

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:

Karen E. Spilka

DISTRICT/ADDRESS:

Second Middlesex and Norfolk

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

11 the property factor plus the payroll factor plus twice times the sales factor, and the denominator
12 of 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 (o)(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
23 results from the three-factor formula set forth in subsection (c) but, instead, shall be apportioned
24 accordingly:

25 (i) For tax years beginning on or after January 1, 2016, by multiplying such taxable net
26 income by a fraction, the numerator of which is the property factor plus the payroll factor plus
27 triple the sales factor and the denominator of which is five, except that when the sales factor does
28 not exist, the denominator of the fraction shall be the number of existing factors, and when the
29 sales factor exists but the payroll factor or property factor does not exist, the denominator of the
30 fraction shall be the number of existing factors plus two;

31 (ii) For tax years beginning on or after January 1, 2017, by multiplying such taxable net
32 income by a fraction, the numerator of which is the property factor plus the payroll factor plus

33 quadruple the sales factor and the denominator of which is six, except that when the sales factor
34 does not exist, the denominator of the fraction shall be the number of existing factors, and when
35 the sales factor exists but the payroll factor or property factor does not exist, the denominator of
36 the fraction shall be the number of existing factors plus three;

37 (iii) For tax years beginning on or after January 1, 2018, by multiplying such taxable net
38 income by a fraction, the numerator of which is the property factor plus the payroll factor plus
39 quintuple the sales factor and the denominator of which is seven, except that when the sales
40 factor does not exist, the denominator of the fraction shall be the number of existing factors, and
41 when the sales factor exists but the payroll factor or property factor does not exist, the
42 denominator of the fraction shall be the number of existing factors plus four; and

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:-

51 (p)(1) As used in this section, the following words shall, unless the context otherwise
52 requires, have the following meaning: “Wholesale corporation”, a domestic or foreign
53 corporation primarily engaged in activities that, in accordance with the North American Industry

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:

61 (i) For tax years beginning on or after January 1, 2016, by multiplying such taxable net
62 income by a fraction, the numerator of which is the property factor plus the payroll factor plus
63 triple the sales factor and the denominator of which is five, except that when the sales factor does
64 not exist, the denominator of the fraction shall be the number of existing factors, and when the
65 sales factor exists but the payroll factor or property factor does not exist, the denominator of the
66 fraction shall be the number of existing factors plus two;

67 (ii) For tax years beginning on or after January 1, 2017, by multiplying such taxable net
68 income by a fraction, the numerator of which is the property factor plus the payroll factor plus
69 quadruple the sales factor and the denominator of which is six, except that when the sales factor
70 does not exist, the denominator of the fraction shall be the number of existing factors, and when
71 the sales factor exists but the payroll factor or property factor does not exist, the denominator of
72 the fraction shall be the number of existing factors plus three;

73 (iii) For tax years beginning on or after January 1, 2018, by multiplying such taxable net
74 income by a fraction, the numerator of which is the property factor plus the payroll factor plus
75 quintuple the sales factor and the denominator of which is seven, except that when the sales

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.