

SENATE No. 1279

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act Extending the Investment Tax Credit to All Corporations..

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, as appearing in the 2008 Official Edition,
2 is hereby amended by deleting section 31A and replacing it with the following new section:-

3 Section 31A. (a) A business corporation shall be allowed a credit as hereinafter
4 provided against its excise due under this chapter. The amount of such credit shall be three per
5 cent of the cost or other basis for federal income tax purposes of qualifying tangible property
6 acquired, constructed, reconstructed, or erected during the taxable year, after deduction
7 therefrom of any federally authorized tax credit taken with respect to such property. Qualifying
8 property shall be tangible personal property and other tangible property including buildings and
9 structural components of buildings acquired by purchase, as defined under section one hundred
10 and seventy-nine (d) of the Federal Internal Revenue Code as amended and in effect for the
11 taxable year is not taxable under chapter sixty A; used by the corporation in the commonwealth;
12 situated in the commonwealth on the last day of the taxable year; and which (1) is depreciable
13 under section one hundred and sixty-seven of said Code and has a useful life of four years or

14 more, or (2) is considered recovery property under section one hundred and sixty-eight of said
15 Code.

16 A business corporation shall be allowed a credit against its excise due under this chapter
17 for tangible personal property leased pursuant to an operating lease as hereinafter provided. The
18 amount of such credit afforded to a lessee corporation with respect to such tangible personal
19 property shall be three percent of the lessor's adjusted basis in the property for federal income tax
20 purposes at the beginning of the lease term, multiplied by a fraction, the numerator of which
21 shall be the number of days of the taxable year during which the lessee corporation leases the
22 tangible personal property and the denominator of which shall be the number of days in the
23 useful life of such property. Such useful life shall be the same as that used by the lessor for
24 depreciation purposes when computing federal income tax liability. An operating lease shall be
25 any contract or agreement to lease or rent or for a license to use such property provided that (i)
26 said lease does not constitute a purchase as defined under section one hundred and seventy-nine
27 (d) of the Code, as amended and in effect for the taxable year, (ii) such property is not taxable
28 under chapter sixty A, (iii) such property is used by the lessee corporation in the commonwealth,
29 (iv) such property is situated in the commonwealth throughout the entire lease term, and (v) such
30 property (1) is depreciable by the lessor under section one hundred and sixty-seven of said Code
31 and has a useful life of four years or more, or (2) is considered recovery property under section
32 one hundred sixty-eight of said Code. Such credit shall not be available to a lessee if such lessor
33 has previously received a credit with respect to the leased tangible personal property. The
34 commissioner shall by regulation require such documentation of the lessor and lessee as to
35 substantiate the credit claimed by this section.

36 (b) A corporation shall not be allowed a credit under paragraph (a) with respect to
37 tangible personal property and other tangible property, including buildings and structural
38 components of buildings, which it leases as a lessor. For the purposes of the preceding sentence,
39 any contract or agreement to lease or rent or for a license to use such property shall be
40 considered a lease.

41 (c) The credit allowed under this section for any taxable year shall not reduce the excise
42 to less than the amount due under section thirty-two (b) or sixty-seven and under any act in
43 addition thereto.

44 (d) A corporation may elect to deduct the amount allowable under section thirty-eight D
45 or the credit under this section, but not both. Any such election must be made on or before the
46 due date of filing the return, including any extension of time and shall be irrevocable.

47 (e) With respect to property which is disposed of or ceases to be in qualified use prior to
48 the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that
49 portion of the credit provided for in paragraph (a) which represents the ratio which the months of
50 qualified use bear to the months of useful life. If property on which credit has been taken is
51 disposed of or ceases to be in qualified use prior to the end of its useful life, the difference
52 between the credit taken and the credit allowed for actual use must be added back as additional
53 taxes due in the year of disposition; provided, however, if such property is disposed of or ceases
54 to be in qualified use after it has been in qualified use for more than twelve consecutive years, it
55 shall not be necessary to add back the credit, as provided in this paragraph. The amount of credit
56 allowed for actual use shall be determined by multiplying the original credit by the ratio which
57 the months of qualified use bear to the months of useful life. For the purposes of this paragraph,

58 useful life of property shall be the same as that used by the corporation for depreciation purposes
59 when computing federal income tax liability.

60 (f) A corporation renting or leasing tangible property otherwise qualifying for the credit
61 under this section from a regional business development corporation or authority authorized
62 under chapter forty D or a regional business development corporation organized as a non-profit
63 corporation under any special act shall be deemed to have acquired such property by purchase as
64 defined under Sec. 179(d) of the Federal Internal Revenue Code, as amended and in effect for the
65 taxable year, for the purposes of this section and shall be eligible for the credit under paragraph
66 (a). The amount of such credit shall be three per cent of the value of qualifying property leased
67 and placed in qualified use during the taxable year. Such value shall be the cost of such property
68 to the regional business development corporation and the books and records of such corporation
69 shall for the purposes of this section be open to the commissioner for inspection. For the
70 purposes of this section, a termination or cessation of such rental or lease for any reason other
71 than a transfer of ownership of such property to the lessee shall be considered a disposition of
72 such property. No further credit shall be allowed to such lessee or any successor corporation, as
73 the case may be, on account of such property in the event of successive rentals or leases,
74 replacement, alteration or change of the property rented or leased; transfer of ownership of such
75 property to the lessee; or the merger, consolidation or other reorganization of such lessee.

76 (g) Any corporation entitled to a credit for any taxable year in accordance with the
77 provisions of paragraphs (a) to (f), inclusive, may carry over and apply to its excise for any one
78 or more of the next succeeding three taxable years, the portion, as reduced from year to year, of
79 its credit which exceeds its excise for the taxable year.

80 (h) Any corporation entitled to a credit for any taxable year under this section shall apply
81 it only to its excise for any of the eligible taxable years.

82 SECTION 2. Chapter 63 of the General Laws, as so appearing, is hereby further
83 amended by deleting Section 38U as most recently amended by Chapter 130 of the Acts of 2008.