SENATE DOCKET, NO. 394 FILED ON: 1/16/2013

SENATE . . . . . No. 1344

The Commonwealth of Massachusetts

PRESENTED BY:

Brian A. Joyce

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act extending the investment tax credit to all corporations..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Brian A. Joyce	*Norfolk, Bristol and Plymouth*

SENATE DOCKET, NO. 394 FILED ON: 1/16/2013

SENATE . . . . . No. 1344

By Mr. Joyce, a petition (accompanied by bill, Senate, No. 1344) of Brian A. Joyce for legislation to extend the investment tax credit to all corporations. Revenue.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *1460* OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

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:

SECTION 1. Chapter 63 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out section 31A, as appearing in the 2010 Official Edition, and inserting in place thereof the following section:-

Section 31A. (a) A business corporation shall be allowed a credit as hereinafter provided against its excise due under this chapter. The amount of such credit shall be three per cent of the cost or other basis for federal income tax purposes of qualifying tangible property acquired, constructed, reconstructed, or erected during the taxable year, after deduction therefrom of any federally authorized tax credit taken with respect to such property. Qualifying property shall be tangible personal property and other tangible property including buildings and structural components of buildings acquired by purchase, as defined under section one hundred and seventy-nine (d) of the Federal Internal Revenue Code as amended and in effect for the taxable year is not taxable under chapter sixty A; used by the corporation in the commonwealth; situated in the commonwealth on the last day of the taxable year; and which (1) is depreciable under section one hundred and sixty-seven of said Code and has a useful life of four years or more, or (2) is considered recovery property under section one hundred and sixty-eight of said Code.

A business corporation shall be allowed a credit against its excise due under this chapter for tangible personal property leased pursuant to an operating lease as hereinafter provided. The amount of such credit afforded to a lessee corporation with respect to such tangible personal

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

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

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

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

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

the months of qualified use bear to the months of useful life. For the purposes of this paragraph, useful life of property shall be the same as that used by the corporation for depreciation purposes when computing federal income tax liability.

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

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

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

SECTION 2. Chapter 63 of the General Laws, as so appearing, is hereby further amended by deleting Section 38U.