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**Chapter 279. AN ACT RELATIVE TO THE USE OF A CERTAIN PARCEL OF LAND IN THE TOWN OF SHERBORN.**

*Be it enacted, etc., as follows:*

**SECTION 1.** Notwithstanding the provisions of chapter four hundred and twenty-four of the acts of nineteen hundred and seventy-nine, chapter three hundred and thirty-two of the acts of nineteen hundred and eighty-one or chapter four hundred and fifty-six of the acts of nineteen hundred and ninety-one, the town of Sherborn, acting by and through its board of selectmen, is hereby authorized to enter into long term ground leases for up to and including ninety-nine years in order to permit the construction and sale of affordable housing units on the site described in section one of chapter four hundred and twenty-four of the acts of nineteen hundred and seventy-nine.

**SECTION 2.** In carrying out any of the activities authorized by this act, including the leasing of the site to a nonprofit development corporation created for the purpose of providing affordable housing, the subleasing of the site by such corporation on terms it deems appropriate, and the construction and operation of affordable housing by such corporation, the provisions relating to the competitive bidding process set forth in sections thirty-eight A½ to thirty-eight O, inclusive, of chapter seven, section thirty-nine M of chapter thirty, chapter thirty B or sections forty-four A to forty-four J, inclusive, of chapter one hundred and forty-nine of the General Laws or in any other law or by-law shall not apply.

**SECTION 3.** This act shall take effect upon its passage.

*The foregoing was laid before the Governor on the fifteenth day of November, 1995 and after ten days had the force of law as prescribed by the Constitution as it was not returned by him to the branch in which it originated with his objections thereto within that time.*

**Chapter 280. AN ACT RELATIVE TO JOB RETENTION AND ECONOMIC EXPANSION IN THE COMMONWEALTH.**

*Be it enacted, etc., as follows:*

**SECTION 1.** Section 38 of chapter 63 of the General Laws, as appearing in the 1994 Official Edition, is hereby amended by striking out subsection (c) and inserting in place thereof the following subsection:-

(c) If a corporation, other than a defense corporation or a manufacturing corporation as defined under subsections (k) and (l) respectively, has income from business activity which is taxable both within and without this commonwealth, its taxable net income, determined under the provisions of subsection (a), shall be apportioned to this commonwealth by multiplying its taxable net income, determined under the provisions of said subsection (a), by a fraction, the numerator of which is the property factor plus the payroll factor plus twice times the sales factor, and the denominator of which is four.

**SECTION 2.** Said section 38 of said chapter 63, as so appearing, is hereby further amended by adding the following two subsections:-

(k) (1) As used in this section, the following words shall, unless the context otherwise requires, have the following meaning:

"Base period property level", the average value of all the corporation's real and tangible personal property, owned or rented, and used in this commonwealth, as computed under subsection (d), for the corporation's taxable year immediately preceding its first taxable year beginning on or after January first, nineteen hundred and ninety-six, as adjusted to include only real and tangible personal property actively used by the corporation in the conduct of a trade or business on the first day of the immediately succeeding taxable year.

"Base period payroll level", the total amount paid in this commonwealth for compensation, as computed under subsection (e), excluding amounts paid or attributable to the ten most highly compensated officers or employees, for the corporation's taxable year immediately preceding its first taxable year beginning on or after January first, nineteen hundred and ninety-six, as adjusted to include only compensation paid during such taxable year to individuals who are actively employed by the corporation on the first day of the immediately succeeding taxable year.

"Defense corporation", a domestic or foreign corporation which, during the sixty month period ending on December thirty-first, nineteen hundred and ninety-five, has derived more than fifty percent of its total gross receipts from the manufacture of tangible personal property for sale directly or, in the case of a subcontractor, indirectly, to the Department of Defense or any branch of the Armed Forces of the United States.

"Property level", the average value of all the corporation's real and tangible personal property owned or rented and used in this commonwealth for the corporation's taxable year, as computed under subsection (d).

"Payroll level", the total amount paid in this commonwealth for compensation for the corporation's taxable year, as computed under subsection (e), excluding amounts paid or attributable to the ten most highly compensated officers or employees.

(2) For any taxable year beginning on or after January first, nineteen hundred and ninety-six but before January first, two thousand, a domestic or foreign defense corporation may, if required to apportion its taxable net income pursuant to subsection (l), elect to have such apportionment determined solely by use of the sales factor. A defense corporation must apportion its income pursuant to said subsection (l) if the denominator of the sales factor is less than ten percent of the taxable net income or it is otherwise determined to be insignificant in producing income. A defense corporation's ability to apportion its taxable net income solely by use of the sales factor shall be reduced to the extent set forth in paragraph (3).

(3) If for any taxable year beginning on or after January first, nineteen hundred and ninety-six but before January first, two thousand, such corporation's property level is less than ninety percent of the base period property level or its payroll level is less than ninety percent of the base period payroll level, the corporation shall instead be required to apportion its taxable net income for such taxable year to the commonwealth in accordance with sub-

section (l); provided, however, that any reduction in the property level or payroll level for any taxable year that is demonstrated to be attributable to a net reduction in business in this commonwealth under contracts with any branch of the Armed Forces of the United States or with any military or defense agency of a foreign government not resulting from transfers of contract work to facilities of the corporation in other states shall not be taken into account in determining whether the property or payroll level for such taxable year is less than ninety percent of the comparable base period level.

(4) The commissioner of revenue shall promulgate rules and regulations implementing the provisions of this subsection.

(5) For the purposes of determining compliance with the provisions of paragraphs (2), (3) and (4) of subsection (k), each defense corporation with more than twenty-five employees, as part of its tax return for each taxable year, shall submit a report, whose form and substance shall be determined by the commissioner of revenue, that describes for each taxable year as of the last day of such taxable year the following:

(1) the number, nature and wages of jobs added or lost in the commonwealth and worldwide from the previous taxable year;

(2) the number of contracts with the Armed Forces of the United States or a foreign government for which a bid was (a) submitted, (b) awarded or (c) lost during the taxable year;

(3) the number of contracts with the Armed Forces of the United States or with foreign governments that were terminated during the taxable year;

(4) the nature and amount of any change in the property factor during the taxable year;

(5) the nature and amount of any change in the payroll factor in the taxable year;

(6) the dollar amount of revenue foregone by the adoption and utilization of the single sales factor pursuant to this section as compared to the apportionment method in effect for the first taxable year beginning on or after January first, nineteen hundred and ninety-five;

(7) volume of sales;

(8) taxable income;

(9) book value of plant, land and equipment;

(10) net capital investments;

(11) net assets;

(12) capacity utilization; and

(13) debts, itemized by the following categories:

(i) loans; and

(ii) mortgages.

The commissioner of revenue shall annually prepare a report utilizing the information received in this paragraph and other sources describing and evaluating the impact, if any, of the utilization of the single sales factor only upon the defense industry. Said report shall contain only cumulative information for the entire defense industry.

(l) (1) As used in this section, the following words shall, unless the context other-

wise requires, have the following meaning:

"Manufacturing corporation", a domestic or foreign corporation that is engaged in manufacturing. In order to be engaged in manufacturing, the corporation must be engaged, in substantial part, in transforming raw or finished physical materials by hand or machinery, and through human skill and knowledge, into a new product possessing a new name, nature and adapted to a new use.

A domestic or foreign manufacturing corporation's activities will be considered to be substantial if any one of the following five tests are met:

1. twenty-five percent or more of its gross receipts are derived from the sale of manufactured goods that it manufactures;
2. twenty-five percent or more of its payroll is paid to employees working in its manufacturing operations and fifteen percent or more of its gross receipts are derived from the sale of manufactured goods that it manufactures;
3. twenty-five percent or more of its tangible property is used in its manufacturing operations and fifteen percent or more of its gross receipts are derived from the sale of manufactured goods that it manufactures;
4. thirty-five percent or more of its tangible property is used in its manufacturing operations; or
5. the corporation's manufacturing activities are deemed substantial under relevant regulations promulgated by the commissioner.

In determining whether a process constitutes manufacturing, the commissioner will examine the facts and circumstances of each case.

For the purposes of this section, a corporation which apportions its income pursuant to subsection (k) is not a manufacturing corporation.

(2) If a manufacturing corporation, as defined in paragraph (1), has income from business activity which is taxable both within and without this commonwealth, its taxable net income, determined under the provisions of subsection (a), shall not be apportioned pursuant to the percentage that results from the three-factor formula set forth in subsection (c) but, instead, shall be apportioned by multiplying its taxable net income, determined under the provisions of subsection (a), by the resulting percentage as determined in the following formulas:

(i) For taxable years beginning on or after January first, nineteen hundred and ninety-six but before January first, nineteen hundred and ninety-seven, twenty percent of the property factor plus twenty percent of the payroll factor plus sixty percent of the sales factor.

(ii) For taxable years beginning on or after January first, nineteen hundred and ninety-seven but before January first, nineteen hundred and ninety-eight, fifteen percent of the property factor plus fifteen percent of the payroll factor plus seventy percent of the sales factor.

(iii) For taxable years beginning on or after January first, nineteen hundred and ninety-eight but before January first, nineteen hundred and ninety-nine, ten percent of the property factor plus ten percent of the payroll factor plus eighty percent of the sales factor.

(iv) For taxable years beginning on or after January first, nineteen hundred and

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ninety-nine but before January first, two thousand, five percent of the property factor plus five percent of the payroll factor plus ninety percent of the sales factor.

(v) For taxable years beginning on or after January first, two thousand, one hundred percent of the sales factor.

(3) Each manufacturing corporation with more than twenty-five employees, apportioning its income in accordance with the provisions of this subsection, as part of its tax return for each year, shall submit a report, whose form and substance shall be determined by the commissioner of revenue, that describes for each taxable year as of the last day of such taxable year the following:

(1) the number, nature and wages of jobs added or lost in the commonwealth and worldwide from the previous taxable year;

(2) the nature and amount of any change in the property factor during the taxable year;

(3) the nature and amount of any change in the payroll factor in the taxable year;

(4) the dollar amount of revenue foregone by the increased weighting of the sales factor pursuant to this section as compared to the apportionment method in effect for the first taxable year beginning on or after January first, nineteen hundred and ninety-five;

(5) volume of sales;

(6) taxable income;

(7) book value of plant, land and equipment;

(8) net capital investments;

(9) net assets;

(10) capacity utilization; and

(11) debts, itemized by the following categories:

(i) loans; and

(ii) mortgages.

The commissioner of revenue shall annually prepare a comprehensive report utilizing the information received in this paragraph and other sources describing and evaluating the impact, if any, of the utilization of the increased weighting of the sales factor upon the manufacturing industry. Said report shall contain only cumulative information for the entire manufacturing industry.

**SECTION 3.** Section 38M of said chapter 63, as so appearing, is hereby amended by adding the following subsection:-

(i) (1) The credit allowed by this section, at the election of the taxpayer in accordance with regulations promulgated by the commissioner of revenue, may be applied separately with respect to (A) the qualified research expenses and the gross receipts of the taxpayer attributable to defense related activities; and (B) the qualified research expenses and the gross receipts of the taxpayer attributable to other activities.

(2) For purposes of this subsection, defense related activities shall mean any activity carried out in this commonwealth, relating to the business of researching, developing and producing for sale pursuant to a contract or subcontract thereof, of:

(A) any arm, ammunition, or implement of war designated in the munitions list pub-

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lished pursuant to section 38 of the Arms Export Act, 22 U.S.C. 2778, but only to the extent that such property is specifically designed, modified, or equipped for military purposes, or (B) equipment for the National Aeronautics and Space Administration.

(3) This subsection shall apply to taxable years beginning on or after January first, nineteen hundred and ninety-five.

Approved November 28, 1995.

**Chapter 281. AN ACT RELATIVE TO BUSINESS ORGANIZATIONS IN THE COMMONWEALTH.**

*Be it enacted, etc., as follows:*

**SECTION 1.** The first paragraph of section 17 of chapter 62 of the General Laws, as appearing in the 1994 Official Edition, is hereby amended by adding the following sentence:- A limited liability company formed under chapter one hundred and fifty-six C or a foreign limited liability company as defined in section two of chapter one hundred and fifty-six C shall be deemed to be a partnership if it is classified for the taxable year as a partnership for federal income tax purposes.

**SECTION 2.** Section 30 of chapter 63 of the General Laws is hereby amended by inserting after the word "sixty-seven H", in line 16, as so appearing, the following words:- , or a limited liability company formed under chapter one hundred and fifty-six C which is not classified for the taxable year as a partnership for federal income tax purposes.

**SECTION 3.** Said section 30 of said chapter 63 is hereby amended by inserting after the words "section two", inserted by section 5 of chapter 81 of the acts of 1995, the following words:- ; provided, further, that said terms shall apply to a foreign limited liability company as defined in section two of chapter one hundred and fifty-six C, which is not classified for the taxable year as a partnership for federal income tax purposes.

**SECTION 4.** Section 1 of chapter 108A of the General Laws, as appearing in the 1994 Official Edition, is hereby amended by striking out the definition of "Real Property" and inserting in place thereof the following three definitions:-

"Foreign registered limited liability partnership", a registered limited liability partnership or a limited liability partnership formed pursuant to an agreement governed by the laws of another jurisdiction.

"Real property", includes land or any interest or estate in land.

"Registered limited liability partnership", a partnership registered under section forty-five and complying with section forty-six.

**SECTION 5.** Section 6 of said chapter 108A, as so appearing, is hereby amended by inserting after the word "profit", in line 2, the following words:- and includes, for all purposes of the laws of the commonwealth, a registered limited liability partnership.

**SECTION 6.** Section 15 of said chapter 108A, as so appearing, is hereby amended by striking out, in line 1, the word "All" and inserting in place thereof the following words:-