

By Mr. Jajuga, a petition (accompanied by bill, Senate, No. 1484) of James P. Jajuga, John D. O'Brien, Brian S. Dempsey, M. Paul Iannuccillo and Arthur J. Broadhurst for legislation to extend existing economic incentives to businesses rebuilding in the Commonwealth after a disaster. Taxation.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Ninety-Seven.

AN ACT EXTENDING EXISTING ECONOMIC INCENTIVES TO BUSINESSES  
REBUILDING IN THE COMMONWEALTH AFTER A DISASTER.

*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. Section 38N of chapter 63 of the General Laws,  
2 as added by chapter 19 of the Acts of 1993, is hereby amended by  
3 inserting after subsection (g) of said section the following new  
4 sections:—

5 (h) In the case of a corporation which has, within the prior five  
6 tax years, suffered a casualty, and solely for the purposes of calcu-  
7 lating the credit authorized by this section, (1) in the case of quali-  
8 fying property which replaces property which, under terms of  
9 Section 1033(a) of the Federal Internal Revenue Code, was invol-  
10 untarily converted, and notwithstanding the provisions of Section  
11 1033(b) of the Federal Internal Revenue Code, the cost or other  
12 basis of such property shall be determined without any adjustment  
13 pursuant to such Section 1033(b); and (2) the cost of property  
14 which qualifies for the credit authorized by this section 38N shall  
15 include all costs that (i) have been incurred since the date of said  
16 casualty; and (ii) are for property that is used exclusively in a cer-  
17 tified project.

18 (i) Notwithstanding any provision of law to the contrary, a cor-  
19 poration (in this section, the "transferor") entitled to a credit under  
20 this section may sell, assign, exchange, convey or otherwise  
21 transfer (all of the foregoing actions are referred to in this section  
22 as "transfer") such credit to any party or parties (in this section  
23 "transferee"), provided that the transferor continues to satisfy the

24 requirements of this section with respect to the use and ownership  
25 of the qualifying property with respect to which the credit is  
26 allowed; and provided that the transferor certifies to the commis-  
27 sioner, concurrently with the submission of its tax return with  
28 respect to the tax year in which such transfer occurred, the amount  
29 of credits so transferred and the name and taxpayer number of any  
30 transferee. In the event of any recapture under subsection (e) of  
31 section 31A of this chapter of any portion of the credit authorized  
32 by this section, the transferor shall be solely liable for any addi-  
33 tional taxes due as a result of such recapture. In event that, after  
34 an examination of the returns and the books, papers, records and  
35 other data of the transferor, the commissioner determines that the  
36 amount of the credit so transferred exceeds the amount of the  
37 credit to which the transferor was entitled under this section, such  
38 excess amount shall be assessed solely against transferor and the  
39 transferor shall be solely liable for any such additional taxes,  
40 penalties and interest so assessed. Nothing herein shall limit any  
41 right the transferor may otherwise have to seek an abatement of  
42 any amount so assessed.

43 Neither the amount received as consideration for credits trans-  
44 ferred under this section nor the amount by which the nominal  
45 value of such transferred credits exceeds the amount of such con-  
46 sideration shall be taxable as income under this chapter or chapter 62  
47 of the General Laws. A transfer of credits pursuant to this section  
48 shall not alter the entitlement to or the allocation or attribution to  
49 any party of any item of income, gain, loss, deduction or credit  
50 other than (i) credits transferred pursuant hereto and (ii) any taxes,  
51 penalties or interest due as a result of a recapture of such credit or  
52 any assessment against the transferor as provided herein.

53 With respect to any transferee, the credit so transferred shall be  
54 a credit pursuant to this section 38N against the excise imposed by  
55 this chapter; if such transferee is subject to tax under chapter 62,  
56 the credit so transferred shall be a credit under subsection (g) of  
57 section 6 of chapter 62.

1 SECTION 2. Subsection (i) of section 31A of chapter 63 of the  
2 General Laws, as added by chapter 19 of the Acts of 1993 and as  
3 most recently amended by chapter 60 of the Acts of 1994, is  
4 hereby amended by adding at the end of such subsection the  
5 following new paragraphs:—



6 In the case of a corporation which has, within the prior five tax  
7 years, suffered a casualty, and solely for the purposes of calcu-  
8 lating the credit authorized by this subsection (i), in the case of  
9 qualifying property which replaces property which, under terms of  
10 Section 1033(a) of the Federal Internal Revenue Code, was invol-  
11 untarily converted, and notwithstanding the provisions of Section  
12 1033(b) of the Federal Internal Revenue Code, the cost or other  
13 basis of such property shall be determined without any adjustment  
14 pursuant to such Section 1033(b).

15 Notwithstanding any provision of law to the contrary, such cor-  
16 poration (in this subsection, the "transferor") entitled to a credit  
17 under this section may sell, assign, exchange, convey or otherwise  
18 transfer (all of the foregoing actions are referred to in this section  
19 as "transfer") such credit to any party or parties (in this section  
20 "transferee"), provided that the transferor continues to satisfy the  
21 requirements of this section with respect to the use and ownership  
22 of the qualifying property with respect to which the credit is  
23 allowed; and provided that the transferor certifies to the commis-  
24 sioner at the time of the transfer the amount of credits so trans-  
25 ferred and the name of and taxpayer number of any transferee. In  
26 the event of any recapture under subsection (e) of this section of  
27 any portion of the credit authorized by this subsection, the trans-  
28 feror shall be solely liable for any additional taxes due as a result  
29 of such recapture. In event that, after an examination of the  
30 returns and the books, papers, records and other data of the trans-  
31 feror, the commissioner determines that the amount of the credit  
32 so transferred exceeds the amount of the credit to which the trans-  
33 feror was entitled under this section, such excess amount shall be  
34 assessed solely against transferor and the transferor shall be solely  
35 liable for any such additional taxes, penalties and interest so  
36 assessed. Nothing herein shall limit any right the transferor may  
37 otherwise have to seek an abatement of any amount so assessed.

38 Neither the amount received as consideration for credits trans-  
39 ferred under this subsection nor the amount by which the nominal  
40 value of such transferred credits exceeds the amount of such con-  
41 sideration shall be taxable as income under this chapter or chapter 62  
42 of the General Laws. A transfer of credits pursuant to this subsec-  
43 tion shall not alter the entitlement to or the allocation or attribu-  
44 tion to any party of any item of income, gain, loss, deduction or

45 credit other than (i) credits transferred pursuant hereto and (ii) any  
46 taxes, penalties or interest due as a result of a recapture of such  
47 credit or any assessment against the transferor as provided herein.

48 With respect to any transferee, the credit so transferred shall be  
49 a credit pursuant to this subsection against the excise imposed by  
50 this chapter; if such transferee is subject to tax under chapter 62,  
51 the credit so transferred shall be a credit under subsection (g) of  
52 section 6 of chapter 62.