ATTACHMENT H

July 16, 2021

To the Honorable Senate and House of Representatives:

Pursuant to Article LVI, as amended by Article XC, Section 3 of the Amendments to the Constitution of the Commonwealth of Massachusetts, I am returning to you for amendment Sections 23, 30, 32, 33, 34, and 145 of House Bill No. 4002, “An Act Making Appropriations for the Fiscal Year 2022 for the Maintenance of the Departments, Boards, Commissions, Institutions and Certain Activities of the Commonwealth, for Interest, Sinking Fund and Serial Bond Requirements and for Certain Permanent Improvements.”

These sections repeal three long-standing tax expenditures: the energy patent deduction, the medical device user fee tax credit, and the harbor maintenance tax credit. While I support the repeal of the energy patent deduction as it has never been claimed, I believe the medical device user fee tax credit and the harbor maintenance tax credit encourage innovation and economic activity in the Commonwealth and should be maintained.

The energy patent deduction makes income from patents that are useful for energy conservation or alternative energy development untaxable for a period of five years. Qualifying patents are to be granted this exemption by the Department of Energy Resources (DOER). However, in a recent report issued by the Tax Expenditure Review Commission, the Commission found that since its enactment in 1979, no taxpayer has taken advantage of the deduction. Additionally, DOER is not aware of any pending patents that would qualify. Where the deduction is neither benefitting taxpayers nor incentivizing the development of technology related to energy conservation or alternative energy development, I support its repeal.

Next, the medical device user fee tax credit is an expenditure available to medical device companies for 100 percent of the user fees paid to submit certain applications and supplements to the U.S. Food and Drug Administration for devices developed in Massachusetts. It was enacted in 2006. Annually, approximately half a dozen companies claim this credit, for a total of $0.4 million to $0.6 million in claims. By design, the credit benefits a very specialized group of companies. Thus, its relatively low utilization rate is appropriate. I see no reason to repeal this tax expenditure, as it is claimed annually by its intended beneficiaries and supports medical device companies operating in the Commonwealth.

Finally, the harbor maintenance credit, enacted in 1996 and made available to shippers, importers, and exporters, is a dollar-for-dollar credit against the corporate excise for harbor maintenance taxes paid to the federal government. Its purpose is to promote the use of Massachusetts harbors, and over 80 taxpayers claim the credit each year, totaling $1.5 million in credits claimed. Quite simply, I do not support the repeal of a tax credit that is serving as a benefit to shippers, importers, and exporters who generate critical economic activity in and around Massachusetts ports.

For these reasons, I recommend that Sections 23, 30, 32, 33, 34, and 145 be amended by striking out the sections and inserting in place thereof the following 3 sections:-

SECTION 23. Paragraph (2) of subsection (a) of section 2 of chapter 62 of the General Laws, as so appearing, is hereby amended by striking out subparagraph (G).

SECTION 32. Paragraph 3 of section 30 of chapter 63 of the General Laws, as so appearing, is hereby amended by striking out, in lines 27 to 40, inclusive, the words “The commissioner of energy resources may approve United States patents, which have been issued to Massachusetts corporations or applied for by Massachusetts corporations as useful for energy conservation and related purposes or as useful for alternative energy development and related purposes, provided that such patents are determined by said commissioner to be of economic value, practicable, and necessary for the convenience and welfare of the commonwealth and its citizens. Any income received from the sale, lease or other transfer of tangible, intangible, personal or real property or materials manufactured in the commonwealth subject to such patent shall be deducted. Said deduction shall extend for a period no longer than five years from the date of issuance of the United States patent or the date of approval by the commissioner of energy resources, whichever first expires.”

SECTION 145. Sections 23 and 32 shall apply for taxable years beginning on or after January 1, 2021.

Respectfully submitted,

Charles D. Baker

Governor