ATTACHMENT I

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 Section 39 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.”

Section 39 is a modified version of a proposal I filed in my initial budget recommendation. It provides the Department of Revenue with authority to implement an optional pass-through entity excise in the amount of the personal income taxes owed on members’ flow-through income and an accompanying tax credit equal to 90% of each member’s portion of the excise. While I strongly support providing this type of benefit to Massachusetts residents who are members of pass-through entities, 100% of the optional excise should be returned to the taxpayer. Where struggling businesses are still emerging from the pandemic and state revenues are strong, taxpayers should be allowed to reap the full benefit of this policy.

For this reason, I recommend that Section 39 be amended by striking out the section and inserting in place thereof the following section:-

SECTION 39. The General Laws are hereby amended by inserting after chapter 63B the following chapter:-

Chapter 63C. Taxation of Pass-Through Entities

Section 1. For taxable years beginning on or after January 1, 2021, an eligible pass-through entity may elect to pay an excise on its qualified income taxable in Massachusetts at a rate of five per cent. A qualified member of an electing pass-through entity shall be allowed a credit against the tax imposed under chapter 62 for the qualified member’s share of such excise paid by the pass-through entity. The credit shall be available to qualified members in an amount proportionate to each member’s share of the pass-through entity’s qualified income taxable in Massachusetts. The credit shall be available for the member's taxable year in which the pass-through entity's taxable year ends.

Section 2. This chapter shall not apply to taxable years for which the federal limitation on the state and local tax deduction imposed by Code section 164(b)(6) has expired or is otherwise not in effect.

Section 3. The following words as used in this chapter shall, unless the context otherwise requires, have the following meanings:

“Code”, the Internal Revenue Code as defined in section 1 of chapter 62 and applicable to the taxable year.

“Commissioner”, the commissioner of revenue.

“Eligible pass-through entity”, an S corporation under Code section 1361, a partnership under Code section 701 or a limited liability company that is treated as an S corporation or partnership under those Code sections.

“Qualified income taxable in Massachusetts”, income of an eligible pass-through entity determined under chapter 62 allocable to a qualified member and included in such member's Massachusetts taxable income under chapter 62.

“Qualified member of a pass-through entity”, a shareholder of an S corporation or a partner in a partnership that is a natural person. A qualified member may be a resident, non-resident or a part year resident.

Section 4. The excise under this chapter shall be in addition to, and not in lieu of, any other Massachusetts tax required to be paid, including tax under chapter 62 or chapter 63. The excise under this chapter shall be due and payable on the pass-through entity’s original, timely-filed return. A return that reports the excise shall be due at the same time as a partnership information return or corporate excise return would be due for the entity under chapter 62C. This chapter shall not change any filing requirements for a qualified member under chapter 62C.

Section 5. The collection and administration of the excise under this chapter shall be governed by the provisions of chapter 62C unless expressly stated otherwise in this chapter or in regulations promulgated by the commissioner under this chapter.

Section 6. The election under this chapter shall be made by the eligible pass-through entity on an annual basis in a manner determined by the commissioner. All members of the electing pass-through entity shall be bound by the election. Once made, the election cannot be revoked.

Section 7. The commissioner shall prescribe regulations or other guidance to carry out the purposes of this chapter. Such regulations or other guidance may (i) make the credit available to qualified members with income from eligible pass-through entities that in turn have income from other pass-through entities, (ii) address the application of this chapter to trusts, and (iii) require estimated payments of the excise by electing pass-through entities and their qualified members in a manner consistent with chapter 62B. Such regulations and other guidance shall, to the extent feasible, ensure that an electing pass-through entity and its qualified members pay an aggregate amount of tax under this chapter and chapter 62 that is generally equivalent to the amount of tax that would have been due from those members under chapter 62 in the absence of an election to pay an excise under this chapter.

And further recommend that the bill be amended by inserting the following new section:-

SECTION 146A. Section 39 shall apply for taxable years beginning on or after January 1, 2021.

Respectfully submitted,

Charles D. Baker

Governor