

# SENATE . . . . . No. 1250

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Nine  
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An Act relative to refundable tax credits..

*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. Subsection (j) of section 6 of chapter 62 of the General Laws, as added by  
2   section 50 of chapter 123 of the acts of 2006 is amended by striking paragraph (5) and inserting  
3   in place thereof the following paragraph:-

4           (5) All or any portion of tax credits issued in accordance with the provisions of this  
5   subsection may be refundable to the extent provided for in section 6A of this chapter.

6           SECTION 2. Paragraph (6) of subsection (j) of section 6 of chapter 62 of the General  
7   Laws, as added by section 50 of chapter 123 of the acts of 2006 is hereby amended by striking  
8   the phrase “and the total amount of tax credits transferred, sold, or assigned pursuant to  
9   paragraph (5) for the preceding fiscal year”

10          SECTION 3. Paragraph (4) of subsection (l) of section 6 of chapter 62 of the General  
11   Laws, as added by section 1 of chapter 158 of the acts of 2005 and as amended by section 3 of  
12   chapter 167 of the acts of 2005, is hereby further amended by striking out the first sentence and  
13   inserting in place thereof the following sentence:- The tax credit shall be taken against the taxes

imposed under this chapter and shall be refundable to the extent provided for in section 6A of this chapter.

SECTION 4. Subsection (l) of section 6 of chapter 62 of the General Laws, as added by section 1 of chapter 158 of the acts of 2005 and as amended by section 3 of chapter 167 of the acts of 2005, is hereby further amended by striking out paragraph (5).

SECTION 5. Chapter 62 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding the following new section 6A:-

6A. Election for Refund of Specified Credits

(a) This section shall apply to credits earned under subsections (j) or (l) of section 6, under section 6½, under section 6I, and under section 6J, of this chapter. It shall not apply to any other credits.

(b) At the written election of a taxpayer entitled to a credit to which this section applies, the commissioner shall apply the credit against the liability of the taxpayer as determined on its return, as first reduced by any other available credits, and shall then refund to the taxpayer 80 percent of the balance of such credits. An election under this subsection shall preclude any carryforward of the credit or any portion thereof to future taxable years.

(c) The commissioner may require substantiation of a taxpayer's claim for refund under subsection (b) prior to any such refund or thereafter. No interest shall accrue on such refund under section 40 of chapter 62C prior to the commissioner's receipt of such substantiation as he may reasonably request.

(d) If a taxpayer does not elect a refundable credit under subsection (b), the credit shall be applied against the liability of the taxpayer as determined on its return and any balance may be carried forward and applied, as reduced from year to year, to future taxable years of the taxpayer to the extent otherwise allowable under this chapter. However, notwithstanding any provisions of this chapter to the contrary, no such credits shall be transferable to other taxpayers.

(e) This section does not limit the availability or transferability of credits allocated or otherwise earned prior to the effective date of this section.

(f) The commissioner shall promulgate such regulations or other written guidance as needed to implement the provisions of this section. Such guidance shall include transition rules with regard to credit programs under which credits were previously transferable and shall include provisions allowing non-profit entities that have earned credits to which this section applies to receive direct refund of credit amounts pursuant to this section through the filing of such returns or applications as the commissioner may determine.

SECTION 6. Section 6 ½ of chapter 62 of the General Laws, as added by chapter 145 of the acts of 2006 is amended by striking subsection (c) and inserting in place thereof the following subsection:-

(c) A medical device company allowed a credit under this section for a taxable year may carry over and apply to the tax imposed by this chapter in any of the succeeding 5 taxable years, the portion, as reduced from year to year, of those credits which exceed the tax for the taxable year. The credit shall be refundable to the extent provided for in section 6A of this chapter.

SECTION 7. Paragraph (3) of subsection (c) of section 6I of chapter 62 of the General Laws, as appearing in the 2004 Official Edition is hereby amended by striking the phrase “not be

refundable” in line 90 and replacing it with the following phrase:-be refundable to the extent provided for in section 6A of this chapter.

SECTION 8. Section 6I of chapter 62 of the General Laws, as appearing in the 2004 Official Edition is hereby amended by striking subsection (f).

SECTION 9. Paragraph (2) of subsection (b) of section 6J of chapter 62 of the General Laws, as appearing in the 2004 Official Edition is hereby amended by striking subparagraph (ii) and inserting in place thereof the following subparagraph:-

(ii) The credit shall be refundable to the extent provided for in section 6A of this chapter.

SECTION 10. Paragraph (2) of subsection (g) of section 6J of chapter 62 of the General Laws, as appearing in the 2004 Official Edition is hereby amended by striking the phrase “, including any credit transferred by the taxpayer,” in lines 121 – 122.

SECTION 11. Paragraph (3) of subsection (c) of section 31H of chapter 63 of the General Laws, as appearing in the 2004 Official Edition is hereby amended by striking the phrase “not be refundable” in line 92 and replacing it with the following phrase:- be refundable to the extent provided for in section 32E of this chapter.

SECTION 12. Section 31H of chapter 63 of the General Laws, as appearing in the 2004 Official Edition is hereby amended by striking subsection (f).

SECTION 13. Section 31L of chapter 63 of the General Laws, as added by chapter 144 of the acts of 2006 is amended by striking subsection (c) and inserting in place thereof the following subsection:-

(c) A medical device company allowed a credit under this section for a taxable year may carry over and apply to the tax imposed by this chapter in any of the succeeding 5 taxable years, the portion, as reduced from year to year, of those credits which exceed the tax for the taxable year. The credit shall be refundable to the extent provided for in section 32E of this chapter.

SECTION 14. Chapter 63 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding the following new section 32E:-

32E. Election for Refund of Specified Credits

(a) This section shall apply to credits earned under sections 31H, 31L, 38Q; 38R, 38T, of this chapter. It shall not apply to any other credits.

(b) At the written election of a taxpayer entitled to a credit to which this section applies, the commissioner shall apply the credit against the liability of the taxpayer as determined on its return, as first reduced by any other available credits, and shall then refund to the taxpayer 80 percent of the balance of such credits. An election under this subsection shall preclude any carryforward of the credit or any portion thereof to future taxable years.

(c) The commissioner may require substantiation of a taxpayer's claim for refund under subsection (b) prior to any such refund or thereafter. No interest shall accrue on such refund under section 40 of chapter 62C prior to the commissioner's receipt of such substantiation as he may reasonably request.

(d) If a taxpayer does not elect a refundable credit under subsection (b), the credit shall be applied against the liability of the taxpayer as determined on its return and any balance may

be carried forward and applied, as reduced from year to year, to future taxable years of the taxpayer to the extent otherwise allowable under this chapter. However, notwithstanding any provisions of this chapter to the contrary, no such credits shall be transferable to other taxpayers.

(e) This section does not limit the availability or transferability of credits allocated or otherwise earned prior to the effective date of this section.

(f) The commissioner shall promulgate such regulations or other written guidance as needed to implement the provisions of this section. Such guidance shall include transition rules with regard to credit programs under which credits were previously transferable and shall include provisions allowing non-profit entities that have earned credits to which this section applies to receive direct refund of credit amounts pursuant to this section through the filing of such returns or applications as the commissioner may determine.

SECTION 15. Section 38Q of chapter 63 of the General Laws, as added by section 64 of chapter 123 of the acts of 2006 is amended by striking subsection (g) and inserting in place thereof the following subsection (g):-

(g) All or any portion of tax credits issued in accordance with the provisions of this subsection may be refundable to the extent provided for in section 32E of this chapter.

SECTION 16. Subsection (h) of section 38Q of chapter 63 of the General Laws, as added by section 64 of chapter 123 of the acts of 2006 is hereby amended by striking the phrase “and the total amount of tax credits transferred, sold, or assigned pursuant to this section in the preceding fiscal year”

117           SECTION 17. Paragraph (2) of subsection (b) of section 38R of chapter 63 of the  
118 General Laws, as appearing in the 2004 Official Edition is hereby amended by striking  
119 subparagraph (ii) and inserting in place thereof the following subparagraph: -

120           (ii) The credit shall be refundable to the extent provided for in section 32E of this  
121 chapter.

122           SECTION 18. Paragraph (2) of subsection (g) of section 38R of chapter 63 of the  
123 General Laws, as appearing in the 2004 Official Edition is hereby amended by striking the  
124 phrase “, including any credit transferred by the taxpayer,” in lines 122 - 123.

125           SECTION 19. Subsection (d) of section 38T of chapter 63 of the General Laws, as  
126 added by section 2 of chapter 158 of the acts of 2005 is amended by striking out the first  
127 sentence and inserting in place thereof the following sentence:- The tax credit shall be taken  
128 against the taxes imposed under this chapter and shall be refundable to the extent provided for in  
129 section 32E of this chapter.

130           SECTION 20. Section 38T of chapter 63 of the General Laws, as added by section 2 of  
131 chapter 158 of the acts of 2005 is amended by striking out subsection (e).

132           SECTION 21. Sections 1 - 20 shall apply to credits allocated or otherwise earned on or  
133 after the effective date of this Act.