

HOUSE No. 2607

The Commonwealth of Massachusetts

PRESENTED BY:

Elizabeth A. Poirier

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 relative to single sales factor.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Elizabeth A. Poirier</i>	<i>14th Bristol</i>	<i>1/15/2019</i>

HOUSE No. 2607

By Mrs. Poirier of North Attleborough, a petition (accompanied by bill, House, No. 2607) of Elizabeth A. Poirier relative to single sales factor in the calculation of taxes for certain financial institutions. Revenue.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to single sales factor.

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 2A of chapter 63, as appearing in the 2016 Official Edition, is
2 hereby amended by striking out subsection (b) and inserting in place thereof the following new
3 subsection:-

4
5 (b)(1) Except as provided by subsection (b)(2), if the financial institution has income
6 from business activity which is taxable both within and without this commonwealth, its net
7 income shall be apportioned to this commonwealth by multiplying its net income by the
8 applicable apportionment percentage. For purposes of subsection (b)(1), the applicable
9 apportionment percentage is determined by adding the taxpayer's receipts factor, property factor
10 and payroll factor together and dividing the sum by three. If one of the factors is missing, the two
11 remaining factors are added and the sum is divided by two. If two of the factors are missing, the
12 remaining factor is the apportionment percentage. If all three factors are missing, the whole of

13 the financial institution's net income shall be taxable under section two. A factor is missing if
14 both its numerator and denominator are zero, but it is not missing merely because its numerator
15 is zero.

16

17 (b)(2), Notwithstanding subsection (b)(1), a financial institution that has income from
18 business activity which is taxable both within and without this commonwealth, may elect to have
19 its net income apportioned to this commonwealth by multiplying said taxable net income by the
20 resulting percentage as determined in the following formulas:

21

22 (i) For taxable years beginning on or after January 1, 2015 but before January 1, 2016, 20
23 percent of the property factor plus 20 percent of the payroll factor plus 60 percent of the receipts
24 factor.

25

26 (ii) For taxable years beginning on or after January 1, 2016 but before January 1, 2017,
27 15 percent of the property factor plus 15 percent of the payroll factor plus 70 percent of the
28 receipts factor.

29

30 (iii) For taxable years beginning on or after January 1, 2017 but before January 1, 2018,
31 10 percent of the property factor plus 10 percent of the payroll factor plus 80 percent of the
32 receipts factor.

33

34 (iv) For taxable years beginning on or after January 1, 2018 but before January 1, 2019, 5
35 percent of the property factor plus 5 percent of the payroll factor plus 90 percent of the receipts
36 factor.

37

38 (v) For taxable years beginning on or after January 1, 2019, 100 percent of the receipts
39 factor.

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41 SECTION 2. Subsection (d) of section 2A of chapter 63, as appearing in the 2016
42 Official Edition, is hereby amended by inserting after paragraph (xiii) the following new
43 paragraph:-

44

45 (xiv) Notwithstanding the foregoing, a financial institution that elects to apportion its
46 taxable net income pursuant to subsection (b)(2) of this section shall apply the rules applicable to
47 the receipts factor as set forth in this section, with the following exceptions:

48

49 (A) In lieu of sourcing receipts pursuant to paragraph (xi), receipts from services not
50 otherwise apportioned under this section are sourced to this commonwealth if the gross receipts
51 are derived from customers in this commonwealth or otherwise attributable to this
52 commonwealth's marketplace.

53

54 (B) In lieu of sourcing receipts pursuant to paragraph (xii), the numerator of the receipts
55 factor includes the income described in paragraph (xii)(A) multiplied by a fraction, the
56 numerator of which is the total amount included in the numerator of the receipts factor pursuant
57 to paragraphs (iii), (iv), (vi) and (xiv)(A) and the denominator of which is the taxpayer's total
58 amount of (1) interest and fees or penalties in the nature of interest from loans, (2) interest and
59 fees or penalties in the nature of interest from credit card receivables and receipts from fees
60 charged to card holders, such as annual fees, and (3) receipts from services subject to
61 apportionment pursuant to (xiv)(A).

62

63 SECTION 3. Section 38 of chapter 63, as appearing in the 2016 Official Edition, is
64 hereby amended by striking out subsection (c) and inserting in place thereof the following new
65 subsection:-

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67 (c)(1) Except as provided by subsection (c)(2), if a business corporation, other than a
68 defense corporation as described in subsection (k), a manufacturing corporation as described in
69 subsection (l), or a mutual fund service corporation to the extent of its mutual fund sales as
70 described in subsection (m), has income from business activity which is taxable both within and
71 without this commonwealth, its taxable net income, as determined under the provisions of
72 subsection (a), shall be apportioned to this commonwealth by multiplying said taxable net
73 income by a fraction, the numerator of which is the property factor plus the payroll factor plus
74 twice times the sales factor, and the denominator of which is four.

75

76 (2) Notwithstanding subsection (c)(1), any business corporation, other than a defense
77 corporation as described in subsection (k), a manufacturing corporation as described in
78 subsection (l), or a mutual fund service corporation, as described in subsection (m), to the extent
79 of its non-mutual fund sales, that has income from business activity which is taxable both within
80 and without this commonwealth, may elect to have its taxable net income, as determined under
81 the provisions of subsection (a), apportioned to this commonwealth by multiplying said taxable
82 net income by the resulting percentage as determined in the following formulas:

83

84 (i) For taxable years beginning on or after January 1, 2015 but before January 1, 2016, 20
85 percent of the property factor plus 20 percent of the payroll factor plus 60 percent of the sales
86 factor.

87

88 (ii) For taxable years beginning on or after January 1, 2016 but before January 1, 2017,
89 15 percent of the property factor plus 15 percent of the payroll factor plus 70 percent of the sales
90 factor.

91

92 (iii) For taxable years beginning on or after January 1, 2017 but before January 1, 2018,
93 10 percent of the property factor plus 10 percent of the payroll factor plus 80 percent of the sales
94 factor.

95

96 (iv) For taxable years beginning on or after January 1, 2018 but before January 1, 2019, 5
97 percent of the property factor plus 5 percent of the payroll factor plus 90 percent of the sales
98 factor.

99
100 (v) For taxable years beginning on or after January 1, 2019, 100 percent of the sales
101 factor.

102
103 SECTION 4. Subsection (f) of section 38 of said chapter 63, as appearing in the 2016
104 Official Edition, is hereby amended by inserting after the third paragraph the following new
105 paragraph:-

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107 Notwithstanding the foregoing, a business corporation that elects to apportion its taxable
108 net income pursuant to subsection (c)(2) of this section shall apportion such income using the
109 sales factor rules set forth in this subsection, with the exception that (i) sales other than sales of
110 tangible personal property are sourced to this commonwealth if the gross receipts are derived
111 from customers in this commonwealth or otherwise attributable to this commonwealth's
112 marketplace; and (ii) gross receipts from the licensing of intangible property are sourced to this
113 commonwealth to the extent that the intangible property is used in the commonwealth.

114

115 SECTION 5. Section 2A of chapter 63 of the General Laws, as so appearing, is hereby
116 amended by striking out subsection (b) and by inserting in place thereof the following
117 subsection:-

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119 (3)(a) The portion of net income derived from business carried on within the
120 commonwealth by a corporation subject to tax under this section shall be determined under the
121 provisions of sections thirty-eight and forty-two; provided, however, that under subsection (c)(1)
122 of section 38 its taxable net income shall be multiplied by a fraction, the numerator of which is
123 the property factor plus the payroll factor plus the sales factor, and the denominator is three.

124

125 (b) Notwithstanding subdivision(3)(a), any corporation subject to tax under this section
126 that has net income derived from business carried on within the commonwealth may elect to
127 determine the portion of such net income subject to tax in accordance with subsection (c)(2) of
128 section 38.

129

130 SECTION 6. Sections 1 to 5 shall be effective for tax years beginning on or after January
131 1, 2018.