

**SENATE . . . . . No. 1385**

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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 the equitable taxation of manufacturing 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. Section 33 of chapter 63 of the General Laws, as appearing in the 2000  
2 Official Edition, is hereby amended by deleting the word “corporations.”, in the first sentence  
3 and inserting in place thereof the following words:- corporations, provided that wherever a  
4 controlled group of corporations exists as defined in section 1563 of the Internal Revenue Code,  
5 there shall be a presumption that all payments to the parent corporation or affiliated corporation  
6 are in excess of fair value and that fair compensation was not included for all commodities sold  
7 to or services performed for the parent corporation or affiliated corporations.

8           SECTION 2. Subsection (1) of section 38 of chapter 63 is hereby amended by striking  
9 out paragraph (3) and inserting in place thereof the following paragraph:-

10           (3) As used in this paragraph, the following words shall, unless the context otherwise  
11 requires, have the following meaning:

12           “Base period employment level,” the number of qualified employees in this  
13 commonwealth of the manufacturing corporation as of December 31, 1995, and the number of

14 non-qualified employees in this commonwealth of the manufacturing corporation as of  
15 December 31, 1995, determined separately.

16 “Non-qualified employment level,” the number of non-qualified employees of the  
17 manufacturing corporation in the taxable year.

18 “Qualified employment level,” the number of qualified employees of the manufacturing  
19 corporation in the taxable year.

20 “Non-qualified employee in the commonwealth,” an individual who: (i) is employed by  
21 a manufacturing corporation; (ii) works on a full-time basis with a normal week of 30 or more  
22 hours; (iii) at the inception of the employment relationship does not have a termination date  
23 which is either a date certain or determined with reference to the completion of some specified  
24 scope of work; (iv) is eligible to receive employee benefits including, but not limited to, paid  
25 holidays, vacation and unemployment benefits; and (v) is subject to Massachusetts income tax  
26 withholding. Three or fewer individuals who collectively fulfill the requirement of clause (ii)  
27 and who each meet the requirements of clauses (i), (iii), (iv), and (v) shall be counted as one  
28 qualified employee for purposes of this section.

29 “Qualified employee in the commonwealth,” an individual who: (i) is employed by a  
30 manufacturing corporation; (ii) works on a full-time basis with a normal week of 30 or more  
31 hours; (iii) at the inception of the employment relationship does not have a termination date  
32 which is either a date certain or determined with reference to the completion of some specified  
33 scope of work; (iv) is eligible to receive employee benefits including, but not limited to, paid  
34 holidays, vacation and unemployment benefits; (v) is subject to Massachusetts income tax  
35 withholding; (vi) is employed working in the manufacturing corporation’s manufacturing

36 operations; and (vii) is not working in a bona fide executive, administrative, or professional  
37 capacity under the provisions of 29 U.S.C. 213(a)(1). Three or fewer individuals who  
38 collectively fulfill the requirement of clause (ii) and who each meet the requirements of clauses  
39 (i), (iii), (iv), (v), (vi), and (vii) shall be counted as one qualified employee for purposes of this  
40 section.

41 (i) If for any taxable year beginning on or after January 1, 2000 but before January 1,  
42 2001, a manufacturing corporation's non-qualified employment level is less than 80% of its base  
43 period employment level, or its qualified employment level is less than 80% of its base period  
44 employment level, the corporation shall instead be required to apportion its taxable net income  
45 for such taxable year to the commonwealth in accordance with subsection ( c ).

46 (ii) If for any taxable year beginning on or after January 1, 2001 but before January 1,  
47 2002, a manufacturing corporation's non-qualified employment level is less than 82.5% of its  
48 base period employment level, or its qualified employment level is less than 82.5% of its base  
49 period employment level, the corporation shall instead be required to apportion its taxable net  
50 income for such taxable year to the commonwealth in accordance with subsection ( c ).

51 (iii) If for any taxable year beginning on or after January 1, 2002 but before January 1,  
52 2003, a manufacturing corporation's non-qualified employment level is less than 85% of its base  
53 period employment level, or its qualified employment level is less than 85% of its base period  
54 employment level, the corporation shall instead be required to apportion its taxable net income  
55 for such taxable year to the commonwealth in accordance with subsection ( c ).

56 (iv) If for any taxable year beginning on or after January 1, 2003 but before January 1,  
57 2004, a manufacturing corporation's non-qualified employment level is less than 87.5% of its

58 base period employment level, or its qualified employment level is less than 87.5% of its base  
59 period employment level, the corporation shall instead be required to apportion its taxable net  
60 income for such taxable year to the commonwealth in accordance with subsection ( c ).

61 (v) If for any taxable year beginning on or after January 1, 2004 but before January 1,  
62 2005, a manufacturing corporation's non-qualified employment level is less than 90% of its base  
63 period employment level, or its qualified employment level is less than 90% of its base period  
64 employment level, the corporation shall instead be required to apportion its taxable net income  
65 for such taxable year to the commonwealth in accordance with subsection ( c ).

66 (vi) If for any taxable year beginning on or after January 1, 2005, a manufacturing  
67 corporation's non-qualified employment level is less than 90% of its base period employment  
68 level, or its qualified employment level is less than 90% of its base period employment level, the  
69 corporation shall instead be required to apportion its taxable net income for such taxable year to  
70 the commonwealth in accordance with subsection ( c ).

71 SECTION 3. Sub-section (a) of section 44 of chapter 151A is amended by inserting after  
72 the word "year.", in the first sentence the following words:- The commissioner shall maintain  
73 suitable records for each employer, including but not limited to the number of qualified and non-  
74 qualified employees as defined by section 38(1)(3) of chapter 63 employed by that employer in  
75 the commonwealth during each year.

76 SECTION 4. Section 45 of said chapter 151A is amended by deleting the word  
77 "chapter.", in the first sentence and inserting in place thereof the following words:-chapter,  
78 including but not limited to the number of qualified and non-qualified employees as defined by

79 section 38(1)(3) of chapter 63 employed by that employer in the commonwealth during each  
80 year.