

SENATE No. 2198

Senate, May 21, 2014 – Text of amendment (3) (offered by Senator Ridrigues) to the Ways and Means amendment (Senate, No. 4) to the House Bill making appropriations for the fiscal year 2015 for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements.

The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

1 moved that the bill be amended moved that the bill be amended by adding the following
2 sections:

3 SECTION __. Clause Sixteenth of section 5 of chapter 59 of the General Laws, as
4 amended by sections 29, 30, and 84 of chapter 46 of the acts of 2013, is hereby further amended
5 by striking out clause sixteenth and inserting in place thereof the following clause:-

6 Sixteenth, (1) In the case of (a) a financial institution as defined in section 1 of chapter 63
7 of the general laws, (b) a business corporation subject to taxation under chapter sixty-three other
8 than a corporation mentioned in either paragraph (2) or paragraph (3) of this clause, (c) a
9 telephone corporation subject to chapter 166 or (d) a business corporation subject to taxation
10 under section twenty, twenty-three or fifty-eight of said chapter sixty-three, all property owned
11 by such financial institution or corporation other than the following:--real estate, poles,
12 underground conduits, wires and pipes, and machinery used in manufacture or in supplying or
13 distributing water; provided, that in the case of a business corporation subject to taxation under
14 said section twenty or said section twenty-three, the laws of the state of incorporation, or, in the
15 case of a business corporation of another nation, the laws of the state where it has elected to
16 establish its principal office in the United States, grant similar exemption from taxation of
17 tangible property owned by like corporations organized under or created by the laws of the
18 commonwealth.

19 SECTION __. Section 1 of chapter 62C of the General Laws, as appearing in the 2012
20 Official Edition, is hereby amended by inserting after the definition of “materialman” the
21 following definition:-

22 “Principal reporting corporation,” the corporation responsible for the filing of a combined
23 report of income pursuant to section 32B of chapter 63, or any successor thereof, as may be
24 provided in regulations or other guidance issued by the commissioner.

25 SECTION __. Section 11 of chapter 62C of the General Laws, as appearing in the 2012
26 Official Edition, is hereby amended by adding the following paragraph:-

27 The filing of a combined report pursuant to G.L. c. 63, § 32B, in the manner prescribed
28 by the commissioner, shall satisfy the filing requirements of this section for any business
29 corporation that, pursuant to such combined report, calculates and reports its own individual
30 corporate excise liability, based on the income and non-income measures of the corporate excise
31 or minimum excise tax, as applicable, under G.L. c. 63, §§ 32D or 39. A combined report shall
32 not constitute a filing under this section for any business corporation that does not so calculate
33 and report its own individual corporate excise liability under such sections, whether or not such
34 business corporation’s income, sales, or other attributes may be taken into account in the
35 calculation of the excise under this chapter of an affiliated corporation that does calculate and
36 report an individual corporate excise pursuant to such combined report.

37 SECTION __. Chapter 62C of the General Laws, as appearing in the 2012 Official
38 Edition, is hereby amended by inserting after section 11 the following section:-

39 Section 11A. Combined Reports.

40 In the case of one or more corporations that participate, or are required to participate, in a
41 filing through the means of a combined report under G.L. c. 63, § 32B, the commissioner may
42 treat the principal reporting corporation as the agent for any and all such corporations with
43 respect to all notices and actions authorized or required by this chapter and chapter 63, whether
44 relating to the income measure or non-income measure of the corporate excise of any such
45 corporation or to the minimum excise tax liability of any such corporation. Such notices and
46 actions include, without limitation, notices and actions associated with processes such as
47 assessment of tax; execution of consents to extend the time for assessment of tax; abatements;
48 hearing requests; refunds; and collection activity. Nothing in this section shall preclude the
49 commissioner from separately taking any such action or directing any notice to any individual
50 corporation subject to tax under any section of G.L. c. 63, even where such corporation
51 participated in or was required to participate in the filing of a combined report. The
52 commissioner may collect under this chapter any unpaid tax from any individual corporation
53 participating or required to participate in a filing through the means of a combined report to the
54 extent of the joint and several liability for such amount under G.L. c. 63, § 32B(e).

55 SECTION __. Section 12 of chapter 62C of the General Laws, as appearing in the 2012
56 Official Edition, is hereby amended by striking out subsection (g).

SECTION __. Said section 12 of said chapter 62C, is hereby further amended by adding the following subsection:-

(k) The filing of a combined report pursuant to G.L. c. 63, § 32B, in the manner prescribed by the commissioner, shall satisfy the filing requirements under subsection (a) of this section for any financial institution that, pursuant to such combined report, calculates and reports its own individual corporate excise liability, based on the income measure or minimum excise tax, as applicable, under G.L. c. 63, §§ 2 or 2B. A combined report shall not constitute a filing under subsection (a) of this section for any financial institution that does not so calculate and report its own individual corporate excise liability under such sections, whether or not such financial institution's income, sales, or other attributes may be taken into account in the calculation of the excise under this chapter of an affiliated corporation that does calculate and report an individual corporate excise pursuant to such combined report.

SECTION __. Section 26 of chapter 62C of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by striking out subsection (b) and inserting in place thereof the following subsection:-

(b) If the commissioner determines, from the verification of a return or otherwise, that the full amount of any tax has not been assessed or is not deemed to be assessed, he may, at any time within three years after the date the return was filed or the date it was required to be filed, whichever occurs later, assess the same with interest as provided in section thirty-two to the date when the deficiency assessment is required to be paid, first giving notice of his intention to the person to be assessed; provided, however, that said three year period for making an assessment shall be suspended during the period of time that the taxpayer has a bankruptcy case pending under the appropriate chapters of Title 11 of the United States Code. Such person or his representative may confer with the commissioner or his duly authorized representative as to the proposed assessment within thirty days after the date of such notification. After the expiration of thirty days from the date of such notification, the commissioner shall assess the amount of tax remaining due the commonwealth, or any portion thereof, which he believes has not therefore been assessed.

In the case of one or more corporations that participated, or was required to participate, in a filing through the means of a combined report under G.L. c. 63, § 32B, the commissioner may effect the issuance of a notice of intention to assess or a notice of assessment to each corporation that participated, or was required to participate, in the combined report with respect to any tax liability due from such corporation under chapter 63, whether relating to the income measure or non-income measure of the corporate excise or minimum excise tax liability, by issuing a single notice to the principal reporting corporation on its own behalf and as the agent for each corporation that is being assessed. This single notice shall state the net cumulative liability of all such assessed corporations. In such cases, the commissioner will provide detail as to the assessment that is being issued to each corporation included in the cumulative assessment, in the

95 form of work papers made available to the principal reporting corporation in connection with the
96 notice of the cumulative assessment that is directed to such principal reporting corporation.
97 Nothing in this paragraph shall preclude the commissioner from separately and directly assessing
98 any individual corporation subject to tax under any section of G.L. c. 63, rather than assessing
99 such corporation through the means a cumulative assessment as referenced by this paragraph,
100 even where such corporation participated in or was required to participate in the filing of a
101 combined report.

102 If the commissioner audits or verifies the returns of the same tax for two or more tax
103 periods and determines, as a result thereof, that the amounts assessed result in overpayments for
104 some tax periods and underpayments for others, he shall offset any overpayments against any
105 underpayments and refund any net overpayment as required by section thirty-six. An application
106 for abatement under section thirty-seven shall not be required for overpayments resulting from
107 assessments made pursuant to this section.

108 Failure to receive the notice provided for by this section shall not affect the validity of the
109 tax.

110 SECTION __. Section 27 of chapter 62C of the General Laws, as appearing in the 2012
111 Official Edition, is hereby amended by adding the following paragraph:-

112 In the case of one or more corporations that participate in a filing through the means of a
113 combined report under G.L. c. 63, § 32B or are required to participate in such filing, the
114 commissioner and the principal reporting corporation may consent in writing to extend the time
115 for assessment of any component of the corporate excise reported or required to be reported
116 under any section of G.L. c. 63 by any such corporation whether relating to the income measure,
117 non-income measure, or a minimum excise tax liability under the corporate excise. This consent
118 shall be effective for (i) any corporation that filed through the means of the combined report,
119 including any corporation that was improperly included in the combined group as determined
120 pursuant to G.L. c. 63, § 32B or that subsequently ceased to be a member of such group, and (ii)
121 any corporation that was improperly excluded from the combined group and that improperly
122 filed a separate return to report its corporate excise under G.L. c. 63. The period so extended by
123 the commissioner and the principal reporting corporation may be further extended by subsequent
124 agreements in writing made before the expiration of the time last extended. The commissioner
125 or his duly authorized representative may examine the books, papers, records, and other data of
126 any corporation that participated in or was required to participate in the filing of the combined
127 report. Nothing in this section shall preclude the commissioner from separately executing
128 consents to extend the time for assessment with any individual corporation subject to tax under
129 any section of G.L. c. 63 for any tax due from such corporation under said chapter or this chapter
130 even where the corporation participated in or was required to participate in the filing of a
131 combined report.

SECTION __. Section 30 of chapter 62C of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by striking out the last sentence and inserting in place thereof the following 4 sentences:-

In the case of the filing of a combined report filed pursuant to G.L. c. 63, § 32B, the principal reporting corporation shall file all notices of change as otherwise provided under this section, together with payment of additional amounts due or an application for abatement, as the case may be, on behalf of any or all corporations participating in the filing of the combined report or required to so participate. Without limitation, such notices of change shall be required from the principal reporting corporation in the event of a final determination of federal change to the income included or required to be included in the combined report, or any portion thereof, without regard to the particular corporation or corporations taking such income into account for federal income tax purposes or to whether such corporations are required to file a return under this chapter. A principal reporting corporation shall be subject to the penalties provided under this section in the event of failure to file a required notice of change under this paragraph.

The commissioner of revenue may promulgate rules and regulations necessary to implement this section.

SECTION __. Chapter 62C of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by striking out section 31 and inserting in place thereof the following section:-

Section 31. If the assessment of any tax is in excess of the amount shown on the return as the tax due, the commissioner shall, as soon as may be, give written notice to the taxpayer of the amount of the assessment, the amount of any balance due and the time when the same is required to be paid. Failure to receive such notice shall not affect the validity of the tax. In the case of one or more corporations that participate in a filing through the means of a combined report under G.L. c. 63, § 32B or are required to participate in such filing, the commissioner may issue a single notice directed to the principal reporting corporation on its own behalf and as the agent for each corporation that is being assessed. This single notice shall state the net cumulative liability of all such assessed corporations.

SECTION __. Section 37 of chapter 62C of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by adding the following paragraph:-

In the case of a combined report filed pursuant to G.L. c. 63, § 32B, the principal reporting corporation may act under this section as the agent for any and all corporations that participated in, or were required to participate in, such filing. In the case of such combined report, the commissioner may offset against any abatement with respect to any such corporation, as determined by the commissioner under this section, any additional excise that is due or determined to be due under chapter 63 from any corporation that participated or was required to participate in the filing, whether that additional excise due may result from the application of the

income or non-income measures of the corporate excise or to the minimum excise tax, and whether or not the additional tax is based on issues related to the abatement. Offsets based on issues unrelated to the abatement may reduce or eliminate such abatement, but in no case shall such offset give rise to a net amount of tax due where an assessment would otherwise be barred as untimely.

SECTION __. Paragraph 8 of section 30 of chapter 63 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by striking clause (3) and replacing it with the following clause:-

(3) the book value on said date of its investment in subsidiary business corporations which represent eighty per cent or more of the voting stock of said corporations, or in the case of a subsidiary business corporation which does not have voting stock, its investment in such business corporation which represents an eighty percent or more ownership interest, as shall be found by multiplying said amount by such corporation's income apportionment percentage, as determined under the provisions of section thirty-eight.

SECTION __. Section 30 of chapter 63 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by striking paragraph 9 and inserting in place thereof the following paragraph:-

9. Notwithstanding paragraph 8, the net worth of a business corporation taxable under clause (1) of subsection (a) of section 39 that is a qualified real estate investment trust shall be such portion of the book value of its total assets less its liabilities on the last day of the taxable year as the book value of its tangible assets situated within the commonwealth on said date and not subject to local taxation plus the amount of its intangible assets on said date allocable to this commonwealth, as hereinafter determined, bear to the book value of its total assets on said date. The intangible assets allocable to this commonwealth shall be such portion of the book value of its total intangible assets on the last day of the taxable year, less the book value on said date of its investment in and advances to subsidiary business corporations which represent 80 per cent or more of the voting stock of said corporations, or in the case of a subsidiary business corporation which does not have voting stock, its investment in such business corporation which represents an 80 percent or more ownership interest, as shall be found by multiplying said amount by such corporation's income apportionment percentage, as determined under section 38. In determining the book value of any asset, the commissioner may disallow any reserve, in whole or in part, with respect thereto which, in his judgment, is not reasonable and proper. For the purpose of this paragraph, "qualified real estate investment trust" shall mean a business corporation that both qualifies as a real estate investment trust under section 856 of the Code, as defined in paragraph 16 of this section, and that is required to file with the Securities and Exchange Commission annual and other reports as specified in Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended; and "advances" shall mean such interests in a corporation where a corporation-shareholder relationship exists, determined under such regulations as the

207 commissioner may issue and under section 385 of the Federal Internal Revenue Code as
208 amended and in effect for the taxable year and the regulations issued thereunder.

209 SECTION __. Subsection (a) of section 31A of chapter 63 of the General Laws, as
210 appearing in the 2012 Official Edition, is hereby amended by striking out, in lines 3 and 23, the
211 following words “thirty-eight C or”.

212 SECTION __. Subsection (c) of section 31A of chapter 63 of the General Laws, as
213 appearing in the 2012 Official Edition, is hereby amended by striking out, in lines 58 to 59,
214 inclusive, the following word “thirty-two(b),”.

215 SECTION __. Subsection (i) of section 31A of chapter 63 of the General Laws, as
216 appearing in the 2012 Official Edition, is hereby amended by striking out, in lines 113 and 131,
217 the following words “thirty-eight C or”.

218 SECTION __. Section 31N of chapter 63 of the General Laws, as appearing in the 2012
219 Official Edition, is hereby amended by inserting before the word “gross”, in lines 13, 16, 17 and
220 19, the following words:- net or.

221 SECTION __. Subsection (d) of Section 31E of chapter 63 of the General Laws, as
222 appearing in the 2012 Official Edition, is hereby amended by striking out, in line 19, the
223 following words “thirty-two (b)”.

224 SECTION __. Section 32C of chapter 63 of the General Laws, as appearing in the 2012
225 Official Edition, is hereby amended by striking out, in line 6, the following words “thirty-two
226 or”.

227 SECTION __. Subsection (b) of Section 38P of chapter 63 of the General Laws, as
228 appearing in the 2012 Official Edition, is hereby amended by striking out, in lines 18 to 19,
229 inclusive, the words “sections thirty-two or” and inserting in place thereof, in each instance, the
230 following word:- section.

231 SECTION __. Subsection (c) of Section 38P of chapter 63 of the General Laws, as
232 appearing in the 2012 Official Edition, is hereby amended by striking out, in line 35, the words
233 “sections thirty-two (b) and” and inserting in place thereof, the following word:- section.

234 SECTION __. Paragraph (a) of section 38Z of chapter 63 of the General Laws, as
235 appearing in the 2012 Official Edition, is hereby amended by striking out, in lines 2 and 11, the
236 words “domestic or foreign” and inserting in place thereof the following word:- business.

237 SECTION __. Section 39A of chapter 63 of the General Laws, as appearing in the 2012
238 Official Edition, is hereby amended by striking out, in lines 1 and 5, the word “foreign” and
239 inserting in place thereof the following word:- business.

240 SECTION __. Said section 39A of said chapter 63, as so appearing, is hereby further
241 amended by striking out, in line 16, the word “foreign” and inserting in place thereof the
242 following word:- business.

243 SECTION __. Said section 39A of said chapter 63, as so appearing, is hereby further
244 amended by inserting, in line 21, before the figure “9” the following words:- 8 or.

245 SECTION __. Section 42A of chapter 63 of the General Laws, as appearing in the 2012
246 Official Edition, is hereby amended by striking out, in line 1, the word “foreign” and inserting in
247 place thereof the following word:- business .

248 SECTION __. Subsection (r) of section 6 of chapter 64H of the General Laws, as
249 appearing in the 2012 Official Edition, is hereby amended by striking out, in line 251, the words
250 “sections thirty-eight C or” and inserting in place thereof the following word:- section.

251 SECTION __. Subsection (s) of section 6 of chapter 64H of the General Laws, as
252 appearing in the 2012 Official Edition, is hereby amended by striking out, in line 276, the
253 following words “thirty-eight C or”.