

HOUSE No. 2889

The Commonwealth of Massachusetts

PRESENTED BY:

Pam Richardson

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 passage of the accompanying bill:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Pam Richardson	6th Middlesex
Bruce E. Tarr	First Essex and Middlesex
Paul McMurtry	11th Norfolk

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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, is hereby
2 amended by deleting subsection (c) of section 38 and replacing it with the following new subsection:-

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

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

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

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

- 24 3. twenty-five percent or more of its tangible property is used in its retailing operations
25 and fifteen percent or more of its gross receipts are derived from sales at retail;
- 26 4. thirty-five percent or more of its tangible property is used in its retailing operations; or
- 27 5. the corporation's retailing activities are deemed substantial under relevant regulations
28 promulgated by the commissioner.

29 (2) If a retail corporation, as defined in paragraph (o), has income from business activity
30 which is taxable both within and without this commonwealth, its taxable net income, determined under
31 the provisions of subsection (a), shall not be apportioned pursuant to the percentage that results from the
32 three-factor formula set forth in subsection (c) but, instead, shall be apportioned by multiplying said
33 taxable net income by one hundred percent of the sales factor.

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

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

- 43 1. twenty-five percent or more of its gross receipts are derived from sales at wholesale;
- 44 2. twenty-five percent or more of its payroll is paid to employees working in its
45 wholesaling operations and fifteen percent or more of its gross receipts are derived from
46 sales at wholesale;
- 47 3. twenty-five percent or more of its tangible property is used in its wholesaling
48 operations and fifteen percent or more of its gross receipts are derived from sales at
49 wholesale;
- 50 4. thirty-five percent or more of its tangible property is used in its wholesaling
51 operations; or
- 52 5. the corporation's wholesaling activities are deemed substantial under relevant
53 regulations promulgated by the commissioner.

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