

HOUSE No. 4656

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, April 7, 2008.

The committee on Ways and Means, to whom was referred the Bill improving tax fairness and business competitiveness (House, No. 4645), reports that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4656). [Representatives deMacedo of Plymouth, Polito of Shrewsbury, Evangelidis of Holden, Loscocco of Holliston, Perry of Sandwich and Webster of Hanson dissenting].

For the committee,

ROBERT A. DeLEO.

The Commonwealth of Massachusetts

In the Year Two Thousand and Eight.

AN ACT IMPROVING TAX FAIRNESS AND BUSINESS COMPETITIVENESS.

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. Section 5 of Chapter 59 of the General Laws, as
2 appearing in the 2006 Official Edition, is hereby amended by
3 striking out, in lines 238 to 239, inclusive, the words “(a)
4 domestic business corporation or (b) a foreign corporation, both as
5 defined in section thirty of chapter sixty-three,” and inserting in
6 place thereof the following words:— a business corporation sub-
7 ject to taxation under section 39 of Chapter 63 that is not a manu-
8 facturing corporation,.

1 SECTION 2. Said section 5 of said Chapter 59 of the General
2 Laws, as so appearing, is hereby amended by striking out, in lines
3 247 to 251, inclusive, the words “(a) a domestic manufacturing
4 corporation or a domestic research and development corporation
5 as defined in section thirty-eight C of chapter sixty-three or (b) a
6 foreign manufacturing corporation or a foreign research and
7 development corporation as defined in section forty-two B of said
8 chapter” and inserting in place thereof the following words:— a
9 manufacturing corporation or a research and development corpo-
10 ration as defined in section 42B of Chapter 63.

1 SECTION 3. Said section 5 of said Chapter 59 of the General
2 Laws, as so appearing, is hereby further amended by striking out,
3 in lines 264 and 265, inclusive, the words “domestic research and
4 development corporation as defined in section 38C of Chapter 63
5 or a foreign”.

1 SECTION 4. Said section 5 of said Chapter 59 of the General
2 Laws, as so appearing, is hereby further amended by striking out

3 paragraph (5) of clause Sixteenth and inserting in place thereof
4 the following 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 5. Said Section 5 of said Chapter 59 is hereby fur-
2 ther amended by striking out clause Sixteenth A.

1 SECTION 6. Section 18 of said Chapter 59 of the General
2 Laws, as appearing in the 2006 Official Edition, is hereby
3 amended by striking out, in lines 18 and 19, the words “domestic
4 business and foreign corporations as defined in section thirty of
5 chapter sixty-three” and inserting in place thereof the following
6 words:— business corporations subject to taxation under
7 Section 39 of Chapter 63.

1 SECTION 7. Said section 18 of said Chapter 59 of the General
2 Laws, as so appearing, is hereby further amended by striking out,
3 in lines 38 and 39, the words “domestic business or foreign corpo-
4 ration, as defined in section thirty of chapter sixty-three” and
5 inserting in place thereof the following words:— business corpo-
6 ration subject to taxation under Section 39 of Chapter 63.

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

1 SECTION 9. Section 83 of said Chapter 59 of the General
2 Laws, as so appearing, is hereby amended by striking out, in line
3 2, the words “domestic and foreign”.

1 SECTION 10. Section 15 of Chapter 60 of the General Laws,
2 as so appearing, is hereby amended by striking out, in line 5, the
3 words “five dollars” and inserting in place thereof the following
4 words:— not more than \$30.

1 SECTION 11. Section 1 of Chapter 62 of the General Laws, as
2 so appearing, is hereby amended by inserting at the end thereof
3 the following 3 paragraphs:—

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

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

12 (r) “Tax-free earnings and profits”, earnings and profits that
13 were considered tax-free earnings and profits under Section 8 as
14 in effect on December 31, 2008.

1 SECTION 12. Subparagraph (E) of paragraph (1) of subsection
2 (a) of Section 2 of said Chapter 62 is hereby repealed.

1 SECTION 13. Subparagraph (B) of paragraph (2) of said sub-
2 section (a) of said Section 2 of said Chapter 62 is hereby repealed.

1 SECTION 14. Said paragraph (2) of said subsection (a) of said
2 section 2 of said Chapter 62 of the General Laws, as appearing in
3 the 2006 Official Edition, is hereby further amended by striking
4 out subparagraph (D) and inserting in place thereof the following
5 subparagraph:—

6 (D) Dividends received from a corporate trust subject to taxa-
7 tion under section 8, as in effect on December 31, 2008, to the
8 extent that they are derived from earnings and profits previously
9 taxed to the trust under said Section 8, but only to the extent that
10 the trust properly filed returns and paid all taxes due.

1 SECTION 15. Subparagraph (J) of paragraph (1) of subsection
2 (d) of said Section 2 of said Chapter 62 is hereby repealed.

1 SECTION 16. Section 4 of said Chapter 62 of the General
2 Laws, as appearing in the 2006 Official Edition, is hereby
3 amended by striking out, in lines 1 to 4, inclusive, the words
4 “non-residents shall be taxed, to the extent specified in section
5 five A on their taxable income, and corporate trusts shall be taxed
6 to the extent specified in section eight”
7 and inserting in place thereof the following words:— and non-
8 residents shall be taxed to the extent specified in Section 5A.

1 SECTION 17. Subsection (a) of Section 6 of said Chapter 62 of
2 the General Laws, as so appearing, is hereby amended by
3 inserting at the end thereof 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 a
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 18. Section 8 of said Chapter 62 is hereby repealed.

1 SECTION 19. The first paragraph of Section 17 of said Chapter
2 62 of the General Laws, as appearing in the 2006 Official Edition,
3 is hereby amended by striking out the third and fourth sentences.

1 SECTION 20. Subsection (e) of Section 17A of said Chapter 62
2 is hereby repealed.

1 SECTION 21. Section 19 of said Chapter 62 is hereby repealed.

1 SECTION 22. Chapter 63B of the General Laws is hereby
2 amended by inserting after Section 2 the following section:—
3 Section 2A. The commissioner may require a taxpayer, or a
4 person-i paying, crediting, or allocating an amount to a taxpayer,
5 to make estimated tax payments on amounts the taxpayer is rea-
6 sonably likely to receive. The commissioner may require a min-
7 imum estimated tax payment, and may require payment on or
8 before the date of receipt of income. The commissioner may, for
9 example, exercise this authority to require a nonresident taxpayer

10 to estimate and pay, on or before the time of sale, the tax liability
11 on the gain from the sale or transfer of real property in the Com-
12 monwealth. The commissioner may issue regulations governing
13 the administration of this section. In the event of a sale, transfer,
14 or disposition of property, a lien in the amount of any required
15 estimated payment shall arise with regard to the property, to the
16 extent provided by regulation, if such a required estimated tax
17 payment is not timely made.

1 SECTION 23. Chapter 62B of the General Laws is hereby
2 amended by inserting after Section 13 the following section:—

3 Section 13A. The commissioner may require a taxpayer, or a
4 person paying, crediting, or allocating an amount to a taxpayer, to
5 make estimated tax payments on amounts the taxpayer is reason-
6 ably likely to receive. The commissioner may require a minimum
7 estimated tax payment, and may require payment on or before the
8 date of receipt of income. The commissioner may, for example,
9 exercise this authority to require a nonresident taxpayer to esti-
10 mate and pay, on or before the time of sale, the income tax lia-
11 bility on the gain from the sale or transfer of real property in the
12 Commonwealth. The commissioner may issue regulations gov-
13 erning the administration of this section. In the event of a sale,
14 transfer, or disposition of property, a lien in the amount of any
15 required estimated payment shall arise with regard to the property,
16 to the extent provided by regulation, if such a required estimated
17 tax payment is not timely made.

1 SECTION 24. Section 6 of Chapter 62C of the General Laws,
2 as appearing in the 2006 Official Edition, is hereby amended by
3 striking out, in lines 8 to 11, inclusive, the words “every corporate
4 trust taxable under section eight of chapter sixty-two, and every
5 other corporate trust doing business within the Commonwealth
6 and every other” and inserting in place thereof the following
7 words:— and every.

1 SECTION 25. Said Section 6 of said Chapter 62C of the
2 General Laws, as so appearing, is hereby further amended by
3 striking out, in line 32, the word “domestic” and inserting in place
4 thereof the following word:— business.

1 SECTION 26. Section 7 of said Chapter 62C of the General
2 Laws, as so appearing, is hereby amended by striking out, in lines
3 1 to 2, inclusive, the words “, other than a corporate trust as
4 defined in chapter sixty-two,”.

1 SECTION 27. Said Chapter 62C of the General Laws, as so
2 appearing, is hereby further amended by striking out Section 11
3 and inserting in place 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,
6 shall, on or before the fifteenth day of the third month following
7 the close of each taxable year, make a return giving the informa-
8 tion that the commissioner may consider necessary for the deter-
9 mination of the taxes imposed upon it by Chapter 63.

1 SECTION 28. Section 33 of Chapter 62C of the General Laws,
2 as so appearing, is hereby amended by striking out, in line 11 and
3 line 19, the words “one-half of”.

1 SECTION 29. Section 47A of said Chapter 62C of the General
2 Laws, as so appearing, is hereby amended by striking out subsec-
3 tion (d) and inserting in place thereof the following 2 subsec-
4 tions:—

5 (d) If the commissioner determines from the information fur-
6 nished pursuant to subsections (a), (b) and (c), or otherwise, that
7 any person who holds a license or certificate of authority issued
8 by any such agency or who has agreed to furnish goods, services
9 or real estate space to any such agency has neglected or refused to
10 file any returns or to pay any tax required under this chapter and
11 that such person has not filed in good faith a pending application
12 for abatement of such tax or a pending petition before the appel-
13 late tax board contesting such tax or entered a payment agreement
14 with which the taxpayer is fully compliant, or has been penalized
15 pursuant to Section 9 of Chapter 62E for failure to comply with
16 the provisions of said Chapter 62E relating to reporting of
17 employees and contractors, or has been penalized pursuant to
18 paragraph (3) of subsection (f) of Section 12 of Chapter 119A for
19 failure to comply with the provisions of said Chapter 119A
20 relating to withholding and remitting child support, the commis-

21 sioner shall so notify such agency and such person in writing.
22 Upon the written request of the commissioner, the agency, depart-
23 ment, board, commission, division, authority, district or other
24 agency of the Commonwealth, shall promptly revoke or suspend
25 that license or certificate of authority. Any license or certificate of
26 authority suspended or revoked under this section shall not be
27 reissued or renewed until the agency receives a certificate issued
28 by the commissioner that the licensee is in good standing with
29 respect to all returns due and taxes payable to the commissioner as
30 of the date of issuance of the certificate, including all taxes and
31 returns referenced in the initial notification or, if the licensee has
32 been penalized for failure to comply with the provisions relating
33 to reporting of employees and contractors under Chapter 62E or
34 withholding and remitting child support under Chapter 119A, a
35 certificate issued by the commissioner that the licensee is in com-
36 pliance with those provisions.

37 (e) Where a license revocation, suspension or non-renewal is
38 based upon nonpayment of an assessed tax administered under
39 this chapter, the licensee's sole right of appeal and to a hearing
40 shall be pursuant to and within the time limitations of this chapter
41 and not pursuant to Chapter 30A. The commissioner shall give the
42 licensee not less than 30 days notice of any proposed action,
43 during which the licensee may enter into a payment agreement
44 with the commissioner under mutually agreeable terms or may file
45 a good faith abatement application within the time periods deter-
46 mined under Section 37. Such an abatement application shall stay
47 a proposed license revocation, suspension, or non-renewal until
48 the amount of disputed tax due is finally determined. A licensee
49 who is beyond the time limitations in Section 37 but who disputes
50 that he is liable for the assessment and is unable to resolve that
51 issue with the commissioner during the 30-day period may appeal
52 the proposed revocation, suspension or non-renewal by filing a
53 civil action under Section 14 of Chapter 30A. The scope of this
54 appeal shall be limited to assertions of mistake or verification of
55 payments made and shall not include determination or redetermi-
56 nation of the proper amount of tax assessed or any other issues
57 appropriately raised through a timely filed abatement under
58 Section 37. Any stay of the proposed revocation, suspension, or

59 non-renewal pending resolution of this appeal shall be within the
60 discretion of the court.

1 SECTION 30. Said Chapter 62C is hereby further amended by
2 inserting after said Section 47A the following section:—

3 Section 47B. (a) If the commissioner determines that any
4 person who holds a driver's license, learner's permit, right to
5 operate a motor vehicle, or certificate of motor vehicle registra-
6 tion has neglected or refused to file any returns or to pay any tax
7 required under this Chapter and that the person has not filed in
8 good faith a pending application for abatement of such tax or a
9 pending petition before the appellate tax board contesting such tax
10 or entered a payment agreement with which the taxpayer is fully
11 compliant, the commissioner shall so notify the registry of motor
12 vehicles and the person in writing. Upon the written request of the
13 commissioner, the registry shall promptly suspend or revoke or
14 prohibit issuance or renewal of the license, learner's permit, right
15 to operate a motor vehicle, or certificate of motor vehicle registra-
16 tion of the taxpayer. Any license, learner's permit, right to operate
17 a motor vehicle, or certificate of motor vehicle registration sus-
18 pended or revoked under this section shall not be reissued or
19 renewed until the registry receives a certificate issued by the com-
20 missioner that the licensee is in good standing with respect to any
21 and all returns due and taxes payable to the commissioner as of
22 the date of issuance of the certificate, including all taxes and
23 returns referenced in the initial notification.

24 (b) Where a license revocation, suspension or non-renewal is
25 based upon nonpayment of an assessed tax administered under
26 this chapter, the licensee's sole right of appeal and to a hearing
27 shall be pursuant to and within the time limitations of this chapter
28 and not pursuant to Chapter 30A. The commissioner shall give the
29 licensee not less than 30 days notice of any proposed action,
30 during which the licensee may enter into a payment agreement
31 with the commissioner under mutually agreeable terms or may file
32 a good faith abatement application within the time periods deter-
33 mined under Section 37. Such an abatement application shall stay
34 a proposed license revocation, suspension, or non-renewal until
35 the amount of disputed tax due is finally determined. A licensee
36 who is beyond the time limitations in Section 37 but who disputes

37 that he is liable for the assessment and is unable to resolve that
38 issue with the commissioner during the 30-day period may appeal
39 the proposed revocation, suspension or non-renewal by filing a
40 civil action as provided in Section 14 of Chapter 30A. The scope
41 of this appeal shall be limited to assertions of mistake or verifica-
42 tion of payments made and shall not include determination or
43 redetermination of the proper amount of tax assessed or any other
44 issues appropriately raised through a timely filed abatement under
45 Section 37. Any stay of the proposed revocation, suspension, or
46 non-renewal pending resolution of this appeal shall be within the
47 discretion of the court.

1 SECTION 31. Section 49A of said Chapter 62C of the General
2 Laws, as appearing in the 2006 Official Edition, is hereby
3 amended by adding the following subsection:—

4 (f) Where a license revocation, suspension or non-renewal is
5 based upon nonpayment of an assessed tax administered under
6 this chapter, the licensee's sole right of appeal and to a hearing
7 shall be pursuant to and within the time limitations of this chapter
8 and not pursuant to Chapter 30A. The commissioner shall give the
9 licensee not less than 30 days notice of any proposed action,
10 during which the licensee may enter into a payment agreement
11 with the commissioner under mutually agreeable terms or may file
12 a good faith abatement application within the time periods deter-
13 mined under Section 37. Such an abatement application shall stay
14 a proposed license revocation, suspension, or non-renewal until
15 the amount of disputed tax due is finally determined. A licensee
16 who is beyond the time limitations in Section 37 but who disputes
17 that he is liable for the assessment and is unable to resolve that
18 issue with the commissioner during the 30-day period may appeal
19 the proposed revocation, suspension or non-renewal by filing a
20 civil action as provided in Section 14 of Chapter 30A. The scope
21 of this appeal shall be limited to assertions of mistake or verifica-
22 tion of payments made and shall not include determination or
23 redetermination of the proper amount of tax assessed or any other
24 issues appropriately raised through a timely filed abatement under
25 Section 37. Any stay of the proposed revocation, suspension, or
26 non-renewal pending resolution of this appeal shall be within the
27 discretion of the court.

1 SECTION 32. Section 50 of said Chapter 62C of the General
2 Laws, as so appearing, is hereby amended by striking out, in line
3 22, the words “Notwithstanding Section 65, the” and inserting in
4 place thereof the following word:— The.

1 SECTION 33. Section 51 of said Chapter 62C of the General
2 Laws, as so appearing, is hereby amended by striking out, in lines
3 3 to 4, inclusive, the words “domestic or foreign business corpora-
4 tion” and by inserting in place thereof the following words:—
5 business corporation as defined in Section 30 of Chapter 63.

1 SECTION 34. Section 65 of said Chapter 62C of the General
2 Laws, as so appearing, is hereby amended by striking out the first
3 paragraph and inserting in its place the following paragraph:—
4 Taxes shall be collected:— (i) within 10 years after the assess-
5 ment of the tax; (ii) within any further period after that 10-year
6 period during which the taxes remain unpaid but only against any
7 real or personal property of the taxpayer to which a tax lien has
8 attached and for which a notice of lien has been filed or recorded
9 under Section 50 in favor of the Commonwealth in accordance
10 with applicable state or federal law within 10 years after the
11 assessment of the tax; (iii) before the expiration of any period of
12 collection agreed upon in writing by the commissioner and the
13 taxpayer before the expiration of that 10-year period; or, (iv) if
14 there is a release of levy under Section 64 after that 10-year
15 period, then before that release. The period so agreed upon may be
16 extended by subsequent agreements in writing made before the
17 expiration of the period previously agreed upon. When any ques-
18 tion relative to such taxes is pending before any agency or court at
19 the end of that 10-year period, the commissioner’s right to collect
20 any tax due shall continue until 1 year after the final determina-
21 tion of that question.

1 SECTION 35. Section 1 of Chapter 63 of the General Laws, as
2 so appearing, is hereby amended by inserting, at the end of the
3 definition of “Financial institution”, the following sentence:—
4 The term “corporation” as used in this definition shall mean
5 any corporation, or any other entity as defined in Section 1.40 of
6 Chapter 156D, whether the corporation or other entity may be

7 formed, organized, or operated in or under the laws of the Com-
8 monwealth or any other jurisdiction, that is classified for the tax-
9 able year as a corporation for federal income tax purposes.

1 SECTION 36. Chapter 63 is hereby amended by inserting, after
2 Section 1 the following section:—

3 Section IA. As used in this chapter the following words shall,
4 unless the context clearly requires otherwise, have the following
5 meanings:—

6 “Business corporation”, any corporation, or any other entity as
7 defined in Section 1.40 of Chapter 156D, whether the corporation
8 or other entity may be formed, organized, or operated in or under
9 the laws of the Commonwealth or any other jurisdiction, and
10 whether organized for business or for non-profit purposes, that is
11 classified for the taxable year as a corporation for federal income
12 tax purposes.

13 “Code”, except as otherwise provided in this chapter, the
14 Internal Revenue Code of the United States, as amended and in
15 effect for the taxable year.

16 “Disregarded entity”, an entity that is disregarded as a separate
17 entity from its owner for federal income tax purposes. Such an
18 entity shall similarly be disregarded for purposes of this chapter,
19 and without limitation, all income, assets, and activities of the
20 entity shall be considered to be those of the owner.

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

1 SECTION 37. Section 2 of said Chapter 63 of the General
2 Laws, as appearing in the 2006 Official Edition, is hereby
3 amended by striking out, in line 1, the words “subsection (b)” and
4 inserting in place thereof the following words:— subsections (b)
5 and (d).

1 SECTION 38. Said Section 2 of said Chapter 63 of the General
2 Laws, as so appearing, is hereby further amended by inserting at
3 the end thereof 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 39. 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 (1) The net income shall be determined by taking into account
8 subchapter S of the Code. Income or loss shall be determined as if
9 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 (2) 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:— (i) if total receipts for the taxable
20 year are at least \$6,000,000 but less than \$9,000,000, 3.31 per
21 cent; and (ii) if total receipts for the taxable year are \$9,000,000
22 or more, 4.97 per cent. For purposes of this paragraph, net income
23 determined to be taxable in accordance with this chapter shall be
24 determined without taking into account subchapter S of the Code,
25 and shall not include income that is taxed to the S corporation at
26 the entity level under paragraph (1). The term total receipts shall
27 mean gross receipts or sales, less returns and allowances, and
28 shall include dividends, interest, royalties, capital gain net
29 income, rental income and all other income. The cost of goods
30 sold or the cost of operations shall not be deductible in deter-
31 mining total receipts. The commissioner shall, by regulation,
32 apply limits on an aggregate basis to S corporations engaged in a
33 unitary business with majority direct or indirect ownership by
34 common stockholders. This aggregating shall also include any
35 other type of entity so engaged and so owned which the commis-

36 sioner finds was established for the purpose of avoiding the fore-
37 going limit.

38 (3) Qualified subchapter S subsidiaries shall not be subject to
39 separate entity level taxation under this section. Rather, the parent
40 S corporation shall be subject to tax under this section, and shall
41 include the income and take into account the activities of all quali-
42 fied subchapter S subsidiaries for purposes of calculating the
43 excise due under paragraphs (1) and (2). The parent S corporation
44 and its qualified subchapter S subsidiaries shall be jointly and sev-
45 erally liable for the tax due under this chapter.

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

1 SECTION 40. Said Chapter 63 of the General Laws, as
2 appearing in the 2006 Official Edition, is hereby further amended
3 by striking out Section 22 and inserting in place thereof the
4 following section:—

5 Section 22. Every domestic insurance company coming within
6 the scope of the definition of a domestic company in Section 1 of
7 Chapter 175, except life insurance companies with respect to
8 amounts received as consideration for annuity contracts and busi-
9 ness taxable under Section 20 and marine, or fire and marine,
10 insurance companies with respect to business taxable under
11 Section 29A, shall annually pay an excise of 2.28 per cent upon
12 the gross premiums for all policies written or renewed, all ,addi-
13 tional premiums charged, and all assessments made by such com-
14 pany on policyholders during the preceding calendar year,
15 exclusive of reinsurance; but such premiums and assessments for
16 policies written or renewed for insurance, exclusive of reinsur-
17 ance, of property or interests in other states or countries where a
18 tax is actually paid by such company, or its agents, shall not be so
19 taxed. For purposes of calculating the credit under Section 29E of
20 this chapter, the term “surtax” is hereby defined as the portion of
21 the excise imposed under this section equal to 0.28 per cent.

1 SECTION 41. Section 23 of Chapter 63 of the General Laws, as
2 so appearing, is hereby further amended by striking out, in line 11,
3 the word “two” and inserting in place thereof the words:—2.28.

1 SECTION 42. Section 29A of said Chapter 63 of the General
2 Laws, as so appearing, is hereby amended by striking out, in line
3 16, the word “five” and inserting in place thereof the following
4 words:— 5.7.

1 SECTION 43. Subsection (a) of Section 29E of said Chapter 63
2 of the General Laws, as so appearing, is hereby amended by
3 striking out, in line 24, the words “18 of Chapter 546 of the acts
4 of 1969” and inserting in place thereof the following words:— 22.

1 SECTION 44. Section 30 of said Chapter 63 of the General
2 Laws, as so appearing, is hereby further amended by striking out
3 paragraphs 1 and 2 and inserting in place thereof the following 2
4 paragraphs:—

5 1. “Business corporation”, any corporation, or any other entity
6 as defined in Section 1.40 of Chapter 156D, whether the corpora-
7 tion or other entity may be formed, organized, or operated in or
8 under the laws of the Commonwealth or any other jurisdiction,
9 and whether organized for business or for non-profit purposes,
10 that is classified for the taxable year as a corporation for federal
11 income tax purposes.

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

1 SECTION 45. Said Section 30 of said Chapter 63 of the
2 General Laws, as so appearing, is hereby further amended by
3 striking out, in line 17S, the word “foreign” and inserting in place
4 thereof the following word:— business.

1 SECTION 46. Said Section 30 of said Chapter 63 of the
2 General Laws, as so appearing, is hereby further amended by
3 striking out, in lines 184 and 192, the words “thirty-two or”.

1 SECTION 47. Said Section 30 of said Chapter 63 of the
2 General Laws, as so appearing, is hereby further amended by
3 striking out, in lines 196 to 198, inclusive, the words, “domestic

4 business corporation taxable under clause (1) of subsection (a) of
5 Section 32 or of a foreign corporation taxable under clause (1) of
6 subsection (a) of” and inserting in place thereof the following
7 words:— business corporation taxable under.

1 SECTION 48. Subsection (h) of Section 31A of said Chapter
2 63 of the General Laws, as so appearing, is hereby amended by
3 striking out the second sentence.

1 SECTION 49. Section 31B of said Chapter 63 is hereby
2 repealed.

1 SECTION 50. Section 31E of said Chapter 63 of the General
2 Laws, as appearing in the 2006 Official Edition, is hereby
3 amended by striking out, in line 1, the words “domestic or for-
4 eign” and inserting in place thereof the following word:— busi-
5 ness.

1 SECTION 51. 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, if
4 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 52. Section 32 of said Chapter 63 is hereby repealed.

1 SECTION 53. Said Chapter 63 of the General Laws, as
2 appearing in the 2006 Official Edition, is hereby further amended
3 by striking out Section 32B and inserting in place thereof the
4 following section:—

5 Section 32B. (a) General rule. Notwithstanding any other provi-
6 sion of this chapter, a corporation subject to tax under this chapter
7 and engaged in a unitary business with 1 or more corporations
8 subject to combination within the meaning of this section shall,
9 under regulations adopted by the commissioner, calculate its tax-
10 able net income derived from this unitary business as its share,
11 attributable to the Commonwealth, of the apportionable income or
12 loss of the combined group engaged in the unitary business, deter-
13 mined in accordance with a combined report.

14 (b) Unitary business defined.

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

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

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

43 (c) Membership in the combined group.

44 (1) Corporations that are subject to combination within the
45 meaning of this section shall include, without limitation, an entity
46 of the kind that is subject to tax or would be subject to tax if doing
47 business in the state under Section 2, 2B, 32D, 39 or 52A, as well
48 as an entity described in Sections 20 to 29E, inclusive, in any case
49 in which the entity does not qualify for treatment as a life insur-
50 ance company as defined in Section 816 of the Code or an insur-
51 ance company subject to tax imposed by Section 831 of the Code.
52 A corporation is subject to combination irrespective of whether
53 the corporation is actually subject to tax under Section 2, 2B,
54 32D, 39 or 52A. A corporation subject to combination includes a
55 real estate investment trust as referenced under Sections 856 to
56 859, inclusive, of the Code and a regulated investment company
57 as referenced under Sections 851 to 855, inclusive, of the Code.

58 (2) A corporation subject to combination within the meaning of
59 this section shall not include an entity described in Section 38B or
60 38U. In addition, an entity subject to combination within the
61 meaning of this section shall not include an entity described in
62 Sections 20 to 29E, inclusive, except as provided in paragraph (1)
63 or otherwise in this chapter.

64 (3) The members of a combined group subject to tax under this
65 chapter may elect to determine their apportioned share of the tax-
66 able net income or loss of the combined group pursuant to a
67 water's edge election under which each taxpayer member shall
68 take into account the income and apportionment factors of only

69 the members otherwise includible in the combined group that are
70 described in any one or more of the following categories:—

71 (A) any member incorporated in the United States or formed
72 under the laws of the United States, any state, the District of
73 Columbia, or any territory or possession of the United States;

74 (B) any member, regardless of the place incorporated or
75 formed, if the average of its property, payroll, and sales factors
76 within the United States is 20 per cent or more;

77 (C) any member that earns more than 20 per cent of its income,
78 directly or indirectly, from intangible property or service-related
79 activities the costs of which generally are deductible for federal
80 income tax purposes, whether currently or over a period of time,
81 against the business income of other members of the group, but
82 only to the extent of that income and the apportionment factors
83 related thereto. A water's edge election shall be effective only if
84 made on a timely-filed, original return for a taxable year by the
85 members of the combined group subject to tax under this chapter.
86 A water's edge election shall be binding for and applicable to the
87 taxable year for which it is made and all taxable years thereafter
88 for a period of 10 years, subject to regulations adopted by the
89 commissioner.

90 (4) Notwithstanding any other provision of this section or this
91 chapter, the commissioner may require that a combined report
92 include the income and associated apportionment factors of any
93 person, corporate or non-corporate, when that person is engaged
94 in a unitary business with the combined group of which the tax-
95 payer is a member and such inclusion is necessary to prevent the
96 avoidance or evasion of taxes owed to the Commonwealth, but in
97 the case of an entity described in Sections 20 to 29E, inclusive,
98 the commissioner may exclude the entity's apportionment factors
99 as referenced in paragraph (2) of subsection (d). The commis-
100 sioner may, by regulation, require that a combined report include
101 the income and associated apportionment factors of any person,
102 corporate or non-corporate, when that person is engaged in a uni-
103 tary business with the combined group of which the taxpayer is a
104 member and the combined report is necessary to reflect a proper
105 apportionment of income of the unitary business.

106 (d) Determination of taxpayer's share of apportionable income
107 of a combined group.

108 (1) A taxpayer's share, attributable to the Commonwealth, of
109 the apportionable income of a combined group of which it is a
110 member shall be determined by applying the apportionment provi-
111 sions of this chapter that are applicable to the taxpayer to the
112 apportionable income of the combined group, taking into account
113 the apportionment factors associated with the combined group's
114 unitary business, as adjusted pursuant to regulations adopted by
115 the commissioner to account for differences, if any, in the appor-
116 tionment formulae applicable under this chapter to the taxpayer
117 members of the combined group.

118 (2) The apportionment percentage of each member of a com-
119 bined group subject to tax under this chapter shall be adjusted to
120 include in its apportionment factor numerator a share of the appor-
121 tionment factors attributable to this state of members of the group
122 that are not themselves taxable in the Commonwealth, and by
123 including in its apportionment factor denominator the apportion-
124 ment factors associated with the combined group's unitary busi-
125 ness wherever located. Notwithstanding this provision, a
126 taxpayer's apportionment factor numerator shall exclude the fac-
127 tors of any entity described in Sections 20 to 29E, inclusive. A
128 taxpayer's share of apportionment factors attributable to this state
129 of members of the group that are not themselves taxable in the
130 Commonwealth shall be determined based on its pro rata share of
131 the apportionment factor numerators of the group members sub-
132 ject to tax in the Commonwealth, as adjusted pursuant to regula-
133 tions adopted by the commissioner to account for differences, if
134 any, in the statutory computation of the taxpayer members' appor-
135 tionment formulae applicable under this chapter to the taxpayer
136 members of the combined group. For purposes of determining
137 whether sales of tangible personal property are "in the Common-
138 wealth" within the meaning of subsection (1) of Section 38, a tax-
139 payer is considered taxable in any state in which any member of
140 its combined group is subject to tax. With respect to a member of
141 a combined group that has no apportionment factors or whose
142 apportionment factors are not determined under Section 38, the
143 commissioner may adopt rules to properly reflect the taxpayer's
144 income subject to apportionment and to effect a proper apportion-
145 ment of the taxpayer's income.

146 (3) For purposes of this section, “apportionable income” is the
147 unitary business income of the combined group and shall be
148 broadly construed to the fullest extent permitted by the United
149 States Constitution. The income subject to apportionment is the
150 sum of the apportionable net income of each member of the com-
151 bined group as determined under this chapter and as adjusted pur-
152 suant to regulations issued pursuant to subsection (f), whether or
153 not the member is subject to tax hereunder.

154 (e) Liability. Every member of the combined group shall be
155 jointly and severally liable for the tax due from any taxpayer
156 member under this chapter, including any interest and penalties, to
157 the extent permitted under the United States Constitution.

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

162 (1) the water’s edge election under paragraph (3) of subsection
163 (c);

164 (2) the determination of the apportionable income of a com-
165 bined group and of a taxpayer member of the combined group
166 under subsection (d);

167 (3) the elimination of intercompany transactions, including but
168 not limited to the payments of dividends, between or among com-
169 bined group members, and the elimination or deferral of income,
170 expenses, apportionment factors or other tax items associated with
171 those transactions;

172 (4) the sharing within the combined group of credits that may
173 be validly claimed by a taxpayer and that are attributable to the
174 combined group’s unitary business, to the extent such sharing of
175 credits by a particular member of the combined group is consis-
176 tent with the statutory requirement for claiming such a credit,
177 taking into account the nature of such member’s business, activi-
178 ties, etc.;

179 (5) the application of any carry forwards, including the sharing
180 of any net operating loss or tax credit carry forwards that are
181 attributable to the activities of the combined group’s unitary busi-
182 ness, but the carry forward of losses, credits or other tax benefits
183 that arise before the effective date of this section shall be available

184 only to the extent permitted by law as in effect before the effective
185 date;

186 (6) the relationship to this section of the provisions set forth in
187 Sections 31I to 31K, inclusive; and

188 (7) all other matters related to the interpretation and administra-
189 tion of this section.

190 (g) Application to expand combined group to include federal
191 consolidated group members. The commissioner may adopt regu-
192 lations under which a taxpayer subject to this section may apply to
193 include within a combined group every member of its federal con-
194 solidated return group that might not otherwise be members of the
195 taxpayer's unitary group, if all members of the expanded com-
196 bined group that are subject to tax under this chapter agree to such
197 treatment for a 10-year period and on terms further provided by
198 the commissioner. The commissioner may approve such expanded
199 combined group reporting if he determines that such reporting
200 would fairly reflect income attributable to the Commonwealth.

1 SECTION 54. Chapter 63 of the General Laws, as appearing in
2 the 2006 Official Edition, is hereby amended by striking out
3 Section 32D and inserting in place thereof the following
4 section:—

5 Section 32D. (a) Any business corporation subject to an excise
6 under Section 39 which is an S corporation as defined under
7 Section 1361 of the Code shall determine the net income measure
8 of the excise as follows:—

9 The net income shall be determined by taking into account sub-
10 chapter S of said Code. Income or loss shall be determined as if it
11 were realized or incurred directly by an owner subject to taxation
12 under Chapter 62 or 63, as applicable. In the case of an S corpora-
13 tion, income shall be included in the net income measure under
14 this subsection to the extent that such income is taxed to the S cor-
15 poration for federal income tax purposes; and

16 Any such business corporation which is an S corporation and
17 which has total receipts for the taxable year of \$6,000,000 or more
18 shall also include in the net income measure of the excise imposed
19 under Section 39 an amount determined by multiplying its net
20 income determined to be taxable in accordance with this chapter

21 by 1 of the following rates, in lieu of the rate provided in said
22 Section 39.

23 (1) if total receipts for the taxable year are at least \$6,000,000
24 but less than \$9,000,000, 3 per cent; and

25 (2) if total receipts for the taxable year are \$9,000,000 or more,
26 4.5 per cent.

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

44 (b) Qualified subchapter S subsidiaries shall not be subject to
45 separate entity level taxation under this section or Section 39.
46 Rather, the parent S corporation shall be subject to tax under this
47 section and Section 39, and shall include the income and take into
48 account the activities of all qualified subchapter S subsidiaries for
49 purposes of determining the excise due under subsection (a) of
50 this section, and shall include the value of the property or the net
51 worth of all qualified subchapter S subsidiaries for purposes of
52 determining the non-income measure of the excise under clause
53 (1) of subsection (a) of Section 39. The parent S corporation and
54 its qualified subchapter S subsidiaries shall be jointly and sever-
55 ally liable for the tax due under this chapter.

1 SECTION 55. Section 33 of said Chapter 63 is hereby repealed.

1 SECTION 56. Section 38 of said Chapter 63, as appearing in
2 the 2006 Official Edition, is hereby amended by striking out, in
3 line 2, the words “domestic business corporation or of a foreign
4 corporation” and inserting in place thereof the following words:—
5 business corporation.

1 SECTION 57. Paragraph (1) of subsection (a) of said Section
2 38 of said Chapter 63 of the General Laws, as so appearing, is
3 hereby amended by striking out clause (i) and inserting in place
4 thereof the following clause:—

5 (i) shares in a corporate trust, as defined in Section 1 of Chapter
6 62, to the extent such dividends represent tax-free earnings and
7 profits, as defined in Section 8 of Chapter 62, as in effect on
8 December 31, 2008, or.

1 SECTION 58. Said Section 38 of said Chapter 63 of the
2 General Laws, as so appearing, is hereby further amended by
3 striking out, in line 70, the words “thirty-eight C or”.

1 SECTION 59. Said Section 38 of said Chapter 63 of the
2 General Laws, as so appearing, is hereby further amended by
3 striking out, in line 162, the word “and”.

1 SECTION 60. Said Section 38 of said Chapter 63 of the
2 General Laws, as so appearing, is hereby further amended by
3 inserting after the word “contracts”, in line 169, the following
4 words:— ; and (6) in the case of a sale or deemed sale of a busi-
5 ness, the term “sales” does not include receipts from the sale of
6 the business “good will” or similar intangible value, including,
7 without limitation, “going concern value” and “workforce in
8 place.”.

1 SECTION 61. Said Section 38 of said Chapter 63 of the
2 General Laws, as so appearing, is hereby further amended by
3 striking out, in line 235, the words “domestic or foreign” and
4 inserting in place thereof, in each instance, the following word:—
5 business.

1 SECTION 62. Said Section 38 of said Chapter 63 of the
2 General Laws, as so appearing, is hereby further amended by
3 striking out, in lines 251 to 252, inclusive, in line 318 and in line
4 326, in each instance, the words “domestic or foreign”.

1 SECTION 63. Section 38A of said Chapter 63 of the General
2 Laws, as so appearing, is hereby amended by striking out, in line
3 1, the word “domestic”

1 SECTION 64. Section 38B of said Chapter 63 of the General
2 Laws, as so appearing, is hereby amended by striking out, in lines
3 1 to 2, inclusive, and in lines 14 to 15, inclusive, the words “,
4 domestic business corporation or foreign” and inserting in place
5 thereof, in each instance, the following words:— or business cor-
6 poration.

1 SECTION 65. Said Section 38B of said Chapter 63 of the
2 General Laws, as so appearing, is hereby further amended by
3 striking out, in line 55, the words “two, thirty-two, or thirty nine”
4 and inserting in place thereof the following words:— 2, 2B, 32D
5 or 39.

1 SECTION 66. Section 38C of said Chapter 63 is hereby
2 repealed.

1 SECTION 67. Section 38D of said Chapter 63 of the General
2 Laws, as appearing in the 2006 Official Edition, is hereby
3 amended by striking out, in line 2, the words “domestic or for-
4 eign”.

1 SECTION 68. Said Section 38D of said Chapter 63 of the
2 General Laws, as so appearing, is hereby further amended by
3 striking out, in lines 86 and 87, the words “(1)(i) of subsection (a)
4 of section thirty-two or clause (l)(i) of subsection (a) of section
5 thirty-nine” and inserting in place thereof the following words:—
6 subclause (i) of clause (1) of subparagraph (a) of the fourth para-
7 graph of Section 39.

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

1 SECTION 70. Section 38F of said Chapter 63 of the General
2 Laws, as so appearing, is hereby amended by striking out, in line
3 2, the words “domestic or foreign” and inserting in place thereof
4 the following word:— business.

1 SECTION 71. Section 38G of said Chapter 63 of the General
2 Laws, as so appearing, is hereby amended by striking out, in lines
3 1 and 11, the words “domestic or foreign” and inserting in place
4 thereof, in each instance, the following word:— business.

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

1 SECTION 73. Said Section 38H of said Chapter 63 of the
2 General Laws, as so appearing, is hereby further amended by
3 striking out, in lines 55 to 56, inclusive, the words “(1)(i) of sub-
4 section (a) of section thirty-two or clause (1)(i) of subsection (a)
5 of section thirty-nine” and inserting in place thereof the following
6 words:— subclause (i) of clause (1) of subparagraph (a) of the
7 fourth paragraph of Section 39.

1 SECTION 74. Section 38I of said Chapter 63 of the General
2 Laws, as so appearing, is hereby amended by striking out, in line
3 2, the words “domestic or foreign” and inserting in place thereof
4 the following word:— business.

1 SECTION 75. Section 38J of said Chapter 63 of the General
2 Laws, as so appearing, is hereby amended by striking out, in line
3 2, the words “domestic or foreign”.

1 SECTION 76. Section 38M of said Chapter 63 of the General
2 Laws, as so appearing, is hereby amended by striking out, in line
3 1, the words “domestic or foreign” and inserting in place thereof
4 the following word:— business.

1 SECTION 77. Said Section 38M of said Chapter 63 of the
2 General Laws, as so appearing, is hereby further amended by
3 striking out, in lines 28 to 29, inclusive, the words “subsection (b)
4 of section thirty-two.”.

1 SECTION 78. Said Section 38M of said Chapter 63 of the
2 General Laws, as so appearing, is hereby further amended by
3 striking out, in lines 44 and 45, the words “section thirty-two or”.

1 SECTION 79. Section 38Q of said Chapter 63 of the General
2 Laws, as so appearing, is hereby amended by striking out, in lines
3 1 to 2, inclusive, and in lines 20 to 21, inclusive, the words
4 “domestic or foreign corporation or limited liability corporation or
5 nonprofit organization” and inserting in place thereof, in each
6 instance, the following words:— business corporation.

1 SECTION 80. Said Section 38Q of said Chapter 63 of the
2 General Laws, as so appearing, is hereby further amended by
3 striking out, in line 61, the words “subsection (b) of Section 32
4 or”.

1 SECTION 81. Section 38S of said Chapter 63 of the General
2 Laws, as so appearing, is hereby amended by striking out, in line
3 2, the words “domestic or foreign”.

1 SECTION 82. Chapter 63 of the General Laws is hereby
2 amended by striking out Section 38T, as inserted by Section 28 of
3 Chapter 163 of the acts of 2005, and inserting in place thereof the
4 following section:—

5 Section 38U. (a) Every business corporation which is exempt
6 from taxation under Section 501 of the Code shall be subject to
7 tax 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 the corporation shall not be subject to tax under this chapter, and
10 the minimum excise under Section 39 shall not apply. If a corpo-
11 ration has unrelated business taxable income that is taxable both
12 within and without the Commonwealth, it may apportion its net
13 income to the Commonwealth under Section 38; provided, how-
14 ever, that its apportionment factors shall be determined by refer-

15 ence only to the unrelated business activity of the corporation.
16 The credits allowed under this chapter shall be determined only
17 with respect to the unrelated business activity of the corporation.
18 (b) An entity that is exempt from taxation under Section 501 of
19 the Code shall not be considered to be a business corporation for
20 purposes of Chapter 59.

1 SECTION 83. Said Chapter 63 of the General Laws, as
2 appearing in the 2006 Official Edition, is hereby further amended
3 by striking out Section 39 and inserting in place thereof the
4 following section:—

5 Section 39. Except as otherwise provided in this section, every
6 business corporation organized under the laws of the Common-
7 wealth, or exercising its charter or other means of legal authority,
8 or qualified to do business or actually doing business in the Com-
9 monwealth, or owning or using any part or all of its capital, plant
10 or any other property in the Commonwealth, shall pay, on account
11 of each taxable year, the excise provided in subsection (a) or (b),
12 whichever is greater, except that an insurance mutual holding
13 company established pursuant to Chapter 175 or under the equiva-
14 lent law of another state shall pay, on account of each taxable
15 year, only the excise provided in clause (2) of subsection (a) or
16 subsection (b), whichever is greater.

17 The excise levied in this section is due and payable, without
18 limitation, on any 1 or all of the following alternative incidents:—

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

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

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

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

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

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

43 (1) \$2.60 per \$1,000 upon the value of:— (i) its tangible prop-
44 erty as determined to be taxable under paragraph 7 of Section 30
45 if a tangible property corporation; or (ii) its net worth as deter-
46 mined to be taxable under paragraph 8 of Section 30 if an intan-
47 gible property corporation; and

48 (2) (i) For tax years beginning before January 1, 2009, 9.50 per
49 cent of its net income determined to be taxable in accordance with
50 this chapter.

51 (ii) For tax years beginning on or after January 1, 2009, but
52 before January 1, 2010, 8.50 per cent of its net income determined
53 to be taxable in accordance with this chapter.

54 (iii) For tax years beginning on or after January 1, 2010, but
55 before January 1, 2011, 7.50 per cent of its net income determined
56 to be taxable in accordance with this chapter.

57 (iv) For tax years beginning on or after January 1, 2011, 7.00
58 per cent of its net income determined to be taxable in accordance
59 with this chapter.

60 (b) Four hundred and fifty six dollars.

61 A business corporation shall not be subject to the income mea-
62 sure of tax under subsection clause (2) of subsection (a) if it is
63 engaged in the business of selling tangible personal property and
64 taxation of that business corporation under this chapter is pre-
65 cluded by the Constitution or laws of the United States, or would
66 be so precluded except for the fact that the business corporation
67 stored tangible personal property in a licensed public storage
68 warehouse, but no portion of any warehouse which is owned or
69 leased by a consignor or consignee of the tangible personal prop-
70 erty shall be considered a licensed public warehouse. A business

71 corporation exempt from the income measure of the excise under
72 this paragraph pursuant to federal Public Law 86-272 shall never-
73 theless be subject to the excise under clause (1) of subsection (a)
74 or subsection (b), whichever is greater.

1 SECTION 84. Clause (i) of paragraph (2) of subsection (a) of
2 Section 39 of said Chapter 63 is hereby repealed.

1 SECTION 85. Clause (ii) of paragraph (2) of subsection (a) of
2 Section 39 of said Chapter 63 is hereby repealed.

1 SECTION 86. Clause (iii) of paragraph (2) of subsection (a) of
2 Section 39 of said Chapter 63 is hereby repealed.

1 SECTION 87. Said Chapter 63 of the General Laws, as
2 appearing in the 2006 Official Edition, is hereby further amended
3 by striking out Section 42B and inserting in place thereof the
4 following section:—

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

18 (b) A research and development corporation for the purposes of
19 this section is a business corporation subject to tax under Section
20 39 whose principal activity herein is research and development
21 and which, during the taxable year, derives more than $\frac{2}{3}$ of its
22 receipts attributable to the Commonwealth from the activity or
23 incurs more than $\frac{2}{3}$ of its expenditures attributable to the Com-
24 monwealth allocable to the activity, but a corporation that quali-
25 fies as a research and development corporation only by reason of

26 its expenditures shall not be entitled to the credit provided in
27 Section 31A of Chapter 63 by virtue of its qualification as a
28 research and development corporation. A corporation that is
29 engaged in research and development and that conducts manufac-
30 turing activities shall exclude expenditures related to manufac-
31 turing from total expenditures for the purpose of assessing
32 whether $\frac{2}{3}$ of expenditures are allocable to research and develop-
33 ment, whether or not the manufacturing activities of the corpora-
34 tion are substantial. Receipts from research and development shall
35 include receipts from the provision of research and development
36 services and from royalties or fees derived from the licensing of
37 patents, know-how or other technology developed from research
38 and development. For purposes of this section, research and
39 development is experimental or laboratory activity having as its
40 ultimate goal the development of new products, the improvement
41 of existing products, the development of new uses for existing
42 products, or the development or improvement of methods for pro-
43 ducing products; and does not include testing or inspection for
44 quality control purposes, efficiency surveys, management studies,
45 consumer surveys or other market research, advertising or promo-
46 tional activities, or research in connection with literacy, historical
47 or similar projects. Nothing in this section shall be construed to
48 provide for an exemption from local taxation of the machinery of
49 a corporation considered to be a research and development corpo-
50 ration which is not considered to be a manufacturing corporation.

51 (c) For purposes of this section and Section 38, the develop-
52 ment and sale of standardized computer software shall be consid-
53 ered a manufacturing activity, without regard to the manner of
54 delivery of the software to the customer.

1 SECTION 88. Said Chapter 63 of the General Laws, as so
2 appearing, is hereby amended by striking out Section 52 and
3 inserting in place thereof the following section:—

4 Section 52. 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. The commissioner and the local asses-
24 sors shall as soon as may be assess all taxes for which liability has
25 been incurred under the laws revived, made operative or applic-
26 able or continued in force by the foregoing provisions or any of
27 them. The time for assessing such taxes shall be extended for a
28 period of one year from the date of entry of such final judgment,
29 order or decree and, for performing any duty subsequent to assess-
30 ment, the time shall be extended for a further period after such
31 assessment commensurate with the period which would have
32 obtained under the laws hereby revived and again made operative,
33 applicable and continued in force. Privileges and rights granted
34 shall be correspondingly extended. Excises declared invalid by
35 reason of the foregoing premises, which were assessed on or after
36 the date when predecessor laws are revived, made operative or
37 applicable or continued in force as provided in this section, shall,
38 to the extent that those excises have been paid and are unrefunded,
39 be credited against the taxes assessed for the same period under
40 the laws revived and again made operative, applicable and con-
41 tinued in force, but if this credit exceeds the taxes due, the excess
42 shall be refunded upon warrant of the commissioner to the state
43 treasurer. There shall be no further or other recovery of the
44 amounts thus credited or refunded. If any provision of this chapter
45 other than the provisions imposing an excise shall be declared
46 unconstitutional or inoperative, the remaining provisions shall not
47 be affected.

1 SECTION 89. Subsection (1) of Section 52A of said Chapter
2 63 of the General Laws, as so appearing, is hereby amended by
3 striking out paragraph (a) and inserting in place thereof the
4 following paragraph:—

5 (a) “Utility corporation” means every business corporation that
6 is (i) an electric company and gas company subject to Chapter
7 164; (ii) a water company and aqueduct company subject to
8 Chapter 165; (iii) a telephone and telegraph company subject to
9 Chapter 166; (iv) a railroad and railway company subject to
10 Chapter 160; and every business corporation qualified under
11 Section 131A of said Chapter 160 to acquire, own and operate ter-
12 minal facilities for steam, electric or other types of railroad; (v) a
13 street railway subject to Chapter 161; (vi) an electric railroad sub-
14 ject to Chapter 162; (vii) a trackless trolley company subject to
15 Chapter 163; (viii) a pipe line company engaged in the transporta-
16 tion or sale of natural gas within the Commonwealth; and (ix)
17 every foreign corporation which is not subject to the above chap-
18 ters but which does an electric, gas, water, aqueduct, telephone,
19 telegraph, railroad, railway, street railway, electric railroad, track-
20 less trolley or bus business within the Commonwealth and has,
21 before January 1, 1952, been subject to taxation under Sections 53
22 to 60, inclusive.

1 SECTION 90. Said Chapter 63 is hereby amended by inserting
2 after Section 68A the following section:—

3 Section 68C. 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:—

10 (1) a financial institution that is subject to excise under Section
11 2 or 2B;

12 (2) a security corporation as defined in Section 38B and subject
13 to excise under that section;

14 (3) a utility corporation as defined in Section 52A and subject
15 to excise under that section;

- 16 (4) an insurance company subject to excise under Sections 20
17 to 29E, inclusive;
- 18 (5) an urban redevelopment corporation subject to excise under
19 Section 10 of Chapter 121 A;
- 20 (6) a corporation described in Section 10 or Section 18 of
21 Chapter 157;
- 22 (7) a corporation described in Section 1 of Chapter 171;
- 23 (8) a corporation or other entity that qualifies as a regulated
24 investment company under Section 851 of the Code; or
- 25 (9) a business corporation otherwise expressly exempted from
26 the excise under this chapter by any other general law.

1 SECTION 91. Chapter 63A of the General Laws, as appearing
2 in the 2006 Official Edition, is hereby amended by striking out
3 Section 2 and inserting in place thereof the following section:—
4 Section 2. Against every taxpayer there shall be levied,
5 assessed and collected an excise at the rate of 0.57 per cent of
6 such taxpayer's gross receipts.

1 SECTION 92. 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 93. Section 6 of Chapter 64C of the General Laws,
2 as so appearing, is hereby amended by striking out, in lines 3 and
3 11. the figure "50½" and inserting in place thereof the following
4 figure:— 100½.

1 SECTION 94. Said Section 6 of said Chapter 64C of the
2 General Laws, as so appearing, is hereby further amended by
3 inserting at the end thereof the following paragraph:—
4 Notwithstanding the provisions of Section 28, an amount equal
5 to 50 mills for each cigarette so sold during the calendar month
6 covered by the return filed under Section 16 of Chapter 62C shall
7 be credited to the Health Care Security Trust established pursuant
8 to Section 1 of Chapter 29D.

1 SECTION 95. Section 28 of said Chapter 64C of the General
2 Laws, as so appearing, is hereby amended by striking out, in line
3 1, the words
4 “section seven” and inserting in place thereof the following
5 words:— Sections 6 and 7.

1 SECTION 96. Section 1 of Chapter 64H of the General Laws,
2 as so appearing, is hereby amended by inserting after the word
3 “state.”, in line 254, the following words:—
4 A transfer of an interest in an aircraft may be considered a
5 transfer of tangible personal property under rules determined by
6 the commissioner.

1 SECTION 97. Chapter 64H of the General Laws is hereby
2 amended by inserting after Section 3 the following section:—
3 Section 3A. (a) Every manufacturer, wholesaler, or unclassified
4 acquirer, as defined in Chapter 64C, doing business in the Com-
5 monwealth, or any other person doing business in the Common-
6 wealth, selling tobacco products, including cigarettes, cigars,
7 smokeless tobacco and smoking tobacco, to others for resale in
8 the Commonwealth, shall pay, as a prepayment for the tax
9 imposed by this chapter, a tax on tobacco products that will be
10 held for retail sale in the Commonwealth. The tax shall be com-
11 puted on each sale of tobacco products by multiplying the tax rate
12 set by this chapter by the wholesale sales price at which such
13 manufacturer, wholesaler, unclassified acquirer or other person
14 sells the tobacco products. The tax imposed by this section shall
15 be paid at the same time and in the same manner as the tax
16 imposed by Section 2. Any manufacturer, wholesaler, unclassified
17 acquirer or other person prepaying the tax shall, with respect to
18 such prepayment, be a vendor for purposes of Section 1 of this
19 chapter and Section 16 of Chapter 62C, shall file returns and pay
20 over tax accordingly, and shall separately state on each customer
21 invoice or other written record, as prescribed by the commis-
22 sioner, the amount of prepaid sales tax charged.
23 (b) Every person selling tobacco products at retail in the Com-
24 monwealth who is required to pay the tax imposed by this chapter
25 shall be allowed a credit in the amount of the prepayment against
26 the total amount of tax it is required to pay over to the commis-

27 sioner under this chapter. Every such person must maintain
28 invoices and other records substantiating the amount of tax pre-
29 paid.

30 (c) Chapter 641 shall apply to the extent that the tax under this
31 section is not paid over to the commissioner by any of the persons
32 mentioned in the first or second paragraph of this section. All
33 taxes imposed by this section are conclusively presumed to be a
34 direct tax on the retail consumer, precollected for the purpose of
35 convenience and facility only.

36 (d) The commissioner may adopt regulations to implement this
37 section, which regulations shall include a provision to prevent the
38 payment of tax by more than one taxpayer.

1 SECTION 98. Subsection (p) of Section 6 of said Chapter 64H
2 of the General Laws, as appearing in the 2006 Official Edition, is
3 hereby amended by striking out clause (3) and inserting in place
4 thereof the following clause:—

5 (3) sales of fertilizer, including ground limestone, hydrated
6 lime, seed inoculants and plant hormones, as well as other sub-
7 stances commonly regarded in the same category and for the same
8 use, but not including any sales of pesticides, including insecti-
9 cides, herbicides, fungicides, miticides and all materials registered
10 with the Environmental Protection Agency as pesticides under
11 Federal Insecticide, Fungicide and Rodenticide Act as well as
12 other pesticides commonly regarded in the same category and for
13 the same purpose except when purchased by a person licensed
14 under Chapter 132B or otherwise exempt under paragraph (r).

1 SECTION 99. Said Section 6 of said Chapter 64H of the
2 General Laws, as so appearing, is hereby further amend by
3 striking out paragraphs (uu) and (vv), inclusive.

1 SECTION 100. Section 33 of Chapter 64H of the General
2 Laws, as so appearing, is hereby amended by adding at the end
3 thereof the following sentence:—

4 For purposes of this section, a vendor shall include any person
5 who has made a prepayment of tax under Section 3A.

1 SECTION 101. Section 7 of Chapter 64I of the General Laws,
2 as so appearing, is hereby amended by striking out paragraphs (d)
3 and (e), inclusive.

1 SECTION 102. Section 34 of Chapter 64I of the General Laws,
2 as so appearing, is hereby amended by adding at the end thereof
3 the following sentence:—

4 For purposes of this section, a vendor shall include any person
5 who has made a prepayment of tax under Section 3A of
6 Chapter 6411.

1 SECTION 103. Section 18 of Chapter 546 of the acts of 1969
2 are hereby repealed.

1 SECTION 104. Section 21 of Chapter 546 of the acts of 1969
2 are hereby repealed.

1 SECTION 105. Section 84 of this act shall take effect on Jan-
2 uary 1, 2009.

1 SECTION 106. Section 85 of this act shall take effect on Jan-
2 uary 1, 2010.

1 SECTION 107. Section 86 of this act shall take effect on Jan-
2 uary 1, 2011.

1 SECTION 108. Sections 95, 98 and 100 of this act shall apply
2 to sales of tobacco products occurring on or after September 1,
3 2008, by manufacturers, wholesalers, unclassified acquirers and
4 other persons specified in Section 95.

1 SECTION 109. This act shall be effective for tax years begin-
2 ning on or after January 1, 2009.