

SENATE, NO. 2675

[Senate, May 5, 2008 – Text of the amendment recommended by the committee on Ways and Means to the House Bill improving tax fairness and business competitiveness (House, No. 4672)]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND EIGHT

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

4 (2) In the case of a business corporation subject to tax under section 39 of chapter
5 63 that is not a manufacturing corporation, all property owned by the corporation other
6 than the following:- real estate, poles, underground conduits, wires and pipes, and
7 machinery used in the conduct of the business, which term, as used in this clause, shall
8 not be considered to include stock in trade or any personal property directly used in
9 connection with dry cleaning or laundering processes or in the refrigeration of goods or in
10 the air-conditioning of premises or in any purchasing, selling, accounting or
11 administrative function.

12

13 SECTION 2. Said section 5 of said chapter 59, as so appearing, is hereby
14 amended by striking out, in lines 247 to 251, the words "(a) a domestic manufacturing
15 corporation as defined in section thirty-eight C of chapter sixty-three or (b) a foreign
16 manufacturing corporation as defined in section forty-two B of said chapter" and

17 inserting in place thereof the following words: a manufacturing corporation as defined in
18 section 42B of chapter 63.

19

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

24

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

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

32

33 SECTION 5. Clause Sixteenth A of said section 5 of said chapter 59 is hereby
34 repealed.

35

36 SECTION 6. Section 18 of said chapter 59, as appearing in the 2006 Official
37 Edition, is hereby amended by striking out, in lines 18 to 19, the words "domestic
38 business and foreign corporations as defined in section thirty of chapter sixty-three" and

39 inserting in place thereof the following words: business corporations subject to tax under
40 section 39 of chapter 63.

41

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

47

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

55

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

58

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

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

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

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

69

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

72

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

75

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

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

83

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

86

87 SECTION 15. Section 4 of said chapter 62, as so appearing, is hereby amended
88 by striking out, in lines 1 to 4, the words "nonresidents shall be taxed, to the extent
89 specified in section five A on their taxable income, and corporate trusts shall be taxed to
90 the extent specified in section eight" and inserting in place thereof the following words:
91 and nonresidents shall be taxed to the extent specified in section 5A.

92

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

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

100

101 SECTION 17. Subsection (h) of said section 6 of said chapter 62, as so appearing,
102 is hereby amended by inserting, after the second sentence, the following sentence:- "With
103 respect to a person who is a nonresident for all or part of the taxable year, the credit shall
104 be limited to 15 per cent of the federal credit multiplied by a fraction the numerator of
105 which is the earned income of the nonresident from Massachusetts sources and the
106 denominator of which is the earned income of the nonresident from all sources."

107

108 SECTION 18. Section 8 of said chapter 62 is hereby repealed.

109

110 SECTION 19. The first paragraph of section 17 of said chapter 62, as appearing in
111 the 2006 Official Edition, is hereby amended by striking out the third and fourth
112 sentences.

113

114 SECTION 20. Section 17A of said chapter 62, as so appearing, is hereby amended
115 by striking out subsection (e).

116

117 SECTION 21. Section 19 of said chapter 62 is hereby repealed.

118

119 SECTION 22. Section 6 of chapter 62C of the General Laws, as appearing in the
120 2006 Official Edition, is hereby amended by striking out, in lines 8 to 11, the words
121 "every corporate trust taxable under section eight of chapter sixty-two, and every other
122 corporate trust doing business within the commonwealth and every other" and inserting
123 in place thereof the following words:- "and every."

124

125 SECTION 23. Said section 6 of said chapter 62C, as so appearing, is hereby
126 further amended by striking out, in line 32, the word "domestic" and inserting in place
127 thereof the following word:- "business."

128

129 SECTION 24. Section 7 of said chapter 62C, as so appearing, is hereby amended
130 by striking out, in lines 1 and 2, the words ", other than a corporate trust as defined in
131 chapter sixty-two,".

132

133 SECTION 25. Said chapter 62C is hereby further amended by striking out section
134 11, as so appearing, and inserting in place thereof the following section:-

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

140

141 SECTION 26. Section 16 of said chapter 62C, as so appearing, is hereby amended
142 by inserting after the word "operator", in line 53, as so appearing, the following words: or
143 room reseller.

144

145 SECTION 27. Section 25 of said chapter 62C, as so appearing, is hereby amended
146 by inserting after the word "operator", in line 6, the following words: or room reseller.

147

148 SECTION 28. Section 51 of said chapter 62C, as so appearing, is hereby amended
149 by striking out, in lines 3 and 4, the words "domestic or foreign business corporation" and
150 by inserting in place thereof the following words:- business corporation as defined in
151 section 30 of chapter 63.

152

153 SECTION 29. Section 67 of said chapter 62C, as so appearing, is hereby amended
154 by inserting after the word "operator", in line 2, the following words: or room reseller.

155

156 SECTION 30. The definition of "Financial institution" in section 1 of chapter 63
157 of the General Laws, as so appearing, is hereby amended by adding the following
158 sentence: The term "corporation" as used in this definition shall mean any corporation, or
159 any "other entity" as defined in section 1.40 of chapter 156D, whether the corporation or
160 other entity may be formed, organized, or operated in or under the laws of the
161 commonwealth or any other jurisdiction, that is classified for the taxable year as a
162 corporation for federal income tax purposes.

163

164 SECTION 31. Section 2 of said chapter 63, as so appearing, is hereby amended
165 by striking out, in line 1, the words "subsection (b)" and inserting in place thereof, the
166 following words: subsections (b) and (d).

167

168 SECTION 32. Said section 2 of said chapter 63, as so appearing, is hereby further
169 amended by striking out subsection (b) and inserting in place thereof the following
170 subsection:-

171 (b) Any corporation taxable under this section shall pay an excise measured by its
172 net income determined to be taxable under section 2A at the following rate:-

173 (i) for each taxable year beginning on or after January 1, 1995, but before January
174 1, 2010, 10.5 per cent;

175 (ii) for each taxable year beginning on or after January 1, 2010, but before
176 January 1, 2011, 10.0 per cent;
177 (iii) for each taxable year beginning on or after January 1, 2011, but before
178 January 1, 2012, 9.5 per cent;
179 (iv) for each taxable year beginning on or after January 1, 2012 and thereafter, 9.0
180 per cent; and provided, further, that in no case shall the excise imposed under this section
181 amount to less than \$456.

182

183 SECTION 33. Said section 2 of said chapter 63, as so appearing, is hereby further
184 amended by adding the following subsection:

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

188

189 SECTION 34. Said chapter 63 is hereby further amended by inserting after
190 section 2A the following section:

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

194 (1) The net income shall be determined by taking into account subchapter S of the
195 Code. Income or loss shall be determined as if it were realized or incurred directly by an
196 owner subject to taxation under chapter 62 or 63, as applicable. In the case of an S
197 corporation, income shall be included in the net income measure under this subsection

198 and, to the extent that the income is taxed to the S corporation for federal income tax
199 purposes, subject to tax at the following rate:-

200 (i) for each taxable year beginning on or after January 1, 1995, but before January
201 1, 2010, 10.5 per cent;

202 (ii) for each taxable year beginning on or after January 1, 2010, but before
203 January 1, 2011, 10.0 per cent;

204 (iii) for each taxable year beginning on or after January 1, 2011, but before
205 January 1, 2012, 9.5 per cent;

206 (iv) for each taxable year beginning on or after January 1, 2012 and thereafter, 9.0
207 per cent.

208 (2) Any financial institution which is an S corporation and has total receipts for
209 the taxable year of at least \$6,000,000 but less than \$9,000,000 shall also include in its
210 excise an amount determined by multiplying its net income determined to be taxable in
211 accordance with this chapter by the following rate:-

212 (i) for each taxable year beginning on or after January 1, 1995, but before January
213 1, 2010, 3.5 per cent;

214 (ii) for each taxable year beginning on or after January 1, 2010, but before
215 January 1, 2011, 3.1 per cent;

216 (iii) for each taxable year beginning on or after January 1, 2011, but before
217 January 1, 2012, 2.8 per cent;

218 (iv) for each taxable year beginning on or after January 1, 2012 and thereafter, 2.4
219 per cent

220 For purposes of this paragraph (2), net income determined to be taxable in
221 accordance with this chapter shall be determined without taking into account subchapter
222 S of the Code, and shall not include income that is taxed to the S corporation at the entity
223 level under paragraph (1). The term "total receipts" shall mean gross receipts or sales,
224 less returns and allowances, and shall include dividends, interest, royalties, capital gain
225 net income, rental income and all other income. The cost of goods sold or the cost of
226 operations shall not be deductible in determining these total receipts. The commissioner
227 shall, by regulation, apply limits on an aggregate basis to S corporations engaged in a
228 unitary business with majority direct or indirect ownership by common stockholders.
229 This aggregating shall also include any other type of entity so engaged and so owned
230 which the commissioner finds was established for the purpose of avoiding the foregoing
231 limit.

232 (3) Any financial institution which is an S corporation and has total receipts for
233 the taxable year of \$9,000,000 or more shall also include in its excise an amount
234 determined by multiplying its net income determined to be taxable in accordance with
235 this chapter by the following rate:-

236 (i) for each taxable year beginning on or after January 1, 1995, but before January
237 1, 2010, 5.2 per cent;

238 (ii) for each taxable year beginning on or after January 1, 2010, but before
239 January 1, 2011, 4.7 per cent;

240 (iii) for each taxable year beginning on or after January 1, 2011, but before
241 January 1, 2012, 4.2 per cent;

242 (iv) for each taxable year beginning on or after January 1, 2012 and thereafter, 3.7
243 per cent

244 For purposes of this paragraph (3), net income determined to be taxable in
245 accordance with this chapter shall be determined without taking into account subchapter
246 S of the Code, and shall not include income that is taxed to the S corporation at the entity
247 level under paragraph (1). The term "total receipts" shall mean gross receipts or sales,
248 less returns and allowances, and shall include dividends, interest, royalties, capital gain
249 net income, rental income and all other income. The cost of goods sold or the cost of
250 operations shall not be deductible in determining these total receipts. The commissioner
251 shall, by regulation, apply limits on an aggregate basis to S corporations engaged in a
252 unitary business with majority direct or indirect ownership by common stockholders.
253 This aggregating shall also include any other type of entity so engaged and so owned
254 which the commissioner finds was established for the purpose of avoiding the foregoing
255 limit.

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

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

264

265 SECTION 35. Section 22 of chapter 63 of the General Laws is hereby amended
266 by striking out section 22 and inserting in place thereof the following section:-

267 Section 22. Every domestic insurance company coming within the scope of the
268 definition of a domestic company in section one of chapter one hundred and seventy-five,
269 except life insurance companies with respect to amounts received as consideration for
270 annuity contracts and business taxable under section twenty and marine, or fire and
271 marine, insurance companies with respect to business taxable under section twenty-nine
272 A, shall annually pay an excise of 2.28 percent upon the gross premiums for all policies
273 written or renewed, all additional premiums charged, and all assessments made by such
274 company on policyholders during the preceding calendar year, exclusive of reinsurance;
275 but such premiums and assessments for policies written or renewed for insurance,
276 exclusive of reinsurance, of property or interests in other states or countries where a tax is
277 actually paid by such company, or its agents, shall not be so taxed. For purposes of
278 calculating the credit under section 29E of this chapter, the term "surtax" is hereby
279 defined as the portion of the excise imposed under this section equal to 0.28 percent.

280

281 SECTION 36. Section 23 of chapter 63 of the General Laws is hereby amended
282 by striking out section 23 and inserting in place thereof the following section:-

283 Section 23. Every foreign insurance company coming within the scope of the
284 definition of a foreign company in section one of chapter one hundred and seventy-five,
285 except life insurance companies with respect to business taxable under sections twenty
286 and twenty-one and marine, or fire and marine, insurance companies with respect to
287 business taxable under section twenty-nine A, shall annually pay an excise upon the gross

288 premiums for all policies written or renewed, all additional premiums charged, and all
289 assessments made during the preceding calendar year for insurance of property or
290 interests in this commonwealth, or which are subjects of insurance by contracts issued
291 through companies or agents therein, exclusive of reinsurance, at the rate of 2.28 percent
292 but not less in amount than would be imposed by the laws of the state or country under
293 which such company is organized upon a like insurance company incorporated in this
294 commonwealth, or upon its agents, if doing business to the same extent in such state or
295 country.

296

297 SECTION 37. Section 29A of chapter 63 of the General Laws is hereby amended
298 by striking out subsection (1) and inserting in place thereof the following subsection:--

299 (1) Every marine, or fire and marine, insurance company authorized to transact
300 business in the commonwealth coming within the scope of the definition of a domestic
301 company or of a foreign company in section one of chapter one hundred and seventy-
302 five, shall, with respect to all insurance written within the commonwealth upon hulls,
303 freights, or disbursements, or upon goods, wares, merchandise and all other personal
304 property and interests therein, in course of exportation from any country, importation into
305 any country, or transportation coastwise including transportation by land or water from
306 point of origin to final destination in respect to, appertaining to, or in connection with,
307 any and all risks or perils of navigation, transit or transportation, any portion of which
308 exportation, importation, transportation, navigation, transit, or shipment is upon any
309 ocean, and upon the property while being prepared for and while awaiting shipment, and
310 during any delays, storage, transshipment or reshipment incident thereto, including war

311 risks and marine builders risks, pay a tax of 5.7 percent on its taxable underwriting profit,
312 ascertained as hereinafter provided, from such insurance written within the
313 commonwealth.

314

315 SECTION 38. Section 29E of chapter 63 of the General Laws is hereby amended
316 by striking out in the last paragraph of subsection (a) the definition of “Retaliatory taxes”
317 and inserting in place thereof the following definition:-

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

322

323 SECTION 39. Section 30 of said chapter 63, as appearing in the 2006 Official
324 Edition, is hereby amended by striking out the introductory clause and paragraphs 1 and 2
325 and inserting in place thereof the following introductory clause and 2 paragraphs:

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

331 1. "Business corporation", any corporation, or any "other entity" as defined in
332 section 1.40 of chapter 156D, whether the corporation or other entity may be formed,
333 organized, or operated in or under the laws of the commonwealth or any other

334 jurisdiction, and whether organized for business or for non-profit purposes, that is
335 classified for the taxable year as a corporation for federal income tax purposes.

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

340

341 SECTION 40. Said section 30 of said chapter 63, as so appearing, is hereby
342 further amended by striking out, in line 178, the word "foreign" and inserting in place
343 thereof the following word: business.

344

345 SECTION 41. Said section 30 of said chapter 63, as so appearing, is hereby
346 further amended by striking out, in line 184 the words "thirty-two or".

347

348 SECTION 42. Said section 30 of said chapter 63, as so appearing, is hereby
349 further amended by striking out, in line 192 the words "thirty-two or".

350

351 SECTION 43. Said section 30 of said chapter 63, as so appearing, is hereby
352 further amended by striking out, in lines 196 to 198 the words, "domestic business
353 corporation taxable under clause (1) of subsection (a) of section 32 or of a foreign
354 corporation taxable under clause (1) of subsection (a) of" and inserting in place thereof,
355 the following words: business corporation taxable under.

356

357 SECTION 44. Said section 30 of said chapter 63 of the General Laws, as so
358 appearing, is hereby further amended by striking out paragraph 16 and inserting in place
359 thereof the following 2 paragraphs:

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

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

365

366 SECTION 45. Subsection (h) of section 31A of said chapter 63, as so appearing,
367 is hereby amended by striking out the second sentence.

368

369 SECTION 46. Section 31B of chapter 63 of the General Laws is hereby repealed.

370

371 SECTION 47. Section 31E of said chapter 63, as so appearing, is hereby
372 amended by striking out, in line 1, the words "domestic or foreign" and inserting in place
373 thereof the following word: business.

374

375 SECTION 48. Said chapter 63 is hereby further amended by inserting after
376 section 31L the following section:

377 Section 31M. In determining gross income under this chapter, if the federal gross
378 income includes any item of gain or has been reduced by any item of loss, with respect to
379 property, then the federal gross income shall be increased by the excess of the federal

380 adjusted basis of the property over the Massachusetts adjusted basis of the property, and
381 shall be decreased by the excess of the Massachusetts adjusted basis of the property over
382 the federal adjusted basis of the property, so that the gain or loss realized for
383 Massachusetts purposes takes into account all applicable differences in the Massachusetts
384 and federal tax rules over the life of an asset that should, in principle, give rise to
385 differences in basis. The Massachusetts adjusted basis of property shall be the federal
386 adjusted basis, except that (i) any federal adjustment resulting from provisions of the
387 Code that were not applicable in determining Massachusetts gross income at the time the
388 federal adjustments were made shall be disregarded; and (ii) adjustments shall be made
389 for any item that was applicable in determining Massachusetts gross income but that was
390 not so applicable in determining federal gross income and for which a federal adjustment
391 would be allowed under the Code if the item had been applicable in determining federal
392 gross income. Without limitation of the foregoing, the federal basis of shares in a
393 business corporation that was formerly treated as a corporate trust or of shares in a
394 successor of that entity shall be reduced in computing Massachusetts adjusted basis to
395 take into account any tax-free earnings and profits accumulated by the former corporate
396 trust.

397

398 SECTION 49. Section 32 of Chapter 63 as appearing in the 2006 Official Edition
399 of the General Laws is hereby amended by striking out subsection (a) and inserting in
400 place thereof the following subsection:-

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

402 (1) \$2.60 per thousand upon the value of:-

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

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

407 (2) 9.5% of its net income determined to be taxable in accordance with the provisions
408 of this chapter.

409

410 SECTION 50. Section 32 of chapter 63 of the General Laws is hereby amended
411 by striking out subsection (b) and inserting in place thereof the following subsection:-

412 (b) \$456.

413

414 SECTION 51. Section 32 of said chapter 63 is hereby repealed.

415

416 SECTION 52. Said chapter 63 is hereby further amended by striking out section
417 32B as appearing in the 2006 Official Edition, and inserting in place thereof the
418 following section:-

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

426 the combined group and of each member thereof, items of income, deductions, and
427 receipts from transactions between or among members of the combined group, including
428 but not limited to the payment of dividends, shall be eliminated.

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

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

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

448 of paragraph (1) regardless of the magnitude of the partner's ownership interest or its
449 distributive or any other share of partnership income.

450 (c)(1) Corporations that are subject to combination within the meaning of this
451 section shall include, an entity of the kind that is subject to tax or would be subject to tax
452 if doing business in the state under section 2, 2B, 32D, 39 or 52A, as well as an entity
453 described in sections 20 to 29E, inclusive, in any case in which the entity does not qualify
454 for treatment as a life insurance company as defined in section 816 of the Code or an
455 insurance company subject to tax imposed by section 831 of the Code. A corporation is
456 subject to combination irrespective of whether the corporation is actually subject to tax
457 under section 2, 2B, 32D, 39 or 52A. A corporation subject to combination includes a
458 real estate investment trust as referenced under sections 856 to 859, inclusive, of the
459 Code and a regulated investment company as referenced under sections 851 to 855,
460 inclusive, of the Code. Any corporation included in the combined group pursuant to this
461 section that is subject to tax under section 2, 2B, 32D 39 or 52A shall determine that part
462 of its taxable net income or loss that is derived from a unitary business (or from an
463 affiliated group pursuant to an election under subsection (g)(ii)) and reported on a
464 combined report in accordance with this section, and such corporation shall not be subject
465 to or benefit from any duplicate inclusion or deduction of income or loss under section 2,
466 2B, 32D 39 or 52A.

467 (2) A corporation subject to combination within the meaning of this section shall
468 not include an entity described in section 38B or 38V. In addition, an entity subject to
469 combination within the meaning of this section shall not include an entity described in

470 sections 20 to 29E, inclusive, except as provided in paragraph (1) or otherwise in this
471 chapter.

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

481 (i) any member incorporated in the United States or formed under the laws of the
482 United States, any state, the District of Columbia, or any territory or possession of the
483 United States;

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

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

493 election shall be binding for and applicable to the taxable year for which it is made and
494 all taxable years thereafter for a period of 10 years, subject to regulations adopted by the
495 commissioner.

496 (iv) Notwithstanding any other provision of this section or this chapter, the
497 commissioner may require that a combined report include the income and associated
498 apportionment factors of any person, corporate or non-corporate, when that person is
499 engaged in a unitary business with the combined group of which the taxpayer is a
500 member and such inclusion is necessary to prevent the avoidance or evasion of taxes
501 owed to the commonwealth, but in the case of an entity described in sections 20 to 29E,
502 inclusive, the commissioner may exclude the entity's apportionment factors as referenced
503 in paragraph (2) of subsection (d). Further, the commissioner may, by regulation, require
504 that a combined report include the income and associated apportionment factors of any
505 person, corporate or non-corporate, when that person is engaged in a unitary business
506 with the combined group of which the taxpayer is a member and when the omission of
507 such income and associated apportionment factors from the combined report is necessary
508 to avoid a material distortion of the unitary business income attributable to the
509 commonwealth.

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

512 "Combined group's taxable income," the aggregate taxable net income or loss,
513 subject to apportionment and derived from a unitary business (or from an affiliated group
514 pursuant to an election under subsection (g)(ii)) and reported on a combined report in

515 accordance with this section, of every taxable member and non-taxable member of the
516 combined group.

517 "Non-taxable member," a member of the combined group that is not subject to tax
518 under section 2, 2B, 32D, 39 or 52A of this chapter.

519 "Taxable member," a member of the combined group that is subject to tax under
520 section 2, 2B, 32D, 39 or 52A of this chapter.

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

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

526 (ii) Each taxable member must compute the numerator of its apportionment
527 factor(s) pursuant to the apportionment provisions of this chapter that apply to such
528 member. Each taxable member shall add to its sales factor numerator its share of
529 Massachusetts sales of non-taxable members based on subsection (iv) below. In the case
530 of a combined group that includes one or more members that are financial institutions and
531 one or more members that are not financial institutions, the numerators of the property
532 and sales factors of the members shall be adjusted in the same manner as the denominator
533 adjustments described in paragraph (iii) below. In the case of such an adjustment,
534 interest or other added receipts shall be sourced as provided in section 2A of this chapter.

535 (iii) Each member must calculate its apportionment factor denominator(s) by (i)
536 determining the apportionment factor denominator(s) of every member of the group
537 based upon the apportionment provisions that apply to each member and (ii) aggregating

538 the apportionment factor denominators of each member, regardless of whether any
539 particular member is taxable in the commonwealth. A member shall determine its
540 property and payroll factor denominators by including the property and payroll of all
541 members of the group, including members of the group subject to a single sales factor
542 apportionment formula. Property and payroll of all members, including members subject
543 to single sales factor apportionment, shall be included in the property and payroll
544 denominators of members to which such property and payroll factors apply. In the case
545 of a combined group that includes one or more members that are financial institutions and
546 one or more members that are not financial institutions, the following adjustments shall
547 apply: (1) with respect to intangible property included in the property factor
548 denominator(s) of the financial institution member(s), such intangible property values
549 shall be reduced to twenty percent of the otherwise determined amounts before
550 combination of the denominators of the group members; and (2) interest or other receipts
551 otherwise excluded from the sales factor of members that are not financial institutions but
552 that would be included if the financial institution rules under section 2A of this chapter
553 were applied shall be added to the denominators of such non-financial members.

554 (iv) The Massachusetts sales of each non-taxable member must be determined
555 based upon the apportionment rules applicable to such member. The resulting
556 Massachusetts sales of non-taxable members must be aggregated. Each taxable member
557 of the group must include in its sales factor numerator a portion of the aggregate
558 Massachusetts sales of non-taxable members based on a ratio, the numerator of which is
559 such taxable member's Massachusetts sales taking into account its applicable sales factor
560 provisions and the denominator of which is the aggregate Massachusetts sales of all the

561 taxable members of the group taking into account their respective sales factor provisions.
562 For purposes of determining whether sales are in the commonwealth and included in the
563 numerator of the sales factor, a taxpayer is considered taxable in any state in which any
564 member of its combined group is subject to tax.

565 (v) In computing the apportionment percentage of combined group members,
566 each member must eliminate intercompany transactions, subject to regulations as may be
567 adopted pursuant to subsection (f)(i).

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

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

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

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

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

583 those transactions and including any exceptions to such eliminations or deferrals under
584 rules analogous to those under section 1502 of the Internal Revenue Code;

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

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

595 (iv) the relationship to this section of the provisions set forth in sections 31I to
596 31K, inclusive.

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

599 "Affiliated group" the same definition as is provided in Section 1504 of the Code
600 except that it shall include all U.S. corporations (i.e., incorporated in the United States or
601 formed under the laws of the United States, any state, the District of Columbia, or any
602 territory or possession of the United States) that are commonly owned, directly or
603 indirectly, by any member of such affiliated group and other commonly owned
604 corporations as the Commissioner may include under subsections (c)(3)(ii) through (iv).

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

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

610 The corporations referred to above shall include members of such affiliated group
611 that are subject to tax or that would be subject to tax if doing business in the state under
612 section 2, 2B, 32D, 39 or 52A. Such affiliated group shall calculate Massachusetts
613 taxable income in accordance with subsection (d). Any such election shall be made on an
614 original, timely filed return by any member of the combined group. Any corporation
615 entering an affiliated group subsequent to the year of election must be included in the
616 Massachusetts combined group and is considered to have waived any objection to its
617 inclusion in the Massachusetts combined group. Such election shall be binding for and
618 applicable to the taxable year for which it is made and for the next 9 taxable years and
619 shall continue to remain in effect until terminated by the combined group. Such election
620 may be terminated without the consent of the commissioner after it has been in effect for
621 10 taxable years. The termination shall be made on an original, timely filed return for the
622 first taxable year in which the federal consolidated group election is to be terminated.

623 (iii) Notwithstanding the provisions of subsection (g)(ii), if with respect to any
624 taxable year within the statute of limitations for assessment, the Commissioner
625 determines that the affiliated group election in this subsection reduces by 20% or more
626 and \$1,000,000 or more the total net income of the corporations included in the affiliated
627 group election that would be apportioned to Massachusetts in the absence of such

628 election, the election shall not be valid in such taxable year or in the 3 immediately
629 subsequent taxable years. For purposes of this determination, the following principles
630 shall apply.

631 1. The income apportioned to Massachusetts under the affiliated group election in
632 subsection (g)(ii) shall be compared to the sum of the net incomes of the unitary groups
633 (and of any other corporations outside such unitary groups) that are included within the
634 affiliated group election. Such net incomes shall be separately determined and
635 apportioned for each such unitary group (and each such other corporation) before being
636 added together.

637 2. For purposes of determining the membership of each unitary group within the
638 affiliated group, as required in clause (g)(iii)(1), the commissioner may presume that the
639 initial filing position of the unitary groups in other states where combined reports are
640 filed fairly represents the proper delineation of the membership of such unitary groups for
641 purposes of the calculation in this subsection (g)(iii). If such unitary groups employ
642 differing filing positions in other jurisdictions with respect to membership of such unitary
643 groups, the commissioner may presume that the predominant filing position appropriately
644 reflects proper membership of the unitary groups. The commissioner may determine the
645 predominant filing position in other jurisdictions either by considering total number of
646 states represented by particular filing positions or by cumulative apportionment
647 percentages in such states.

648 3. Taxpayers shall make available to the commissioner such state tax filings in
649 other jurisdictions as the commissioner determines are necessary for the calculation in
650 this paragraph.

651

652 SECTION 53. Section 32D of said chapter 63, as so appearing, is hereby amended
653 by striking out, in lines 1 to 3, the words "domestic business corporation or foreign
654 corporation subject to an excise under section 32 or 39 which is an S corporation or a
655 qualified subchapter S subsidiary" and inserting in place thereof the following words:
656 business corporation subject to an excise under section 39 which is an S corporation.

657

658 SECTION 54. Said section 32D of said chapter 63, as so appearing, is hereby
659 further amended by striking out, in lines 12 to 16, the words ". In the case of a qualified
660 subchapter S subsidiary, income shall be included in the net income measure under this
661 subsection to the extent that such income would have been taxed to the subchapter S
662 subsidiary for federal income tax purposes had it been treated as a separate corporation".

663

664 SECTION 55. Subsection (a) of said section 32D of said chapter 63, as so
665 appearing, is hereby further amended by striking out clause (ii) and inserting in place
666 thereof the following clause:

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

672 (1) when the total receipts for the taxable year are at least \$6,000,000 but less than
673 \$9,000,000:

- 674 a. For taxable years beginning before January 1, 2010, 3.0 per cent;
- 675 b. For taxable years beginning on or after January 1, 2010, but before January 1,
676 2011, 2.5 per cent;
- 677 c. For taxable years beginning on or after January 1, 2011, but before January 1,
678 2012, 2.1 per cent; or
- 679 d. For taxable years beginning on or after January 1, 2012, 1.8 per cent; and
680 (2) when the total receipts for the taxable year are \$9,000,000 or more:
- 681 a. For taxable years beginning before January 1, 2010, 4.5 per cent;
- 682 b. For taxable years beginning on or after January 1, 2010, but before January 1,
683 2011, 3.7 per cent;
- 684 c. For taxable years beginning on or after January 1, 2011, but before January 1,
685 2012, 3.2 per cent; or
- 686 d. For taxable years beginning on or after January 1, 2012, 2.7 per cent.

687

688 SECTION 56. Said section 32D of said chapter 63, as so appearing, is hereby
689 further amended by striking out subsection (b) and inserting in place thereof the
690 following subsection:-

691 (b) Qualified subchapter S subsidiaries shall not be subject to separate entity level
692 taxation under this section or section 39. Rather, the parent S corporation shall be subject
693 to tax under this section and section 39, and shall include the income and take into
694 account the activities of all qualified subchapter S subsidiaries for purposes of
695 determining the excise due under subsection (a) of this section, and shall include the
696 value of the property or the net worth of all qualified subchapter S subsidiaries for

697 purposes of determining the non-income measure of the excise under clause (1) of
698 subsection (a) of section 39. The parent S corporation and its qualified subchapter S
699 subsidiaries shall be jointly and severally liable for the tax due under this chapter.

700

701 SECTION 57. Section 33 of said chapter 63 is hereby repealed.

702

703 SECTION 58. Section 38 of said chapter 63, as appearing in the 2006 Official
704 Edition, is hereby further amended by striking out, in line 2, the words "domestic
705 business corporation or of a foreign corporation" and inserting in place thereof the
706 following words: business corporation.

707

708 SECTION 59. Paragraph (1) of subsection (a) of said section 38 of said chapter
709 63, as so appearing, is hereby amended by striking out clause (i) and inserting in place
710 thereof the following clause:

711 (i) shares in a corporate trust, as defined in section 1 of chapter 62, to the extent
712 such dividends represent tax free earnings and profits, as defined in section 8 of chapter
713 62 in effect on December 31, 2008.

714

715 SECTION 60. Said section 38 of said chapter 63, as so appearing, is hereby
716 further amended by striking out, in line 70, the words "thirty-eight C or".

717

718 SECTION 61. Said section 38 of said chapter 63, as so appearing, is hereby
719 further amended by striking out, in line 162, the word "and".

720

721 SECTION 62. Said section 38 of said chapter 63, as so appearing, is hereby
722 further amended by inserting after the word "contracts", in line 169, the following words:
723 ; and (6) in the case of a sale or deemed sale of a business, the term "sales" does not
724 include receipts from the sale of the business "good will" or similar intangible value,
725 including, without limitation, "going concern value" and "workforce in place."

726

727 SECTION 63. Said section 38 of said chapter 63, as so appearing, is hereby
728 further amended by striking out, in line 235, the words "domestic or foreign" and
729 inserting in place thereof the following word: business.

730

731 SECTION 64. Said section 38 of said chapter 63, as so appearing, is hereby
732 further amended by striking out, in lines 251 to 252, in line 318 and in line 326, the
733 words "domestic or foreign".

734

735 SECTION 65. Section 38A of said chapter 63, as so appearing, is hereby
736 amended by striking out, in line 1, the word "domestic".

737

738 SECTION 66. Section 38B of said chapter 63, as so appearing, is hereby
739 amended by striking out, in lines 1 to 2 and in lines 14 to 15, the words ", domestic
740 business corporation or foreign" and inserting in place thereof, in each instance, the
741 following words: or business.

742

743 SECTION 67. Said section 38B of said chapter 63, as so appearing, is hereby
744 further amended by striking out subsection (c) and inserting in place thereof the
745 following subsection:

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

748

749 SECTION 68. Section 38C of said chapter 63 is hereby repealed.

750

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

753

754 SECTION 70. Said section 38D of said chapter 63, as so appearing, is hereby
755 further amended by striking out, in lines 86 to 87, the words "(1)(i) of subsection (a) of
756 section thirty-two or clause".

757

758 SECTION 71. Section 38E of said chapter 63, as so appearing, is hereby
759 amended by striking out, in line 1, the words "domestic or foreign".

760

761 SECTION 72. Section 38F of said chapter 63, as so appearing, is hereby
762 amended by striking out, in line 2, the phrase "domestic or foreign" and inserting in place
763 thereof, the following word: business.

764

765 SECTION 73. Section 38G of said chapter 63, as so appearing, is hereby
766 amended by striking out, in line 1 and in line 11, the words "domestic or foreign" and
767 inserting in place thereof, in each instance, the following word: business.

768

769 SECTION 74. Section 38H of said chapter 63, as so appearing, is hereby
770 amended by striking out, in line 2, the words "domestic or foreign".

771

772 SECTION 75. Said section 38H of said chapter 63, as so appearing, is hereby
773 further amended by striking out, in lines 55 to 56, the words "(1)(i) of subsection (a) of
774 section thirty-two or clause".

775

776 SECTION 76. Section 38I of said chapter 63, as so appearing, is hereby amended
777 by striking out, in line 2, the words "domestic or foreign" and inserting in place thereof,
778 the following word: business.

779

780 SECTION 77. Section 38J of said chapter 63, as so appearing, is hereby amended
781 by striking out, in line 2, the words "domestic or foreign".

782

783 SECTION 78. Section 38M of said chapter 63, as so appearing, is hereby
784 amended by striking out, in line 1, the words "domestic or foreign" and inserting in place
785 thereof the following word: business.

786

787 SECTION 79. Said section 38M of said chapter 63, as so appearing, is hereby
788 further amended by striking out, in lines 28 to 29, the words "subsection (b) of section
789 thirty-two, subsection (b) of section thirty-nine," and inserting in place thereof the
790 following words: "subsection (b) of section 39.

791

792 SECTION 80. Said section 38M of said chapter 63, as so appearing, is hereby
793 further amended by striking out, in lines 44 to 45, the words "thirty-two or".

794

795 SECTION 81. Subsection (a) of section 38Q of said chapter 63, as so appearing,
796 is hereby amended by striking out the first paragraph and inserting in place thereof the
797 following paragraph:

798 A business corporation which commences and diligently pursues an
799 environmental response action on or before August 5, 2011 and which achieves and
800 maintains a permanent solution or remedy operation status in compliance with chapter
801 21E and the regulations adopted under that chapter which includes an activity and use
802 limitation shall, at the time the permanent solution or remedy operation status is
803 achieved, be allowed a base credit of 25 per cent of the net response and removal costs
804 incurred between August 1, 1998 and January 1, 2012 for any property it owns or leases
805 for business purposes and which is located within an economically distressed area as
806 defined in section 2 of chapter 21E, if these costs are not less than 15 per cent of the
807 assessed value of the property before remediation, and if the site was reported to the
808 department of environmental protection. A credit of 50 per cent of these costs shall be
809 allowed for a corporation which achieves and maintains a permanent solution or remedy

810 operation status in compliance with chapter 21E and the Massachusetts Contingency Plan
811 provided in 310 CMR 40.00 which does not include an activity and use limitation. Only a
812 business corporation that is an eligible person as defined by section 2 of chapter 21E, and
813 not subject to any enforcement action brought under chapter 21E, shall be allowed a
814 credit.

815

816 SECTION 82. Said section 38Q of said chapter 63, as so amended, is hereby
817 further amended by striking out, in line 61, the words "subsection (b) of section 32 or".

818

819 SECTION 83. Section 38S of said chapter 63, as appearing in the 2004 Official
820 Edition, is hereby amended by striking out, in line 2, the words "domestic or foreign".

821

822 SECTION 84. Said chapter 63 is hereby further amended by striking out section
823 38T, as inserted by section 28 of chapter 163 of the acts of 2005, and inserting in place
824 thereof the following section:

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

833 under this chapter shall be determined only with respect to the unrelated business activity
834 of the corporation.

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

837

838 SECTION 85. Said chapter 63 is hereby further amended by striking out section
839 39, as appearing in the 2006 Official Edition, and inserting in place thereof the following
840 section:

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

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

852 (1) The authority or qualification to carry on or do business in this state or the
853 actual doing of business within the commonwealth. The term "doing business" as used
854 herein shall mean and include each and every act, power, right, privilege, or immunity
855 exercised or enjoyed in the commonwealth, as an incident to or by virtue of the powers

856 and privileges acquired by the nature of those organizations, as well as, the buying,
857 selling or procuring of services or property.

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

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

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

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

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

871 (1) \$2.60 per 1000 upon the value of

872 (i) its tangible property as determined to be taxable under paragraph 7 of section
873 30 if a tangible property corporation, or

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

876 (2)(i) For tax years beginning before January 1, 2010, 9.5 per cent of its net
877 income determined to be taxable in accordance with this chapter; or

878 (ii) For tax years beginning on or after January 1, 2010, but before January 1,
879 2011, 9.0 per cent of its net income determined to be taxable in accordance with this
880 chapter; or

881 (iii) For tax years beginning on or after January 1, 2011, but before January 1,
882 2012, 8.5 per cent of its net income determined to be taxable in accordance with this
883 chapter; or

884 (iv) For tax years beginning on or after January 1, 2012, 8.0 per cent of its net
885 income determined to be taxable in accordance with this chapter.

886 (b) \$456.

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

898

899 SECTION 86. Said chapter 63 is hereby further amended by striking out section
900 42B, as so appearing, and inserting in place thereof the following section:

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

910 (b) A research and development corporation for the purposes of this section is a
911 business corporation subject to tax under section 39 whose principal activity herein is
912 research and development and which, during the taxable year, derives more than 2/3 of its
913 receipts attributable to the commonwealth from the activity or incurs more than 2/3 of its
914 expenditures attributable to the commonwealth allocable to the activity, but a corporation
915 that qualifies as a research and development corporation only by reason of its
916 expenditures shall not be entitled to the credit provided in section 31A of chapter 63 by
917 virtue of its qualification as a research and development corporation. A corporation that is
918 engaged in research and development and that conducts manufacturing activities shall
919 exclude expenditures related to manufacturing from total expenditures for the purpose of
920 assessing whether 2/3 of expenditures are allocable to research and development, whether
921 or not the manufacturing activities of the corporation are substantial. Receipts from
922 research and development shall include receipts from the provision of research and
923 development services and from royalties or fees derived from the licensing of patents,

924 know-how or other technology developed from research and development. For purposes
925 of this section, research and development is experimental or laboratory activity having as
926 its ultimate goal the development of new products, the improvement of existing products,
927 the development of new uses for existing products, or the development or improvement
928 of methods for producing products; and does not include testing or inspection for quality
929 control purposes, efficiency surveys, management studies, consumer surveys or other
930 market research, advertising or promotional activities, or research in connection with
931 literacy, historical or similar projects. Nothing in this section shall be construed to
932 provide for an exemption from local taxation of the machinery of a corporation
933 considered to be a research and development corporation which is not considered to be a
934 manufacturing corporation.

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

938

939 SECTION 87. Section 52 of said chapter 63, as appearing in the 2006 Official
940 Edition, is hereby amended by striking out the first 4 sentences and inserting in place
941 thereof the following 2 sentences:- If any of the provisions of this chapter imposing an
942 excise on business corporations as defined in subsection (1) of section 30 are declared
943 unconstitutional or inoperative by a final judgment, order or decree of the supreme court
944 of the United States or of the supreme judicial court of the commonwealth, the portion of
945 those provisions that was found to be unconstitutional or inoperative shall be null and
946 void and shall become inapplicable to those corporations. In this event, the provisions of

947 law, whether under this chapter or chapter 62, that (a) were applicable to those business
948 corporations immediately before the enactment of the provision found to be
949 unconstitutional or inoperative and (b) became inoperative or inapplicable in connection
950 with the enactment of the provision found to be unconstitutional or inoperative, shall
951 thereupon be revived and become operative and applicable in respect to those business
952 corporations and shall be continued in full force and effect from the first day of January
953 preceding by 6 years the first day of January of the calendar year in which the final
954 judgment, order or decree is entered, to the same extent as if the provision found to be
955 unconstitutional or inoperative had not been enacted.

956

957 SECTION 88. Said section 52 of said chapter 63, as so appearing, is hereby
958 further amended by striking out the last 3 sentences and inserting in place thereof the
959 following 3 sentences:- Excises declared invalid by reason of the foregoing premises,
960 which were assessed on or after the date when predecessor laws are revived, made
961 operative or applicable or continued in force as provided in this section, shall, to the
962 extent that those excises have been paid and are unrefunded, be credited against the taxes
963 assessed for the same period under the laws revived and again made operative, applicable
964 and continued in force, but if this credit exceeds the taxes due, the excess shall be
965 refunded upon warrant of the commissioner to the state treasurer. There shall be no
966 further or other recovery of the amounts thus credited or refunded. If any provision of this
967 chapter other than the provisions imposing an excise shall be declared unconstitutional or
968 inoperative, the remaining provisions shall not be affected.

969

970 SECTION 89. Subsection (1) of section 52A of said chapter 63, as so appearing,
971 is hereby amended by striking out paragraph (a) and inserting in place thereof the
972 following paragraph:

973 (a) "Utility corporation" means every business corporation that is (i) an electric
974 company and gas company subject to chapter 164; (ii) a water company and aqueduct
975 company subject to chapter 165; (iii) a telephone and telegraph company subject to
976 chapter 166; (iv) a railroad and railway company subject to chapter 160; and every
977 business corporation qualified under section 131A of said chapter 160 to acquire, own
978 and operate terminal facilities for steam, electric or other types of railroad; (v) a street
979 railway subject to chapter 161; (vi) an electric railroad subject to chapter 162; (vii) a
980 trackless trolley company subject to chapter 163; (viii) a pipe line company engaged in
981 the transportation or sale of natural gas within the commonwealth; and (ix) every foreign
982 corporation which is not subject to the above chapters but which does an electric, gas,
983 water, aqueduct, telephone, telegraph, railroad, railway, street railway, electric railroad,
984 trackless trolley or bus business within the commonwealth and has, before January 1,
985 1952, been subject to taxation under sections 53 to 60.

986

987 SECTION 90. Said chapter 63 is hereby amended by inserting after section 68A
988 the following section:

989 Section 68C. In general, a business corporation as defined in section 30 is subject
990 to an excise under section 39, as provided in that section, and as modified by section 32D
991 in the case of S corporations and by section 38U in the case of entities qualifying under
992 section 501 of the Code. Notwithstanding this general rule or any other provision of this

993 chapter, the excise under section 39 shall not apply in the case of a business corporation
994 that is: (1) a financial institution, as defined in section 1, that is subject to excise under
995 section 2 or 2B; (2) a security corporation as defined in section 38B and subject to excise
996 under that section;; (3) a utility corporation as defined in section 52A and subject to
997 excise under that section; (4) an insurance company subject to excise under sections 20 to
998 29E; (5) an urban redevelopment corporation subject to excise under section 10 of
999 chapter 121A; (6) a corporation described in sections 10 or 18 of chapter 157; (7) a
1000 corporation described in section 1 of chapter 171; (8) a corporation or other entity that
1001 qualifies as a regulated investment company under section 851 of the federal Internal
1002 Revenue Code; or (9) a business corporation otherwise expressly exempted from the
1003 excise under this chapter by any other General Law.

1004

1005 SECTION 91. Section 2 of chapter 63A of the General Laws is hereby amended
1006 by striking out section 2 and inserting in place thereof the following section: --

1007 Section 2. Against every taxpayer there shall be levied, assessed and collected an
1008 excise at the rate of 0.57 percent of such taxpayer's gross receipts.

1009

1010 SECTION 92. Section 10 of chapter 63B of the General Laws, as so appearing, is
1011 hereby amended by striking out, in line 3, the word "domestic".

1012

1013 SECTION 93. Section 6 of chapter 64C of the General Laws, as so appearing, is
1014 hereby amended by striking out the first 2 sentences and inserting in place thereof the
1015 following:-

1016 Every licensee who is required to file a return under section 16 of chapter 62C
1017 shall, at the time of filing such return, pay to the commissioner an excise equal to 100½
1018 mills plus any amount by which the federal excise tax on cigarettes is less than 8 mills for
1019 each cigarette so sold during the calendar month covered by the return; provided,
1020 however, that cigarettes with respect to which the excise under this section has once been
1021 imposed and has not been refunded, if paid, shall not be subject upon a subsequent sale to
1022 the excise imposed by this section. Each unclassified acquirer shall, at the time of filing a
1023 return required by section 16 of chapter 62C, pay to the commissioner an excise equal to
1024 100½ mills plus any amount by which the federal excise tax on cigarettes is less than 8
1025 mills for each cigarette so imported or acquired and held for sale or consumption, and
1026 cigarettes, with respect to which such excise has been imposed and has not been
1027 refunded, if paid, shall not be subject, when subsequently sold, to any further excise
1028 under this section.

1029 Every manufacturer, wholesaler, vending machine operator, unclassified acquirer
1030 or retailer, as defined in section 1, and every stamper appointed by the commissioner
1031 pursuant to section 30 of said chapter who, at the commencement of business on July 1,
1032 2008, has on hand any cigarettes for sale or any unused adhesive or meter stamps shall
1033 make and file with the commissioner of revenue within 20 days a return, subscribed and
1034 sworn to under the penalties of perjury, showing a complete inventory of such cigarettes
1035 and stamps and shall, at the time he is required to file such return, pay an additional
1036 excise of 50 mills per cigarette on all cigarettes and all unused adhesive and meter stamps
1037 upon which an excise of only 75 1/5 mills has previously been paid. All provisions of
1038 chapters 62C and this chapter relative to the assessment, collection, payment, abatement,

1039 verification and administration of taxes, including penalties, shall, so far as pertinent, be
1040 applicable to the excise imposed by this section.

1041

1042 SECTION 94. Section 1 of chapter 64G of the General Laws, as so appearing, is
1043 hereby amended by inserting after paragraph (b) thereof the following paragraph:

1044 (b1/2) "Doing business in the commonwealth", ownership or operation of a bed and
1045 breakfast establishment, hotel, lodging house or motel that is located in the
1046 commonwealth, maintenance otherwise of a place of business in the commonwealth, the
1047 presence of an employee in the commonwealth on more than a de minimis basis,
1048 solicitation in the commonwealth of orders for transfer of occupancy of accommodations
1049 located in the commonwealth, solicitation in the commonwealth by a reseller of a
1050 contract or other cooperative arrangement with an operator with respect to
1051 accommodations located in the commonwealth, inspection in the commonwealth of
1052 accommodations that may be the subject of a cooperative arrangement between an
1053 operator and a reseller, or other exploitation of the market for accommodations or resale
1054 of accommodations located in the commonwealth by any means whatsoever, including,
1055 but not limited to, salesmen, solicitors or representatives in the commonwealth, whether
1056 those salesmen, solicitors or representatives are employed by the operator or reseller, by a
1057 person affiliated with the operator or the reseller by common ownership, or by any other
1058 party. This definition is intended to extend the jurisdiction of the commonwealth over
1059 operators and resellers to the full extent authorized by the Constitution and the laws of
1060 the United States.

1061

1062 SECTION 95. Said section 1 of said chapter 64G, as so appearing, is hereby
1063 further amended by inserting after the word "operator", in line 49, the following words:
1064 or the room reseller.

1065

1066 SECTION 96. Said section 1 of said chapter 64G, as so appearing, is hereby
1067 further amended by adding the following paragraph:

1068 (k) "Room Reseller" or "Reseller", any person having any right, permission,
1069 license, or other authority from or through an operator to reserve or arrange transfer of
1070 occupancy of accommodations the transfer of which is subject to this chapter, such that
1071 the occupant pays all or a portion of the rent to the reseller, but the term shall not include
1072 a tour operator.

1073

1074 SECTION 97. Said chapter 64G is hereby further amended by striking out
1075 section 3, as so appearing, and inserting in place thereof the following section:

1076 Section 3. An excise is hereby imposed upon the transfer of occupancy of any
1077 room or rooms in a bed and breakfast establishment, hotel, lodging house, or motel in this
1078 commonwealth by any operator or room reseller doing business in the commonwealth at
1079 the rate of 5 per cent of the total amount of rent for each occupancy. No excise shall be
1080 imposed if the total amount of rent paid by the occupant is less than \$15 per day or its
1081 equivalent. The operator or room reseller shall pay the excise to the commissioner at the
1082 time provided for filing the return required by section 16 of chapter 62C.

1083

1084 SECTION 98. Section 3A of said chapter 64G, as so appearing, is hereby
1085 amended by striking out the first 3 sentences and inserting in place thereof the following
1086 3 sentences: Any city or town that accepts this section may impose a local excise tax
1087 upon the transfer of occupancy of any room or rooms in a bed and breakfast
1088 establishment, hotel, lodging house or motel located within the city or town by any
1089 operator or room reseller at a rate up to, but not exceeding, 4 per cent of the total amount
1090 of rent paid by the occupant for the occupancy, but the city of Boston may impose a local
1091 excise upon the transfer of occupancy of any room in a bed and breakfast establishment,
1092 hotel, lodging house or motel located within the city by any operator or room reseller at
1093 the rate of up to but not exceeding 4.5 per cent of the total amount of rent paid by the
1094 occupant for the occupancy. No excise shall be imposed if the total amount of rent paid
1095 by the occupant is less than \$15 per day or its equivalent or if the accommodation is
1096 exempt under section 2. The operator or room reseller shall pay the local excise tax
1097 imposed under this section to the commissioner at the same time and in the same manner
1098 as the excise tax due the commonwealth.

1099

1100 SECTION 99. Said chapter 64G is hereby further amended by striking out
1101 sections 4 to 6, as so appearing, and inserting in place thereof the following 4 sections:
1102 Section 3B. Notwithstanding any other provision of this chapter, in cases in which
1103 occupancy is transferred through the use of a room reseller, the application of the excise
1104 shall be as follows: If the room reseller is required to register under section 6 to collect
1105 the excise, the room reseller shall collect and pay to the commissioner the excise upon the
1106 amount of rent paid by the occupant to the room reseller, less the amount of rent that the

1107 reseller has paid to the operator. Whether or not the room reseller is so registered, the
1108 operator shall collect and pay to the commissioner the excise upon the amount of rent
1109 paid to the operator by the reseller or the occupant.

1110 Section 4. Reimbursement for the excise imposed under sections 3 and 3A shall
1111 be paid by the occupant or the room reseller to the operator and by the occupant to the
1112 room reseller, as the case may be, and each operator and room reseller doing business in
1113 the commonwealth shall add to the rent and shall collect from the occupant or the room
1114 reseller the full amount of the excise imposed, in accordance with sections 3 and 3A, and
1115 that excise shall be a debt to the operator or room reseller, when so added to the rent, and
1116 shall be recoverable at law in the same manner as other debts.

1117 Section 5. The amount of the excise collected by the operator or the room reseller
1118 under this chapter shall be stated and charged separately from the rent and shown
1119 separately on any record thereof at the time the transfer of occupancy is made, or on any
1120 evidence of the transfer issued or used by the operator or the room reseller. A room
1121 reseller shall not be required to disclose to the occupant the amount of tax charged by the
1122 operator. The reseller shall represent to the occupant that the separately stated taxes
1123 charged by the reseller include taxes charged by the operator.

1124 Section 6. No person shall operate a bed and breakfast establishment, hotel,
1125 lodging house or motel in this commonwealth, or do business as a room reseller in the
1126 commonwealth, unless a certificate of registration has been issued to him in accordance
1127 with section 67 of chapter 62C.

1128

1129 SECTION 100. Section 7A of said chapter 64G, as so appearing, is hereby
1130 amended by inserting after the word "operator", in line 1 and in line 7, the following
1131 words: or room reseller .

1132

1133 SECTION 101. Said chapter 64G is hereby further amended by striking out
1134 section 7B, as so appearing, and inserting in place thereof the following section:

1135 Section 7B. Every operator or room reseller who fails to pay to the commissioner
1136 any sums required to be paid by this chapter shall be personally and individually liable
1137 for those amounts to the commonwealth. The terms "operator" and "room reseller", as
1138 used in this section, include an officer or employee of a corporation, or a member or
1139 employee of a partnership, who as an officer, employee or member is under a duty to pay
1140 over the taxes imposed by this chapter.

1141

1142 SECTION 102. Section 12 of said chapter 64G, as so appearing, is hereby
1143 amended by inserting after the word "operator", in line 5, the following words: and each
1144 room reseller.

1145

1146 SECTION 103. Section 18 of chapter 546 of the acts of 1969 is hereby repealed.

1147

1148 SECTION 104. Section 21 of chapter 546 of the acts of 1969 is hereby repealed.

1149

1150 SECTION 105. It is the intent of provisions of this act that modify the tax
1151 treatment of corporate trusts to create general conformity with federal classification rules.

1152 It is also the intent of these provisions to ensure that any tax-free earnings and profits
1153 accumulated by an entity formerly treated as a corporate trust be subject to tax under
1154 chapter 62 or chapter 63 of the General Laws. To that end, the commissioner of revenue
1155 may adopt reasonable rules, by regulation or otherwise, to determine the method or
1156 methods by which previously untaxed amounts will be taxed to the entity, its successor,
1157 or its direct or indirect owners, partners, or beneficiaries. The commissioner may also
1158 determine reasonable transition rules for entities, including but not limited to corporate
1159 trusts and qualified subchapter S subsidiaries, and the successors, and direct or indirect
1160 owners, partners, or beneficiaries of those entities, whose tax classification is altered by
1161 this act. These transition rules may include providing for nonrecognition of gain or loss in
1162 the event of a conversion of an entity's Massachusetts tax status resulting from this act,
1163 with corresponding adjustments to basis or other tax attributes if and as determined by the
1164 commissioner to be appropriate.

1165

1166 SECTION 106. Sections 1 to 16, inclusive, 18 to 25, inclusive, 28, 30 to 85,
1167 inclusive, 91, 96, 103, 104, inclusive, shall be effective for tax years beginning on or after
1168 January 1, 2009.

1169

1170 SECTION 107. Section 93 shall be effective as of July 1, 2008.

1171

1172 SECTION 108. Sections 26, 27, 29 and 94 to 102, inclusive, shall be effective for
1173 transfers of occupancy taking place on or after January 1, 2009.