SENATE DOCKET, NO. 1511 FILED ON: 1/16/2015

SENATE . . . . . No. 1584

The Commonwealth of Massachusetts

PRESENTED BY:

Bruce E. Tarr

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 extending single sales factor apportionment to all retail and wholesale corporations.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Bruce E. Tarr	*First Essex and Middlesex*
Viriato M. deMacedo	*Plymouth and Barnstable*
Robert L. Hedlund	*Plymouth and Norfolk*
Donald F. Humason, Jr.	*Second Hampden and Hampshire*

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By Mr. Tarr, a petition (accompanied by bill, Senate, No. 1584) of Bruce E. Tarr, Viriato M. deMacedo, Robert L. Hedlund and Donald F. Humason, Jr. for legislation to extend single sales factor apportionment to all retail and wholesale corporations. Revenue.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *1420* OF 2013-2014.]

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act extending single sales factor apportionment to all retail and wholesale corporations.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 2A of chapter 63 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by striking out subsection (b) and inserting in place thereof the following subsection:

(b) if the financial institution has income from business activity which is taxable both within and without this commonwealth, its net income shall be apportioned to this commonwealth by multiplying its net income by one hundred percent of the receipts factor.

SECTION 2. Said section 2A of chapter 63, as so appearing , is hereby further amended by striking out paragraph (xi) of subsection (d) and inserting in place thereof the following paragraph:-

10 (xi) The numerator of the receipts factor includes receipts from services not otherwise
11 apportioned under this section, if the gross receipts are derived from customers in this
12 commonwealth or otherwise attributable to this commonwealth's marketplace. The
13 commissioner shall promulgate regulations to implement this paragraph.

14 SECTION 3. Said section 2A of chapter 63, as so appearing, is hereby further amended
15 by striking out paragraph (xii)(B) of subsection (d) and inserting in place thereof the following
16 paragraph: -

17 (B) the numerator of the receipts factor includes the income described in paragraph
18 (xii)(A) multiplied by a fraction, the numerator of which is the total amount included in the
19 numerator of the receipts factor pursuant to paragraphs (iii), (iv), (vi) and (xi) and the
20 denominator of which is the taxpayer's total amount of (1) interest and fees or penalties in the
21 nature of interest from loans, (2) interest and fees or penalties in the nature of interest from credit
22 card receivables and receipts from fees charged to card holders, such as annual fees, and (3)
23 receipts from services subject to apportionment pursuant to paragraph (xi).

24 SECTION 4. Section 2A of chapter 63, as so appearing , is hereby further amended by
25 deleting paragraphs (C), (D) and (E) of paragraph (xii) of subsection (d).

26 SECTION 5. Section 38 of chapter 63 of the General Laws, as so appearing, is hereby
27 amended by deleting subsection (c) and replacing it with the following new subsection:-

28 (c) If a corporation, other than a defense corporation as described in subsection (k), a
29 manufacturing corporation as described in subsection (l), or a mutual fund service corporation to
30 the extent of its mutual fund sales as described in subsection (m), has income from business
31 activity which is taxable both within and without this commonwealth, its taxable net income, as

32 determined under the provisions of subsection (a), shall be apportioned to this commonwealth by
33 multiplying said taxable net income by one hundred percent of the sales factor.

34 SECTION 6. Said section 38 of chapter 63 of the General Laws, as so appearing, is
35 hereby further amended by deleting subsections (d) and (e).

36 SECTION 7. Said section 38 of chapter 63, as so appearing, is hereby further amended by
37 striking in its entirety, lines 141-230, and inserting in place thereof the following:-

38 Sales, other than the sales of tangible personal property, are in this commonwealth if the
39 gross receipts are derived from customers in this commonwealth or otherwise attributable to this
40 commonwealth's marketplace.

41 For the purposes of this subsection: (1) in the case of the licensing of intangible property,
42 the income-producing activity shall be considered to be derived from customers in this
43 commonwealth to the extent that the intangible property is used in the commonwealth; (2) the
44 corporation shall be considered to be taxable in the state of the purchaser if the tangible personal
45 property is delivered or shipped to a purchaser in a foreign country; (3) sales of tangible personal
46 property to the United States government or any agency or instrumentality thereof for purposes
47 of resale to a foreign government or any agency or instrumentality thereof are not sales made in
48 the commonwealth; (4) in the case of the sale, exchange or other disposition of a capital asset, as
49 defined in paragraph (m) of section 1 of chapter 62, used in a taxpayer's trade or business,
50 including a deemed sale or exchange of such asset, "sales" are measured by the gain from the
51 transaction; and (5) "security" means any interest or instrument commonly treated as a security
52 as well as other instruments which are customarily sold in the open market or on a recognized
53 exchange, including, but not limited to, transferable shares of a beneficial interest in any

54 corporation or other entity, bonds, debentures, notes, and other evidences of indebtedness,
55 accounts receivable and notes receivable, cash and cash equivalents including foreign currencies,
56 and repurchase and futures contracts.

57 Notwithstanding the foregoing, mutual fund sales by a mutual fund service corporation as
58 defined in subsection (m), other than the sale of tangible personal property, shall be assigned to
59 this commonwealth to the extent that shareholders of the regulated investment company are
60 domiciled in this commonwealth as follows:

61 (a) by multiplying the mutual fund service corporation's total dollar amount of sales of
62 such services on behalf of each regulated investment company by a fraction, the numerator of
63 which shall be the average of the number of shares owned by the regulated investment
64 company’s shareholders domiciled in this commonwealth at the beginning of and at the end of
65 the regulated investment company's taxable year that ends with or within the mutual fund service
66 corporation's taxable year, and the denominator of which shall be the average of the number of
67 shares owned by the regulated investment company shareholders everywhere at the beginning of
68 and at the end of the regulated investment company's taxable year that ends with or within the
69 mutual fund service corporation's taxable year.

70 (b) A separate computation shall be made to determine the sale for each regulated
71 investment company, the sum of which shall equal the total sales assigned to the commonwealth.

72 SECTION 8. Sections 1 to 7 shall be effective for tax years beginning on or after January
73 1, 2016.