

HOUSE No. 3756

The Commonwealth of Massachusetts



EXECUTIVE DEPARTMENT
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DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

February 27, 2007.

To the Honorable Senate and House of Representatives:

I am filing for your consideration the attached legislative proposal, entitled, "An Act Improving the Fairness of the Tax Laws."

This legislation will provide property tax relief to citizens across the Commonwealth by enacting a Homeowner Circuit Breaker, which will expand the present Senior Circuit Breaker income-tax credit to homeowners of all ages. Effective January 1, 2008, an estimated 100,000 families and individuals will qualify for this credit, in a projected amount of up to \$920 per year, which constitutes a nearly 25 percent offset to the average state-wide property tax bill of \$3,800.

The bill will also close several tax loopholes that create an uneven playing field for business and cost hundreds of millions of dollars of lost revenue. Closing these loopholes will not hurt our competitiveness or place an onerous tax burden on business. A number of states with whom Massachusetts competes for business already have similar laws in place. In addition, none of these reforms targets tax benefits that the Legislature intended. On the contrary, these reforms are a first step toward achieving equity and fairness in a tax system known to be cumbersome and unfair.

Finally, this legislation will create a commission to recommend longer-term changes to modernize and simplify our current tax laws, so as to promote tax fairness and equity, encourage business growth and innovation, and strengthen the Commonwealth's global competitiveness.

I urge your prompt and favorable consideration of this bill to begin improving the fairness of our system of taxation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Deval Patrick", written in a cursive style.

DEVAL L. PATRICK,
Governor.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT IMPROVING THE FAIRNESS OF THE TAX LAWS.

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

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

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

1 SECTION 2. Paragraph (3) of said clause Sixteenth of said
2 section 5 of said chapter 59, as so appearing, is hereby amended
3 by striking out the words “(a) a domestic manufacturing corpora-
4 tion as defined in section 38C of chapter 63 or (b) a foreign man-
5 ufacturing corporation as defined in section 42B of said chapter”
6 and inserting in place thereof the following words:— a manufac-
7 turing corporation as defined in section 42B of chapter 63.

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

5 (5) The classification by the commissioner or the appellate tax
6 board of a corporation as a business corporation or a manufac-
7 turing corporation as respectively defined as aforesaid, shall be
8 followed in the assessment under this chapter of machinery used
9 in the conduct of the business.

1 SECTION 4. Clause Sixteenth A of said section 5 of said
2 chapter 59 is hereby repealed.

1 SECTION 5. Section 18 of said chapter 59, as appearing in the
2 2004 Official Edition, is hereby amended by striking out, in lines
3 18 to 19, the words “domestic business and foreign corporations
4 as defined in section thirty of chapter sixty-three” and inserting in
5 place thereof the following words:— business corporations sub-
6 ject to tax under section 39 of chapter 63.

1 SECTION 6. Said section 18 of said chapter 59, as so
2 appearing, is hereby further amended by striking out, in lines 38
3 to 39, the words “domestic business or foreign corporation, as
4 defined in section thirty of chapter sixty-three” and inserting in
5 place thereof, the following words:— business corporation sub-
6 ject to tax under section 39 of chapter 63.

1 SECTION 7. Section 33 of said chapter 59, as so appearing, is
2 hereby amended by striking out, in lines 6 to 10, the words
3 “domestic business corporations and foreign corporations as
4 respectively defined in section thirty of chapter sixty-three, and
5 domestic manufacturing corporations and foreign manufacturing
6 corporations as respectively defined in sections thirty-eight C and
7 forty-two B of said chapter” and inserting in place thereof the
8 following words:— business corporations subject to tax under
9 section 39 of chapter 63.

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

1 SECTION 9. Section 1 of chapter 62 of the General Laws, as
2 amended by section 10 of chapter 58 of the acts of 2006, is hereby

3 further amended by inserting after paragraph (o) the following 3
4 paragraphs:—

5 (p) “Partnership”, an entity that is classified for the taxable year
6 as a partnership for federal income tax purposes, except as other-
7 wise provided in this chapter.

8 (q) “Disregarded entity”, an entity that is disregarded as a sepa-
9 rate entity from its owner for federal income tax purposes. Such
10 an entity shall similarly be disregarded for purposes of this
11 chapter, and without limitation, all income, assets, and activities
12 of the entity shall be considered to be those of the owner.

13 (r) “Tax-free earnings and profits”, earnings and profits that
14 were considered tax-free earnings and profits under section 8 of
15 this chapter as in effect on December 31, 2007.

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

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

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

5 (D) Dividends received from a corporate trust subject to taxa-
6 tion under section 8 of this chapter as in effect on December 31,
7 2007, to the extent that they are derived from earnings and profits
8 previously taxed to the trust under said section but only to the
9 extent that the trust properly filed returns and paid all taxes due.

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

1 SECTION 14. Section 4 of said chapter 62, as so appearing, is
2 hereby amended by striking out, in lines 1 to 4, the words “non-
3 residents shall be taxed, to the extent specified in section five A

4 on their taxable income, and corporate trusts shall be taxed to the
5 extent specified in section eight” and inserting in place thereof the
6 following words:— and nonresidents shall be taxed to the extent
7 specified in section 5A.

1 SECTION 15. Subsection (a) of section 6 of said chapter 62, as
2 so appearing, is hereby amended by inserting after the first para-
3 graph the following paragraph:—

4 In the case of dividends received out of tax-free earnings and
5 profits of a corporate trust previously subject to tax under this
6 chapter, shareholders of the corporate trust shall be entitled to
7 credit for income taxes paid to other jurisdictions on those earn-
8 ings and profits, either by the corporate trust or by the share-
9 holders, as otherwise calculated under this subsection.

1 SECTION 16. Subsection (h) of said section 6 of said
2 chapter 62, as so appearing, is hereby amended by inserting, after
3 the second sentence, the following sentence:— With respect to a
4 person who is a nonresident for all or part of the taxable year, the
5 credit shall be limited to 15 per cent of the federal credit multi-
6 plied by a fraction the numerator of which is the earned income of
7 the nonresident from Massachusetts sources and the denominator
8 of which is the earned income of the nonresident from all sources.

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

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

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

5 (10) Every board or officer of a city, town, district or local
6 commission responsible for the collection of property taxes,
7 special assessments or water and sewer charges shall annually
8 transmit to the commissioner, in the form and manner that the
9 commissioner prescribes, a report of the amounts billed to every
10 person who is liable during the taxable year to the city, town, dis-
11 trict or commission for those taxes, assessments and charges. The
12 commonwealth shall pay to each city, town, district or commis-
13 sion an amount sufficient to defray the additional costs imposed
14 under this subsection. In every year not later than June 1, the
15 state auditor shall determine and deliver to the commissioner a
16 statement of the incremental costs attributed to this subsection and
17 estimated to be incurred by each city, town, district and commis-
18 sion in the next fiscal year. The commissioner shall include in the
19 budget recommendations for the fiscal year a request for an appro-
20 priation in an amount equal to these estimated costs, and shall, not
21 later than September 1, disburse to each city, town, district or
22 commission its share of these appropriated funds.

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

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

1 SECTION 21. Section 17A of said chapter 62 of the General
2 Laws, as so appearing, is hereby amended by striking out para-
3 graph (e).

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

1 SECTION 23. Section 6 of chapter 62C of the General Laws,
2 as so appearing, is hereby amended by striking out, in lines 8 to
3 11, the words “every corporate trust taxable under section eight of
4 chapter sixty-two, and every other corporate trust doing business
5 within the commonwealth and every other” and inserting in place
6 thereof the following words:— and every.

1 SECTION 24. Said section 6 of said chapter 62C, as so
2 appearing, is hereby further amended by striking out, in line 32,
3 the word “domestic” and inserting in place thereof the following
4 word:— business.

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

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

4 Section 11. Except as otherwise provided in this chapter, every
5 business corporation, as defined in section 30 of chapter 63, shall,
6 on or before the fifteenth day of the third month following the
7 close of each taxable year, make a return giving the information
8 that the commissioner may consider necessary for the determina-
9 tion of the taxes imposed upon it by chapter 63.

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

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

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

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

1 SECTION 31. Section 1 of chapter 63 of the General Laws, as
2 so appearing, is hereby amended by inserting after the last sen-

3 tence in the definition of “Financial institution” the following sen-
4 tence:—

5 The term “corporation” as used in this definition shall mean
6 any corporation, or any "other entity" as defined in section 1.40 of
7 chapter 156D, whether the corporation or other entity may be
8 formed, organized, or operated in or under the laws of Massachu-
9 setts or any other jurisdiction, that is classified for the taxable
10 year as a corporation for federal income tax purposes.

1 SECTION 32. Section 2 of said chapter 63, as so appearing, is
2 hereby amended by striking out, in line 1, the words “subsection
3 (b)” and inserting in place thereof, the following words:— sub-
4 sections (b) and (d).

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

4 (d) Any financial institution that is an S corporation, as defined
5 in section 1361 of the Code, shall not be subject to the tax pro-
6 vided in subsections (a) and (b), and shall instead be subject to the
7 excise set forth in section 2B.

1 SECTION 34. Said chapter 63 is hereby further amended by
2 inserting after section 2A, the following section:—

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

7 (i) The net income shall be determined by taking into account
8 subchapter S of the Code. Income or loss shall be determined as
9 if it were realized or incurred directly by an owner subject to taxa-
10 tion under chapter 62 or 63, as applicable. In the case of an S cor-
11 poration, income shall be included in the net income measure
12 under this subsection and subject to tax at a rate of 10.5 per cent
13 to the extent that the income is taxed to the S corporation for fed-
14 eral income tax purposes; and

15 (ii) Any financial institution which is an S corporation and has
16 total receipts for the taxable year of \$6,000,000 or more shall also
17 include in its excise an amount determined by multiplying its net

18 income determined to be taxable in accordance with this chapter
19 by 1 of the following rates:

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

22 (2) if total receipts for the taxable year are \$9,000,000 or more,
23 4.97 per cent.

24 For purposes of this paragraph (ii) of subsection (a), net income
25 determined to be taxable in accordance with this chapter shall be
26 determined without taking into account subchapter S of said Code,
27 and shall not include income that is taxed to the S corporation at
28 the entity level under paragraph (i) of this subsection. The term
29 “total receipts” shall mean gross receipts or sales, less returns and
30 allowances, and shall include dividends, interest, royalties, capital
31 gain net income, rental income and all other income. The cost of
32 goods sold or the cost of operations shall not be deductible in
33 determining these total receipts. The commissioner shall, by regu-
34 lation, apply limits on an aggregate basis to S corporations
35 engaged in a unitary business with majority direct or indirect own-
36 ership by common stockholders. This aggregating shall also
37 include any other type of entity so engaged and so owned which
38 the commissioner finds was established for the purpose of
39 avoiding the foregoing limit.

40 (iii) Qualified subchapter S subsidiaries shall not be subject to
41 separate entity level taxation under this section. Rather, the parent
42 S corporation shall be subject to tax under this section, and shall
43 include the income and take into account the activities of all quali-
44 fied subchapter S subsidiaries for purposes of calculating the
45 excise due under paragraphs (i) and (ii) of this subsection. The
46 parent S corporation and its qualified subchapter S subsidiaries
47 shall be jointly and severally liable for the tax due under this
48 chapter.

49 (b) The excise imposed under this section for each taxable year
50 shall be not less than \$456.

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

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

4 (a) An insurance company subject to sections 20 through 29E
5 shall, in addition to the excise determined under those sections, be

6 subject to this section if the company owns, directly or indirectly,
7 50 per cent or more of the interests in an entity treated as a part-
8 nership or disregarded entity that is engaged in a non-insurance
9 trade or business in Massachusetts.

10 (b) Without limitation, this section shall not apply to income of
11 an insurance company from the buying, selling, holding, or
12 dealing in securities or other investment intangibles on its own
13 behalf, and not as a broker. Gain from the sale of real property
14 and improvements shall also be excluded to the extent that the
15 gain exceeds cumulative depreciation and similar expenses with
16 respect to the property and improvements that have been deducted
17 in determining income taxable under subsection (c).

18 (c) An insurance company with non-insurance trade or busi-
19 ness income from a partnership or disregarded entity, as described
20 in subsection (a), shall file a return under this chapter with respect
21 to the income and activities of the partnership or disregarded
22 entity in the manner of a business corporation, financial institu-
23 tion, or utility corporation, as applicable, and pay the associated
24 excise. The income and activities shall, to the extent applicable,
25 be included in a combined return filed under section 32B.

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

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

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

12 1. “Business corporation”, any corporation, or any “other
13 entity” as defined in section 1.40 of chapter 156D, whether the
14 corporation or other entity may be formed, organized, or operated
15 in or under the laws of Massachusetts or any other jurisdiction,
16 and whether organized for business or for non-profit purposes,

17 that is classified for the taxable year as a corporation for federal
18 income tax purposes.

19 2. “Disregarded entity”, an entity that is disregarded as a sepa-
20 rate entity from its owner for federal income tax purposes. Such
21 an entity shall similarly be disregarded for purposes of this
22 chapter, and without limitation, all income, assets, and activities
23 of the entity shall be considered to be those of the owner.

1 SECTION 37. Said section 30 of said chapter 63 is hereby fur-
2 ther amended by striking out, in line 178, as appearing in the 2004
3 Official Edition, the word “foreign” and inserting in place thereof
4 the following word:— business.

1 SECTION 38. Said section 30 of said chapter 63 is hereby fur-
2 ther amended by striking out, in line 184, as so appearing, the
3 words “thirty-two or”.

1 SECTION 39. Said section 30 of said chapter 63 is hereby fur-
2 ther amended by striking out, in line 192, as so appearing, the
3 words “thirty-two or”.

1 SECTION 40. Said section 30 of said chapter 63 is hereby fur-
2 ther amended by striking out, in lines 196 to 198, as so appearing,
3 the words, “domestic business corporation taxable under
4 clause (1) of subsection (a) of section 32 or of a foreign corpora-
5 tion taxable under clause (1) of subsection (a) of” and inserting in
6 place thereof, the following words:— business corporation taxable
7 under.

1 SECTION 41. Section 30 of chapter 63 of the General Laws,
2 as amended by sections 19 to 22 of chapter 163 of the acts of
3 2005, is hereby further amended by striking out paragraph 16 and
4 inserting in place thereof the following 2 paragraphs:—

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

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

1 SECTION 42. Section 31E of said chapter 63, as appearing in
2 the 2004 Official Edition, is hereby amended by striking out, in
3 line 1, the words “domestic or foreign” and inserting in place
4 thereof the following word:— business.

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

3 Section 31M. In determining gross income under this chapter,
4 if the federal gross income includes any item of gain or has been
5 reduced by any item of loss, with respect to property, then the fed-
6 eral gross income shall be increased by the excess of the federal
7 adjusted basis of the property over the Massachusetts adjusted
8 basis of the property, and shall be decreased by the excess of the
9 Massachusetts adjusted basis of the property over the federal
10 adjusted basis of the property, so that the gain or loss realized for
11 Massachusetts purposes takes into account all applicable differ-
12 ences in the Massachusetts and federal tax rules over the life of an
13 asset that should, in principle, give rise to differences in basis.
14 The Massachusetts adjusted basis of property shall be the federal
15 adjusted basis, except that (i) any federal adjustment resulting
16 from provisions of the Code that were not applicable in deter-
17 mining Massachusetts gross income at the time the federal adjust-
18 ments were made shall be disregarded; and (ii) adjustments shall
19 be made for any item that was applicable in determining Massa-
20 chusetts gross income but that was not so applicable in deter-
21 mining federal gross income and for which a federal adjustment
22 would be allowed under the Code if the item had been applicable
23 in determining federal gross income. Without limitation of the
24 foregoing, the federal basis of shares in a business corporation
25 that was formerly treated as a corporate trust or of shares in a suc-
26 cessor of that entity shall be reduced in computing Massachusetts
27 adjusted basis to take into account any tax-free earnings and
28 profits accumulated by the former corporate trust.

1 SECTION 44. Section 32 of said chapter 63 is hereby
2 repealed.

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

4 Section 32B.

5 (a) Notwithstanding any other provision of this chapter, a cor-
6 poration subject to tax under this chapter and engaged in a unitary
7 business with 1 or more corporations subject to combination
8 within the meaning of this section shall, under regulations adopted
9 by the commissioner, calculate its taxable net income derived
10 from this unitary business as its share, attributable to the common-
11 wealth, of the apportionable income or loss of the combined group
12 engaged in a unitary business, determined in accordance with a
13 combined report.

14 (b) (1) For purposes of this section, the term “unitary business”
15 shall mean the activities of a group of 2 or more corporations
16 under common ownership that are sufficiently interdependent,
17 integrated or interrelated through their activities so as to provide
18 mutual benefit and produce a sharing or exchange of value among
19 them and a significant flow of value between the separate parts.
20 The term unitary business shall be construed to the fullest extent
21 permitted under the United States Constitution.

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

29 (3) Any business conducted by a partnership shall be treated as
30 the business of the partners, whether the partnership interest is
31 directly held or indirectly held through a series of partnerships, to
32 the extent of the partner’s distributive share of the partnership’s
33 income, regardless of the magnitude of the partner’s ownership
34 interest or its distributive share of partnership income. A business
35 conducted directly or indirectly by 1 corporation is unitary with
36 that portion of a business conducted by another, commonly owned
37 corporation through its direct or indirect interest in a partnership if
38 the activities conducted by the former corporation and the partner-
39 ship are unitary within the meaning of paragraph (1) of subsection

40 (b) regardless of the magnitude of the partner's ownership interest
41 or its distributive or any other share of partnership income.

42 (c) (1) Corporations that are subject to combination within the
43 meaning of this section shall include, without limitation, an entity
44 of the kind that may be subject to tax under sections 2, 2B, 32D,
45 39 or 52A, as well as an entity described under sections 20
46 through 29E in any case in which (i) 50 per cent or more of the
47 entity's total premiums earned during the taxable year on both a
48 gross and net basis are for liability coverage provided to other cor-
49 porations with which the entity is engaged in a unitary business or
50 (ii) the liability coverage provided by the entity to these other cor-
51 porations accounts for 50 per cent or more of the total risks borne
52 by the entity. The calculation in the preceding sentence shall not
53 include premiums earned, or risks ensured, by the entity as a
54 result of membership in a reinsurance pool in which the entity
55 cedes and assumes risks within the same group of corporations. A
56 corporation is subject to combination irrespective of whether the
57 corporation is actually subject to tax under 1 of the sections refer-
58 enced in this subsection. A corporation subject to combination
59 includes a real estate investment trust as referenced under
60 sections 856 to 859 of the Code and a regulated investment com-
61 pany as referenced under sections 851 to 855 of the Code.

62 (2) A corporation subject to combination within the meaning
63 of this section shall not include an entity described under
64 sections 38B or 38T. In addition, an entity subject to combination
65 within the meaning of this section shall not include an entity
66 described under sections 20 through 29E except as provided in
67 paragraph (1) of subsection (c) or otherwise in this chapter.

68 (3) A corporation subject to combination within the meaning
69 of this section shall not include an entity that is not incorporated
70 in or organized under the laws of the United States or any state,
71 the District of Columbia, or any territory or possession of the
72 United States, if, in accordance with rules prescribed by the Com-
73 missioner, (a) the entity ordinarily has 80 per cent or more of its
74 payroll and property outside the United States, and (b) the
75 following criteria are met: (i) the taxpayer certifies that transac-
76 tions conducted between the entity and other members of the
77 group are on arm's length terms; and (ii) the taxpayer agrees to
78 report to the commissioner any adjustments as finally determined

79 by the United States Internal Revenue Service with respect to
80 transactions between any related entities that may have a bearing
81 on the comparability of transactions referred to in
82 subparagraph (i).

83 (4) Notwithstanding any other provision of this section or this
84 chapter, the commissioner may require that a combined report
85 include the income and associated apportionment factors of any
86 person, corporate or non-corporate, when that person is engaged
87 in a unitary business with the combined group of which the tax-
88 payer is a member and the combined report is necessary to prevent
89 the avoidance or evasion of taxes owed to the commonwealth.
90 Further, the commissioner may, by regulation, require that a com-
91 bined report include the income and associated apportionment fac-
92 tors of any person, corporate or non-corporate, when that person is
93 engaged in a unitary business with the combined group of which
94 the taxpayer is a member and the combined report is necessary to
95 reflect a proper apportionment of income of the unitary business.

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

104 (2) The taxpayer's apportionment percentage shall be deter-
105 mined by including in its apportionment factor numerator a share
106 of the apportionment factors associated with the combined group's
107 unitary business in the state without regard to whether particular
108 members of the group are taxable in the commonwealth and by
109 including in its apportionment factor denominator the apportion-
110 ment factors associated with the combined group's unitary busi-
111 ness, wherever located. Notwithstanding this provision, the
112 numerator shall exclude the factors of any entity described under
113 sections 20 through 29E to the extent that the entity is not subject
114 to tax on its net income under chapter 63. The taxpayer's share of
115 apportionment factors associated with the combined group's uni-
116 tary business in the state shall be determined based on its pro rata
117 share of the apportionment factor numerators of the group mem-

118 bers subject to tax in the commonwealth. With respect to a
119 member of a combined group that has no apportionment factors or
120 whose apportionment factors are not determined under section 38,
121 the commissioner may adopt rules to effect a proper: (a) reflection
122 of the taxpayer's income subject to apportionment and (b) appor-
123 tionment of the taxpayer's income.

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

132 (e) The individual members of the combined group shall be
133 jointly and severally liable for the taxpayer's tax due under this
134 chapter, including any interest and penalties, to the extent per-
135 mitted under the United States Constitution.

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

140 (1) the elimination of intercompany transactions, including but
141 not limited to the payments of dividends, between or among com-
142 bined group members, and the elimination or deferral of income,
143 expenses, apportionment factors or other tax items associated with
144 those transactions;

145 (2) the application of any carry forwards, including the appli-
146 cation of any net operating loss carry forwards, which are attribut-
147 able to the activities of the combined group's unitary business,
148 including a preclusion as to the carry forward of losses or other
149 tax benefits that were attributable to entities not subject to tax in
150 the commonwealth;

151 (3) the relationship to this section of the provisions set forth in
152 sections 31I through 31K of this chapter; and

153 (4) all other matters related to the interpretation and adminis-
154 tration of this section.

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

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

1 SECTION 48. Said section 32D of said chapter 63, as so
2 appearing, is hereby further amended by striking out lines 17 to 23
3 and inserting in place thereof the following words:—
4 (ii) Any such business corporation which is an S corporation
5 and has total receipts for the taxable year of \$6,000,000 or more
6 shall also include in the net income measure of the excise imposed
7 under section 39 an amount determined by multiplying its net
8 income determined to be taxable in accordance with this chapter
9 by 1 of the following rates, in lieu of the rate provided in said
10 section 39:.

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

1 SECTION 50. Said section 32D of said chapter 63, as so
2 appearing, is hereby further amended by striking out
3 subsection (b) and inserting in place thereof the following sub-
4 section:—
5 (b) Qualified subchapter S subsidiaries shall not be subject to
6 separate entity level taxation under this section or section 39.
7 Rather, the parent S corporation shall be subject to tax under this
8 section and section 39, and shall include the income and take into

9 account the activities of all qualified subchapter S subsidiaries for
10 purposes of determining the excise due under subsections (a) of
11 this section, and shall include the value of the property or the net
12 worth of all qualified subchapter S subsidiaries for purposes of
13 determining the non-income measure of the excise under
14 clause (1) of subsection (a) of section 39. The parent S corpora-
15 tion and its qualified subchapter S subsidiaries shall be jointly and
16 severally liable for the tax due under this chapter.

1 SECTION 51. Section 33 of said chapter 63 is hereby repealed.

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

1 SECTION 53. Said section 38 of said chapter 63 is hereby fur-
2 ther amended by striking out clause (i) of paragraph (1) of subsec-
3 tion (a), as appearing in the 2004 Official Edition, and inserting in
4 place thereof the following clause:—

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

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

1 SECTION 55. Said section 38 of said chapter 63 is hereby fur-
2 ther amended by striking out, in line 219, as so appearing, the
3 words “domestic or foreign” and inserting in place thereof the
4 following word:— business.

1 SECTION 56. Said section 38 of said chapter 63 is hereby fur-
2 ther amended by striking out, in lines 235 to 236, as so appearing,
3 the words “domestic or foreign”.

1 SECTION 57. The definition of “manufacturing corporation”
2 in paragraph (1) of subsection (1) of said section 38 of said chapter
3 63, as amended by section 60 of chapter 123 of the acts of 2006, is
4 hereby further amended by striking out, in the first paragraph, the
5 words “domestic or foreign”.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 SECTION 73. Section 38M of said chapter 63, as so
2 appearing, is hereby amended by striking out, in line 1, the words

3 “domestic or foreign” and inserting in place thereof the following
4 word:— business.

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

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

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

5 (a) A business corporation which commences and diligently
6 pursues an environmental response action on or before August 5,
7 2011 and which achieves and maintains a permanent solution or
8 remedy operation status in compliance with chapter 21E and the
9 regulations adopted under that chapter which includes an activity
10 and use limitation shall, at the time the permanent solution or
11 remedy operation status is achieved, be allowed a base credit of
12 25 per cent of the net response and removal costs incurred
13 between August 1, 1998 and January 1, 2012 for any property it
14 owns or leases for business purposes and which is located within
15 an economically distressed area as defined in section 2 of
16 chapter 21E, if these costs shall be not less than 15 per cent of the
17 assessed value of the property before remediation, and if the site
18 was reported to the department of environmental protection. A
19 credit of 50 per cent of these costs shall be allowed for a corpora-
20 tion which achieves and maintains a permanent solution or
21 remedy operation status in compliance with chapter 21E and the
22 Massachusetts Contingency Plan provided in 310 CMR 40.00
23 which does not include an activity and use limitation. Only a busi-
24 ness corporation that is an eligible person as defined by section 2
25 of chapter 21E, and not subject to any enforcement action brought
26 under chapter 21E shall be allowed a credit.

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

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

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

5 Section 38U. Every business corporation which is exempt from
6 taxation under section 501 of the Code shall be subject to tax
7 under section 39 on its unrelated business taxable income, as
8 defined in section 512 of the Code. The property or net worth of
9 those corporations shall not be subject to tax under this chapter,
10 and the minimum excise under section 39 shall not apply. If a
11 corporation has unrelated business taxable income that is taxable
12 both within and without the commonwealth, it may apportion its
13 net income to the commonwealth under section 38, but its appor-
14 tionment factors shall be determined by reference only to the
15 unrelated business activity of the corporation. The credits
16 allowed under this chapter shall be determined only with respect
17 to the unrelated business activity of the corporation.

18 An entity that is exempt from taxation under section 501 of the
19 Code shall not be considered to be a business corporation for pur-
20 poses of chapter 59.

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

4 Section 39. Except as otherwise provided in this section, every
5 business corporation, organized under the laws of the common-
6 wealth, or exercising its charter or other means of legal authority,
7 or qualified to do business or actually doing business in the com-
8 monwealth, or owning or using any part or all of its capital, plant
9 or any other property in the commonwealth, shall pay, on account
10 of each taxable year, the excise provided in subsection (a) or (b)

11 of this section, whichever is greater, except that an insurance
12 mutual holding company established under chapter 175 or under
13 the equivalent law of another state shall pay, on account of each
14 taxable year, only the excise provided in clause (2) of subsection
15 (a) or subsection (b), whichever is greater.

16 Without limitation, the excise levied in this section is due and
17 payable on any 1 or all of the following alternative incidents:

18 (1) The authority or qualification to carry on or do business in
19 this state or the actual doing of business within the common-
20 wealth. The term “doing business” as used herein shall mean and
21 include each and every act, power, right, privilege, or immunity
22 exercised or enjoyed in the commonwealth, as an incident to or by
23 virtue of the powers and privileges acquired by the nature of those
24 organizations, as well as, the buying, selling or procuring of serv-
25 ices or property.

26 (2) The exercising or continuance of a business corporation’s
27 charter or other means of legal authority within the common-
28 wealth.

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

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

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

41 (a) An amount equal to the sum of:—

42 (1) \$7 per 1000 upon the value of —

43 (i) its tangible property as determined to be taxable under para-
44 graph 7 of section 30 if a tangible property corporation, or

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

47 (2) 8.33 per cent of its net income determined to be taxable in
48 accordance with this chapter.

49 (b) \$400.

50 A business corporation shall not be subject to the income mea-
51 sure of tax under subsection clause (2) of subsection (a) if it is
52 engaged in the business of selling tangible personal property and
53 taxation of that business corporation under this chapter is pre-
54 cluded by the Constitution or laws of the United States, or would
55 be so precluded except for the fact that the business corporation
56 stored tangible personal property in a licensed public storage
57 warehouse, but no portion of any warehouse which is owned or
58 leased by a consignor or consignee of the tangible personal prop-
59 erty shall be considered a licensed public warehouse. A business
60 corporation exempt from the income measure of the excise under
61 this paragraph pursuant to federal Public Law 86-272 shall never-
62 theless be subject to the excise under clause (1) of subsection (a)
63 or subsection (b), whichever is greater.

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

5 Section 42B. Every business corporation subject to taxation
6 under section 39 that has a usual place of business in the common-
7 wealth, and is engaged in manufacturing therein, or engaged
8 therein in research and development shall, for the purposes of this
9 chapter, be considered to be a manufacturing corporation or a
10 research and development corporation. Every manufacturing cor-
11 poration shall be taxed in the same manner and shall have the
12 same duties under this chapter and chapter 62C as other business
13 corporations subject to taxation under section 39, except insofar
14 as the determination of the excise under this chapter may be
15 affected by reason of the exemption from local taxation of the
16 machinery of a manufacturing corporation.

17 A research and development corporation for the purposes of
18 this section is a business corporation subject to tax under
19 section 39 whose principal activity herein is research and develop-
20 ment and which, during the taxable year, derives more than 2/3 of
21 its receipts attributable to the commonwealth from the activity or
22 incurs more than 2/3 of its expenditures attributable to the com-
23 monwealth allocable to the activity, but a corporation that quali-
24 fies as a research and development corporation only by reason of

25 its expenditures shall not be entitled to the credit provided in
26 section 31A of chapter 63 by virtue of its qualification as a
27 research and development corporation. A corporation that is
28 engaged in research and development and that conducts manufac-
29 turing activities shall exclude expenditures related to manufac-
30 turing from total expenditures for the purpose of assessing
31 whether 2/3 of expenditures are allocable to research and develop-
32 ment, whether or not the manufacturing activities of the corpora-
33 tion are substantial. Receipts from research and development shall
34 include receipts from the provision of research and development
35 services and from royalties or fees derived from the licensing of
36 patents, know-how or other technology developed from research
37 and development. For purposes of this section, research and
38 development is experimental or laboratory activity having as its
39 ultimate goal the development of new products, the improvement
40 of existing products, the development of new uses for existing
41 products, or the development or improvement of methods for pro-
42 ducing products; and does not include testing or inspection for
43 quality control purposes, efficiency surveys, management studies,
44 consumer surveys or other market research, advertising or promo-
45 tional activities, or research in connection with literacy, historical
46 or similar projects. Nothing in this section shall be construed to
47 provide for an exemption from local taxation of the machinery of
48 a corporation considered to be a research and development corpo-
49 ration which is not considered to be a manufacturing corporation.
50 For purposes of this section and section 38, the development
51 and sale of standardized computer software shall be considered a
52 manufacturing activity, without regard to the manner of delivery
53 of the software to the customer.

1 SECTION 82. Section 52 of said chapter 63, as appearing in
2 the 2004 Official Edition, is hereby amended by striking out the
3 first 4 sentences and inserting in place thereof the following 2 sen-
4 tences:— If any of the provisions of this chapter imposing an
5 excise on business corporations as defined in subsection (1) of
6 section 30 are declared unconstitutional or inoperative by a final
7 judgment, order or decree of the supreme court of the United
8 States or of the supreme judicial court of the commonwealth, the
9 portion of those provisions that was found to be unconstitutional

10 or inoperative shall be null and void and shall become inapplic-
11 able to those corporations. In this event, the provisions of law,
12 whether under this chapter or chapter 62, that (a) were applicable
13 to those business corporations immediately before the enactment
14 of the provision found to be unconstitutional or inoperative and
15 (b) became inoperative or inapplicable in connection with the
16 enactment of the provision found to be unconstitutional or inoper-
17 ative, shall thereupon be revived and become operative and
18 applicable in respect to those business corporations and shall be
19 continued in full force and effect from the first day of January pre-
20 ceding by 6 years the first day of January of the calendar year in
21 which the final judgment, order or decree is entered, to the same
22 extent as if the provision found to be unconstitutional or inopera-
23 tive had not been enacted.

1 SECTION 83. Said section 52 of said chapter 63, as so
2 appearing, is hereby further amended by striking out the last 3
3 sentences and inserting in place thereof the following 3 sen-
4 tences:— Excises declared invalid by reason of the foregoing
5 premises, which were assessed on or after the date when prede-
6 cessor laws are revived, made operative or applicable or continued
7 in force as provided in this section, shall, to the extent that those
8 excises have been paid and are unrefunded, be credited against the
9 taxes assessed for the same period under the laws revived and
10 again made operative, applicable and continued in force, but if
11 this credit exceeds the taxes due, the excess shall be refunded
12 upon warrant of the commissioner to the state treasurer. There
13 shall be no further or other recovery of the amounts thus credited
14 or refunded. If any provision of this chapter other than the provi-
15 sions imposing an excise shall be declared unconstitutional or
16 inoperative, the remaining provisions shall not be affected.

1 SECTION 84. Section 52A of said chapter 63, as so appearing,
2 is hereby amended by striking out paragraph (a) of subsection (1)
3 and inserting in place thereof the following paragraph:—
4 (a) “Utility corporation” means every business corporation that
5 is (i) an electric company and gas company subject to
6 chapter 164; (ii) a water company and aqueduct company subject
7 to chapter 165; (iii) a telephone and telegraph company subject to

8 chapter 166; (iv) a railroad and railway company subject to
9 chapter 160; and every business corporation qualified under
10 section 131A of said chapter 160 to acquire, own and operate ter-
11 minal facilities for steam, electric or other types of railroad; (v) a
12 street railway subject to chapter 161; (vi) an electric railroad sub-
13 ject to chapter 162; (vii) a trackless trolley company subject to
14 chapter 163; (viii) a pipe line company engaged in the transporta-
15 tion or sale of natural gas within the commonwealth; and (ix)
16 every foreign corporation which is not subject to the above chap-
17 ters but which does an electric, gas, water, aqueduct, telephone,
18 telegraph, railroad, railway, street railway, electric railroad, track-
19 less trolley or bus business within the commonwealth and has,
20 before January 1, 1952, been subject to taxation under sections 53
21 to 60.

1 SECTION 85. Said chapter 63 is hereby amended by inserting
2 after section 68A, the following section:—

3 Section 68B. In general, a business corporation as defined in
4 section 30 is subject to an excise under section 39, as provided in
5 that section, and as modified by section 32D in the case of S cor-
6 porations and by section 38U in the case of entities qualifying
7 under section 501 of the Code. Notwithstanding this general rule
8 or any other provision of this chapter, the excise under section 39
9 shall not apply in the case of a business corporation that is: (1) a
10 financial institution, as defined in section 1, that is subject to
11 excise under section 2 or 2B; (2) a security corporation as defined
12 in section 38B and subject to excise under that section; (3) a
13 utility corporation as defined in section 52A and subject to excise
14 under that section; (4) an insurance company subject to excise
15 under sections 20 to 29E (except as provided in Section 29F); (5)
16 an urban redevelopment corporation subject to excise under
17 section 10 of chapter 121A; (6) a corporation described in sections
18 10 or 18 of chapter 157; (7) a corporation described in section 1 of
19 chapter 171; (8) a corporation or other entity that qualifies as a
20 regulated investment company under section 851 of the federal
21 Internal Revenue Code; or (9) a business corporation otherwise
22 expressly exempted from the excise under this chapter by any
23 other General Law.

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

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

4 Section 1. (a) There shall be levied, collected and paid the
5 excise specified in this section on each conveyance of real prop-
6 erty located in the commonwealth or interest in real property
7 located in the commonwealth: when the consideration for the
8 interest or property conveyed, exclusive of the value of any lien or
9 encumbrance remaining on the interest or property at the time of
10 the sale, exceeds \$100 and does not exceed \$500, \$2; and for each
11 additional \$500 or fractional part thereof, \$2, but in Barnstable
12 county, the excise specified in this section shall be \$1.50 for each
13 \$500 or fractional part of the consideration, excluding a consider-
14 ation of between \$0 and \$100 dollars. The excise shall be payable
15 at the registry of deeds in the county in which the real property
16 lies, regardless of whether the conveyance is evidenced by a deed,
17 instrument, or other writing or whether the deed, instrument, or
18 other writing is otherwise recorded. Notwithstanding any other
19 provisions of this section or any other general or special law to the
20 contrary, Nantucket county may disburse and expend deposits in
21 county excise funds for the purpose of facilities and programs
22 related to law enforcement, including the planning, improving or
23 constructing of police stations and other related facilities and pro-
24 grams. This chapter shall not apply to any instrument or writing
25 given to secure a debt or to any conveyance to which the com-
26 monwealth, a city or town of the commonwealth, or the United
27 States or any of their agencies are a party.

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

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

38 “Conveyance”, a transfer or transfers, directly or indirectly, of
39 any interest in real property by any method, including but not lim-
40 ited to sale, exchange, grant, assignment, trust indenture, or
41 transfer or acquisition of a controlling interest in any entity with
42 an interest in real property, but the transfer or acquisition of a con-
43 trolling interest shall be considered to be a conveyance only if the
44 fair market value of the interest or interests in real property wher-
45 ever situated that is owned by the entity, whether directly or
46 through subsidiary entities, equals or exceeds 80 per cent of the
47 fair market value of all of the assets of the entity.

48 “Interest in real property”, includes, but is not limited to, an
49 estate in fee simple, a beneficial interest, a life estate, a perpetual
50 easement, or a leasehold or sublease interest, ordinary or propri-
51 etary, but only where the sum of the term of the lease or sublease
52 and any options for renewal, extension, or the like exceeds 49
53 years.

54 “Transfer or acquisition of a controlling interest”, occurs, in the
55 case of a corporation which has an interest in real property, when
56 a person, or group of persons acting in concert, transfers or
57 acquires, directly or indirectly, including through the transfer or
58 acquisition of an interest in another entity, a total of 50 per cent or
59 more of the total combined stock of the corporation, by vote or
60 value. In the case of any partnership, limited liability company,
61 association, trust, or other entity having an interest in real prop-
62 erty, the transfer or acquisition of a controlling interest therein
63 occurs when a person, or group of persons acting in concert, trans-
64 fers or acquires, directly or indirectly, including through the
65 transfer or acquisition of an interest in another entity, a total of 50
66 per cent or more of the capital, profits, or beneficial interest in the
67 entity.

68 (d) Persons are considered to be “acting in concert” when, in
69 accordance with regulations adopted by the commissioner, they
70 have a relationship such that 1 person influences or controls the
71 actions of another. Where the individuals or entities are not com-
72 monly controlled or owned, persons shall be considered to be
73 acting in concert when, in accordance with regulations adopted by
74 the commissioner, the unity with which the sellers or purchasers

75 have negotiated and will consummate the transfer of ownership
76 interests indicates that they are acting as a single entity. If the
77 transfers or acquisitions are completely independent, each seller
78 selling or purchaser buying without regard to the identity of the
79 other sellers or purchasers, then the transfers or acquisitions shall
80 be treated as separate transfers or acquisitions.

81 (e) For purposes of determining whether a controlling interest
82 is transferred or acquired, only transfers or acquisitions of inter-
83 ests occurring on or after January 1, 2008, shall be added together.
84 Where there is a transfer or acquisition of an interest in an entity
85 that has an interest in real property on or after January 1, 2008,
86 and subsequently there is a transfer or acquisition of an additional
87 interest or interests in the same entity, the transfers or acquisitions
88 shall be added together to determine whether a transfer or acquisi-
89 tion of a controlling interest has occurred. No transfer or acquisi-
90 tion of an interest in an entity that has an interest in real property
91 shall be added to another transfer or acquisition in the same entity
92 if they occur more than 3 years apart, unless the transfers or
93 acquisitions are so timed as part of a plan to avoid the excises
94 specified in this section. Notwithstanding the foregoing, neither a
95 bona fide pledge of stock, partnership, or other interest as loan
96 collateral nor any conveyance of publicly traded stock, partner-
97 ship, or other interest, shall be considered subject to taxation
98 under this chapter.

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

101 Section 2. The excise imposed by this chapter shall be paid by
102 the person who conveys the real property or interest in real prop-
103 erty, or for whose benefit the real property or interest in it is con-
104 veyed. When the conveyance consists of a transfer or an
105 acquisition of a controlling interest in an entity with an interest in
106 real property, the “person who conveys” the interest means, but is
107 not limited to, a shareholder, partner, or other interest-holder
108 transferring stock, a partnership interest, or another equity
109 interest, respectively. The payment of the excise shall be denoted
110 by “stamps,” as that term is defined in section 3, affixed to or
111 printed directly on the deed, instrument or writing evidencing the
112 conveyance, or if none, to a form prescribed by the commissioner
113 for the purpose. In any case in which a conveyance subject to the

114 excise imposed in this chapter is not evidenced by a deed, instru-
115 ment, or writing that will be recorded, the conveyance shall be
116 evidenced by recording the stamp form required by this section.
117 The person affixing or printing a stamp shall cancel the same by
118 writing or stamping on it the initials of his name and the date
119 when the stamp is affixed or printed, in such manner that it cannot
120 be used again; but the stamp shall not be so defaced as to prevent
121 determination of its denomination and genuineness.

122 The word “person” shall, for the purposes of this chapter,
123 include political subdivisions of the commonwealth, individuals,
124 partnerships, corporations, trusts, limited liability companies,
125 societies, associations, or any other form of unincorporated enter-
126 prise.

127 Section 3. (a) Stamps for the purpose of paying the excise
128 under this chapter shall be prepared in the form, of the denomina-
129 tions and in the quantities that the commissioner may prescribe.
130 The commissioner shall provide for the sale of the stamps in the
131 places and at the times that the commissioner considers necessary.
132 The commissioner shall provide for the custody of the stamps and
133 other equipment used in the production of the stamps in the
134 manner that he considers expedient. For purposes of this section,
135 the term “stamps” shall include both adhesive stamps and com-
136 puter generated images printed directly on a deed, instrument,
137 writing, or form required by section 2.

138 (b) The commissioner may cause to be installed in any registry
139 of deeds 1 or more metering machines through which the stamps
140 may be sold and may remove the machine if the commissioner
141 considers it expedient. The commissioner may also approve com-
142 puter hardware and software, purchased at the expense of the reg-
143 istry, to produce stamps. Upon the installation of a metering
144 machine or approved computer hardware and software, the reg-
145 ister of deeds shall sell stamps to persons requiring the same for
146 affixation or printing to deeds, instruments, writings, or forms in
147 accordance with this chapter.

148 (c) Each register of deeds shall on or before the tenth day of
149 each month account to the commissioner on a form prescribed and
150 furnished by him for all sales made by the register during the pre-
151 ceding calendar month and shall turn over to the commissioner all
152 moneys received from the sales, less any adjustments approved by

153 him. Each register of deeds, with the approval of the advisory
154 board on county expenditures and the county commissioners, shall
155 for the purposes of purchasing equipment or services relative to
156 electronic reporting, indexing, computers and systems designed to
157 modernize and maintain registry records, retain interest earned on
158 the deposit of excise stamp fees. Each register shall, annually, fur-
159 nish to the county treasurer a financial report regarding this
160 interest and the expenditure of it in accordance with accepted
161 accounting procedures.

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

165 Each register of deeds shall give to the commissioner a bond, in
166 a penal sum and with sureties approved by the commissioner, con-
167 ditioned satisfactorily to account for money received by the reg-
168 ister in his official capacity from the sale of the stamps. The
169 premium for the bond shall be paid by the state treasurer upon cer-
170 tification by the commissioner.

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

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

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

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

4 Section 6. The commissioner shall administer and enforce the
5 excise imposed by this chapter and shall adopt regulations as nec-
6 essary to implement this chapter. At any time after the making of
7 a conveyance subject to the excise imposed by this chapter, the
8 commissioner may investigate and ascertain whether the excise, in

9 the proper amount, was paid. For this purpose, the commissioner
10 may exercise all powers granted to him under section 70 of
11 chapter 62C. Whoever refuses to produce the books, papers,
12 records, or other data required to be produced under section 70, or
13 fails to preserve the same for 3 years or a longer period that the
14 commissioner may by regulation provide, or alters, cancels or
15 obliterates any part of this data, or makes any false entry therein,
16 shall be punished by a fine of not less than \$500 nor more than
17 \$5,000, or by imprisonment for not less than 3 months nor more
18 than 2 years, or both.

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

4 Whoever signs and delivers to a purchaser, or to any person
5 designated by a purchaser, a deed, instrument, writing, or form
6 required by section 2 of this chapter which does not have the
7 stamps required by this chapter affixed to it or printed on it, or
8 whoever leaves or causes to be left for recording or registration in
9 any registry of deeds within the commonwealth an original deed,
10 instrument, writing, or form which does not have the stamps
11 required by this chapter affixed to it or printed on it, or a duplicate
12 deed, instrument, writing, or form without first having left or
13 caused to be left for recording or registration in a registry of deeds
14 within the commonwealth the original thereof, shall be subject to
15 a penalty, not exceeding \$100, that the commissioner may deter-
16 mine.

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

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

1 SECTION 93. Section 8 of said chapter 64D, as so appearing,
2 is hereby amended by inserting after the word “affixed”, in line 7,
3 the following words:— or printed.

1 SECTION 94. Section 9 of said chapter 64D, as so appearing,
2 is hereby amended by striking out, in line 1, the words “an adhe-
3 sive” and inserting in place thereof the following words:— a.

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

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

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

9 Notwithstanding any general or special law and this chapter to
10 the contrary, and except for Barnstable county and all counties
11 that have been abolished under chapter 34B or other applicable
12 law, on the first day of each month, 42.5 per cent of the excises
13 collected under this chapter shall be transmitted to the Deeds
14 Excise Fund for each county. For Barnstable county, on the first
15 day of each month, 28.33 per cent of the excises collected under
16 this chapter, but not including the additional excise authorized
17 under section 2 of chapter 163 of the acts of 1988, shall be trans-
18 mitted to the Deeds Excise Fund. Notwithstanding any general or
19 special law and this chapter to the contrary, and except for Barn-
20 stable county and all counties that have been abolished under
21 chapter 34B or other applicable law, on the first day of each
22 month, 7.5 per cent of the excises collected under this chapter
23 shall be transmitted to the County Correction Fund established in
24 section 13. For Barnstable county, on the first day of each month,
25 5 per cent of the excises collected under this chapter, but not
26 including the additional excise authorized under said section 2 of
27 said chapter 163, shall be transmitted to the County Correction
28 Fund. The remaining percentage of excises collected under this
29 chapter, including all excises collected under this chapter in all
30 counties that have been abolished under chapter 34B or other
31 applicable law shall be transmitted to and retained by the General
32 Fund in accordance with section 10.”

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

4 (b½) “Doing business in the commonwealth”, ownership or
5 operation of a bed and breakfast establishment, hotel, lodging
6 house or motel that is located in the commonwealth, maintenance
7 otherwise of a place of business in the commonwealth, the pres-
8 ence of an employee in the commonwealth on more than a de min-
9 imis basis, solicitation in the commonwealth of orders for transfer
10 of occupancy of accommodations located in the commonwealth,
11 solicitation in the commonwealth by a reseller of a contract or
12 other cooperative arrangement with an operator with respect to
13 accommodations located in the commonwealth, inspection in the
14 commonwealth of accommodations that may be the subject of a
15 cooperative arrangement between an operator and a reseller, or
16 other exploitation of the market for accommodations or resale of
17 accommodations located in the commonwealth by any means
18 whatsoever, including, but not limited to, salesmen, solicitors or
19 representatives in the commonwealth, whether those salesmen,
20 solicitors or representatives are employed by the operator or
21 reseller, by a person affiliated with the operator or the reseller by
22 common ownership, or by any other party. This definition is
23 intended to extend the jurisdiction of the commonwealth over
24 operators and resellers to the full extent authorized by the Consti-
25 tution and the laws of the United States.

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

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

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

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

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

11 The operator or room reseller shall pay the excise to the com-
12 missioner at the time provided for filing the return required by
13 section 16 of chapter 62C.

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

4 Any city or town that accepts this section may impose a local
5 excise tax upon the transfer of occupancy of any room or rooms in
6 a bed and breakfast establishment, hotel, lodging house or motel
7 located within the city or town by any operator or room reseller at
8 a rate up to, but not exceeding, 4 per cent of the total amount of
9 rent paid by the occupant for the occupancy, but the city of Boston
10 may impose a local excise upon the transfer of occupancy of any
11 room in a bed and breakfast establishment, hotel, lodging house or
12 motel located within the city by any operator or room reseller at
13 the rate of up to but not exceeding 4.5 per cent of the total amount
14 of rent paid by the occupant for the occupancy. No excise shall be
15 imposed if the total amount of rent paid by the occupant is less
16 than \$15 per day or its equivalent or if the accommodation is
17 exempt under section 2 of this chapter. The operator or room
18 reseller shall pay the local excise tax imposed under this section to
19 the commissioner at the same time and in the same manner as the
20 excise tax due the commonwealth.

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

3 Section 3B. Notwithstanding any other provision of this
4 chapter, in cases in which occupancy is transferred through the

5 use of a room reseller, the application of the excise shall be as
6 follows:

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

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

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

4 Section 4. Reimbursement for the excise imposed under sec-
5 tions 3 and 3A shall be paid by the occupant or the room reseller
6 to the operator and by the occupant to the room reseller, as the
7 case may be, and each operator and room reseller doing business
8 in the commonwealth shall add to the rent and shall collect from
9 the occupant or the room reseller the full amount of the excise
10 imposed, in accordance with sections 3 and 3A, and that excise
11 shall be a debt to the operator or room reseller, when so added to
12 the rent, and shall be recoverable at law in the same manner as
13 other debts.

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

23 Section 6. No person shall operate a bed and breakfast estab-
24 lishment, hotel, lodging house or motel in this commonwealth, or
25 do business as a room reseller in the commonwealth, unless a cer-
26 tificate of registration has been issued to him in accordance with
27 section 67 of chapter 62C.

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

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

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

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

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

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

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

5 (xx) Sales of tangible personal property purchased by a busi-
6 ness entity for keeping or retention in the commonwealth for the
7 purpose of subsequently transporting that property outside of the
8 commonwealth for business use thereafter solely outside of the
9 commonwealth, or for the purpose of being processed, fabricated
10 or manufactured into other tangible personal property to be trans-
11 ported outside of the commonwealth and thereafter used solely
12 outside of the commonwealth. A taxpayer must retain adequate
13 documentation substantiating that the requirements of this exemp-
14 tion are met.

1 SECTION 110. Section 8 of chapter 64I of the General Laws,
2 as appearing in the 2004 Official Edition, is hereby amended by
3 inserting after the word “purchase.”, in line 45, the following sen-
4 tence:— Notwithstanding this paragraph, tangible personal prop-
5 erty purchased for placement in inventory is presumed to be
6 purchased for use in the commonwealth if the property is subse-
7 quently used in the commonwealth without regard to whether it is
8 brought into the commonwealth within 6 months after purchase,
9 and use tax is due at the time the property is first used in the com-
10 monwealth.

1 SECTION 111. (a) There shall be a special commission to
2 study the modernization and simplification of the current tax laws
3 of the commonwealth, for the purposes of promoting tax fairness
4 and equity, encouraging business growth and innovation, and
5 strengthening the commonwealth's global competitiveness. The
6 commission shall provide recommendations on matters including:
7 (1) the definition and proper taxation of utility corporations;
8 (2) the need for preferential tax treatment of security corporations,
9 (3) the appropriate method for calculating credits for research and
10 development credits; (4) the scope and ongoing need for the var-
11 ious exemptions from the sales and use taxes; (5) appropriate tax-
12 ation of digital products; (6) estimated tax payment rules for
13 individuals; (7) the substitution of refundable credits for transfer-

14 able credits; (8) use of gambling losses on personal income tax
15 returns; (9) the imposition of the cigar excise on wholesale trans-
16 actions; (10) the calculation of the non-income measure of the
17 corporate excise; and (11) other matters as the commission may
18 determine. The commission shall also evaluate the common-
19 wealth's participation in the Streamlined Sales Tax Compact.

20 (b) The commission shall consist of the secretary of administra-
21 tion and finance, who shall chair the commission, the chairs of the
22 joint committee on revenue, the commissioner of revenue, the sec-
23 retary of housing and economic development, or the designees of
24 any of them; 3 persons appointed by the governor who are
25 experts in economics or corporate tax law; and representatives
26 appointed by the following organizations: the Federal Reserve
27 Bank of Boston, the Massachusetts Taxpayers Foundation, the
28 Greater Boston Chamber of Commerce, Associated Industries of
29 Massachusetts, the Massachusetts Budget and Policy Center, the
30 Massachusetts AFL-CIO, Neighbor to Neighbor Massachusetts,
31 the Massachusetts Teachers Association, and the Massachusetts
32 Municipal Association.

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

1 SECTION 112. It is the intent of provisions of this act that
2 modify the tax treatment of corporate trusts to create general con-
3 formity with federal classification rules. It is also the intent of
4 these provisions to ensure that any tax-free earnings and profits
5 accumulated by an entity formerly treated as a corporate trust be
6 subject to tax under chapter 62 or chapter 63 of the General Laws.
7 To that end, the commissioner of revenue may adopt reasonable
8 rules, by regulation or otherwise, to determine the method or
9 methods by which previously untaxed amounts will be taxed to
10 the entity, its successor, or its direct or indirect owners, partners,
11 or beneficiaries. The commissioner may also determine reason-
12 able transition rules for entities, including but not limited to cor-
13 porate trusts and qualified subchapter S subsidiaries, and the
14 successors, and direct or indirect owners, partners, or beneficiaries
15 of those entities, whose tax classification is altered by this act.
16 These transition rules may include providing for nonrecognition

17 of gain or loss in the event of a conversion of an entity's Massa-
18 chusetts tax status resulting from this act, with corresponding
19 adjustments to basis or other tax attributes if and as determined by
20 the commissioner to be appropriate.

1 SECTION 113. The commissioner may adopt rules and regula-
2 tions to implement sections 28, 30 and 97 to 107, inclusive, of this
3 act.

1 SECTION 114. Sections 1 to 15, inclusive, 17 to 26, inclusive,
2 29, 31 to 87, inclusive, and 112 shall be effective for tax years
3 beginning on or after January 1, 2008.

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

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

1 SECTION 117. Sections 108 and 109 shall apply to transac-
2 tions on or after January 1, 2008 and shall have no retroactive
3 impact on existing leases or rentals. Section 110 shall apply to
4 property brought into the commonwealth for use on or after Jan-
5 uary 1, 2008. A termination of any existing lease or rental
6 between related entities, related members, or affiliates, including
7 persons described in section 267(b) or 707(b)(1) of the Internal
8 Revenue Code, after the effective date of this act shall be consid-
9 ered to be a sale at fair market value of the leased or rented prop-
10 erty if the lessee retains possession or use of the property.