

HOUSE No. 2694

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act making technical corrections to the combined reporting law..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Clause sixteenth of section 5 of chapter 59 of the General Laws, as
2 appearing in the 2006 Official Edition and most recently amended by sections 3 and 4 of chapter
3 173 of the acts of 2008, is hereby amended by deleting paragraph (3) and inserting in place
4 thereof the following new paragraph:-

5 (3) In the case of (i) a manufacturing corporation or a research and development
6 corporation, as defined in section 42B of chapter 63, or (ii) a limited liability company that has
7 its usual place of business in the commonwealth, is engaged in manufacturing in the
8 commonwealth or in research and development in the commonwealth, is a disregarded entity, as
9 defined in section 30 of chapter 63, and whose sole member is a business corporation, as defined
10 in paragraph 1 of section 30 of chapter 63, all property owned by such corporation other than the
11 following:--real estate, poles and underground conduits, wires and pipes; provided, however, that
12 no property, except property entitled to a pollution control abatement pursuant to the provisions
13 of the forty-fourth clause or a cogeneration facility as defined herein, shall be exempt from
14 taxation if it is used in the manufacture or generation of electricity and it has not received a

15 manufacturing classification effective on or before January 1, 1996. For the purposes of this
16 section, a cogeneration facility shall be defined as any electrical generating unit having power
17 production capacity which, together with any other power generation facilities located at the
18 same site, is not greater than 30 megawatts and which produces electric energy and steam or
19 other form of useful energy utilized for industrial, commercial, heating, or cooling purposes.
20 This clause, as it applies to a research and development corporation as defined in section 42B of
21 said chapter 63 or a limited liability company engaged in research and development in the
22 commonwealth as so described in subparagraph (ii), shall take effect only upon its acceptance by
23 any city or town.

24 SECTION 2. Section 1 of chapter 63 of the General Laws, as appearing in the 2006
25 Official Edition, is hereby amended by striking out clause (b) in the definition of "net income"
26 and inserting in place thereof the following clause:-

27 losses sustained in other taxable years, except to the extent the financial institution may
28 deduct such losses pursuant to section 32B;

29 SECTION 3. Paragraph (a) of section 32B of said chapter 63 of the General Laws, as
30 appearing in section 48 of chapter 173 of the acts of 2008, is hereby amended by adding the
31 following sentence:-

32 With respect to the elimination of dividends, dividends paid among unitary affiliates shall
33 be eliminated irrespective of whether the dividends were paid from earnings and profits
34 generated during tax years in which the affiliates filed on a separate entity or combined basis for
35 Massachusetts purposes.

36 SECTION 4. Subsection (c)(1)(3) of said section 32B of said chapter 63 of the General
37 Laws, as appearing in said section 48 of said chapter 173, is hereby further amended by striking
38 out clauses (i) - (iii) and inserting in place thereof the following clauses:-

39 (i) any member incorporated in the United States or formed under the laws of the United
40 States, any state, the District of Columbia, or any territory or possession of the United States, but
41 excluding any member where at least 80 percent of the gross income from all sources of the
42 member in the tax year is active foreign business income as defined in Internal Revenue Code
43 Section 861 (c)(1)(B);

44 (ii) any member, regardless of the place incorporated or formed outside the United States,
45 if the average of its property, payroll, and sales factors within the United States is 20 per cent or
46 more. For purposes of this determination, M.G.L. c. 63, section 38(g) shall apply.

47 (iii) any member that earns more than 20 per cent of its gross income, directly or
48 indirectly, from intangible property or service-related activities the costs of which generally are
49 deductible for federal income tax purposes, whether currently or over a period of time, against
50 the business income of other members of the group, but only to the extent of the net income and
51 apportionment factors related thereto. However, the inclusion of such income and apportionment
52 factors does not apply if the exceptions to the related party add back provisions under sections
53 31I, 31J, and 31K would otherwise apply to the intercompany transactions at issue. For purposes
54 of this provision, the exceptions under sections 31I, 31J, and 31K shall be applicable to
55 intercompany transactions related to intangible property or service-related activities that are
56 subject to this provision. A worldwide election shall be effective only if made on a timely-filed,
57 original return for a taxable year by the members of the combined group subject to tax under this

58 chapter. A worldwide election shall be binding for and applicable to the taxable year for which it
59 is made and all taxable years thereafter for a period of 10 years, subject to regulations adopted by
60 the commissioner.

61 SECTION 5. Subsection (f) of said section 32B of said chapter 63 of the General Laws,
62 as appearing in said section 48 of said chapter 173, is hereby amended by striking out clause (iii)
63 and inserting in place thereof the following clause:-

64 (iii) the application of any carry forwards, including the sharing of any net operating loss
65 or tax credit carry forwards that are attributable to the activities of the combined group's unitary
66 business, which shall provide for the liberal sharing of such attributes among each member of the
67 group, including financial institutions and utility corporations irrespective of any limitation on
68 the deduction for losses sustained in other taxable years that is otherwise imposed under section
69 1 or 52A of this chapter, but the carry forward of losses, credits or other tax benefits that arise
70 before the effective date of this section shall be available only to the extent permitted by law as
71 in effect before the effective date; and

72 SECTION 6. Subsection (g) of said section 32B of said chapter 63 of the General Laws,
73 as appearing in said section 48 of said chapter 173, is hereby further amended by striking out
74 clause (iii) and inserting in place thereof the following clause:-

75 (iii) The commissioner shall study the use and revenue impact of the affiliated group
76 election provided by this subsection in the first 3 years in which the election is available and
77 shall provide a report to the clerks of the house of representatives and the senate who shall
78 forward the same to the house of representatives and the senate committees on ways and means
79 and to the joint committee on revenue not later than March 15, 2013. Any taxpayer participating

80 in an affiliated group election under this subsection shall provide to the commissioner a copy of
81 its most recently filed Federal Form 851, recomputed to account for entities owned more than 50
82 per cent by members of the affiliated group, and a copy of the most recent federal corporate tax
83 return(s) filed by members of the affiliated group, provided that the report by the commissioner
84 shall include only aggregate information, and shall not identify information relating to particular
85 taxpayers.

86 SECTION 7. Chapter 63 of the General Laws as appearing in the 2006 Official Edition
87 is hereby amended by inserting after section 32D the following section:-

88 Section 32E. If two or more domestic business corporations or foreign corporations
89 participated in the filing of a consolidated return of income to the federal government, the net
90 income measure of their excises imposed under section 32 may, at their option, be assessed upon
91 their combined net income, in which case the excise shall be assessed to all said corporations and
92 collected from any one or more of them. The commissioner may require corporations that have
93 made such election to report the income measure and the non-income measure of the excise, and
94 the minimum excise if applicable, all as set forth in section 32 on a single form; provided,
95 however, that nothing in this section shall be construed to eliminate the requirement that each
96 corporation participating in a combined return compute its non-income measure and the
97 minimum excise if applicable in accordance with said section 32.

98 Where such election is made, each and every member of the consolidated group subject
99 to taxation under section 32 shall be included in such return of combined net income. The
100 combined net income shall be determined as follows: (a) the taxable net income of each such
101 corporation apportioned to this commonwealth pursuant to the provisions of section 38 shall first

102 be separately determined; and (b) the taxable net income of each such corporation, as so
103 determined, shall then be added together and shall constitute their combined net income taxable
104 under this chapter.

105 Any election made pursuant to this section shall be made on or before the due date,
106 including any extension of time, for the filing of the return required under this chapter and
107 chapter 62C of each member of the group so participating. Corporations electing to file a
108 combined return under this section must continue to file such a combined return for each
109 succeeding taxable year unless and until they receive the written prior approval of the
110 commissioner to file separate returns of income. Such approval shall be granted only if a valid
111 business purpose, other than a reduction of tax, exists for the request. An application to file such
112 separate returns must be made on or before the due date, including any extension of time, for the
113 filing of the return required under this chapter and chapter 62C.

114 SECTION 8: Subsection (1)(b) of section 52A of said chapter 63 of the General Laws,
115 as so appearing, is hereby amended by striking out clause (ii) and inserting in place thereof the
116 following clause:-

117 (ii) losses sustained in other taxable years, except to the extent the utility corporation may
118 deduct such losses pursuant to section 32B;