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of such parking lot. Said land to be incorporated into the existing municipal parking lot is bounded and described as follows:

Beginning at the southwest corner of the new parking area which extends into the existing Town Green. This point is located approximately 46 feet north of the northerly curb line of Beacon Street and approximately 104 feet east of the easterly curb line of Centre Street;

Thence running in an northerly direction approximately 212 feet;

Thence running in an easterly direction approximately 15 feet;

Thence running in an southerly direction approximately 212 feet;

Thence running in a westerly direction approximately 20 feet to the point of beginning.

This parcel contains 3,710 square feet of land more or less.

SECTION 2. This act shall take effect upon its passage.

Approved July 26, 1988.

Chapter 202. AN ACT RELATIVE TO CERTAIN REVENUES OF THE COMMONWEALTH.

Be it enacted, etc., as follows:

SECTION 1. Section 1 of chapter 62 of the General Laws is hereby amended by striking out paragraph (e), as amended by section 2 of chapter 106 of the acts of 1988, and inserting in place thereof the following paragraph:-

(e) "Dividend", any item of federal gross income which is treated as a dividend under the provisions of the Code; or with respect to a federal S corporation treated as a C corporation or corporate trust under this chapter and chapter sixty-three, and any item of federal gross income which, but for Subchapter S of the Code, would be treated as a dividend under the Code.

SECTION 2. Paragraph (1) of subsection (a) of section 2 of said chapter 62, as amended by section 5 of said chapter 106, is hereby further amended by inserting after subparagraph (D) the following subparagraph:-

(E) Amounts excluded under Subchapter S of the Code with respect to a federal S corporation treated as a C corporation or corporate trust under this chapter and chapter sixty-three.

SECTION 3. Paragraph (2) of said subsection (a) of section 2 of said chapter 62, as appearing in the 1986 Official Edition, is hereby amended by inserting after subparagraph (A) the following subparagraph:-

(B) Amounts included under Subchapter S of the Code with respect to a federal S corporation treated as a C corporation or corporate trust under this chapter and chapter sixty-three.

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SECTION 4. Paragraph (1) of subsection (d) of said section 2 of said chapter 62, as appearing in section 8 of chapter 106 of the acts of 1988, is hereby amended by adding the following subparagraph:-

(J) Any deduction allowed by Subchapter S of the Code with respect to a federal S corporation treated as a C corporation or corporate trust under this chapter and chapter sixty-three.

SECTION 5. The first sentence of paragraph (b) of section 8 of said chapter 62, as amended by section 12 of said chapter 106, is hereby further amended by striking out clause (v) and inserting in place thereof the following clause:- (v) has elected to be an S corporation, as defined in section thirteen hundred and sixty-one of the Code, for federal income tax purposes for the taxable year and is qualified as a Massachusetts S corporation under this chapter; provided, however, to the extent that income is taxable at the entity level under the Code such income shall also be so taxable to the corporate trust.

SECTION 6. Section 17A of said chapter 62, as appearing in the 1986 Official Edition, is hereby amended by adding the following subsection:-

(e) The provisions of this section shall only apply to shareholders of an S corporation, as so defined, which has total receipts for the taxable year of less than six million dollars. An S corporation, as so defined, with total receipts of six million dollars or more for the taxable year shall be taxed as a C corporation under section thirty-two or thirty-nine of chapter sixty-three and the shareholders thereof shall be taxed under this chapter as if such corporation were a C corporation for federal income tax purposes. Where an S corporation, as so defined, is a corporate trust under this chapter with total receipts of six million dollars or more for the taxable year, such corporate trust and the beneficiaries thereof shall be taxed under this chapter as if it were a C corporation for federal income tax purposes. The commissioner shall, by regulation, apply the six million dollar limitation to corporations or corporate trusts which may intermittently exceed such limit but which have average annual total receipts below such limit over a longer period of time; and shall, by regulation, apply such limitation on an aggregate basis to S corporations engaged in a unitary business and with majority stock ownership by common stockholders. The phrase "total receipts", as used in this subsection, means gross receipts or sales, less returns and allowances, and includes dividends, interest, royalties, net capital gains, rental income and all other income. The cost of goods sold or the cost of operations shall not be deductible in determining such total receipts.

SECTION 7. Section 24 of chapter 62C of the General Laws, as so appearing, is hereby amended by adding the following paragraph:-

If the books, papers, records, and other data of the taxpayer are so voluminous as to make a complete audit thereof impractical and inefficient, the commissioner may use such statistical sample methods in conducting such audit as may be agreed to by the parties and project the audit findings derived therefrom over the entire audit period to

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determine the proper tax. If, after a good faith effort, the parties cannot reach such an agreement, the commissioner may utilize such statistical sample methods which he deems appropriate and which comply with the provisions of the Internal Revenue Code.

SECTION 8. Section 26 of said chapter 62C, as so appearing, is hereby amended by adding the following two subsections:-

(h) Except as otherwise provided in subsection (d), in the case of a return filed pursuant to section six or eleven, if the taxpayer omits from gross income an amount properly includible therein which is in excess of twenty-five per cent of the amount of gross income stated in the return, the tax may be assessed at any time within six years after the return was filed. For purposes of this subsection, in the case of a trade or business, the term "gross income" shall mean the total of the amounts received or accrued from the sale of goods or services, if such amounts are required to be shown on the return, prior to diminution by the cost of such sales or services. In determining the amount omitted from gross income, there shall not be taken into account any amount which is omitted from gross income stated in the return if such amount is disclosed on the return, or in a statement attached to the return, in a manner adequate to apprise the commissioner of the nature and amount of such item.

(i) Except as otherwise provided in subsection (d), in the case of a return filed pursuant to the provisions of sections twelve, fourteen or sixteen, if the return omits an amount of such tax properly includible thereon which exceeds twenty-five per cent of the amount of such tax reported thereon, the tax may be assessed at any time within six years after the return is filed. In determining the amount of tax omitted on a return, there shall not be taken into account any amount of tax which is omitted from the return if the transaction giving rise to such tax is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the commissioner of the existence and nature of such item.

SECTION 9. Clause (b) of paragraph 5 of section 30 of chapter 63 of the General Laws, as so appearing, is hereby amended by inserting after the word "year", in line 51, the words:- ; provided, however, that any deduction otherwise allowable which is allocable, in whole or in part, to one or more classes of income not included in a corporation's taxable net income, as determined under subsection (a) of section thirty-eight, shall not be allowed. In lieu of disallowing any deduction allocable, in whole or in part, to dividends not included in a corporation's taxable net income, five per cent of such dividends shall be includable therein, as provided in said subsection (a) of said section thirty-eight.

SECTION 10. Said clause (b) of said paragraph 5 of said section 30 of said chapter 63, as so appearing, is hereby further amended by striking out subclause (ii) and inserting in place thereof the following subclause:-

(ii) losses sustained in other taxable years; provided, however, that net operating losses as defined in section one hundred and seventy-two

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of the federal Internal Revenue Code as amended and in effect for the taxable year of the losses which are sustained in taxable years ending on or after December thirty-first, nineteen hundred and eighty-nine, shall be allowed; provided, further, that such deduction shall be limited to a percentage of the net income for the taxable year as follows: twenty-five per cent of net income for taxable years ending on or after December thirty-first, nineteen hundred and ninety, and before December thirty-first, nineteen hundred and ninety-one; fifty per cent of net income for taxable years ending on or after December thirty-first, nineteen hundred and ninety-one, and before December thirty-first, nineteen hundred and ninety-two; seventy-five per cent of net income for taxable years ending on or after December thirty-first, nineteen hundred and ninety-two, and before December thirty-first, nineteen hundred and ninety-three; and one hundred per cent of net income for taxable years ending on and after December thirty-first, nineteen hundred and ninety-three. Losses sustained in any taxable year may be carried forward for not more than five years and may not be carried back.

For the first five consecutive taxable years of a corporation, measured from the date of its organization whether or not organized under the laws of the commonwealth, so much of the loss as determined under section one hundred and seventy-two of the Federal Internal Revenue Code, as amended and in effect for the taxable year, as is represented by net operating loss carryovers for taxable years ending December thirty-first, nineteen hundred and seventy-five, and thereafter shall be deducted; provided, however, that such carryover losses shall not be allowed to any corporation fifty per cent or more of whose voting stock is owned by another corporation whether or not such owning corporation is taxable in this commonwealth; and provided, further, that in the case of a foreign corporation losses incurred before such corporation becomes subject to tax liability in this commonwealth shall not be allowed and.

SECTION 11. Paragraph 9 of said section 30 of said chapter 63, as so appearing, is hereby amended by adding the following sentence:- For the purpose of this paragraph, "advances" shall mean such interests in a corporation where a corporation-shareholder relationship exists, determined under such regulations as the commissioner may issue and under the provisions of section three hundred and eighty-five of the Federal Internal Revenue Code as amended and in effect for the taxable year and the regulations issued thereunder.

SECTION 12. Paragraph (a) of section 31A of said chapter 63, as so appearing, is hereby amended by inserting after the word "year", in line 14, the words:- is not taxable under chapter sixty A.

SECTION 13. Said section 31A of said chapter 63, as so appearing, is hereby amended by adding the following paragraph:-

(h) Any corporation entitled to a credit for any taxable year under

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this section shall apply it only to its excise for any of the eligible taxable years. Such credit may not be applied against the excise liability of any other corporation pursuant to an election under the provisions of section thirty-two B.

SECTION 14. Section 32 of said chapter 63, as so appearing, is hereby amended by striking out subsection (b) and inserting in place thereof the following subsection:-

(b) Four hundred dollars.

SECTION 15. Section 32B of said chapter 63, as so appearing, is hereby amended by adding the following two paragraphs:-

Where such election is made, each and every member of the consolidated group subject to taxation under section thirty-two or thirty-nine shall be included in such return of combined net income. The combined net income shall be determined as follows: (a) the taxable net income of each such corporation apportioned to this commonwealth pursuant to the provisions of section thirty-eight shall first be separately determined; and (b) the taxable net income of each such corporation, as so determined, shall then be added together and shall constitute their combined net income taxable under this chapter.

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

SECTION 16. Section 32D of said chapter 63, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following three sentences:- Any domestic business corporation or foreign corporation subject to tax under section thirty-two or thirty-nine, which is an S corporation, as defined under section thirteen hundred and sixty-one of the Federal Internal Revenue Code, as amended and in effect for the taxable year, for federal income tax purposes for any taxable year and which has total receipts for such taxable year of less than six million dollars, shall determine the net income measure of the excise imposed under section thirty-two or thirty-nine by taking into account the provisions of Subchapter S of said Code. The phrase "total receipts", as used in this section, means gross receipts or sales, less returns and allowances, and includes dividends, interest, royalties, net capital gains, rental income and all other income. The cost of goods sold or the cost of operations shall not be

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deductible in determining such total receipts.

SECTION 17. Subsection (a) of section 38 of said chapter 63, as so appearing, is hereby amended by striking out clause (1) and inserting in place thereof the following clause:-

(1) Ninety-five per cent of dividends, exclusive of distributions in liquidation, included therein shall be deducted other than dividends from or on account of the ownership of:.

SECTION 18. Section 39 of said chapter 63, as so appearing, is hereby amended by striking out subsection (b) and inserting in place thereof the following subsection:-

(b) Four hundred dollars.

SECTION 19. Paragraph (5) of section 1 of chapter 64H of the General Laws, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- "Engaged in business in the commonwealth", having a business location in the commonwealth; regularly or systematically soliciting orders for the sale of tangible personal property for delivery to destinations in the commonwealth or otherwise exploiting the retail sales market in the commonwealth through any means whatsoever, including, but not limited to, salesmen, solicitors or representatives in the commonwealth, catalogs or other solicitation materials sent through the mails or otherwise, billboards, advertising or solicitations in newspapers, magazines, radio or television broadcasts, computer networks or in any other communications medium; or regularly engaged in the delivery of property in the commonwealth.

SECTION 20. Section 2B of chapter 85 of the General Laws, as so appearing, is hereby amended by striking out, in line 9, the word "twenty" and inserting in place thereof the word:- thirty-five.

SECTION 21. Section 8 of chapter 89 of the General Laws, as so appearing, is hereby amended by striking out, in line 45, the word "twenty" and inserting in place thereof the word:- thirty-five.

SECTION 22. Section 1B of chapter 90 of the General Laws, as so appearing, is hereby amended by adding the following two paragraphs:-

Every person operating a motorized bicycle or riding as a passenger on a motorized bicycle shall wear protective headgear conforming with such minimum standards of construction and performance as the registrar may prescribe, and no person operating a motorized bicycle shall permit any other person to ride a passenger on such motorized bicycle unless such passenger is wearing such protective headgear.

A person convicted of a violation this section shall be punished by a fine of not more than twenty-five dollars for the first offense, not less than twenty-five nor more than fifty dollars for a second offense, and not less than fifty nor more than one hundred dollars for subsequent

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offenses committed.

SECTION 23. Section 14B of said chapter 90, as so appearing, is hereby amended by striking out the last paragraph and inserting in place thereof the following paragraph:-

Whoever violates any provision of this section shall be punished by a fine of not less than twenty-five dollars for each offense.

SECTION 24. The first paragraph of section 20 of said chapter 90 is hereby amended by striking out, in lines 4 to 7, inclusive, as so appearing, the words "not more than twenty-five dollars for the first offense, not less than twenty-five nor more than fifty dollars for a second offense, and not less than fifty nor more than one hundred dollars for subsequent offenses" and inserting in place thereof the words:- not more than thirty-five dollars for the first offense, not less than thirty-five nor more than seventy-five dollars for a second offense, and not less than seventy-five nor more than one hundred and fifty dollars for subsequent offenses,- by striking out in line 23, the word "thirty" and inserting in place thereof the word:- forty,- and by striking out, in line 30, the word "sixty" and inserting in place thereof the word:- eighty.

SECTION 25. Said section 20 of said chapter 90, as amended by section 1 of chapter 83 of the acts of 1987, is hereby further amended by striking out the second paragraph and inserting in place thereof the following paragraph:-

Any person convicted of a violation of the provisions of section seventeen, or of a violation of a special regulation lawfully made under the authority of section eighteen shall be punished by a fine of not less than fifty dollars. Where said conviction is for operating a vehicle at a rate of speed exceeding ten miles per hour over the speed limit for the way upon which the person was operating, an additional fine of ten dollars for each mile per hour in excess of the ten miles per hour shall be assessed.

SECTION 26. The first paragraph of section 40 of chapter 131 of the General Laws, as appearing in the 1986 Official Edition, is hereby amended by striking out the fifth sentence and inserting in place thereof the following two sentences:- To defray state and local administrative costs, each such notice shall be accompanied by a filing fee, payable to the city or town, to be determined on a sliding scale basis by the commissioner of administration after consultation with the secretary of environmental affairs. Fifty per cent of amounts collected in excess of twenty-five dollars from each such filing fee shall be paid over to the state treasurer and credited to the General Fund.

SECTION 27. Section 87A of chapter 276 of the General Laws, as so appearing, is hereby amended by adding the following four paragraphs:-

The court shall assess upon every person placed on supervised probation a monthly probation day supervision fee, hereinafter referred

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to as "probation fee", equal to not less than one day's net wages nor more than three days' net wages, based on said person's daily net wages at the time of sentencing; provided, however, that the amount of said probation fee may be modified by the court at any time in accordance with any changes in said wages. Said person shall pay said probation fee once each month during such time as said person remains unsupervised probation. Notwithstanding the foregoing, said fee shall not be assessed upon any person accused or convicted of a violation of section one or fifteen of chapter two hundred and seventy-three, where compliance with an order of support for a spouse or minor child is a condition of probation.

The court may waive payment of said probation fee in whole or in part if it determines after a hearing that such payment would constitute an undue hardship on said person or his family due to limited income, employment status, or any other factor. If said fee is waived and the court determines that said person is able to work, then in lieu of payment of said probation fee the court shall require said person to perform unpaid community work service at a public or nonprofit agency or facility, as approved and monitored by the probation department, for not less than one day per month. Such waiver shall be in effect only during the period of time that said person is unable to pay his monthly probation fee.

The court may waive said probation fee in whole or in part if said person is assessed payment of restitution. In such cases, said probation fee may be waived only to the extent and during the period that restitution is paid in an amount equivalent to said probation fee.

Said probation fee shall be collected by the several probation offices of the trial court and transmitted to the state treasurer for deposit into the General Fund. The state treasurer shall account for all such fees received and report said fees annually, itemized by court division, to the house and senate committees on ways and means.

SECTION 28. Section 12 of chapter 794 of the acts of 1985, as amended by section 10 of chapter 35 of the acts of 1986, is hereby further amended by striking out the first sentence and inserting in place thereof the following sentence:- Upon the effective date of this act, all automobile law violations, as defined in section one of chapter ninety C of the General Laws, for which the assessment, heretofore considered a penalty or fine, does not exceed one hundred dollars for the first offense and does not provide for a penalty of imprisonment, excepting operation of a motor vehicle in violation of the first paragraph of section ten of chapter ninety of the General Laws, or violation of section twenty-five of said chapter ninety, shall be deemed civil motor vehicle infractions and not criminal offenses, and all statutes, ordinances, by-laws or regulations heretofore providing for such automobile law violations shall be so interpreted; provided, however, that violations of the provisions of section seventeen of said chapter ninety and violations of a special speed regulation lawfully made under the authority of section eighteen of said chapter ninety, shall be deemed civil motor vehicle infractions to which

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this section shall apply.

SECTION 29. Notwithstanding the provisions of chapter sixty-three B of the General Laws to the contrary, declarations of estimated tax filed under said chapter sixty-three B with respect to taxable years ending on or after December thirty-first, nineteen hundred and eighty-eight shall include the amount which the taxpayer estimates as the additional taxes due by reason of the passage of this act; and the computation of the addition to the tax with respect to such declarations under section six of said chapter sixty-three B shall be made as if the provisions of this act were in effect and applicable to the preceding taxable year.

SECTION 30. The commissioner of administration is hereby directed to establish the schedule of fees authorized pursuant to section twenty-six of this act to be effective no later than October first, nineteen hundred and eighty-eight.

SECTION 31. At the election of the taxpayer, section fifteen shall also apply to all taxable periods for which the taxpayer has filed a return based upon the department of revenue's nineteen hundred and seventy-nine letter ruling No. 1979-42.

SECTION 32. The provisions of sections one to six, inclusive, section nine, and sections eleven to eighteen, inclusive, of this act shall apply to taxable years ending on or after December thirty-first, nineteen hundred and eighty-eight. The provisions of section seven shall apply to audits begun on or after August first, nineteen hundred and eighty-eight. The provisions of section eight shall apply to returns filed on or after August first, nineteen hundred and eighty-eight and to returns filed prior thereto where the period of time for assessment under subsection (b) of section twenty-six of chapter sixty-two C of the General Laws had not expired prior to said date. The provisions of section ten shall apply to taxable years ending on or after December thirty-first, nineteen hundred and eighty-nine. The remaining sections shall take effect upon its passage.

SECTION 33. The provisions of section nineteen of this act shall take effect on January first, nineteen hundred and eighty-nine.

Approved July 26, 1988.

EMERGENCY LETTER: July 26, 1988 @ 4:10 P.M.

Chapter 203. AN ACT PROVIDING FOR THE IMPROVEMENT OF THE COURTHOUSES OF THE COMMONWEALTH.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to immediately improve courthouse facilities, therefore it is hereby declared to be an emergency law, necessary for