SENATE DOCKET, NO. 1006 FILED ON: 1/17/2013

SENATE . . . . . No. 1420

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 all retail and wholesale corporations.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Karen E. Spilka	*Second Middlesex and Norfolk*
Chris Walsh	*6th Middlesex*

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SENATE . . . . . No. 1420

By Ms. Spilka, a petition (accompanied by bill, Senate, No. 1420) of Karen E. Spilka and Chris Walsh for legislation to extend single sales factor apportionment to all retail and wholesale corporations. Revenue.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

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 38 of chapter 63 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by deleting subsection (c) and replacing it with the following new subsection:-

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

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

(o)(1) As used in this section, the following words shall, unless the context otherwise requires, have the following meaning: “Retail corporation”, a domestic or foreign corporation primarily engaged in activities that, in accordance with the North American Industry Classification System (NAICS), United States Manual, United States Office of Management and Budget, 1997 Edition, would be included in Sectors 44-45.

(2) If a retail corporation, as defined in paragraph (o), has income from business activity which is taxable both within and without this commonwealth, its taxable net income, determined under the provisions of subsection (a), shall not be apportioned pursuant to the percentage that results from the three-factor formula set forth in subsection (c) but, instead, shall be apportioned accordingly:

(i) For tax years beginning on or after January 1, 2015, by multiplying such taxable net income by a fraction, the numerator of which is the property factor plus the payroll factor plus triple the sales factor and the denominator of which is five, except that when the sales factor does not exist, the denominator of the fraction shall be the number of existing factors, and when the sales factor exists but the payroll factor or property factor does not exist, the denominator of the fraction shall be the number of existing factors plus two;

(ii) For tax years beginning on or after January 1, 2016, by multiplying such taxable net income by a fraction, the numerator of which is the property factor plus the payroll factor plus quadruple the sales factor and the denominator of which is six, except that when the sales factor does not exist, the denominator of the fraction shall be the number of existing factors, and when the sales factor exists but the payroll factor or property factor does not exist, the denominator of the fraction shall be the number of existing factors plus three;

(iii) For tax years beginning on or after January 1, 2017, by multiplying such taxable net income by a fraction, the numerator of which is the property factor plus the payroll factor plus quintuple the sales factor and the denominator of which is seven, except that when the sales factor does not exist, the denominator of the fraction shall be the number of existing factors, and when the sales factor exists but the payroll factor or property factor does not exist, the denominator of the fraction shall be the number of existing factors plus four; and

(iv) For tax years beginning on or after January 1, 2018, and thereafter, by multiplying such taxable net income by one hundred percent of the sales factor.

(3) For purposes of the application of Section 32B of chapter 63 of the General Laws, each member of a combined group will be considered to be a “retail corporation” under this Section if fifty-percent or more of the combined group’s non-intercompany receipts are derived from sales at retail.

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

(p)(1) As used in this section, the following words shall, unless the context otherwise requires, have the following meaning: “Wholesale corporation”, a domestic or foreign corporation primarily engaged in activities that, in accordance with the North American Industry Classification System (NAICS), United States Manual, United States Office of Management and Budget, 1997 Edition, would be included in Sectors 42.

(2) If a Wholesale corporation, as defined in paragraph (p), has income from business activity which is taxable both within and without this commonwealth, its taxable net income, determined under the provisions of subsection (a), shall not be apportioned pursuant to the percentage that results from the three-factor formula set forth in subsection (c), but instead, shall be apportioned accordingly:

(i) For tax years beginning on or after January 1, 2015, by multiplying such taxable net income by a fraction, the numerator of which is the property factor plus the payroll factor plus triple the sales factor and the denominator of which is five, except that when the sales factor does not exist, the denominator of the fraction shall be the number of existing factors, and when the sales factor exists but the payroll factor or property factor does not exist, the denominator of the fraction shall be the number of existing factors plus two;

(ii) For tax years beginning on or after January 1, 2016, by multiplying such taxable net income by a fraction, the numerator of which is the property factor plus the payroll factor plus quadruple the sales factor and the denominator of which is six, except that when the sales factor does not exist, the denominator of the fraction shall be the number of existing factors, and when the sales factor exists but the payroll factor or property factor does not exist, the denominator of the fraction shall be the number of existing factors plus three;

(iii) For tax years beginning on or after January 1, 2017, by multiplying such taxable net income by a fraction, the numerator of which is the property factor plus the payroll factor plus quintuple the sales factor and the denominator of which is seven, except that when the sales factor does not exist, the denominator of the fraction shall be the number of existing factors, and when the sales factor exists but the payroll factor or property factor does not exist, the denominator of the fraction shall be the number of existing factors plus four; and

(iv) For tax years beginning on or after January 1, 2018, and thereafter, by multiplying such taxable net income by one hundred percent of the sales factor.

(3) For purposes of the application of Section 32B of chapter 63 of the General Laws, each member of a combined group will be considered to be a “Wholesale corporation” under this Section if fifty-percent or more of the combined group’s non-intercompany receipts are derived from sales at wholesale trade.