

HOUSE No. 2805

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

AN ACT RELATIVE TO CERTAIN TAX EXEMPTIONS ..

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. Chapter 63 of the General Laws is hereby amended by deleting section 42B
2 thereof and substituting therefor the following section: --

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

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

15 to the commonwealth from the activity. Receipts from research and development shall include
16 receipts from the provision of research and development services and from royalties or fees
17 derived from the licensing of patents, know-how or other technology developed from research
18 and development. For purposes of this section and of section 6 of chapter 64H, research and
19 development is experimental or laboratory activity having as its ultimate goal the development of
20 new products, the improvement of existing products, the development of new uses for existing
21 products, and the development or improvement of methods for producing products, and does
22 not include testing or inspection for quality control purposes, efficiency surveys, management
23 studies, consumer surveys or other market research, advertising or promotional activities, or
24 research in connection with literacy, historical or similar projects. Nothing in this section shall be
25 construed to provide for an exemption from local taxation of the machinery of a corporation
26 deemed to be a research and development corporation which is not deemed to be a
27 manufacturing corporation.

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

31 SECTION 2. Section 6 of Chapter 64H of the General Laws is hereby amended
32 by deleting subsection (r) thereof and substituting therefor the following subsection: --

33 (r) Sales of materials, tools and fuel, or any substitute therefor, which become an
34 ingredient or component part of tangible personal property to be sold or which are consumed and
35 used directly and exclusively in agricultural production; in commercial fishing; in an industrial
36 plant in the actual manufacture of tangible personal property to be sold, including the publishing

37 of a newspaper; in the operation of commercial radio broadcasting or television transmission; in
38 the furnishing of power to an industrial manufacturing plant; in the furnishing of gas, water,
39 steam or electricity when delivered to consumers through mains, lines or pipes; in the production
40 of animals for research, testing, or other purposes relating to the promotion or maintenance of the
41 health, safety or well being of human beings or animals; or in research and development as
42 defined in section 42B of chapter 63. However, the exemption in this paragraph so far as it
43 applies to sales of electricity, gas and steam consumed and used directly and exclusively in an
44 industrial plant in the actual manufacture of tangible personal property to be sold shall be limited
45 to the extent allowed in paragraph (i). For the purpose of this paragraph, the raising of poultry
46 and livestock shall be construed to be included in the term "agricultural production"; any
47 material, tool or fuel shall be construed to be consumed and used only if its normal useful life is
48 less than one year or if its cost is allowable as an ordinary and necessary business expense for
49 federal income tax purposes or if it is nuclear fuel or a nuclear fuel assembly; and the term
50 "industrial plant" shall mean a factory at a fixed location primarily engaged in the manufacture,
51 conversion or processing of tangible personal property to be sold in the regular course of
52 business.

53 SECTION 3. Section 6 of Chapter 64H of the General Laws is hereby further amended
54 by deleting subsection (s) thereof and substituting therefor the following subsection: --

55 (s) Sales of machinery, or replacement parts thereof, used directly and exclusively in
56 agricultural production; in commercial fishing; in an industrial plant in the actual manufacture of
57 tangible personal property to be sold, including the publishing of a newspaper; in the operation
58 of commercial radio broadcasting or television transmission; in the furnishing of power to an
59 industrial manufacturing plant; in the furnishing of gas, water, steam or electricity when

60 delivered to consumers through mains, lines or pipes; in the production of animals for research,
61 testing, or other purposes relating to the promotion or maintenance of the health, safety or well
62 being of human beings or animals; or in research and development as defined in Section 42B of
63 chapter 63. For the purpose of this paragraph, the raising of poultry and livestock shall be
64 construed to be included in the term "agricultural production"; the term "industrial plant" shall
65 mean a factory at a fixed location primarily engaged in the manufacture, conversion or
66 processing of tangible personal property to be sold in the regular course of business; and
67 machinery shall be deemed to be used directly and exclusively in the actual manufacture,
68 conversion or processing of tangible personal property to be sold only where such machinery is
69 used solely during a manufacturing, conversion or processing operation to effect a direct and
70 immediate physical change upon the tangible personal property to be sold; to guide or measure a
71 direct and immediate physical change upon such property where such function is an integral and
72 essential part of tuning, verifying or aligning the component parts of such property; or to test or
73 measure such property where such function is an integral part of the production flow or function;
74 used solely to store, transport, convey or handle such property during the manufacturing,
75 converting, or processing operations heretofore specified; or used solely to place such property in
76 the container, package or wrapping in which such property is normally sold to the ultimate
77 consumer thereof. Machinery used directly and exclusively in the actual manufacture, conversion
78 of processing of any tangible personal property which is not to be sold and which would be
79 exempt under paragraph (r) or this paragraph if purchased from a vendor thereof or machinery
80 used during any manufacturing, converting or processing, conveying or packaging operation or
81 function or for any other purpose, except as heretofore specified, shall not be exempt under this
82 paragraph even though such operation, function or purpose is an integral or essential part of a

83 continuous production flow or manufacturing process. Where a portion of a group of portable or
84 mobile machinery is used directly and exclusively in the actual manufacture, conversion or
85 processing of tangible personal property to be sold, as heretofore defined, the number
86 represented by such portion, if otherwise qualifying, shall be exempt under this paragraph even
87 though the machinery in said group is used interchangeably and not otherwise identifiable as to
88 use.

89 SECTION 4. This act shall take effect with respect to sales made on or after July 1,
90 2009.