

**HOUSE . . . . . No. 2889**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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An Act relative to 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:*

1 SECTION 1. Chapter 63 of the General Laws, as appearing in the 2004 Official Edition,  
2 is hereby amended by deleting subsection (c) of section 38 and replacing it with the following  
3 new subsection:-

4 (c) If a corporation, other than a defense corporation as described in subsection  
5 (k), a manufacturing corporation as described in subsection (l), a mutual fund service corporation  
6 to the extent of its mutual fund sales as described in subsection (m), a retail corporation as  
7 described in subsection (o), or a wholesale corporation as described in subsection (p), has income  
8 from business activity which is taxable both within and without this commonwealth, its taxable  
9 net income, as determined under the provisions of subsection (a), shall be apportioned to this  
10 Commonwealth by multiplying said taxable net income by a fraction, the numerator of which is  
11 the property factor plus the payroll factor plus twice times the sales factor, and the denominator  
12 of which is four.

13 SECTION 2. Section 38 of Chapter 63 of the General Laws, as so appearing, is hereby  
14 further amended by inserting the following new subsection:-

15 (o) (1) As used in this section, the following words shall, unless the context otherwise  
16 requires, have the following meaning: “Retail corporation”, a corporation that is engaged in  
17 retailing. In order to be engaged in retailing, the corporation must be engaged, in substantial part,  
18 in the ordinary course of business of making sales of tangible personal property or associated  
19 services at retail; engaged in the business of making sales of tangible personal property at retail  
20 at an auction; engaged in the business of making sales for storage, use or other consumption, or  
21 makes sales at auction for storage, use or other consumption. A sale “at retail” is a sale for any  
22 purpose other than resale. A domestic or foreign retail corporation's activities will be considered  
23 to be substantial if any one of the following five tests are met: 1. twenty-five percent or more of  
24 its gross receipts are derived from sales at retail;

25 2. twenty-five percent or more of its payroll is paid to employees working in its retailing  
26 operations and fifteen percent or more of its gross receipts are derived from sales at retail;

27 3. twenty-five percent or more of its tangible property is used in its retailing operations  
28 and fifteen percent or more of its gross receipts are derived from sales at retail;

29 4. thirty-five percent or more of its tangible property is used in its retailing operations; or

30 5. the corporation's retailing activities are deemed substantial under relevant regulations  
31 promulgated by the commissioner.

32 (2) If a retail corporation, as defined in paragraph (o), has income from business activity  
33 which is taxable both within and without this commonwealth, its taxable net income, determined

34 under the provisions of subsection (a), shall not be apportioned pursuant to the percentage that  
35 results from the three-factor formula set forth in subsection (c) but, instead, shall be apportioned  
36 by multiplying said taxable net income by one hundred percent of the sales factor.

37 SECTION 2. Section 38 of Chapter 63 of the General Laws, as so appearing, is hereby  
38 further amended by inserting the following new subsection:-

39 (p) (1) As used in this section, the following words shall, unless the context otherwise  
40 requires, have the following meaning: “Wholesale corporation”, a corporation that is engaged in  
41 wholesaling. In order to be engaged in wholesaling, the corporation must be engaged, in  
42 substantial part, in the ordinary course of business of making sales of tangible personal property  
43 at wholesale; engaged in the business of making sales of tangible personal property at wholesale  
44 at an auction. A sale “at wholesale” is a sale whereby the purchaser intends to resell the  
45 purchased items. A domestic or foreign wholesale corporation's activities will be considered to  
46 be substantial if any one of the following five tests are met:

- 47 1. twenty-five percent or more of its gross receipts are derived from sales at wholesale;
- 48 2. twenty-five percent or more of its payroll is paid to employees working in its  
49 wholesaling operations and fifteen percent or more of its gross receipts are derived from sales at  
50 wholesale;
- 51 3. twenty-five percent or more of its tangible property is used in its wholesaling  
52 operations and fifteen percent or more of its gross receipts are derived from sales at wholesale;
- 53 4. thirty-five percent or more of its tangible property is used in its wholesaling  
54 operations; or

55           5. the corporation's wholesaling activities are deemed substantial under relevant  
56 regulations promulgated by the commissioner.

57           (2) If a wholesale corporation, as defined in paragraph (p), has income from business  
58 activity which is taxable both within and without this commonwealth, its taxable net income,  
59 determined under the provisions of subsection (a), shall not be apportioned pursuant to the  
60 percentage that results from the three-factor formula set forth in subsection (c), but instead, shall  
61 be apportioned by multiplying said taxable net income by one hundred percent of the sales  
62 factor.