentence does not apply to a sale of tangible personal property held for resale to any third party that is not related as described in this section.

SECTION 109. Section 6 of said chapter 64H, as amended by section 15 of chapter 260 of the acts of 2006,, is hereby further amended by inserting after paragraph (ww), the following paragraph:-

(xx) Sales of tangible personal property purchased by a business entity for keeping or retention in the commonwealth for the purpose of subsequently transporting that property outside of the commonwealth for business use thereafter solely outside of the commonwealth, or for the purpose of being processed, fabricated or manufactured into other tangible personal property to be transported outside of the commonwealth and thereafter used solely outside of the commonwealth. A taxpayer must retain adequate documentation substantiating that the requirements of this exemption are met.

SECTION 110. Section 8 of chapter 64I of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by inserting after the word “purchase.”, in line 45, the following sentence:- Notwithstanding this paragraph, tangible personal property purchased for placement in inventory is presumed to be purchased for use in the commonwealth if the property is

subsequently used in the commonwealth without regard to whether it is brought into the commonwealth within 6 months after purchase, and use tax is due at the time the property is first used in the commonwealth.

SECTION 111. (a) There shall be a special commission to study the modernization and simplification of the current tax laws of the commonwealth, for the purposes of promoting tax fairness and equity, encouraging business growth and innovation, and strengthening the commonwealth's global competitiveness. The commission shall provide recommendations on matters including: (1) the definition and proper taxation of utility corporations; (2) the need for preferential tax treatment of security corporations, (3) the appropriate method for calculating credits for research and development credits; (4) the scope and ongoing need for the various exemptions from the sales and use taxes; (5) appropriate taxation of digital products; (6) estimated tax payment rules for individuals; (7) the substitution of refundable credits for transferable credits; (8) use of gambling losses on personal income tax returns; (9) the imposition of the cigar excise on wholesale transactions; (10) the calculation of the non-income measure of the corporate excise; and (11) other matters as the commission may determine. The commission shall also evaluate the commonwealth's participation in the Streamlined Sales Tax Compact.

(b) The commission shall consist of the secretary of administration and finance, who shall chair the commission, the chairs of the joint committee on revenue, the commissioner of revenue, the secretary of housing and economic development, or the designees of any of them; 3 persons appointed by the governor who are experts in economics or corporate tax law; and representatives appointed by the following organizations: the Federal Reserve Bank of Boston, the Massachusetts Taxpayers Foundation, the Greater Boston Chamber of Commerce, Associated Industries of Massachusetts, the Massachusetts Budget and Policy Center, the Massachusetts AFL-CIO,

Neighbor to Neighbor Massachusetts, the Massachusetts Teachers Association, and the Massachusetts Municipal Association.

(c) The commission shall submit its report, including legislative recommendations if any, to the clerks of the house of representatives and senate on or before December 31, 2008.

SECTION 112. 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 those entities, whose tax classification is altered by this act. These 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 this act, with corresponding adjustments to basis or other tax attributes if and as determined by the commissioner to be appropriate.

SECTION 113. The commissioner may adopt rules and regulations to implement sections 28, 30 and 97 to 107, inclusive, of this act.

SECTION 114. Sections 1 to 15, inclusive, 17 to 26, inclusive, 29, 31 to 87, inclusive, and 112 shall be effective for tax years beginning on or after January 1, 2008.

SECTION 115. Sections 27 to 28, 30, and 97 to 107, inclusive, shall be effective for transfers of occupancy taking place on or after January 1, 2008.

SECTION 116. Sections 88 to 96, inclusive, shall be effective for transfers taking place on or after January 1, 2008.

SECTION 117. Sections 108 and 109 shall apply to transactions on or after January 1, 2008 and shall have no retroactive impact on existing leases or rentals. Section 110 shall apply to property brought into the commonwealth for use on or after January 1, 2008. A termination of any existing lease or rental between related entities, related members, or affiliates, including persons described in section 267(b) or 707(b)(1) of the Internal Revenue Code, after the effective date of this act shall be considered to be a sale at fair market value of the leased or rented property if the lessee retains possession or use of the property.