SENATE No. 1564

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. SpilkaSecond Middlesex and Norfolk

SENATE DOCKET, NO. 930 FILED ON: 1/15/2015

SENATE No. 1564

By Ms. Spilka, a petition (accompanied by bill, Senate, No. 1564) of Karen E. Spilka for legislation to extend single sales factor apportionment to all retail and wholesale corporations. Revenue.

[SIMILAR MATTER FILED IN PREVIOUS SESSION SEE SENATE, NO. 1420 OF 2013-2014.]

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court (2015-2016)

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:

1 SECTION 1. Section 38 of chapter 63 of the General Laws, as appearing in the 2012

2 Official Edition, is hereby amended by deleting subsection (c) and replacing it with the following

3 new subsection:-

4 (c) If a corporation, other than a defense corporation as described in subsection (k), a

5 manufacturing corporation as described in subsection (l), a mutual fund service corporation to

6 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

the property factor plus the payroll factor plus twice times the sales factor, and the denominatorof 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 (0)(1) As used in this section, the following words shall, unless the context otherwise 16 requires, have the following meaning: "Retail corporation", a domestic or foreign corporation 17 primarily engaged in activities that, in accordance with the North American Industry 18 Classification System (NAICS), United States Manual, United States Office of Management and 19 Budget, 1997 Edition, would be included in Sectors 44-45. 20 (2) If a retail corporation, as defined in paragraph (o), has income from business activity 21 which is taxable both within and without this commonwealth, its taxable net income, determined 22 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 apportionedaccordingly:

(i) 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 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, 2017, by multiplying such taxable net
 income by a fraction, the numerator of which is the property factor plus the payroll factor plus

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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, 2018, 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 exist, the

43 (iv) For tax years beginning on or after January 1, 2019, and thereafter, by multiplying
44 such taxable net income by one hundred percent of the sales factor.

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

49 SECTION 3. Section 38 of Chapter 63 of the General Laws, as so appearing, is hereby
 50 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

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54 Classification System (NAICS), United States Manual, United States Office of Management and
55 Budget, 1997 Edition, would be included in Sectors 42.

56 (2) If a Wholesale corporation, as defined in paragraph (p), has income from business 57 activity which is taxable both within and without this commonwealth, its taxable net income, 58 determined under the provisions of subsection (a), shall not be apportioned pursuant to the 59 percentage that results from the three-factor formula set forth in subsection (c), but instead, shall 60 be apportioned accordingly:

(i) 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
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, 2017, 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, 2018, 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

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76	factor does not exist, the denominator of the fraction shall be the number of existing factors, and
77	when the sales factor exists but the payroll factor or property factor does not exist, the
78	denominator of the fraction shall be the number of existing factors plus four; and
79	(iv) For tax years beginning on or after January 1, 2019, and thereafter, by multiplying
80	such taxable net income by one hundred percent of the sales factor.
81	(3) For purposes of the application of Section 32B of chapter 63 of the General Laws,
82	each member of a combined group will be considered to be a "Wholesale corporation" under this
83	Section if fifty-percent or more of the combined group's non-intercompany receipts are derived
84	from sales at wholesale trade.