

By Mr. Dempsey of Haverhill, petition of the Associated Industries of Massachusetts, Linda J. Melconian and other members of the General Court relative to extending the investment tax credit to leased equipment. Taxation.

**The Commonwealth of Massachusetts**

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

AN ACT EXTENDING THE INVESTMENT TAX CREDIT TO LEASED EQUIPMENT.

*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 (a) of section 31A of Chapter 63 of  
2 the General Laws, as appearing in the 1994 Official Edition, is  
3 hereby amended by striking out the second paragraph and  
4 inserting in place thereof the following paragraph:—

5 A manufacturing corporation, or a business corporation  
6 engaged primarily in research and development, which has been  
7 deemed to be such under section thirty-eight C or forty-two B, or  
8 a corporation primarily engaged in agriculture or commercial  
9 fishing, shall be allowed a credit against its excise due under this  
10 chapter for tangible personal property leased pursuant to an oper-  
11 ating lease as hereinafter provided. The amount of such credit  
12 afforded to a lessee corporation with respect to such tangible per-  
13 sonal property shall be one percent of the lessor's adjusted basis  
14 in the property for federal income tax purposes at the beginning of  
15 the lease term. When determining adjusted basis, useful life shall  
16 be the same as that used by the lessor for Internal Revenue Code  
17 section 168(b) depreciation purposes, using the straight line  
18 method of depreciation with a half-year convention. An operating  
19 lease shall be any contract or agreement to lease or rent or for a  
20 license to use such property provided that (i) said lease does not  
21 constitute a purchase, (ii) such property is not taxable under  
22 chapter sixty A, (iii) such property is used by the lessee corpora-  
23 tion in the commonwealth, (iv) such property is situated in the

24 commonwealth on the last day of the taxable year, and (v) such  
25 property (1) is depreciable by the lessor under section one hundred  
26 and sixty-seven of said Code and has a useful life of four years or  
27 more, or (2) is considered recovery property under section one hun-  
28 dred sixty-eight of said Code. The commissioner shall by regula-  
29 tion require such documentation of the lessor and lessee as to  
30 substantiate the credit claimed by this section.

1 SECTION 2. Section 31A of said Chapter 63 of the General  
2 Laws, as so appearing is hereby further amended by striking out  
3 paragraph (e) and inserting in place thereof the following  
4 paragraph:—

5 (e) With respect to property which is disposed of or ceases to  
6 be in qualified use prior to the end of the taxable year in which the  
7 credit is to be taken, the amount of the credit shall be that portion  
8 of the credit provided for in paragraph (a) which represents the  
9 ratio which the months of qualified use bear to the months of  
10 useful life. If property on which credit has been taken is disposed  
11 of or ceases to be in qualified use prior to the end of its useful life  
12 the difference between the credit taken and the credit allowed for  
13 actual use must be added back as additional taxes due in the year  
14 of disposition; provided, however, if such property is disposed of  
15 or ceases to be in qualified use after it has been in qualified use  
16 for more than twelve consecutive years, it shall not be necessary  
17 to add back the credit, as provided in this paragraph. The amount  
18 of credit allowed for actual use shall be determined by multiplying  
19 the original credit by the ratio which the months of qualified use  
20 bear to the months of useful life. For the purposes of this para-  
21 graph, useful life of property shall be the same as that used by the  
22 corporation for depreciation purposes when computing federal  
23 income tax liability. For purposes of this section, leased property  
24 is disposed of or ceases to be in qualified use when the property is  
25 removed from Massachusetts, the lease term expires or the lease is  
26 terminated by the lessor lessee. When leased property is disposed  
27 of or ceases to be in qualified use, the difference between the  
28 credit taken and the credit allowed for actual use must be added  
29 back as additional taxes due in the year of disposition by the  
30 lessee in accordance with the provisions of this section.

1 SECTION 3. Subsection (i) of said section 31A of said  
2 Chapter 63 as so appearing, is hereby further amended by striking  
3 out the second paragraph and inserting in place thereof the  
4 following paragraph:—

5 A manufacturing corporation, or a business corporation  
6 engaged primarily in research and development, which has been  
7 deemed to be such under section thirty-eight C or forty-two B, or  
8 a corporation primarily engaged in agriculture or commercial  
9 fishing, shall be allowed a credit against its excise due under this  
10 chapter for tangible personal property leased pursuant to an oper-  
11 ating lease as hereinafter provided. The amount of such credit  
12 afforded to a lessee corporation with respect to such tangible per-  
13 sonal property shall be three percent of the lessor's adjusted basis  
14 in the property for federal income tax purposes at the beginning of  
15 the lease term. When determining adjusted basis, useful life shall  
16 be the same as that used by the lessor for Internal Revenue Code  
17 section 168(b) depreciation purposes using the straight line  
18 method with a half-year convention. An operating lease shall be  
19 any contract or agreement to lease or rent or for a license to use  
20 such property provided that (i) said lease does not constitute a  
21 purchase, (ii) such property is not taxable under chapter sixty A,  
22 (iii) such property is used by the lessee corporation in the com-  
23 monwealth, (iv) such property is situated in the commonwealth,  
24 on the last day of the taxable year, and (v) such property (1) is  
25 depreciable by the lessor under section one hundred and sixty-  
26 seven of said Code and has a useful life of four years or more, or  
27 (2) is considered recovery property under section one hundred  
28 sixty-eight of said Code. The commissioner shall by regulation  
29 require such documentation of the lessor and lessee as to substan-  
30 tiate the credit claimed by this section.

