HOUSE DOCKET, NO. 2827 FILED ON: 1/17/2019

HOUSE . . . . . No. 2459

The Commonwealth of Massachusetts

PRESENTED BY:

Ann-Margaret Ferrante

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 establishing a tax credit for artist work space.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Ann-Margaret Ferrante	*5th Essex*	*1/17/2019*
Carlos González	*10th Hampden*	*1/24/2019*
Sarah K. Peake	*4th Barnstable*	*1/29/2019*

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HOUSE . . . . . No. 2459

By Ms. Ferrante of Gloucester, a petition (accompanied by bill, House, No. 2459) of Ann-Margaret Ferrante, Carlos González and Sarah K. Peake for legislation to establish an artist workspace tax credit. Revenue.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *2590* OF 2017-2018.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act establishing a tax credit for artist work space.

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 62 of the General Laws is hereby amended by inserting after section 6N, as appearing in the 2012 Official Edition, the following section:-

Section 6O. (a) For the purposes of this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

"Commissioner", the commissioner of revenue.

"Cultural district", a geographical area of a city or town within the commonwealth designated as a cultural district pursuant to the provisions of section 58A of chapter 10.

"Department", the department of housing and community development, or its successor agency.

"Eligibility statement", a statement authorized and issued by the department certifying that a given project is a qualified project. The department shall, in consultation with the commissioner, promulgate regulations establishing criteria upon which the eligibility statements will be issued. The eligibility statement shall specify the maximum annual amount of the Massachusetts artist work shop tax credit authorized. The department shall only authorize the tax credits to qualified projects which are placed in service on or after January 1, 2016.

"Qualified project", a project for the construction of a new building located in a cultural district, or renovation of an existing building located in a cultural district, providing artists with the workspace necessary to produce art, which meets the requirements of this section.

"Taxpayer", a person, firm, partnership or other entity subject to the income tax imposed by the provisions of this chapter hired as a contractor, subcontractor or otherwise to perform construction on a qualified project.

(b)(1) There shall be a Massachusetts artist workspace tax credit. The department may authorize annually under this section together with section 38GGH of chapter 63 the total sum of: (i) $20,000,000; (ii) unused Massachusetts artist workspace tax credits, if any, for the preceding calendar years; and (iii) Massachusetts artist workspace tax credits returned to the department by a qualified project.

(2) Unless otherwise provided in this section or the context clearly requires otherwise, the department shall authorize, administer, determine eligibility for the Massachusetts artist workspace tax credit.

(3) The department shall allocate the total available Massachusetts artist workspace tax credit among as many qualified projects as fiscally feasible, with the goal of increasing the commonwealth's stock of artist workspace.

(c)(1) A taxpayer may be allowed a state tax credit with respect to a qualified project, provided that the department issues an eligibility statement for that qualified project. This state tax credit shall be termed the Massachusetts artist workspace tax credit.

(2) The total Massachusetts artist workspace tax credit available to a qualified project shall be authorized and allocated by the department, or its successor agency, based on the qualified project's need for the credit for economic feasibility.

(3) The Massachusetts artist workspace tax credit shall be taken against the taxes imposed under this chapter, claimed equally for 5 years, subtracted from the amount of state tax otherwise due for each taxable period and shall not be refundable. Any amount of the artist workspace tax credit that exceeds the tax due for a taxable year may be carried forward to any of the 5 subsequent taxable years.

(4) All or any portion of tax credits issued in accordance with the provisions of this section may be allocated to parties who are eligible under the provisions of paragraph (1) of subsection (c). A taxpayer shall certify to the commissioner the amount of credit allocated to such taxpayer. The taxpayer shall provide to the commissioner appropriate information so that the artist workspace tax credit can be properly allocated.

(5) In the event that recapture of Massachusetts artist workspace tax credit is required, any statement submitted to the commissioner as provided in subsection (c) shall include the

proportion of the state credit required to be recaptured, the identity of each taxpayer subject to the recapture and the amount of credit previously allocated to such taxpayer.

(6) The director of the department, in consultation with the commissioner, shall promulgate regulations necessary to administer the provisions of this subsection.

(d) The taxpayer shall submit, at the time of filing the taxpayer's state tax return, a copy of the eligibility statement issued by the department with respect to such qualified project. In the case of failure to attach the eligibility statement, a credit under this section shall not be allowed with respect to such qualified project for that year until the copy is provided to the department of revenue.

(e) The commissioner or the department, through the promulgation of regulations, may require the filing of additional documentation necessary to determine the eligibility or accuracy of a tax credit claimed under the provisions of this section.

(f) The department, in consultation with the commissioner, shall monitor and oversee compliance with the Massachusetts artist workspace tax credit program and may promulgate regulations requiring the filing of additional documentation deemed necessary to determine continuing eligibility for the Massachusetts artist workspace tax credit. The department or the commissioner shall report specific occurrences of noncompliance to appropriate state, federal and local authorities.

(g) Except for unused credits carried forward pursuant to paragraph (3) of subsection (c) and section 38GGH of chapter 63, a qualified project shall not be eligible for any Massachusetts artist workspace tax credits for more than 7 taxable years.

(h) The department may provide that upon application for state tax credits issued by the department, such taxpayer may elect to receive such state tax credit in the form of a loan generated by transferring the credit to the department or its designee on terms specified by the department in accordance with its qualified allocation plan. Neither a direct tax refund nor a loan received as the result of the transfer of the credit shall be considered taxable income under this chapter.

(i) The department may pursue methods of enhancing the efficiency of the Massachusetts artist workspace tax credit program including but not limited to: pursuing opinions from the United States department of treasury's internal revenue service in the form of general counsel memoranda, private letter rulings and other notices, rulings or guidelines; by reviewing other state tax programs which utilize an option for taxpayers to receive such tax credit in the form of a loan generated by transferring the credit to a designated state entity; and any other such methods.

SECTION 2. Chapter 63 of the General Laws is hereby amended by inserting after section 38FF, as so appearing, the following section:-

Section 38GG. (a) For the purposes of this section, unless the context clearly requires otherwise, the following words shall have the following meanings:-

“Commissioner”, the commissioner of the department of revenue

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“Cultural district”, a geographical area of a city or town within the commonwealth designated as a cultural district pursuant to the provisions of section 58A of chapter 10.

"Department", the department of housing and community development, or its successor agency.

"Eligibility statement", a statement authorized and issued by the department certifying that a given project is a qualified artist workspace project. The department, in consultation with the commissioner, shall promulgate regulations establishing criteria upon which the eligibility statements shall be issued. The eligibility statement shall specify the maximum annual amount of the artist workspace tax credit authorized. The department shall only authorize the tax credits to qualified artist workspace projects which are placed in service on or after January 1, 2016.

"Qualified artist workspace project" or "qualified project", a project for the construction of a new building in a cultural district, or renovation of an existing building located in a cultural district, providing artists with the workspace necessary to produce art, which meets the requirements of this section.

"Taxpayer", a corporation subject to an excise imposed by the provisions of this chapter, including, without limitations, section 2, sections 20 to 23, inclusive, section 29A, section 32 and section 39, hired as a contractor, subcontractor or otherwise to perform construction on a qualified project..

(b)(1) There shall be a Massachusetts artist workspace tax credit. The department may authorize annually under this section together with section 6O of chapter 62 the total sum of: (i) $20,000,000; (ii) unused artist workspace tax credits, if any, for the preceding calendar years; and (iii) any artist workspace tax credits returned to the department by a qualified artist workspace project.

(2) Unless otherwise provided in this section or the context clearly requires otherwise, the department shall authorize, administer, determine eligibility for the artist workspace tax credit.

(3) The department shall allocate the total available Massachusetts artist workspace tax credit among as many qualified artist workspace projects as fiscally feasible, with the goal of increasing the commonwealth's stock of artist workspace.

(c)(1) A taxpayer may be allowed a state tax credit with respect to a qualified artist workspace project, provided that the department issues an eligibility statement for that qualified project. This state tax credit shall be termed the Massachusetts artist workspace tax credit.

(2) The total Massachusetts artist workspace tax credit available to a qualified project shall be authorized and allocated by the department, or its successor agency, based on the qualified project's need for the credit for economic feasibility.

(3) The Massachusetts artist workspace tax credit shall be taken against the taxes imposed under this chapter, claimed equally for 5 years, subtracted from the amount of state tax otherwise due for each taxable period and shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward to any of the 5 subsequent taxable years.

(4) All or any portion of tax credits issued in accordance with the provisions of this section may be allocated to parties who are eligible under the provisions of paragraph (1) of subsection (c). A taxpayer shall certify to the commissioner the amount of credit allocated to such taxpayer. The taxpayer shall provide to the commissioner appropriate information so that the artist workspace tax credit can be properly allocated.

(5) In the event that recapture of Massachusetts artist workspace tax credits is required, any statement submitted to the commissioner as provided in subsection (c) shall include the proportion of the state credit required to be recaptured, the identity of each taxpayer subject to the recapture and the amount of credit previously allocated to such taxpayer.

(6) The director of the department, in consultation with the commissioner, shall promulgate regulations necessary to administer the provisions of this subsection.

(d) The taxpayer shall submit, at the time of filing the taxpayer's state tax return, a copy of the eligibility statement issued by the department with respect to such qualified project. In the case of failure to attach the eligibility statement, a credit under this section shall not be allowed with respect to such qualified project for that year until the copy is provided to the department of revenue.

(e) The commissioner or the department may require the filing of additional documentation necessary to determine the eligibility or accuracy of a tax credit claimed under the provisions of this section through the promulgation of regulations.

(f) The department, in consultation with the commissioner, shall monitor and oversee compliance with the Massachusetts artist workspace tax credit program and may promulgate regulations requiring the filing of additional documentation deemed necessary to determine continuing eligibility for the Massachusetts artist workspace tax credit. The department or the commissioner shall report specific occurrences of noncompliance to appropriate state, federal and local authorities.

(g) Except for unused credits carried forward pursuant to section 6O of chapter 62 and paragraph (3) of subsection (c) of this section, a qualified project shall not be eligible for any Massachusetts artist workspace tax credits for more than 7 taxable years.

(h) The department may provide that upon application for state tax credits issued by the department, such taxpayer may elect to receive such state tax credit in the form of a loan generated by transferring the credit to the department or its designee on terms specified by the department in accordance with its qualified allocation plan. Neither a direct tax refund nor a loan received as the result of the transfer of the credit shall be considered taxable income under this chapter.

(i) The department may pursue methods of enhancing the efficiency of the Massachusetts artist workspace tax credit program including but not limited to; pursuing opinions from the United States department of treasury's internal revenue service in the form of general counsel memoranda, private letter rulings and other notices, rulings or guidelines and reviewing other state tax programs which utilize an option for taxpayers to receive such tax credit in the form of a loan generated by transferring the credit to a designated state entity.