

SENATE No. 1368

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to extending single sales factor apportionment to all 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), or a mutual fund service
6 corporation to the extent of its mutual fund sales as described in subsection (m), has income from
7 business activity which is taxable both within and without this commonwealth, its taxable net
8 income, as determined under the provisions of subsection (a), shall be apportioned to this
9 commonwealth by multiplying said taxable net income by one hundred percent of the sales
10 factor.

11 SECTION 2. Section 38 of Chapter 63 of the General Laws, as so appearing, is hereby
12 further amended by deleting subsections (d) and (e).

13 SECTION 3. Section 38 of Chapter 63, as so appearing, is hereby further amended by
14 striking in subsection (f) all words after the phrase "Sales, other than the sales of tangible
15 personal property, are in this commonwealth if:-" and replacing it with the following:-

16 Sales, other than the sales of tangible personal property, are in this commonwealth if:-

17 1. the income-producing activity is performed in this commonwealth; or

18 2. if the income-producing activity is performed both in and outside this commonwealth,
19 the sales are assigned to the commonwealth on a pro-rata basis to the extent the income-
20 producing activity occurred in the commonwealth.

21 For the purposes of this subsection: (1) in the case of the licensing of intangible property,
22 the income-producing activity shall be considered to be performed in the commonwealth to the
23 extent that the intangible property is used in the commonwealth; (2) the corporation shall be
24 considered to be taxable in the state of the purchaser if the tangible personal property is delivered
25 or shipped to a purchaser in a foreign country; (3) sales of tangible personal property to the
26 United States government or any agency or instrumentality thereof for purposes of resale to a
27 foreign government or any agency or instrumentality thereof are not sales made in the
28 commonwealth; (4) in the case of the sale, exchange or other disposition of a capital asset, as
29 defined in paragraph (m) of section 1 of chapter 62, used in a taxpayer's trade or business,
30 including a deemed sale or exchange of such asset, "sales" are measured by the gain from the
31 transaction; and (5) "security" means any interest or instrument commonly treated as a security
32 as well as other instruments which are customarily sold in the open market or on a recognized
33 exchange, including, but not limited to, transferable shares of a beneficial interest in any
34 corporation or other entity, bonds, debentures, notes, and other evidences of indebtedness,

35 accounts receivable and notes receivable, cash and cash equivalents including foreign currencies,
36 and repurchase and futures contracts.

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

41 (a) by multiplying the mutual fund service corporation's total dollar amount of sales of
42 such services on behalf of each regulated investment company by a fraction, the numerator of
43 which shall be the average of the number of shares owned by the regulated investment
44 company's shareholders domiciled in this commonwealth at the beginning of and at the end of
45 the regulated investment company's taxable year that ends with or within the mutual fund service
46 corporation's taxable year, and the denominator of which shall be the average of the number of
47 shares owned by the regulated investment company shareholders everywhere at the beginning of
48 and at the end of the regulated investment company's taxable year that ends with or within the
49 mutual fund service corporation's taxable year.

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

52 The commissioner shall promulgate regulations to implement this paragraph.

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