

**SENATE . . . . . No. 1521**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Karen E. Spilka***

*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 retail and wholesale corporations.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Karen E. Spilka</i>	
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>Michael O. Moore</i>	

**SENATE . . . . . No. 1521**

By Ms. Spilka, a petition (accompanied by bill, Senate, No. 1521) of Karen E. Spilka, Chris Walsh, Tom Sannicandro and Michael O. Moore for legislation to extend single sales factor apportionment to retail and wholesale corporations. Revenue.

**The Commonwealth of Massachusetts**

**In the Year Two Thousand Eleven**

An Act extending single sales factor apportionment to 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. Section 38 of chapter 63 of the General Laws, as appearing in the  
2 2008 Official Edition, is hereby amended by deleting subsection (c) and replacing it with the  
3 following new subsection:-

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

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

15 “(o) (1) As used in this section, the following words shall, unless the context  
16 otherwise requires, have the following meaning: “Retail corporation”, a corporation that is  
17 engaged in retailing. In order to be engaged in retailing, the corporation must be engaged, in  
18 substantial part, in the ordinary course of business of making sales of tangible personal property  
19 or associated services at retail; engaged in the business of making sales of tangible personal  
20 property at retail at an auction; engaged in the business of making sales for storage, use or other  
21 consumption, or makes sales at auction for storage, use or other consumption. A sale “at retail” is  
22 a sale for any purpose other than resale.

23 A domestic or foreign retail corporation's activities will be considered to be substantial if  
24 any one of the following five tests are met:

25 1. twenty-five percent or more of its gross receipts are derived from sales at retail;

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

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

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

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

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

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

43                   “(p) (1) As used in this section, the following words shall, unless the context  
44 otherwise requires, have the following meaning: “Wholesale corporation”, a corporation that is  
45 engaged in wholesaling. In order to be engaged in wholesaling, the corporation must be  
46 engaged, in substantial part, in the ordinary course of business of making sales of tangible  
47 personal property at wholesale; engaged in the business of making sales of tangible personal  
48 property at wholesale at an auction. A sale “at wholesale” is a sale whereby the purchaser  
49 intends to resell the purchased items.

50                   A domestic or foreign wholesale corporation's activities will be considered to be  
51 substantial if any one of the following five tests are met:

52                   1. twenty-five percent or more of its gross receipts are derived from sales at  
53 wholesale;

54                   2. twenty-five percent or more of its payroll is paid to employees working in its  
55 wholesaling operations and fifteen percent or

56                   more of its gross receipts are derived from sales at wholesale;

57                   3. twenty-five percent or more of its tangible property is used in its wholesaling  
58 operations and fifteen percent or more of its

59                   gross receipts are derived from sales at wholesale;

60                   4. thirty-five percent or more of its tangible property is used in its wholesaling  
61 operations; or

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

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