

# SENATE . . . . . No. 2390

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Senate, May 24, 2023 -- Text of amendment (825) (offered by Senator Fattman) to the Ways and Means amendment (Senate, No. 3) to the House Bill making appropriations for the fiscal year 2024 for the maintenance of the departments, boards, commissions, institutions, and certain activities of the Commonwealth, for interest, sinking fund, and serial bond requirements, and for certain permanent improvements.

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## The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court  
(2023-2024)

1 by inserting after section \_\_\_ the following section:-

2 "SECTION 1. Section 2A of chapter 63 of the General Laws, as appearing in the 2020  
3 Official Edition, is hereby amended by striking out subsection (b) and by inserting in place  
4 thereof the following subsection:-

5 (b) If a financial institution has income from business activity which is taxable both  
6 within and without this commonwealth, its net income shall be apportioned to the  
7 commonwealth by multiplying its net income by the apportionment percentage. The  
8 apportionment percentage is determined by adding 25 percent of the property factor plus 25  
9 percent of the payroll factor plus 50 percent of the receipts factor. If 1 of the factors is missing  
10 the percentages set forth in the preceding sentence shall be increased proportionately such that  
11 the sum of the percentages by which the 2 remaining factors are multiplied under this subsection  
12 is one. If 2 factors are missing, the remaining factor is the apportionment percentage. If all 3  
13 factors are missing, the whole of the financial institution's net income shall be taxable under

14 Section 2. A factor is missing if both its numerator and denominator are 0, but it is not missing  
15 merely because its numerator is 0.

16 SECTION 2. Said subsection (b) of said section 2A of said chapter 63, as so appearing, is  
17 hereby further amended by striking out the words “25 percent of the property factor plus 25  
18 percent of the payroll factor plus 50”, inserted by section 8, and inserting in place thereof the  
19 following words:- 16.5 percent of the property factor plus 16.5 percent of the payroll factor plus  
20 67.

21 SECTION 3. Said subsection (b) of said section 2A of said chapter 63, as so appearing, is  
22 hereby further amended by striking out the words, “16.5 percent of the property factor plus 16.5  
23 percent of the payroll factor plus 67”, inserted by section 9, and inserting in place thereof the  
24 following words:- 8.25 percent of the property factor plus 8.25 percent of the payroll factor plus  
25 83.5.

26 SECTION 4. Said section 2A of said chapter 63, as so appearing, is hereby amended by  
27 striking out subsections (b) and (c) and inserting in place thereof the following 2 subsections:-

28 (b) If the financial institution has income from business activity which is taxable both  
29 within and without this commonwealth, its net income shall be apportioned to this  
30 commonwealth by multiplying its net income by its receipts factor. If the receipts factor is  
31 missing, the whole of the financial institution’s net income shall be taxable under section 2. The  
32 receipts factor is missing if both its numerator and denominator are 0, but it is not missing  
33 merely because its numerator is 0.

34 (c) The receipts shall be computed according to the method of accounting, cash or accrual  
35 basis, used by the taxpayer for federal income tax purposes for the taxable year.

36 SECTION 5. Said section 2A of said chapter 63, as so appearing, is hereby further  
37 amended by striking out subsections (e), (f) and (g) and inserting in place thereof the following  
38 subsection:-

39 (e) If the provisions of subsections (a) to (d), inclusive, are not reasonably adapted to  
40 approximate the net income derived from business carried on within the commonwealth, a  
41 financial institution may apply to the commissioner, or the commissioner may require the  
42 financial institution, to have its income derived from business carried on within this  
43 commonwealth determined by a method other than that set forth in subsections (a) to (d),  
44 inclusive. Such application shall be made by attaching to its duly-filed return a statement of the  
45 reasons why the financial institution believes that the provisions of this section are not  
46 reasonably adapted to approximate its net income derived from business carried on within this  
47 commonwealth and a description of the method sought by it. A financial institution which so  
48 applies shall, upon receipt of a request therefor from the commissioner, file with the  
49 commissioner, under oath of its treasurer, a statement of such additional information as the  
50 commissioner may require.

51 If, after such application by the financial institution, or after the commissioner's own  
52 review, the commissioner determines that the provisions of subsections (a) to (d), inclusive, are  
53 not reasonably adapted to approximate the financial institution's net income derived from  
54 business carried on within the commonwealth, the commissioner shall by reasonable methods  
55 determine the amount of net income derived from business activity carried on within the  
56 commonwealth. The amount thus determined shall be the net income taxable under section two  
57 and the foregoing determination shall be in lieu of the determination required by subsections (a)  
58 to (d), inclusive. If an alternative method is used by the commissioner hereunder, the

59 commissioner, in his discretion, with respect to the two next succeeding taxable years, may  
60 require similar information from such financial institution if it shall appear that the provisions of  
61 subsections (a) to (d), inclusive, are not reasonably adapted to approximate for the applicable  
62 year the financial institution's net income derived from business carried on within this  
63 commonwealth and may again by reasonable methods determine such income.

64 SECTION 6. Subsection (c) of section 38 of said chapter 63, as so appearing, is hereby  
65 amended by striking out in lines 46 to 48, inclusive, the words "a fraction, the numerator of  
66 which is the property factor plus the payroll factor plus twice times the sales factor, and the  
67 denominator of which is four", and inserting in place thereof the following words:- a fraction  
68 which is the sum of: 18.75 per cent multiplied by the payroll factor, plus 18.75 per cent  
69 multiplied by the property factor, plus 62.5 per cent multiplied by the sales factor.

70 SECTION 7. Said subsection (c) of said section 38 of said chapter 63, as so appearing, is  
71 hereby further amended by striking out the words, "18.75 per cent multiplied by the payroll  
72 factor, plus 18.75 per cent multiplied by the property factor, plus 62.5", inserted by section 6,  
73 and inserting in place thereof the following words:- 12.5 per cent multiplied by the payroll  
74 factor, plus 12.5 per cent multiplied by the property factor, plus 75.

75 SECTION 8. Said subsection (c) of said section 38 of said chapter 63, as so appearing, is  
76 hereby further amended by striking out the words, "12.5 per cent multiplied by the payroll factor,  
77 plus 12.5 per cent multiplied by the property factor, plus 75", inserted by section 7, and inserting  
78 in place thereof the following words:- 6.25 per cent multiplied by the payroll factor, plus 6.25  
79 per cent multiplied by the property factor, plus 87.5.

80 SECTION 9. Said section 38 of said chapter 63, as so appearing, is hereby further  
81 amended by striking out subsection (g) and inserting in place thereof the following subsection:-

82 (g) If one of the factors is missing, the percentages set forth in subsection (c) shall be  
83 increased proportionately such that the sum of the percentages by which the 2 remaining factors  
84 are multiplied under this subsection is 1. If 2 factors are missing, the remaining factor is the  
85 apportionment percentage. If all 3 factors are missing, the whole of the taxpayer's net income  
86 shall be its taxable net income. A factor is missing if both its numerator and denominator are 0,  
87 or if it is otherwise determined to be insignificant in producing income.

88 SECTION 10. Said chapter 63, as so appearing, is hereby further amended by striking out  
89 section 38 and inserting in place thereof the following section:-

90 Section 38. The commissioner shall determine the part of the net income of a business  
91 corporation derived from business carried on within the commonwealth as follows:

92 (a) Net income as defined in section 30 adjusted as follows shall constitute taxable net  
93 income:

94 (1) 95 percent of dividends, exclusive of distributions in liquidation, included therein  
95 shall be deducted other than dividends from or on account of the ownership of:

96 (i) shares in a corporate trust, as defined in section 1 of chapter 62, to the extent such  
97 dividends represent tax-free earnings and profits, as defined in section 8 of chapter 62, as in  
98 effect on December 31, 2008,

99 (ii) deemed distributions and actual distributions, except actual distributions out of  
100 previously taxed income, from a DISC which is not a wholly owned DISC, or

101 (iii) any class of stock, if the corporation owns less than 15 per cent of the voting stock of  
102 the corporation paying such dividend.

103 (2) Long-term capital gains realized and long-term capital losses sustained from the sale  
104 or exchange of intangible property affected under the provisions of the Federal Internal Revenue  
105 Code, as amended, and in effect for taxable years ended on or before December 31, 1962, shall  
106 not be included in any part therein.

107 (b) If the corporation does not have income from business activity which is taxable in  
108 another state, the whole of its taxable net income, determined under the provisions of subsection  
109 (a), shall be allocated to this commonwealth. For purposes of this section, a corporation is  
110 taxable in another state if (1) in that state such corporation is subject to a net income tax, a  
111 franchise tax measured by net income, a franchise tax for the privilege of doing business, or a  
112 corporate stock tax, or (2) that state has jurisdiction to subject such corporation to a net income  
113 tax regardless of whether, in fact, the state does or does not. Notwithstanding any other provision  
114 of this section, the portion of the taxable net income of a corporation that a non-domiciliary state  
115 is prohibited from taxing under the Constitution of the United States shall be allocated in full to  
116 the commonwealth if the commercial domicile of the corporation is in the commonwealth.

117 (c) If a corporation has income from business activity which is taxable both within and  
118 without this commonwealth, its taxable net income, as determined under the provisions of  
119 subsection (a), shall be apportioned to this commonwealth by multiplying such taxable net  
120 income by the sales factor.

121 (d) The sales factor is a fraction, the numerator of which is the total sales of the  
122 corporation in the commonwealth during the taxable year, and the denominator of which is the  
123 total sales of the corporation everywhere during the taxable year.

124 As used in this subsection, unless specifically stated otherwise, “sales” shall mean all  
125 gross receipts of the corporation, including deemed receipts from transactions treated as sales or  
126 exchanges under the Code, except interest, dividends and gross receipts from the maturity,  
127 redemption, sale, exchange or other disposition of securities; provided, however, that “sales”  
128 shall not include gross receipts from transactions or activities to the extent that a non-domiciliary  
129 state would be prohibited from taxing the income from such transactions or activities under the  
130 Constitution of the United States.

131 (e) Sales of tangible personal property are in the commonwealth for purposes of this  
132 section if:

133 (1) the property is delivered or shipped to a purchaser within the commonwealth  
134 regardless of the f.o.b. point or other conditions of the sale; or (2) the corporation is not taxable  
135 in the state of the purchaser and the property was not sold by an agent or agencies chiefly  
136 situated at, connected with or sent out from premises for the transaction of business owned or  
137 rented by the corporation outside the commonwealth. “Purchaser”, as used in clauses (1) and (2)  
138 shall include the United States government.

139 (f) Sales, other than sales of tangible personal property, are in the commonwealth for  
140 purposes of this section if the corporation’s market for the sale is in the commonwealth. The  
141 corporation’s market for a sale is in the commonwealth and the sale is thus assigned to the  
142 commonwealth for the purpose of this section:

143 (1) in the case of sale, rental, lease or license of real property, if and to the extent the  
144 property is located in the commonwealth;

145 (2) in the case of rental, lease or license of tangible personal property, if and to the extent  
146 the property is located in the commonwealth;

147 (3) in the case of sale of a service, if and to the extent the service is delivered to a  
148 location in the commonwealth;

149 (4) in the case of lease or license of intangible property, including a sale or exchange of  
150 such property where the receipts from the sale or exchange derive from payments that are  
151 contingent on the productivity, use or disposition of the property, if and to the extent the  
152 intangible property is used in the commonwealth; and

153 (5) in the case of the sale of intangible property, other than as provided in clause (4),  
154 where the property sold is a contract right, government license or similar intangible property that  
155 authorizes the holder to conduct a business activity in a specific geographic area, if and to the  
156 extent that the intangible property is used in or otherwise associated with the commonwealth;  
157 provided, however, that any sale of intangible property, not otherwise described in this clause or  
158 clause (4), shall be excluded from the numerator and the denominator of the sales factor.

159 (g) If the numerator and denominator of the sales factor are zero or if the sales factor is  
160 otherwise determined to be insignificant in producing income, the taxpayer shall determine its  
161 sales factor by:

162 (1) adding to its sales any interest, dividends and gross receipts from the maturity,  
163 redemption, sale, exchange or other disposition of securities, and applying the sourcing



164 provisions for receipts under section 2A to the total adjusted sales amount, as if the taxpayer  
165 were a financial institution for purposes of that section; or

166 (2) if, notwithstanding the adjustments in subsection (g)(1), the numerator and  
167 denominator of the sales factor remains zero or if the factor is otherwise determined to be  
168 insignificant in producing income, the whole of the taxpayer's net income shall be taxable net  
169 income allocated to the commonwealth, provided that the alternative apportionment provisions  
170 of subsection (e) of section 2A shall be applicable, as if the taxpayer were a financial institution  
171 for purposes of that section.

172 (h) For the purposes of this section:

173 (1) in the case of sales, other than sales of tangible personal property, if the state or states  
174 to which sales should be assigned cannot be determined, it shall be reasonably approximated;

175 (2) in the case of sales other than sales of tangible personal property if the taxpayer is not  
176 taxable in a state to which a sale is assigned, or if the state or states to which such sales should be  
177 assigned cannot be determined or reasonably approximated, such sale shall be excluded from the  
178 numerator and denominator of the sales factor;

179 (3) the corporation shall be considered to be taxable in the state of the purchaser if  
180 tangible personal property is delivered or shipped to a purchaser in a foreign country;

181 (4) sales of tangible personal property to the United States government or any agency or  
182 instrumentality thereof for purposes of resale to a foreign government or any agency or  
183 instrumentality thereof are not sales made in the commonwealth;

184 (5) in the case of sale, exchange or other disposition of a capital asset, as defined in  
185 paragraph (m) of section 1 of chapter 62, used in a taxpayer's trade or business, including a  
186 deemed sale or exchange of such asset, "sales" shall be measured by the gain from the  
187 transaction;

188 (6) "security" shall mean any interest or instrument commonly treated as a security as  
189 well as other instruments which are customarily sold in the open market or on a recognized  
190 exchange, including, but not limited to, transferable shares of a beneficial interest in any  
191 corporation or other entity, bonds, debentures, notes and other evidences of indebtedness,  
192 accounts receivable and notes receivable, cash and cash equivalents including foreign currencies  
193 and repurchase and futures contracts;

194 (7) in the case of a sale or deemed sale of a business, the term "sales" shall not include  
195 receipts from the sale of the business "goodwill" or similar intangible value, including, without  
196 limitation, "going concern value" and "workforce in place"; and

197 (8) in the case of a business deriving receipts from operating a gaming establishment or  
198 otherwise deriving receipts from conducting a wagering business or activity, income-producing  
199 activity shall be considered to be performed in the commonwealth to the extent that the location  
200 of wagering transactions or activities that generated the receipts is in the commonwealth.

201 (i) (1) As used in this subsection, the following words shall, unless the context requires  
202 otherwise, have the following meaning:

203 "Administration services", include, but are not limited to, clerical, fund or shareholder  
204 accounting, participant record keeping, transfer agency, bookkeeping, data processing, custodial,  
205 internal auditing, legal and tax services performed for a regulated investment company, but only

206 if the provider of such service or services during the taxable year in which such service or  
207 services are provided also provides or is affiliated with a person that provides management or  
208 distribution services to any regulated investment company.

209 “Affiliate”, the meaning as set forth in 15 USC section a-2(a)(3)(C), as may be amended  
210 from time to time.

211 “Distribution services”, include, but are not limited to, the services of advertising,  
212 servicing, marketing or selling shares of a regulated investment company, but, in the case of  
213 advertising, servicing or marketing shares, only where such service is performed by a person  
214 who is, or in the case of a close end company, was, either engaged in the services of selling  
215 regulated investment company shares or affiliated with a person that is engaged in the service of  
216 selling regulated investment company shares. In the case of an open end company, such service  
217 of selling shares must be performed pursuant to a contract entered into pursuant to 15 USC  
218 section a-15(b), as from time to time amended.

219 “Domicile”, presumptively the shareholder’s mailing address on the records of the  
220 regulated investment company. If, however, the regulated investment company or the mutual  
221 fund service corporation has actual knowledge that the shareholder’s primary residence or  
222 principal place of business is different than the shareholder’s mailing address said presumption  
223 shall not control. If the shareholder of record is a company which holds the shares of the  
224 regulated investment company as depositor for the benefit of a separate account, then the  
225 shareholder shall be the contract owners or policyholders of the contracts or policies supported  
226 by the separate account, and it shall be presumed that the domicile of said shareholder is the  
227 contract owner’s or policyholder’s mailing address to the extent that the company maintains such

228 mailing addresses in the regular course of business. If the regulated investment company or the  
229 mutual fund service corporation has actual knowledge that the shareholder's principal place of  
230 business is different than the shareholder's mailing address said presumption shall not control.

231 "Management services", include, but are not necessarily limited to, the rendering of  
232 investment advice directly or indirectly to a regulated investment company, making  
233 determinations as to when sales and purchases of securities are to be made on behalf of the  
234 regulated investment company, or the selling or purchasing of securities constituting assets of a  
235 regulated investment company, and related activities, but only where such activity or activities  
236 are performed: (i) pursuant to a contract with the regulated investment company entered into  
237 pursuant to 15 USC section a-15(a), as from time to time amended; (ii) for a person that has  
238 entered into such contract with the regulated investment company; or (iii) for a person that is  
239 affiliated with a person that has entered into such contract with a regulated investment company.

240 "Mutual fund sales", taxable net income derived within the taxable year directly or  
241 indirectly from the rendering of management, distribution or administration services to a  
242 regulated investment company, including net income received directly or indirectly from  
243 trustees, sponsors and participants of employee benefit plans which have accounts in a regulated  
244 investment company.

245 "Regulated investment company", the meaning as set forth in section 851 of the Internal  
246 Revenue Code as amended and in effect for the taxable year.

247 (2) Notwithstanding the foregoing, mutual fund sales, other than the sale of tangible  
248 personal property, shall be assigned to the commonwealth to the extent that shareholders of the  
249 regulated investment company are domiciled in the commonwealth as follows:

250 (a) by multiplying the taxpayer's total dollar amount of sales of such services on behalf  
251 of each regulated investment company by a fraction, the numerator of which shall be the average  
252 of the number of shares owned by the regulated investment company's shareholders domiciled in  
253 the commonwealth at the beginning of and at the end of the regulated investment company's  
254 taxable year that ends with or within the taxpayer's taxable year and the denominator of which  
255 shall be the average of the number of shares owned by the regulated investment company  
256 shareholders everywhere at the beginning of and at the end of the regulated investment  
257 company's taxable year that ends with or within the taxpayer's taxable year.

258 (b) A separate computation shall be made to determine the sale for each regulated  
259 investment company, the sum of which shall equal the total sales assigned to the commonwealth.

260 The commissioner shall adopt regulations to implement subsections (d) to (i), inclusive.  
261 Nothing in this subsection shall limit the commissioner's authority under subsection (k).

262 (j) If a corporation maintains an office, warehouse or other place of business in a state  
263 other than this commonwealth for the purpose of reducing its tax under this chapter, the  
264 commissioner shall, in determining the amount of taxable net income apportionable to this  
265 commonwealth, adjust any factor to properly reflect the amount which the factor ought  
266 reasonably to assign to this commonwealth.

267 (k) If the apportionment provisions of this section are not reasonably adapted to  
268 approximate the net income derived from business carried on within this commonwealth by any  
269 type of industry group, the commissioner may, by regulation, adopt alternative apportionment  
270 provisions to be applied to such an industry group in lieu of the foregoing provisions.

271 (l) In any case in which a purchasing corporation makes an election under section 338 of  
272 the Code, the target corporation shall be treated as having sold its assets for purposes of this  
273 section.

274 SECTION 11. Sections 1 and 6 shall take effect for the tax year beginning on January 1,  
275 2025 and ending on December 31, 2025.

276 SECTION 12. Sections 2 and 7 shall take effect for the tax year beginning on January 1,  
277 2026 and ending on December 31, 2026.

278 SECTION 13. Sections 3 and 8 shall take effect on January 1, 2025 and shall be effective  
279 for all tax years beginning on or after January 1, 2025.

280 SECTION 14. Sections 4, 5 and 10 shall take effect on January 1, 2026 and shall be  
281 effective for all tax years beginning on or after January 1, 2026."