SENATE DOCKET, NO. FILED ON: 1/9/2009

**SENATE . . . . . . . . . . . . . . . No.**

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The Commonwealth of Massachusetts

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

PRESENTED BY:

**Walsh, Marian (SEN)**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

*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 passage of the accompanying bill:

An Act relative to the equitable taxation of corporations.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

PETITION OF:

|  |  |
| --- | --- |
| Name: | District/Address: |
| Walsh, Marian (SEN) | Suffolk and Norfolk |

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S01842 OF 2007-2008.]

The Commonwealth of Massachusetts

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**In the Year Two Thousand and Nine**

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An Act relative to the equitable taxation of 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. Subsection ( c ) of section 38 of  chapter 63 of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by striking out the words ",

other than a defense corporation as described in subsection (k), a manufacturing corporation as described in subsection (l), or a mutual fund service corporation to the extent of its mutual fund sales as described in subsection (m),"

SECTION 2.  Said section 38 is hereby further amended by striking out subsections (k) and (l).

SECTION 3.  Said section 38 is hereby further amended by striking out subsection (m) and inserting in place thereof the following subsection:-

(m) As used in subsection (f), the following words shall, unless the content otherwise requires, have the following meaning:

"Administration services", include, but are not limited to, clerical, fund or shareholder accounting, participant record keeping, transfer agency, bookkeeping, data processing, custodial, internal auditing, legal and tax services performed for a regulated investment company, but only if the provider of such service or services during the taxable year in which such service or services are provided also provides or is affiliated with a person that provides management or distribution services to any regulated investment company.

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

"Domicile", presumptively the shareholder's mailing address on the records of the regulated investment company.  If, however, the regulated investment company or the mutual fund service corporation has actual knowledge that the shareholder's primary residence or principal place of business is different than the shareholder's mailing address said presumption shall not control.  If the shareholder of record is a company which holds the shares of the regulated investment company as depositor for the benefit of a separate account, then the shareholder shall be the contract owners or policyholders of the contracts or policies supported by the separate account, and it shall be presumed that the domicile of said shareholder is the contract owner's or policyholder's mailing address to the extent that the company maintains such mailing addresses in the regular course of business.  If the regulated investment company or the mutual fund service corporation has actual knowledge that the shareholder's principal place of business is different than the shareholder's mailing address said presumption shall not control.

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

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

"Mutual fund service corporation", any corporation doing business in the commonwealth which derives more than fifty percent of its gross income from the provision directly or indirectly of management, distribution or administration services to or on behalf of a regulated investment company and from trustees, sponsors and participants of employee benefit plans which have accounts in a regulated investment company.

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