

HOUSE No. 3335

The Commonwealth of Massachusetts

PRESENTED BY:

John J. Mahoney

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 adoption of the accompanying bill:

An Act relative to tax credits, education and training for the design and development of video game and interactive digital media products.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>John J. Mahoney</i>	<i>13th Worcester</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>

HOUSE No. 3335

By Mr. Mahoney of Worcester, a petition (accompanied by bill, House, No. 3335) of John J. Mahoney and Daniel M. Donahue relative to tax credits for digital media products. Revenue.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 2606 OF 2015-2016.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act relative to tax credits, education and training for the design and development of video game and interactive digital media products.

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. Chapter 63 of the General Laws is hereby amended by striking out section
2 38X and inserting in place thereof the following section:

3 Section 38X. (a) As used in this section the following words shall, unless the context
4 clearly requires otherwise, have the following meanings:-

5 “Commissioner”, the commissioner of revenue.

6 “Motion picture”, a feature-length film, a video, a digital media project, a television
7 series defined as a season not to exceed 27 episodes, or a commercial made in the
8 commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot.

9 The term “ motion picture” shall not include a production featuring news, current events, weather

10 and financial market reports, talk show, game show, sporting events, awards show or other gala
11 event, a production whose sole purpose is fundraising, a long-form production that primarily
12 markets a product or service, a production containing obscene material or performances.

13 “Motion picture production company”, a company including its subsidiaries engaged in
14 the business of producing motion pictures, videos, television series, or commercials intended for
15 a theatrical release or for television viewing. The term “motion picture production company”
16 shall not mean or include any company which is more than 25 per cent owned, affiliated, or
17 controlled, by any company or person which is in default on a loan made or guaranteed by the
18 commonwealth.

19 “Massachusetts production expense”, a production expense for the motion picture, video
20 game or interactive digital media clearly and demonstrably incurred in the commonwealth.

21 “Principal photography”, the phase of production during which the motion picture is
22 actually filmed. The term shall not include preproduction or postproduction.

23 “Production expense” or “production cost”, preproduction, production and
24 postproduction expenditures directly incurred in the production of a motion picture, video game
25 or interactive digital media. The term shall include wages and salaries paid to individuals
26 employed in the production of the motion picture, video game or interactive digital media; the
27 costs of set construction and operation, editing and related services, photography, sound
28 synchronization, lighting, wardrobe, make-up and accessories; film processing, transfer, sound
29 mixing, special and visual effects; music; location fees and the cost of purchase or rental of
30 facilities and equipment or any other production expense as may be determined by the
31 department of revenue to be an eligible production expense. The term shall not include costs

32 incurred in marketing or advertising a motion picture, video game or interactive digital media,
33 any costs related to the transfer of tax credits or any amounts paid to persons or businesses as a
34 result of their participation in profits from the exploitation of the production.

35 “Secretary”, the secretary of economic development.

36 "Video game" or "interactive digital media", interactive software that: (i) is produced for
37 distribution on or accessed via electronic media, including without limitation software that may
38 be accessed via or downloaded from the Internet or mobile networks and software that are
39 distributed on optical media or embedded in or downloadable to electronic devices, including
40 without limitation mobile phones, portable game systems, computers, tablets, and personal
41 digital assistants (PDA) or other handheld electronic devices; (ii) users may interact with via an
42 electronic device, which may include without limitation a computer, a game system, a mobile
43 phone, tablet, a PDA or other handheld electronic devices, in order to achieve a goal or set of
44 goals; and (iii) include an appreciable quantity of text, sound, fixed images, animated images, or
45 3-D geometry.

46 “Video game studio” or “interactive digital media studio”, a permanent facility within the
47 commonwealth used primarily for the design, production or development of video games or
48 interactive digital media products.

49 (b) A taxpayer engaged in the making of a motion picture, video game or interactive
50 digital media shall be allowed a credit against the taxes imposed by this chapter for the
51 employment of persons within the commonwealth in connection with the filming or production
52 of 1 or more motion pictures, video games or interactive digital media in the commonwealth
53 within any consecutive 12 month period. The credit shall be equal to 25 per cent of the total

54 aggregate payroll paid by a motion picture, video game or interactive digital media production
55 company that constitutes Massachusetts source income, when total production costs incurred in
56 the commonwealth equal or exceed \$50,000 during the taxable year. For purposes of this
57 subsection, the term “total aggregate payroll” shall not include the salary of any employee whose
58 salary is equal to or greater than \$1,000,000.

59 (c) A taxpayer shall be allowed an additional credit against the taxes imposed by this
60 chapter equal to 25 per cent of all Massachusetts production expenses, not including the payroll
61 expenses used to claim a credit pursuant to subsection (b), where the motion picture, video game
62 or interactive digital media is also eligible for a credit pursuant to subsection (b) and either
63 Massachusetts production expenses exceed 50 per cent of the total production expenses for a
64 motion picture or at least 50 per cent of the total principal photography days of the film or the
65 production of the video game or interactive digital media take place in the commonwealth.

66 (d) A taxpayer shall be allowed an additional credit against the taxes imposed by this
67 chapter equal to 5 per cent of all Massachusetts production expenses under this section if video
68 game studio or interactive digital media studio is located in a gateway municipality, as defined
69 by section 3A of chapter 23A; provided, that the value of such credit shall not exceed \$500,000
70 per year.

71 (e) The tax credit shall be taken against the taxes imposed under this chapter and shall, at
72 the election of the taxpayer, be refundable to the extent provided for in section 32E. Any amount
73 of the tax credit that exceeds the tax due for a taxable year may be carried forward by the
74 taxpayer to any of the 5 subsequent taxable years.

75 (f)(1) All or any portion of tax credits issued in accordance with the provisions of this
76 section may be transferred, sold or assigned to other taxpayers with tax liabilities under this
77 chapter or chapter 62. Any tax credit that is transferred, sold or assigned and taken against taxes
78 imposed by this chapter. Any amount of the tax credit that exceeds the tax due for a taxable year
79 may be carried forward by the transferee, buyer or assignee to any of the 5 subsequent taxable
80 years from which a certificate is initially issued by the department of revenue.

81 (2) An owner, transferee or assignee desiring to make a transfer, sale or assignment shall
82 submit to the commissioner a statement which describes the amount of tax credit for which the
83 transfer, sale or assignment of tax credit is eligible. The owner, transferee or assignee shall
84 provide to the commissioner such information as the commissioner may require for the proper
85 allocation of the credit. The commissioner shall provide to the taxpayer a certificate of eligibility
86 to transfer, sell or assign the tax credits. The commissioner shall not issue a certificate to a
87 taxpayer that has an outstanding tax obligation with the commonwealth in connection with any
88 motion picture, video game or interactive digital media for any prior taxable year. A tax credit
89 shall not be transferred, sold or assigned without a certificate. The commissioner shall direct,
90 assign and issue a certificate equal to 10 per cent of the annual total of all tax credits earned in
91 the prior year to the Massachusetts Digital Games Institute for game development education and
92 training programs and activities. These credits may be refunded at 80 per cent of face value or
93 transferred, sold or assigned to other taxpayers with tax liabilities.

94 (g) The commissioner, in consultation with the secretary, shall promulgate regulations
95 necessary for the administration of this subsection.

96 SECTION 2. Said chapter 63 of the general laws is hereby further amended by adding
97 the following three sections:-

98 Section 82. (a) As used in this section and in section 83, the following terms shall have
99 the following meaning:

100 “Eligible labor expenditures”, compensation and benefits paid to employees working on
101 the development, creation, production, maintenance, and distribution of video games or
102 interactive digital media as defined in section 38X, as well as employees supporting technical or
103 production infrastructure, including but not limited to, computer support staff.

104 “Video game production company”, a company including its subsidiaries engaged in the
105 business of producing video games or interactive digital media as defined in section 38X. The
106 term “video game production company” shall not mean or include any company which is more
107 than 25 per cent owned, affiliated, or controlled, by any company or person which is in default
108 on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

109 (b) A taxpayer engaged in the making of a video game or interactive digital media shall
110 be allowed a credit against the taxes imposed by this chapter for the employment of persons
111 within the commonwealth in connection with the filming or production of 1 or more video games
112 or interactive digital media in the commonwealth within any consecutive 12 month period. The
113 credit shall be equal to 35 per cent of the eligible labor expenditures paid by a video game or
114 interactive digital media production company that constitutes Massachusetts source income,
115 when eligible labor expenditures incurred in the commonwealth equal or exceed \$50,000 during
116 the taxable year.

117 (c) A taxpayer engaged in the making of a video game or interactive digital media shall
118 be allowed an additional workforce credit against the taxes imposed by this chapter for eligible
119 labor expenditures within the commonwealth. The credit shall be equal to the following:

120 (1) if the sum of the average of the video game production company for the 5 year
121 period is greater than or equal to 100 per cent but less than 105 per cent of the count of full-time
122 equivalent employees during the year the credit in section 38X was earned, the workforce tax
123 credit shall be 10 per cent of the tax credit allowed in subsection (b);

124 (2) if the sum of the average of the video game production company for the 5 year
125 period is greater than or equal to 105 per cent but less than 110 per cent of the count of full-time
126 equivalent employees during the year the credit in section 38X was earned, the workforce tax
127 credit shall be 20 per cent of the tax credit allowed in subsection (b);

128 (3) if the sum of the average of the video game production company for the 5 year
129 period is greater than or equal to 110 per cent but less than 115 per cent of the count of full-time
130 equivalent employees during the year the credit in section 38X was earned, the workforce tax
131 credit shall be 30 per cent of the tax credit allowed in subsection (b);

132 (4) if the sum of the average of the video game production company for the 5 year
133 period is greater than or equal to 115 per cent but less than 120 per cent of the count of full-time
134 equivalent employees during the year the credit in section 38X was earned, the workforce tax
135 credit shall be 40 per cent of the tax credit allowed in subsection (b); and

136 (5) if the sum of the average of the video game production company for the 5 year
137 period is greater than or equal to 120 per cent of the count of full-time equivalent employees

138 during the year the credit in section 38X was earned, the workforce tax credit shall be 50 per cent
139 of the tax credit allowed in subsection (b).

140 (d) A taxpayer shall be allowed an additional credit against the taxes imposed by this
141 chapter equal to 5 per cent of either the credit allowed in subsections (b) and (c) of section 38X
142 or the credit allowed in subsections (b) and (c) of this section if a video game production
143 company is located in a gateway municipality, as defined by section 3A of chapter 23A;
144 provided, that the value of such credit shall not exceed \$500,000 per year.

145 (e) The tax credit shall be taken against the taxes imposed under this chapter and shall, at
146 the election of the taxpayer, be refundable to the extent provided for in section 32E. Any amount
147 of the tax credit that exceeds the tax due for a taxable year may be carried forward by the
148 taxpayer to any of the 5 subsequent taxable years.

149 (f)(1) All or any portion of tax credits issued in accordance with the provisions of this
150 section may be transferred, sold or assigned to other taxpayers with tax liabilities under this
151 chapter or chapter 62. Any tax credit that is transferred, sold or assigned and taken against taxes
152 imposed by this chapter or said chapter 62 shall not be refundable. Any amount of the tax credit
153 that exceeds the tax due for a taxable year may be carried forward by the transferee, buyer or
154 assignee to any of the 5 subsequent taxable years from which a certificate is initially issued by
155 the department of revenue.

156 (2) An owner, transferee or assignee desiring to make a transfer, sale or assignment shall
157 submit to the commissioner a statement which describes the amount of tax credit for which the
158 transfer, sale or assignment of tax credit is eligible. The owner, transferee or assignee shall
159 provide to the commissioner such information as the commissioner may require for the proper

160 allocation of the credit. The commissioner shall provide to the taxpayer a certificate of eligibility
161 to transfer, sell or assign the tax credits. The commissioner shall not issue a certificate to a
162 taxpayer that has an outstanding tax obligation with the commonwealth in connection with any
163 motion picture for any prior taxable year. A tax credit shall not be transferred, sold or assigned
164 without a certificate. The commissioner shall direct, assign and issue a certificate equal to 10 per
165 cent of the annual total of all tax credits earned in the prior year to the Massachusetts Digital
166 Games Institute for game development education and training programs and activities. These
167 credits may be refunded at 80 per cent of face value or transferred, sold or assigned to other
168 taxpayers with tax liabilities.

169 (g) A taxpayer shall be allowed either the credits under this section or section 38X.

170 (h) The commissioner, in consultation with the secretary, shall promulgate regulations
171 necessary for the administration of this section.

172 Section 83. A taxpayer engaged in the making of a video game or interactive digital
173 media shall be allowed a workforce training credit against the taxes imposed by this chapter for
174 eligible 2 year on-the-job training wages within the commonwealth. The credit shall be equal to
175 25 per cent of on-the-job wages as determined by the commissioner.

176 Section 84. (a) If a taxpayer, engaged in the making of a video game or interactive
177 digital media receiving a tax credit under section 82, discontinues operations in the
178 commonwealth during the first 2 and one-half years of applying for such credit, the taxpayer
179 shall forfeit all credits taken by the taxpayer during such 2 and one-half year period. In the event
180 of the forfeiture of such credits, the department shall initiate proceedings against the taxpayer to
181 recover wrongfully exempted state income taxes and the taxpayer shall promptly repay to the

182 department any wrongfully exempted state income taxes. The forfeited amount of credits shall
183 be deemed assessed on the date the department initiates proceedings against such recipient and
184 the recipient shall promptly repay to the department any wrongfully exempted state income
185 taxes. The secretary of economic development may elect to waive enforcement of any such
186 forfeiture based on a finding that the waiver is necessary to avert an imminent and demonstrable
187 hardship to the recipient. If a waiver is granted, the recipient shall agree to contractual recapture
188 provisions. The existence of any waiver granted under this section, the date of the granting of
189 such waiver, and a brief summary of the reasons supporting the granting of such waiver shall be
190 disclosed consistent with the provisions of this section.

191 (b) Beginning June 1, 2013 the department shall annually compile a report on the
192 outcomes and effectiveness of the recapture provisions of this section, including but not limited
193 to: (1) the total number of taxpayers engaged in the making of a video game or interactive digital
194 media receiving a tax credit under sections 38X, 82 or 83; (2) the total number of recipients in
195 violation of this section; (3) the total number of completed recapture efforts; (4) the total number
196 of recapture efforts initiated; and (5) the number of waivers granted. Such report shall be a
197 public record under clause Twenty-sixth of section 7 of chapter 4 and chapter 66.

198 (c) The commissioner, in consultation with the secretary, shall promulgate regulations
199 necessary for the administration of this section.