

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

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Cynthia Stone Creem**

*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 relative to refundable tax credits.

PETITION OF:

NAME:

Cynthia Stone Creem

DISTRICT/ADDRESS:

First Middlesex and Norfolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. S01714 OF 2007-2008.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine

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### AN ACT RELATIVE TO REFUNDABLE TAX CREDITS.

*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. Subsection (j) of section 6 of chapter 62 of the General Laws, as added by section  
2 50 of chapter 123 of the acts of 2006 is amended by striking paragraph (5) and inserting in place  
3 thereof the following paragraph:-

4 (5) All or any portion of tax credits issued in accordance with the provisions of this subsection  
5 may be refundable to the extent provided for in section 6A of this chapter.

6 SECTION 2. Paragraph (6) of subsection (j) of section 6 of chapter 62 of the General Laws, as  
7 added by section 50 of chapter 123 of the acts of 2006 is hereby amended by striking the phrase  
8 “and the total amount of tax credits transferred, sold, or assigned pursuant to paragraph (5) for  
9 the preceding fiscal year”

10 SECTION 3. Paragraph (4) of subsection (l) of section 6 of chapter 62 of the General Laws, as  
11 added by section 1 of chapter 158 of the acts of 2005 and as amended by section 3 of chapter 167  
12 of the acts of 2005, is hereby further amended by striking out the first sentence and inserting in  
13 place thereof the following sentence:- The tax credit shall be taken against the taxes imposed  
14 under this chapter and shall be refundable to the extent provided for in section 6A of this chapter.

15 SECTION 4. Subsection (l) of section 6 of chapter 62 of the General Laws, as added by section  
16 1 of chapter 158 of the acts of 2005 and as amended by section 3 of chapter 167 of the acts of  
17 2005, is hereby further amended by striking out paragraph (5).

18 SECTION 5. Chapter 62 of the General Laws, as appearing in the 2004 Official Edition, is  
19 hereby amended by adding the following new section 6A:-

20 6A. Election for Refund of Specified Credits

21 (a) This section shall apply to credits earned under subsections (j) or (l) of section 6, under  
22 section 6½, under section 6I, and under section 6J, of this chapter. It shall not apply to any other  
23 credits.

24 (b) At the written election of a taxpayer entitled to a credit to which this section applies, the  
25 commissioner shall apply the credit against the liability of the taxpayer as determined on its  
26 return, as first reduced by any other available credits, and shall then refund to the taxpayer 80  
27 percent of the balance of such credits. An election under this subsection shall preclude any  
28 carryforward of the credit or any portion thereof to future taxable years.

29 (c) The commissioner may require substantiation of a taxpayer's claim for refund under  
30 subsection (b) prior to any such refund or thereafter. No interest shall accrue on such refund  
31 under section 40 of chapter 62C prior to the commissioner's receipt of such substantiation as he  
32 may reasonably request.

33 (d) If a taxpayer does not elect a refundable credit under subsection (b), the credit shall be  
34 applied against the liability of the taxpayer as determined on its return and any balance may be  
35 carried forward and applied, as reduced from year to year, to future taxable years of the taxpayer  
36 to the extent otherwise allowable under this chapter. However, notwithstanding any provisions  
37 of this chapter to the contrary, no such credits shall be transferable to other taxpayers.

38 (e) This section does not limit the availability or transferability of credits allocated or otherwise  
39 earned prior to the effective date of this section.

40 (f) The commissioner shall promulgate such regulations or other written guidance as needed to  
41 implement the provisions of this section. Such guidance shall include transition rules with  
42 regard to credit programs under which credits were previously transferable and shall include  
43 provisions allowing non-profit entities that have earned credits to which this section applies to  
44 receive direct refund of credit amounts pursuant to this section through the filing of such returns  
45 or applications as the commissioner may determine.

46 SECTION 6. Section 6 1/2 of chapter 62 of the General Laws, as added by chapter 145 of the acts  
47 of 2006 is amended by striking subsection (c) and inserting in place thereof the following  
48 subsection:-

49 (c) A medical device company allowed a credit under this section for a taxable year may carry  
50 over and apply to the tax imposed by this chapter in any of the succeeding 5 taxable years, the  
51 portion, as reduced from year to year, of those credits which exceed the tax for the taxable year.  
52 The credit shall be refundable to the extent provided for in section 6A of this chapter.

53 SECTION 7. Paragraph (3) of subsection (c) of section 6I of chapter 62 of the General Laws, as  
54 appearing in the 2004 Official Edition is hereby amended by striking the phrase “not be  
55 refundable” in line 90 and replacing it with the following phrase:-be refundable to the extent  
56 provided for in section 6A of this chapter.

57 SECTION 8. Section 6I of chapter 62 of the General Laws, as appearing in the 2004 Official  
58 Edition is hereby amended by striking subsection (f).

59 SECTION 9. Paragraph (2) of subsection (b) of section 6J of chapter 62 of the General Laws, as  
60 appearing in the 2004 Official Edition is hereby amended by striking subparagraph (ii) and  
61 inserting in place thereof the following subparagraph:-

62 (ii) The credit shall be refundable to the extent provided for in section 6A of this chapter.

63 SECTION 10. Paragraph (2) of subsection (g) of section 6J of chapter 62 of the General Laws,  
64 as appearing in the 2004 Official Edition is hereby amended by striking the phrase “, including  
65 any credit transferred by the taxpayer,” in lines 121 – 122.

66 SECTION 11. Paragraph (3) of subsection (c) of section 31H of chapter 63 of the General Laws,  
67 as appearing in the 2004 Official Edition is hereby amended by striking the phrase “not be

68 refundable” in line 92 and replacing it with the following phrase:- be refundable to the extent  
69 provided for in section 32E of this chapter.

70 SECTION 12. Section 31H of chapter 63 of the General Laws, as appearing in the 2004 Official  
71 Edition is hereby amended by striking subsection (f).

72 SECTION 13. Section 31L of chapter 63 of the General Laws, as added by chapter 144 of the  
73 acts of 2006 is amended by striking subsection (c) and inserting in place thereof the following  
74 subsection:-

75 (c) A medical device company allowed a credit under this section for a taxable year may carry  
76 over and apply to the tax imposed by this chapter in any of the succeeding 5 taxable years, the  
77 portion, as reduced from year to year, of those credits which exceed the tax for the taxable year.  
78 The credit shall be refundable to the extent provided for in section 32E of this chapter.

79 SECTION 14. Chapter 63 of the General Laws, as appearing in the 2004 Official Edition, is  
80 hereby amended by adding the following new section 32E:-

81 32E. Election for Refund of Specified Credits

82 (a) This section shall apply to credits earned under sections 31H, 31L, 38Q; 38R, 38T, of this  
83 chapter. It shall not apply to any other credits.

84 (b) At the written election of a taxpayer entitled to a credit to which this section applies, the  
85 commissioner shall apply the credit against the liability of the taxpayer as determined on its  
86 return, as first reduced by any other available credits, and shall then refund to the taxpayer 80

87 percent of the balance of such credits. An election under this subsection shall preclude any  
88 carryforward of the credit or any portion thereof to future taxable years.

89 (c) The commissioner may require substantiation of a taxpayer's claim for refund under  
90 subsection (b) prior to any such refund or thereafter. No interest shall accrue on such refund  
91 under section 40 of chapter 62C prior to the commissioner's receipt of such substantiation as he  
92 may reasonably request.

93 (d) If a taxpayer does not elect a refundable credit under subsection (b), the credit shall be  
94 applied against the liability of the taxpayer as determined on its return and any balance may be  
95 carried forward and applied, as reduced from year to year, to future taxable years of the taxpayer  
96 to the extent otherwise allowable under this chapter. However, notwithstanding any provisions  
97 of this chapter to the contrary, no such credits shall be transferable to other taxpayers.

98 (e) This section does not limit the availability or transferability of credits allocated or otherwise  
99 earned prior to the effective date of this section.

100 (f) The commissioner shall promulgate such regulations or other written guidance as needed to  
101 implement the provisions of this section. Such guidance shall include transition rules with  
102 regard to credit programs under which credits were previously transferable and shall include  
103 provisions allowing non-profit entities that have earned credits to which this section applies to  
104 receive direct refund of credit amounts pursuant to this section through the filing of such returns  
105 or applications as the commissioner may determine.

106 SECTION 15. Section 38Q of chapter 63 of the General Laws, as added by section 64 of chapter  
107 123 of the acts of 2006 is amended by striking subsection (g) and inserting in place thereof the  
108 following subsection (g):-

109 (g) All or any portion of tax credits issued in accordance with the provisions of this subsection  
110 may be refundable to the extent provided for in section 32E of this chapter.

111 SECTION 16. Subsection (h) of section 38Q of chapter 63 of the General Laws, as added by  
112 section 64 of chapter 123 of the acts of 2006 is hereby amended by striking the phrase “and the  
113 total amount of tax credits transferred, sold, or assigned pursuant to this section in the preceding  
114 fiscal year”

115 SECTION 17. Paragraph (2) of subsection (b) of section 38R of chapter 63 of the General Laws,  
116 as appearing in the 2004 Official Edition is hereby amended by striking subparagraph (ii) and  
117 inserting in place thereof the following subparagraph: -

118 (ii) The credit shall be refundable to the extent provided for in section 32E of this chapter.

119 SECTION 18. Paragraph (2) of subsection (g) of section 38R of chapter 63 of the General Laws,  
120 as appearing in the 2004 Official Edition is hereby amended by striking the phrase “, including  
121 any credit transferred by the taxpayer,” in lines 122 - 123.

122 SECTION 19. Subsection (d) of section 38T of chapter 63 of the General Laws, as added by  
123 section 2 of chapter 158 of the acts of 2005 is amended by striking out the first sentence and  
124 inserting in place thereof the following sentence:- The tax credit shall be taken against the taxes



125 imposed under this chapter and shall be refundable to the extent provided for in section 32E of  
126 this chapter.

127 SECTION 20. Section 38T of chapter 63 of the General Laws, as added by section 2 of chapter  
128 158 of the acts of 2005 is amended by striking out subsection (e).

129 SECTION 21. Sections 1 - 20 shall apply to credits allocated or otherwise earned on or after the  
130 effective date of this Act.