

**HOUSE . . . . . No.**

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**The Commonwealth of Massachusetts**

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PRESENTED BY:

**Daniel E. Bosley**

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*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 passage of the accompanying bill:

An Act making technical corrections to the combined reporting law.

\_\_\_\_\_

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Daniel E. Bosley	1st Berkshire

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT MAKING TECHNICAL CORRECTIONS TO THE COMBINED REPORTING LAW.

*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. Clause sixteenth of section 5 of chapter 59 of the General Laws, as appearing in the 2006  
2 Official Edition and most recently amended by sections 3 and 4 of chapter 173 of the acts of 2008, is  
3 hereby amended by deleting paragraph (3) and inserting in place thereof the following new paragraph:-

4

5 (3) In the case of (i) a manufacturing corporation or a research and development corporation, as defined  
6 in section 42B of chapter 63, or (ii) a limited liability company that has its usual place of business in the  
7 commonwealth, is engaged in manufacturing in the commonwealth or in research and development in the  
8 commonwealth, is a disregarded entity, as defined in section 30 of chapter 63, and whose sole member is  
9 a business corporation, as defined in paragraph 1 of section 30 of chapter 63, all property owned by such  
10 corporation other than the following:--real estate, poles and underground conduits, wires and pipes;  
11 provided, however, that no property, except property entitled to a pollution control abatement pursuant to  
12 the provisions of the forty-fourth clause or a cogeneration facility as defined herein, shall be exempt from  
13 taxation if it is used in the manufacture or generation of electricity and it has not received a manufacturing  
14 classification effective on or before January 1, 1996. For the purposes of this section, a cogeneration  
15 facility shall be defined as any electrical generating unit having power production capacity which,  
16 together with any other power generation facilities located at the same site, is not greater than 30  
17 megawatts and which produces electric energy and steam or other form of useful energy utilized for  
18 industrial, commercial, heating, or cooling purposes. This clause, as it applies to a research and  
19 development corporation as defined in section 42B of said chapter 63 or a limited liability company

20 engaged in research and development in the commonwealth as so described in subparagraph (ii), shall  
21 take effect only upon its acceptance by any city or town.

22 SECTION 2. Section 1 of chapter 63 of the General Laws, as appearing in the 2006 Official Edition, is  
23 hereby amended by striking out clause (b) in the definition of "net income" and inserting in place thereof  
24 the following clause:-

25 losses sustained in other taxable years, except to the extent the financial institution may deduct such  
26 losses pursuant to section 32B;

27

28 SECTION 3. Paragraph (a) of section 32B of said chapter 63 of the General Laws, as appearing in  
29 section 48 of chapter 173 of the acts of 2008, is hereby amended by adding the following sentence:-

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31 With respect to the elimination of dividends, dividends paid among unitary affiliates shall be eliminated  
32 irrespective of whether the dividends were paid from earnings and profits generated during tax years in  
33 which the affiliates filed on a separate entity or combined basis for Massachusetts purposes.

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35 SECTION 4. Subsection (c)(1)(3) of said section 32B of said chapter 63 of the General Laws, as  
36 appearing in said section 48 of said chapter 173, is hereby further amended by striking out clauses (i) -  
37 (iii) and inserting in place thereof the following clauses:-

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39 (i) any member incorporated in the United States or formed under the laws of the United States, any state,  
40 the District of Columbia, or any territory or possession of the United States, but excluding any member  
41 where at least 80 percent of the gross income from all sources of the member in the tax year is active  
42 foreign business income as defined in Internal Revenue Code Section 861 (c)(1)(B);

43

44 (ii) any member, regardless of the place incorporated or formed outside the United States, if the average  
45 of its property, payroll, and sales factors within the United States is 20 per cent or more. For purposes of  
46 this determination, M.G.L. c. 63, section 38(g) shall apply.

47

48 (iii) any member that earns more than 20 per cent of its gross income, directly or indirectly, from  
49 intangible property or service-related activities the costs of which generally are deductible for federal  
50 income tax purposes, whether currently or over a period of time, against the business income of other  
51 members of the group, but only to the extent of the net income and apportionment factors related thereto.  
52 However, the inclusion of such income and apportionment factors does not apply if the exceptions to the  
53 related party add back provisions under sections 31I, 31J, and 31K would otherwise apply to the  
54 intercompany transactions at issue. For purposes of this provision, the exceptions under sections 31I, 31J,  
55 and 31K shall be applicable to intercompany transactions related to intangible property or service-related  
56 activities that are subject to this provision. A worldwide election shall be effective only if made on a  
57 timely-filed, original return for a taxable year by the members of the combined group subject to tax under  
58 this chapter. A worldwide election shall be binding for and applicable to the taxable year for which it is  
59 made and all taxable years thereafter for a period of 10 years, subject to regulations adopted by the  
60 commissioner.

61

62 SECTION 5. Subsection (f) of said section 32B of said chapter 63 of the General Laws, as appearing in  
63 said section 48 of said chapter 173, is hereby amended by striking out clause (iii) and inserting in place  
64 thereof the following clause:-

65

66 (iii) the application of any carry forwards, including the sharing of any net operating loss or tax credit  
67 carry forwards that are attributable to the activities of the combined group's unitary business, which shall  
68 provide for the liberal sharing of such attributes among each member of the group, including financial  
69 institutions and utility corporations irrespective of any limitation on the deduction for losses sustained in  
70 other taxable years that is otherwise imposed under section 1 or 52A of this chapter, but the carry forward  
71 of losses, credits or other tax benefits that arise before the effective date of this section shall be available  
72 only to the extent permitted by law as in effect before the effective date; and

73

74 SECTION 6. Subsection (g) of said section 32B of said chapter 63 of the General Laws, as appearing  
75 in said section 48 of said chapter 173, is hereby further amended by striking out clause (iii) and inserting  
76 in place thereof the following clause:-

77

78 (iii) The commissioner shall study the use and revenue impact of the affiliated group election provided  
79 by this subsection in the first 3 years in which the election is available and shall provide a report to the

80 clerks of the house of representatives and the senate who shall forward the same to the house of  
81 representatives and the senate committees on ways and means and to the joint committee on revenue not  
82 later than March 15, 2013. Any taxpayer participating in an affiliated group election under this  
83 subsection shall provide to the commissioner a copy of its most recently filed Federal Form 851,  
84 recomputed to account for entities owned more than 50 per cent by members of the affiliated group, and a  
85 copy of the most recent federal corporate tax return(s) filed by members of the affiliated group, provided  
86 that the report by the commissioner shall include only aggregate information, and shall not identify  
87 information relating to particular taxpayers.

88

89 SECTION 7. Chapter 63 of the General Laws as appearing in the 2006 Official Edition is hereby  
90 amended by inserting after section 32D the following section:-

91 Section 32E. If two or more domestic business corporations or foreign corporations participated in the  
92 filing of a consolidated return of income to the federal government, the net income measure of their  
93 excises imposed under section 32 may, at their option, be assessed upon their combined net income, in  
94 which case the excise shall be assessed to all said corporations and collected from any one or more of  
95 them. The commissioner may require corporations that have made such election to report the income  
96 measure and the non-income measure of the excise, and the minimum excise if applicable, all as set forth  
97 in section 32 on a single form; provided, however, that nothing in this section shall be construed to  
98 eliminate the requirement that each corporation participating in a combined return compute its non-  
99 income measure and the minimum excise if applicable in accordance with said section 32.

100 Where such election is made, each and every member of the consolidated group subject to taxation  
101 under section 32 shall be included in such return of combined net income. The combined net income shall  
102 be determined as follows: (a) the taxable net income of each such corporation apportioned to this  
103 commonwealth pursuant to the provisions of section 38 shall first be separately determined; and (b) the  
104 taxable net income of each such corporation, as so determined, shall then be added together and shall  
105 constitute their combined net income taxable under this chapter.

106 Any election made pursuant to this section shall be made on or before the due date, including any  
107 extension of time, for the filing of the return required under this chapter and chapter 62C of each member  
108 of the group so participating. Corporations electing to file a combined return under this section must  
109 continue to file such a combined return for each succeeding taxable year unless and until they receive the  
110 written prior approval of the commissioner to file separate returns of income. Such approval shall be  
111 granted only if a valid business purpose, other than a reduction of tax, exists for the request. An  
112 application to file such separate returns must be made on or before the due date, including any extension  
113 of time, for the filing of the return required under this chapter and chapter 62C.

114 SECTION 8: Subsection (1)(b) of section 52A of said chapter 63 of the General Laws, as so appearing,  
115 is hereby amended by striking out clause (ii) and inserting in place thereof the following clause:-

116

117 (ii) losses sustained in other taxable years, except to the extent the utility corporation may deduct such  
118 losses pursuant to section 32B;