

House bill No. 4645, as amended by the House, as changed by the House committee on Bills in the Third Reading, and as passed to be engrossed by the House. April 10, 2008.



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:

SECTION 1. Clause Sixteenth of section 5 of chapter 59 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out paragraph (2) and inserting in place thereof the following paragraph:—

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

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

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

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

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

SECTION 5. Said section 5 of said chapter 59, as so appearing, is hereby further amended by striking out clause Sixteenth A.

SECTION 6. Section 18 of said chapter 59, as so appearing, is hereby amended by striking out, in lines 18 and 19, the words “domestic business and foreign corporations as defined in section thirty of chapter sixty-three” and inserting in place thereof the following words:— business corporations subject to tax under section 39 of chapter 63.

SECTION 7. Said section 18 of said chapter 59, as so appearing, is hereby further amended by striking out, in lines 38 and 39, the words “domestic business or foreign corporation, as defined in section thirty of chapter sixty-three” and inserting in place thereof the following words:— business corporation subject to tax under section 39 of chapter 63.

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

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

SECTION 10. Section 1 of chapter 62 of the General Laws, as so appearing, is hereby amended by adding the following 3 paragraphs:—

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

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

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

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

SECTION 12. Paragraph (2) of said subsection (a) of said section 2 of said chapter 62, as so appearing, is hereby amended by striking out subparagraph (B).

SECTION 13. Said paragraph (2) of said subsection (a) of said section 2 of said chapter 62, as so appearing, is hereby further amended by striking out subparagraph (D) and inserting in place thereof the following subparagraph:—

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

SECTION 14. Paragraph (1) of subsection (d) of said section 2 of said chapter 62, as so appearing, is hereby amended by striking out subparagraph (J).

SECTION 15. Section 4 of said chapter 62, as so appearing, is hereby amended by striking out, in lines 1 to 4, inclusive, the words “non-residents shall be taxed, to the extent specified in section five A on their taxable income, and corporate trusts shall be taxed to the extent specified in section eight” and inserting in place thereof the following words:— and non-residents shall be taxed to the extent specified in section 5A.

SECTION 16. Subsection (a) of section 6 of said chapter 62, as so appearing, is hereby amended by adding the following paragraph:—

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

SECTION 17. Section 8 of said chapter 62 is hereby repealed.

SECTION 18. The first paragraph of section 17 of said chapter 62, as appearing in the 2006 Official Edition, is hereby amended by striking out the third and fourth sentences.

SECTION 19. Section 17A of said chapter 62, as so appearing, is hereby amended by striking out subsection (e).

SECTION 20. Section 19 of said chapter 62 is hereby repealed.

SECTION 21. Section 6 of chapter 62C of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out, in lines 8 to 11, inclusive, the words “every corporate trust taxable under section eight of chapter sixty-two, and every other corporate trust doing business within the commonwealth and every other” and inserting in place thereof the following words:— and every.

SECTION 22. Said section 6 of said chapter 62C, as so appearing, is hereby further amended by striking out, in line 32, the word “domestic” and inserting in place thereof the following word:— business.

SECTION 23. Section 7 of said chapter 62C, as so appearing, is hereby amended by striking out, in lines 1 and 2, the words “, other than a corporate trust as defined in chapter sixty-two,”.

SECTION 24. Said chapter 62C is hereby further amended by striking out section 11, as so appearing, and inserting in place thereof the following section:—

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

SECTION 25. Section 51 of said chapter 62C, as so appearing, is hereby amended by striking out, in lines 3 and 4, the words “domestic or foreign business corporation” and by inserting in place thereof the following words business corporation as defined in section 30 of chapter 63.

SECTION 26. The definition of “Financial institution” in section 1 of chapter 63 of the General Laws, as so appearing, is hereby amended by adding the following sentence:— The term “corporation” as used in this definition shall mean any corporation, or any “other entity” as defined in section 1.40 of chapter 156D, whether the corporation or other entity may be formed, organized, or operated in or under the laws of the commonwealth or any other jurisdiction, that is classified for the taxable year as a corporation for federal income tax purposes.

SECTION 27. Section 2 of said chapter 63, as so appearing, is hereby amended by striking out, in line 1, the words “subsection (b)” and inserting in place thereof the following words:— subsections (b) and (d).

SECTION 27A. Said section 2 of said chapter 63, as so appearing, is hereby further amended by striking out subsection (b) and inserting in place thereof the following subsection:-

(b) Any corporation taxable under this section and described in clause (c), (d) or (e) of the definition of “financial institution” in section 1, but not described in clause (a) or (b) of said definition, shall pay an excise measured by its net income determined to be taxable under section 2A at the following rate:-

(i) on account of each taxable year beginning on or after January 1, 1995, but before January 1, 2009, 10.5 per cent; or

(ii) on account of each taxable year beginning on or after January 1, 2009, but before January 1, 2010, 10.0 per cent; or

(iii) on account of each taxable year beginning on or after January 1, 2010 in which the inflation adjusted growth in baseline taxes imposed under this section in the fiscal year ending on June 30 of the previous year exceeds 2.5 per cent and the inflation-adjusted change in baseline taxes for each consecutive 3-month period reported by the commissioner between August and December of the previous year is greater than 0, a percentatge equal to the rate in effect for the prior year, less 0.5 per cent; provided, however, that in no case shall the tax rate be less than 9.0 per cent; and provided, further, that in no case shall the excise impose under this section be less than \$456.

On or before October 15 of each year, the commissioner shall submit a report to the secretary of administration, the house and senate committees on ways and means and the joint committee on revenue providing a preliminary statement of the rate of excise to be

imposed under this section for taxable years beginning on or after the following January 1. On or before December 15, the commissioner shall make a final statement of the corporate tax rate for the following year to the same recipients.

For purposes of this section, the following words shall have the following meaning:-

“Baseline tax revenues”, the amount of state tax revenues received under this section that would have been credited to the budgeted funds had there been no change in federal or state tax law or administrative practices that affected tax collections for the year, as estimated by the commissioner.

“Inflation adjusted change in baseline tax revenues”, the commissioner’s estimate of the percentage change from the preceding fiscal year in the amount of baseline tax revenues minus the percentage change in the consumer price index for all urban consumers for Boston as most recently reported by the federal Bureau of Labor Statistics, from the index so reported 12 months before. The estimate shall be provided to the secretary of administration, the house and senate committees on ways and means and the joint committee on revenue annually, on or before August 30 for the preceding fiscal year. Monthly, on or before the fifteenth day, the commissioner shall provide an estimate for the preceding 3 months to the same recipients.

SECTION 28. Said section 2 of said chapter 63, as so appearing, is hereby further amended by adding the following subsection:—

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

SECTION 29. Said chapter 63 is hereby further amended by inserting after section 2A the following section:—

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

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

(2) Any financial institution which is an S corporation and has total receipts for the taxable year of \$6,000,000 or more shall also include in its excise an amount determined by multiplying its net income determined to be taxable in accordance with this chapter by 1 of the following rates:—

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

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

For purposes of this paragraph (2), net income determined to be taxable in accordance with this chapter shall be determined without taking into account subchapter S of the Code, and shall not include income that is taxed to the S corporation at the entity level under paragraph (1). The term “total receipts” shall mean gross receipts or sales, less returns and

allowances, and shall include dividends, interest, royalties, capital gain net income, rental income and all other income. The cost of goods sold or the cost of operations shall not be deductible in determining these total receipts. The commissioner shall, by regulation, apply limits on an aggregate basis to S corporations engaged in a unitary business with majority direct or indirect ownership by common stockholders. This aggregating shall also include any other type of entity so engaged and so owned which the commissioner finds was established for the purpose of avoiding the foregoing limit.

(3) Qualified subchapter S subsidiaries shall not be subject to separate entity level taxation under this section. Rather, the parent S corporation shall be subject to tax under this section, and shall include the income and take into account the activities of all qualified subchapter S subsidiaries for purposes of calculating the excise due under paragraphs (1) and (2). The parent S corporation and its qualified subchapter S subsidiaries shall be jointly and severally liable for the tax due under this chapter.

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

SECTION 30. Said chapter 63 is hereby further amended by striking out section 22, as appearing in the 2006 Official Edition, and inserting in place thereof the following section:—

Section 22. Every domestic insurance company coming within the scope of the definition of a domestic company in section 1 of chapter 175, except life insurance companies with respect to amounts received as consideration for annuity contracts and business taxable under section 20 and marine, or fire and marine, insurance companies with respect to business taxable under section 29A, shall annually pay an excise of 2.28 per cent upon the gross premiums for all policies written or renewed, all additional premiums charged, and all assessments made by such company on policyholders during the preceding calendar year, exclusive of reinsurance; but such premiums and assessments for policies written or renewed for insurance, exclusive of reinsurance, of property or interests in other states or countries where a tax is actually paid by such company, or its agents, shall not be so taxed. For purposes of calculating the credit under section 29E of this chapter, the term “surtax” is hereby defined as the portion of the excise imposed under this section equal to 0.28 per cent.

SECTION 31. Said chapter 63 is hereby further amended by striking out section 23, as so appearing, and inserting in place thereof the following section:—

Section 23. Every foreign insurance company coming within the scope of the definition of a foreign company in section 1 of chapter 175, except life insurance companies with respect to business taxable under sections 20 and 21 and marine, or fire and marine, insurance companies with respect to business taxable under section 29A, shall annually pay an excise upon the gross premiums for all policies written or renewed, all additional premiums charged, and all assessments made during the preceding calendar year for insurance of property or interests in this commonwealth, or which are subjects of insurance by contracts issued through companies or agents therein, exclusive of reinsurance, at the rate of 2.28 per cent but not less in amount than would be imposed by the laws of the state or country under which such company is organized upon a like

insurance company incorporated in this commonwealth, or upon its agents, if doing business to the same extent in such state or country.

SECTION 32. Section 29A of said chapter 63, as so appearing, is hereby amended by striking out subsection (1) and inserting in place thereof the following subsection:—

(1) Every marine, or fire and marine, insurance company authorized to transact business in the commonwealth coming within the scope of the definition of a domestic company or of a foreign company in section 1 of chapter 175, shall, with respect to all insurance written within the commonwealth upon hulls, freights, or disbursements, or upon goods, wares, merchandise and all other personal property and interests therein, in course of exportation from any country, importation into any country, or transportation coastwise including transportation by land or water from point of origin to final destination in respect to, appertaining to, or in connection with, any and all risks or perils of navigation, transit or transportation, any portion of which exportation, importation, transportation, navigation, transit, or shipment is upon any ocean, and upon the property while being prepared for and while awaiting shipment, and during any delays, storage, transshipment or reshipment incident thereto, including war risks and marine builders risks, pay a tax of 5.7 per cent on its taxable underwriting profit, ascertained as hereinafter provided, from such insurance written within the commonwealth.

SECTION 33. Subsection (a) of section 29E of said chapter 63, as so appearing, is hereby amended by striking out the definition of “Retaliatory taxes” and inserting in place thereof the following definition:—

“Retaliatory taxes”, those taxes imposed or assessed by and paid to another jurisdiction by any domestic property and casualty insurer due to the surtax as defined in section 22 of this chapter. Such term, however, shall not include penalties or interest for late payment of taxes.

SECTION 34. Section 30 of said chapter 63, as so appearing, is hereby amended by striking out the introductory clause and inserting in place thereof the following introductory clause:—

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

SECTION 35. Said section 30 of said chapter 63, as so appearing, is hereby further amended by striking out paragraphs 1 and 2 and inserting in place thereof the following 2 paragraphs:—

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

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

SECTION 36. Said section 30 of said chapter 63, as so appearing, is hereby further amended by striking out, in line 178, the word “foreign” and inserting in place thereof the following word:— business.

SECTION 37. Said section 30 of said chapter 63, as so appearing, is hereby further amended by striking out, in lines 184 and 192, the words “thirty-two or”.

SECTION 38. Said section 30 of said chapter 63, as so appearing, is hereby further amended by striking out, in lines 196 to 198, inclusive, the words, “domestic business corporation taxable under clause (1) of subsection (a) of section 32 or of a foreign corporation taxable under clause (1) of subsection (a) of” and inserting in place thereof the following words:— business corporation taxable under.

SECTION 39. Said section 30 of said chapter 63, as so appearing, is hereby further amended by striking out paragraph 16 and inserting in place thereof the following 2 paragraphs:—

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

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

SECTION 40. Subsection (h) of section 31A of said chapter 63, as so appearing, is hereby amended by striking out the second sentence.

SECTION 41. Section 31B of said chapter 63 is hereby repealed.

SECTION 42. Section 31E of said chapter 63, as appearing in the 2006 Official Edition, is hereby amended by striking out, in line 1, the words “domestic or foreign” and inserting in place thereof the following word:— business.

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

Section 31M. In determining gross income under this chapter, if the federal gross income includes any item of gain or has been reduced by any item of loss, with respect to property, then the federal gross income shall be increased by the excess of the federal adjusted basis of the property over the Massachusetts adjusted basis of the property, and shall be decreased by the excess of the Massachusetts adjusted basis of the property over the federal adjusted basis of the property, so that the gain or loss realized for Massachusetts purposes takes into account all applicable differences in the Massachusetts and federal tax rules over the life of an asset that should, in principle, give rise to differences in basis. The Massachusetts adjusted basis of property shall be the federal

adjusted basis, except that (i) any federal adjustment resulting from provisions of the Code that were not applicable in determining Massachusetts gross income at the time the federal adjustments were made shall be disregarded; and (ii) adjustments shall be made for any item that was applicable in determining Massachusetts gross income but that was not so applicable in determining federal gross income and for which a federal adjustment would be allowed under the Code if the item had been applicable in determining federal gross income. Without limitation of the foregoing, the federal basis of shares in a business corporation that was formerly treated as a corporate trust or of shares in a successor of that entity shall be reduced in computing Massachusetts adjusted basis to take into account any tax-free earnings and profits accumulated by the former corporate trust.

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

SECTION 45. Said chapter 63 is hereby further amended by striking out section 32B as appearing in the 2006 Official Edition, and inserting in place thereof the following section:-

Section 32B. (a) Notwithstanding any other provision of this chapter, a corporation subject to tax under this chapter and engaged in a unitary business with 1 or more corporations subject to combination within the meaning of this section shall, under regulations adopted by the commissioner, calculate its taxable net income derived from this unitary business as its share, attributable to the commonwealth, of the apportionable income or loss of the combined group engaged in the unitary business, determined in accordance with a combined report.

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

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

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

(c) (1)Corporations that are subject to combination within the meaning of this section

shall include, , an entity of the kind that is subject to tax or would be subject to tax if doing business in the state under section 2, 2B, 32D, 39 or 52A, as well as an entity described in sections 20 to 29E, inclusive, in any case in which the entity does not qualify for treatment as a life insurance company as defined in section 816 of the Code or an insurance company subject to tax imposed by section 831 of the Code. A corporation is subject to combination irrespective of whether the corporation is actually subject to tax under section 2, 2B, 32D, 39 or 52A. A corporation subject to combination includes a real estate investment trust as referenced under sections 856 to 859, inclusive, of the Code and a regulated investment company as referenced under sections 851 to 855, inclusive, of the Code. Any corporation included in the combined group pursuant to this section shall not be required to file as a separate entity pursuant to sections 2, 2B, 32D 39 or 52A.

(2) A corporation subject to combination within the meaning of this section shall not include an entity described in section 38B or 38V. In addition, an entity subject to combination within the meaning of this section shall not include an entity described in sections 20 to 29E, inclusive, except as provided in paragraph (1) or otherwise in this chapter.

(3) The members of a combined group subject to tax under this chapter may elect to determine their apportioned share of the taxable net income or loss of the combined group pursuant to a worldwide election under which each taxpayer member, wherever located, shall take into account the income and apportionment factors of all the members includible in the combined group. Otherwise, the combined group would determine its share of the taxable net income or loss of the combined group on a water's edge basis under which each member shall take into account the income and apportionment factors of only the members that are described in any one or more of the following categories:—

(i) any member incorporated in the United States or formed under the laws of the United States, any state, the District of Columbia, or any territory or possession of the United States but excluding any member with more than 80 percent of the average of its property, payroll and receipts sourced outside the United States;

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

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

(d) (1) When used in this section, the following words shall have the following meaning:

“Combined group’s taxable income,” the aggregate taxable net income or loss of every taxable member and non-taxable member of the combined group.

"Non-taxable member," a member of the combined group that is not independently subject to tax under this chapter.

"Taxable member," a member of the combined group that is independently subject to tax under this chapter.

(2) A corporation subject to tax under this chapter that is part of a combined group shall apportion its income as follows:-

(i) Subject to the rules of this subsection, each taxable member shall determine its apportionment percentage based on its specific apportionment formula pursuant to this chapter.

(ii) Each taxable member must compute the numerator of its apportionment factor(s) pursuant to the apportionment provisions of this chapter that apply to such member. Each taxable member shall add to its sales factor numerator its share of Massachusetts sales of non-taxable members based on subsection (D) below.

(iii) Each member must calculate its apportionment factor denominator(s) by (i) determining the apportionment factor denominator(s) of every member of the group based upon the apportionment provisions that apply to each member and (ii) aggregating the apportionment factor denominators of each member, regardless of whether any particular member is taxable in the commonwealth. A member shall determine its property and payroll factor denominators by including the property and payroll of all members of the group, including members of the group subject to a single sales factor apportionment formula. A member includes in its denominators the property and payroll attributable to a member subject to a single sales factor formula pursuant to the rules under section 2A, if such other member qualifies as a financial institution as defined under section 1, or otherwise pursuant to section 38.

(iv) The Massachusetts sales of each non-taxable member must be determined based upon the apportionment rules applicable to such member. The resulting Massachusetts sales of non-taxable members must be aggregated. Each taxable member of the group must include in its sales factor numerator a portion of the aggregate Massachusetts sales of non-taxable members based on a ratio, the numerator of which is such taxable member's Massachusetts sales taking into account its applicable sales factor provisions and the denominator of which is the aggregate Massachusetts sales of all the taxable members of the group taking into account their respective sales factor provisions. For purposes of determining whether sales are in the commonwealth and included in the numerator of the sales factor, a taxpayer is considered taxable in any state in which any member of its combined group is subject to tax.

(v) In computing the apportionment percentage of combined group members, each member must eliminate intercompany transactions.

(3) To arrive at each member's apportioned taxable net income or loss, each member shall apply its apportionment percentage, as determined under subparagraphs (i) to (v), inclusive, of paragraph (2), to the combined group's taxable income, as defined in of paragraph (1).

(4) Each taxable member shall multiply its apportioned taxable net income or loss by the tax rate applicable to such member pursuant to the provisions of this chapter.

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

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

(i) the elimination of intercompany transactions, including but not limited to the payments of dividends, between or among combined group members, and the elimination or deferral of income, expenses, apportionment factors or other tax items associated with those transactions;

(ii) the sharing within the combined group of credits that may be validly claimed by a taxpayer and that are attributable to the combined group's unitary business, to the extent such sharing of credits by a particular member of the combined group is consistent with the statutory requirement for claiming such a credit, taking into account the nature of such member's business, activities, etc.;

(iii) the application of any carry forwards, including the sharing of any net operating loss or tax credit carry forwards that are attributable to the activities of the combined group's unitary business, but the carry forward of losses, credits or other tax benefits that arise before the effective date of this section shall be available only to the extent permitted by law as in effect before the effective date; and

(iv) the relationship to this section of the provisions set forth in sections 31I to 31K, inclusive.

(g) (i). When used in this section, the following words shall have the following meaning:-

"Affiliated group" is defined pursuant to Section 1504 of the Code and includes all corporations that are commonly owned, directly or indirectly, by any member of such affiliated group.

"Commonly owned" shall mean more than 50 per cent of the voting control of such member is directly or indirectly owned by a common owner or owners, either corporate or non-corporate.

(ii) A taxpayer may elect, without the consent of the commissioner, to treat as its Massachusetts combined group all corporations that are members of its affiliated group.

The corporations referred to above shall include members of such affiliated group that are subject to tax or that would be subject to tax if doing business in the state under section 2, 2B, 32D, 39 or 52A. Such affiliated group shall calculate Massachusetts taxable income in accordance with subsection (d). Any such election shall be made on an original, timely filed return by any member of the combined group. Any corporation entering an affiliated group subsequent to the year of election must be included in the Massachusetts combined group and is considered to have waived any

objection to its inclusion in the Massachusetts combined group. Such election shall be binding for and applicable to the taxable year for which it is made and for the next 9 taxable years and shall continue to remain in effect until terminated by the combined group. Such election may be terminated without the consent of the commissioner after it has been in effect for 10 taxable years. The termination shall be made on an original, timely filed return for the first taxable year in which the federal consolidated group election is to be terminated.

(h) (i) If book-tax differences for the fiscal period ending during the year of enactment of this section result in an increase to a net deferred tax liability or decrease to a net deferred tax asset for any taxpayer affected by this section, taxpayer shall be entitled to a deduction, subject to paragraph (2), equal to one-fifth of the book-tax differences creating the increase in the net deferred tax liability or decrease in the net deferred tax asset of the taxpayer in each of the 5 years beginning with the 2010 taxable year of such taxpayer. If this deduction results in a net operating loss in any tax year, the unused deduction may be carried forward indefinitely by the combined group and deducted without regard to any limitation.

(2) The deduction under paragraph (1) shall not exceed the amount necessary to offset the increase in the net deferred tax liability or the decrease in the net deferred asset of the taxpayer as computed in accordance with generally accepted accounting principles that would otherwise result from the imposition of the excise tax under this section 32B for any taxpayer affected under this section, if the deduction provided under this subsection were not allowed. This deduction shall be applied to affiliates at the taxpayer's election.

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

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

SECTION 48. Clause (ii) of subsection (a) of section 32D of said chapter 63, as so appearing, is hereby amended by striking out the first paragraph of and inserting in place thereof the following paragraph:—

Any such business corporation which is an S corporation and which has total receipts for the taxable year of \$6,000,000 or more shall also include in the net income measure of the excise imposed under section 39 an amount determined by multiplying its net income determined to be taxable in accordance with this chapter by 1 of the following rates, in lieu of the rate provided in said section 39:

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

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

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

SECTION 50. Said section 32D of said chapter 63, as so appearing, is hereby further amended by striking out subsection (b) and inserting in place thereof the following subsection:—

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

SECTION 51. Said chapter 63 is hereby further amended by striking out section 32E, inserted by section 6 of chapter 63 of the acts of 2007, and inserting in place thereof the following section:—

Section 32E (a). This section shall apply to certain credits earned under section 38U.

(b) At the written election of a taxpayer entitled to a credit under section 38U, the commissioner shall apply the credit against the liability of the taxpayer as determined on its return, as first reduced by any other available credits, and shall then refund to the taxpayer 90 per cent of the balance of the credits.

(c) The commissioner may require substantiation of a taxpayer’s claim for a refund under subsection (b) before payment of the refund. No interest shall accrue on a refund under section 40 of chapter 62C before the commissioner’s receipt of the substantiation request.

(d) The commissioner shall promulgate regulations or other guidelines as he deems necessary to implement this section. The commissioner shall submit any proposed regulations to the joint committee on revenue and the house and senate committees on ways and means before their adoption by the department. The regulations shall be accompanied by a summary which clearly instructs the taxpayer of his rights under this section.

SECTION 52. Section 33 of said chapter 63 is hereby repealed.

SECTION 53. Section 38 of said chapter 63, as appearing in the 2006 Official Edition, is hereby amended by striking out, in line 2, the words “domestic business corporation or of a foreign corporation” and inserting in place thereof the following words:— business corporation.

SECTION 54. Paragraph (1) of subsection (a) of said section 38 of said chapter 63, as so appearing, is hereby amended by striking out clause (i) and inserting in place thereof the following clause:—

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

SECTION 55. Said section 38 of said chapter 63, as so appearing, is hereby further amended by striking out, in line 70, the words “thirty-eight C or”.

SECTION 56. Said section 38 of said chapter 63, as so appearing, is hereby further amended by striking out, in line 162, the word “and”.

SECTION 57. Said section 38 of said chapter 63, as so appearing, is hereby further amended by inserting after the word “contracts”, in line 169, the following words:— ; and (6) in the case of a sale or deemed sale of a business, the term “sales” does not include receipts from the sale of the business “good will” or similar intangible value, including, without limitation, “going concern value” and “workforce in place.”

SECTION 58. Said section 38 of said chapter 63, as so appearing, is hereby further amended by striking out, in line 235, the words “domestic or foreign” and inserting in place thereof, in each instance, the following word:— business.

SECTION 59. Said section 38 of said chapter 63, as so appearing, is hereby further amended by striking out, in lines 251 and 252, and in lines 318 and 326, the words “domestic or foreign”.

SECTION 60. Section 38A of said chapter 63, as so appearing, is hereby amended by striking out, in line 1, the word “domestic”.

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

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

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

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

SECTION 64. Section 38D of said chapter 63, as appearing in the 2006 Official Edition, is hereby amended by striking out, in line 2, the words “domestic or foreign”.

SECTION 65. Said section 38D of said chapter 63, as so appearing, is hereby further amended by striking out, in lines 86 and 87, the words “(1)(i) of subsection (a) of section thirty-two or clause (1)(i) of subsection (a) of section thirty-nine” and inserting in place thereof the following words:— subclause (i) of clause (1) of subparagraph (a) of the fourth paragraph of section 39.

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

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

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

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

SECTION 70. Said section 38H of said chapter 63, as so appearing, is hereby further amended by striking out, in lines 55 and 56, the words “clause (1)(i) of subsection (a) of section thirty-two or clause (1)(i) of subsection (a) of section thirty-nine” and inserting in place thereof the following words:— subclause (i) of clause (1) of subparagraph (a) of the fourth paragraph of section 39.

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

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

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

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

SECTION 75. Said section 38M of said chapter 63, as so appearing, is hereby further amended by striking out, in lines 44 and 45, the words “section thirty-two or thirty-nine” and inserting in place thereof the following words:— section 39.

SECTION 76. Subsection (a) of section 38Q of said chapter 63, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:—

A business corporation which commences and diligently pursues an environmental response action on or before August 5, 2011 and which achieves and maintains a permanent solution or remedy operation status in compliance with chapter 21E and the regulations adopted under that chapter which includes an activity and use limitation shall, at the time the permanent solution or remedy operation status is achieved, be allowed a base credit of 25 per cent of the net response and removal costs incurred between August 1, 1998 and January 1, 2012 for any property it owns or leases for business purposes and which is located within an economically distressed area as defined in section 2 of chapter 21E, if these costs are not less than 15 per cent of the assessed value of the property before remediation, and if the site was reported to the department of environmental protection. A credit of 50 per cent of these costs shall be allowed for a corporation which achieves and maintains a permanent solution or remedy operation status in compliance with chapter 21E and the Massachusetts contingency plan provided in 310 CMR 40.00 which does not include an activity and use limitation. Only a business corporation that is an eligible person as defined by section 2 of chapter 21E, and not subject to any enforcement action brought under chapter 21E, shall be allowed a credit.

SECTION 77. Said section 38Q of said chapter 63, as so amended, is hereby further amended by striking out, in line 61, the words “subsection (b) of section 32 or”.

SECTION 78. Section 38S of said chapter 63, as appearing in the 2006 Official Edition, is hereby amended by striking out, in line 2, the words “domestic or foreign”.

SECTION 79. Said chapter 63 is hereby further amended by striking out section 38T, as most recently amended by section 10 of chapter 63 of the acts of 2007, and inserting in place thereof the following section:—

Section 38U. (a) As used in this section the following words shall, unless the context clearly requires otherwise, have the following meanings:—

“Commissioner”, the commissioner of revenue.

“Motion picture”, a feature-length film, a video, a digital media project, a television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term "motion picture" shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, a production containing obscene material or performances.

“Motion picture production company”, a company including its subsidiaries engaged in the business of producing motion pictures, videos, television series, or commercials intended for a theatrical release or for television viewing. The term "motion picture production company" shall not mean or include any company which is more than 25 per cent owned, affiliated, or controlled, by any company or person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

“Massachusetts production expense”, a production expense for the motion picture clearly and demonstrably incurred in the commonwealth.

“Principal photography”, the phase of production during which the motion picture is actually filmed. The term shall not include preproduction or postproduction.

“Production expense” or “production cost”, preproduction, production and postproduction expenditures directly incurred in the production of a motion picture. The term shall include wages and salaries paid to individuals employed in the production of the motion picture; the costs of set construction and operation, editing and related services, photography, sound synchronization, lighting, wardrobe, make-up and accessories; film processing, transfer, sound mixing, special and visual effects; music; location fees and the cost of purchase or rental of facilities and equipment or any other production expense as may be determined by the department of revenue to be an eligible production expense. The term shall not include costs incurred in marketing or advertising a motion picture, any costs related to the transfer of tax credits or any amounts paid to persons or businesses as a result of their participation in profits from the exploitation of the production.

“Secretary”, the secretary of economic development.

(b) A taxpayer engaged in the making of a motion picture shall be allowed a credit against the taxes imposed by this chapter for the employment of persons within the commonwealth in connection with the filming or production of 1 or more motion pictures in the commonwealth within any consecutive 12 month period. The credit shall be equal to 25 per cent of the total aggregate payroll paid by a motion picture production company that constitutes Massachusetts source income, when total production costs incurred in the commonwealth equal or exceed \$50,000 during the taxable year. For purposes of this subsection, the term "total aggregate payroll" shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.

(c) A taxpayer shall be allowed an additional credit against the taxes imposed by this chapter equal to 25 per cent of all Massachusetts production expenses, not including the payroll expenses used to claim a credit pursuant to subsection (b), where the motion picture is also eligible for a credit pursuant to subsection (b) and either Massachusetts production expenses exceed 50 per cent of the total production expenses for a motion picture or at least 50 per cent of the total principal photography days of the film take place in the commonwealth.

(d) The tax credit shall be taken against the taxes imposed under this chapter and shall, at the election of the taxpayer, be refundable to the extent provided for in section 32E. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the taxpayer to any of the 5 subsequent taxable years.

(e)(1) All or any portion of tax credits issued in accordance with the provisions of this section may be transferred, sold or assigned to other taxpayers with tax liabilities under this chapter or chapter 62. Any tax credit that is transferred, sold or assigned and taken against taxes imposed by this chapter or said chapter 62 shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the transferee, buyer or assignee to any of the 5 subsequent taxable years from which a certificate is initially issued by the department of revenue.

(2) An owner, transferee or assignee desiring to make a transfer, sale or assignment shall submit to the commissioner a statement which describes the amount of tax credit for which the transfer, sale or assignment of tax credit is eligible. The owner, transferee or

assignee shall provide to the commissioner such information as the commissioner may require for the proper allocation of the credit. The commissioner shall provide to the taxpayer a certificate of eligibility to transfer, sell or assign the tax credits. The commissioner shall not issue a certificate to a taxpayer that has an outstanding tax obligation with the commonwealth in connection with any motion picture for any prior taxable year. A tax credit shall not be transferred, sold or assigned without a certificate.

(f) The commissioner, in consultation with the secretary, shall promulgate regulations necessary for the administration of this subsection.

SECTION 80. Said chapter 63 is hereby further amended by striking out section 38T, inserted by section 28 of chapter 163 of the acts of 2005, and inserting in place thereof the following section:—

Section 38V. (a) Every business corporation which is exempt from taxation under section 501 of the Code shall be subject to tax under section 39 on its unrelated business taxable income, as defined in section 512 of the Code. The property or net worth of those corporations shall not be subject to tax under this chapter, and the minimum excise under section 39 shall not apply. If a corporation has unrelated business taxable income that is taxable both within and without the commonwealth, it may apportion its net income to the commonwealth under section 38, but its apportionment factors shall be determined by reference only to the unrelated business activity of the corporation. The credits allowed under this chapter shall be determined only with respect to the unrelated business activity of the corporation.

(b) An entity that is exempt from taxation under section 501 of the Code shall not be considered to be a business corporation for purposes of chapter 59.

SECTION 81. Said chapter 63, as appearing in the 2006 Official Edition, is hereby further amended by striking out section 39 and inserting in place thereof the following section:—

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

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

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

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

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

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

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

(a) An amount equal to the sum of:—

(1) \$2.60 per \$1,000 upon the value of:—

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

(ii) its net worth as determined to be taxable under paragraph 8 of section 30 if an intangible property corporation; and

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

(ii) For tax years beginning on or after January 1, 2009, but before January 1, 2010, 8.75 per cent of its net income determined to be taxable in accordance with this chapter; or

(iii) For tax years beginning on or after January 1, 2010 in which the inflation adjusted growth in baseline corporate taxes in the fiscal year ending on June 30 of the previous year exceeds 2.5 per cent and the inflation-adjusted change in baseline taxes for each consecutive 3-month period reported by the commissioner between August and December of the previous year is greater than 0:

1. the percentage of its net income determined to be taxable in accordance with this chapter equal to the rate in effect for the prior taxable year, less 0.75 per cent; or
2. 7.5 per cent, if the rate for the prior taxable year is 8.0 per cent; provided, however, that in no case shall the rate be less than 7.5 per cent; or

(b) \$456.

On or before October 15 of each year, the commissioner shall submit a report to the secretary of administration, the house and senate committees on ways and means and the joint committee on revenue providing a preliminary statement of the rate of excise to be

imposed under this section for taxable years beginning on or after the following January 1. On or before December 15, the commissioner shall make a final statement of the corporate tax rate for the following year to the same recipients.

For purposes of this section, the following words shall have the following meaning:—

"Baseline tax revenues", the amount of state tax revenues received under this section that would have been credited to the budgeted funds had there been no change in federal or state tax law or administrative practices that affected tax collections for the year, as estimated by the commissioner.

"Inflation adjusted change in baseline tax revenues", the commissioner's estimate of the percentage change from the preceding fiscal year in the amount of baseline tax revenues minus the percentage change in the consumer price index for all urban consumers for Boston as most recently reported by the federal Bureau of Labor Statistics, from the index so reported 12 months before. The estimate shall be provided to the secretary of administration, the house and senate committees on ways and means and the joint committee on revenue annually, on or before August 30 for the preceding fiscal year. Monthly, on or before the fifteenth day, the commissioner shall provide an estimate for the preceding 3 months to the same recipients.

A business corporation shall not be subject to the income measure of tax under clause (2) of subsection (a) if it is engaged in the business of selling tangible personal property and taxation of that business corporation under this chapter is precluded by the Constitution or laws of the United States, or would be so precluded except for the fact that the business corporation stored tangible personal property in a licensed public storage warehouse, but no portion of any warehouse which is owned or leased by a consignor or consignee of the tangible personal property shall be considered a licensed public warehouse. A business corporation exempt from the income measure of the excise under this paragraph pursuant to federal Public Law 86-272 shall nevertheless be subject to the excise under clause (1) of subsection (a) or subsection (b), whichever is greater.

SECTION 82. Said chapter 63 is hereby further amended by striking out section 42B , as so appearing, and inserting in place thereof the following section:—

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

(b) A research and development corporation for the purposes of this section is a business corporation subject to tax under section 39 whose principal activity herein is research and development and which, during the taxable year, derives more than 2/3 of its

receipts attributable to the commonwealth from the activity or incurs more than 2/3 of its expenditures attributable to the commonwealth allocable to the activity, but a corporation that qualifies as a research and development corporation only by reason of its expenditures shall not be entitled to the credit provided in section 31A of chapter 63 by virtue of its qualification as a research and development corporation. A corporation that is engaged in research and development and that conducts manufacturing activities shall exclude expenditures related to manufacturing from total expenditures for the purpose of assessing whether 2/3 of expenditures are allocable to research and development, whether or not the manufacturing activities of the corporation are substantial. Receipts from research and development shall include receipts from the provision of research and development services and from royalties or fees derived from the licensing of patents, know-how or other technology developed from research and development. For purposes of this section, research and development is experimental or laboratory activity having as its ultimate goal the development of new products, the improvement of existing products, the development of new uses for existing products, or the development or improvement of methods for producing products; and does not include testing or inspection for quality control purposes, efficiency surveys, management studies, consumer surveys or other market research, advertising or promotional activities, or research in connection with literacy, historical or similar projects. Nothing in this section shall be construed to provide for an exemption from local taxation of the machinery of a corporation considered to be a research and development corporation which is not considered to be a manufacturing corporation.

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

SECTION 83. Section 52 of said chapter 63, as so appearing, is hereby amended by striking out the first 4 sentences and inserting in place thereof the following 2 sentences:— If any of the provisions of this chapter imposing an excise on business corporations as defined in subsection (1) of section 30 are declared unconstitutional or inoperative by a final judgment, order or decree of the supreme court of the United States or of the supreme judicial court of the commonwealth, the portion of those provisions that was found to be unconstitutional or inoperative shall be null and void and shall become inapplicable to those corporations. In this event, the provisions of law, whether under this chapter or chapter 62, that (a) were applicable to those business corporations immediately before the enactment of the provision found to be unconstitutional or inoperative and (b) became inoperative or inapplicable in connection with the enactment of the provision found to be unconstitutional or inoperative, shall thereupon be revived and become operative and applicable in respect to those business corporations and shall be continued in full force and effect from the first day of January preceding by 6 years the first day of January of the calendar year in which the final judgment, order or decree is entered, to the same extent as if the provision found to be unconstitutional or inoperative had not been enacted.

SECTION 84. Said section 52 of said chapter 63, as so appearing, is hereby further amended by striking out the last 3 sentences and inserting in place thereof the following 3 sentences:— Excises declared invalid by reason of the foregoing premises, which were assessed on or after the date when predecessor laws are revived, made operative or

applicable or continued in force as provided in this section, shall, to the extent that those excises have been paid and are unrefunded, be credited against the taxes assessed for the same period under the laws revived and again made operative, applicable and continued in force, but if this credit exceeds the taxes due, the excess shall be refunded upon warrant of the commissioner to the state treasurer. There shall be no further or other recovery of the amounts thus credited or refunded. If any provision of this chapter other than the provisions imposing an excise shall be declared unconstitutional or inoperative, the remaining provisions shall not be affected.

SECTION 85. Subsection (1) of section 52A of said chapter 63, as so appearing, is hereby amended by striking out paragraph (a) and inserting in place thereof the following paragraph:—

(a) “Utility corporation” means every business corporation that is (i) an electric company and gas company subject to chapter 164; (ii) a water company and aqueduct company subject to chapter 165; (iii) a telephone and telegraph company subject to chapter 166; (iv) a railroad and railway company subject to chapter 160; and every business corporation qualified under section 131A of said chapter 160 to acquire, own and operate terminal facilities for steam, electric or other types of railroad; (v) a street railway subject to chapter 161; (vi) an electric railroad subject to chapter 162; (vii) a trackless trolley company subject to chapter 163; (viii) a pipe line company engaged in the transportation or sale of natural gas within the Commonwealth; and (ix) every foreign corporation which is not subject to the above chapters but which does an electric, gas, water, aqueduct, telephone, telegraph, railroad, railway, street railway, electric railroad, trackless trolley or bus business within the Commonwealth and has, before January 1, 1952, been subject to taxation under sections 53 to 60, inclusive.

SECTION 86. Said chapter 63 is hereby further amended by inserting after section 68A the following section:—

Section 68C. In general, a business corporation as defined in section 30 is subject to an excise under section 39, as provided in that section, and as modified by section 32D in the case of S corporations and by section 38V in the case of entities qualifying under section 501 of the Code. Notwithstanding this general rule or any other provision of this chapter, the excise under section 39 shall not apply in the case of a business corporation that is:—

- (1) a financial institution, as defined in section 1, that is subject to excise under section 2 or 2B;
- (2) a security corporation as defined in section 38B and subject to excise under that section;
- (3) a utility corporation as defined in section 52A and subject to excise under that section;
- (4) an insurance company subject to excise under sections 20 to 29E, inclusive;
- (5) an urban redevelopment corporation subject to excise under section 10 of chapter 121A;
- (6) a corporation described in section 10 or section 18 of chapter 157;
- (7) a corporation described in section 1 of chapter 171;
- (8) a corporation or other entity that qualifies as a regulated investment company under section 851 of the Code; or

(9) a business corporation otherwise expressly exempted from the excise under this chapter by any other general law.

SECTION 87. Chapter 63A of the General Laws is hereby amended by striking out section 2, as appearing in the 2006 Official Edition, and inserting in place thereof the following section:—

Section 2. Against every taxpayer there shall be levied, assessed and collected an excise at the rate of 0.57 per cent of such taxpayer's gross receipts.

SECTION 88. Section 10 of chapter 63B of the General Laws, as so appearing, is hereby amended by striking out, in line 3, the word "domestic".

SECTION 89. Section 6 of chapter 64C of the General Laws, as so appearing, is hereby amended by striking out the first 2 sentences and inserting in place thereof the following 2 sentences:— Every licensee who is required to file a return under section 16 of chapter 62C shall, at the time of filing such return, pay to the commissioner an excise equal to 100½ mills plus any amount by which the federal excise tax on cigarettes is less than 8 mills for each cigarette so sold during the calendar month covered by the return; provided, however, that cigarettes with respect to which the excise under this section has once been imposed and has not been refunded, if paid, shall not be subject upon a subsequent sale to the excise imposed by this section. Each unclassified acquirer shall, at the time of filing a return required by section 16 of chapter 62C, pay to the commissioner an excise equal to 100½ mills plus any amount by which the federal excise tax on cigarettes is less than 8 mills for each cigarette so imported or acquired and held for sale or consumption, and cigarettes, with respect to which such excise has been imposed and has not been refunded, if paid, shall not be subject, when subsequently sold, to any further excise under this section.

SECTION 90. Said section 6 of said chapter 64C, as so appearing, is hereby further amended by adding the following paragraph:-

Notwithstanding the provisions of section 28, an amount equal to 50 mills for each cigarette so sold during the calendar month covered by the return filed under section 16 of chapter 62C shall be credited to the Commonwealth Care Trust Fund, established pursuant to section 2000 of chapter 29.

SECTION 91. Section 28 of said chapter 64C, as so appearing, is hereby amended by striking out in line 1 the words "section seven" and inserting in place thereof the following words:- Sections 6 and 7A.

SECTION 92. Section 18 of chapter 546 of the acts of 1969 is hereby repealed.

SECTION 93. Section 21 of said chapter 546 is hereby repealed.

SECTION 94. Chapter 63 of the acts of 2007 is hereby amended by striking out the section 13 and inserting in place thereof the following section:—

Section 13. Notwithstanding any general or special law to the contrary, the commissioner of revenue shall annually, not later than December 31, report in writing to the house and senate committees on ways and means on the status of the film tax credit established pursuant to section 6 of chapter 62, inserted by section 2 of chapter 158 of the acts of 2005, section 38U of chapter 63 and section 6 of chapter 64H of the General Laws. The report shall include, but not be limited to, the motion picture production activity generated by the tax credits and the net revenue impact of the tax credits.

SECTION 95. There shall be a special commission to review the corporate tax laws of the commonwealth. The investigation shall include, but not be limited to, the modernization and simplification of the current business tax laws, as well as rate structure and reporting mechanisms of corporations. Said commission shall consist of the chair of the committee on house ways and means or his designee, who shall serve as chair, the house chair of the joint the committee on revenue, or his designee, the house chair of the joint committee on financial services, or his designee, the house chair of the joint committee on economic development and emerging technology, or his designee, the house chair of the joint committee on telecommunications, utilities and energy, or his designee, the house chair of the joint committee on community development and small business, or his designee, two house members appointed by the speaker, and two house members appointed by the minority leader. There shall also be appointed by the Speaker four members one of whom shall represent the financial services industry, one who shall represent rate regulated utilities, and two of whom shall represent general business corporations. The commission shall collect and evaluate data, and shall file a report of the results of its investigation with the clerks of the house of representatives on or before December 31, 2008. The report shall include recommendations and any legislation necessary to address the revision of the corporate tax laws of the commonwealth.

SECTION 96. Sections 1 to 84, inclusive, sections 85 to 88, inclusive, and 92, 93 and 94 shall be effective for tax years beginning on or after January 1, 2009.

SECTION 97. Sections 89, 90 and 91 shall take effect on July 1, 2008.

House, No.

BILL IMPROVING TAX FAIRNESS AND
BUSINESS COMPETITIVENESS
