

**HOUSE . . . . . No.**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Pam Richardson**

*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 extending single sales factor apportionment to all retail and wholesale corporations.

PETITION OF:

NAME:

Pam Richardson

DISTRICT/ADDRESS:

6th Middlesex

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT RELATIVE TO 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. Chapter 63 of the General Laws, as appearing in the 2004 Official Edition, is hereby  
2 amended by deleting subsection (c) of section 38 and replacing it with the following new subsection:-

3  
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 the  
6 extent of its mutual fund sales as described in subsection (m), a retail corporation as described in  
7 subsection (o), or a wholesale corporation as described in subsection (p), has income from business  
8 activity which is taxable both within and without this commonwealth, its taxable net income, as  
9 determined under the provisions of subsection (a), shall be apportioned to this Commonwealth by  
10 multiplying said taxable net income by a fraction, the numerator of which is the property factor plus the  
11 payroll factor plus twice times the sales factor, and the denominator of which is four.

12  
13 SECTION 2. Section 38 of Chapter 63 of the General Laws, as so appearing, is hereby further amended  
14 by inserting the following new subsection:-

15  
16 (o) (1) As used in this section, the following words shall, unless the context otherwise requires,  
17 have the following meaning: "Retail corporation", a corporation that is engaged in retailing. In order to  
18 be engaged in retailing, the corporation must be engaged, in substantial part, in the ordinary course of  
19 business of making sales of tangible personal property or associated services at retail; engaged in the

20 business of making sales of tangible personal property at retail at an auction; engaged in the business of  
21 making sales for storage, use or other consumption, or makes sales at auction for storage, use or other  
22 consumption. A sale "at retail" is a sale for any purpose other than resale. A domestic or foreign retail  
23 corporation's activities will be considered to be substantial if any one of the following five tests are met:

- 24 1. twenty-five percent or more of its gross receipts are derived from sales at retail;
- 25 2. twenty-five percent or more of its payroll is paid to employees working in its retailing  
26 operations and fifteen percent or more of its gross receipts are derived from sales at  
27 retail;
- 28 3. twenty-five percent or more of its tangible property is used in its retailing operations  
29 and fifteen percent or more of its gross receipts are derived from sales at retail;
- 30 4. thirty-five percent or more of its tangible property is used in its retailing operations;  
31 or
- 32 5. the corporation's retailing activities are deemed substantial under relevant  
33 regulations promulgated by the commissioner.

34

35 (2) If a retail corporation, as defined in paragraph (o), has income from business activity  
36 which is taxable both within and without this commonwealth, its taxable net income, determined under  
37 the provisions of subsection (a), shall not be apportioned pursuant to the percentage that results from  
38 the three-factor formula set forth in subsection (c) but, instead, shall be apportioned by multiplying said  
39 taxable net income by one hundred percent of the sales factor.

40

41 SECTION 2. Section 38 of Chapter 63 of the General Laws, as so appearing, is hereby further amended  
42 by inserting the following new subsection:-

43

44 (p) (1) As used in this section, the following words shall, unless the context otherwise requires,  
45 have the following meaning: "Wholesale corporation", a corporation that is engaged in wholesaling. In  
46 order to be engaged in wholesaling, the corporation must be engaged, in substantial part, in the  
47 ordinary course of business of making sales of tangible personal property at wholesale; engaged in the  
48 business of making sales of tangible personal property at wholesale at an auction. A sale "at wholesale"  
49 is a sale whereby the purchaser intends to resell the purchased items. A domestic or foreign wholesale  
50 corporation's activities will be considered to be substantial if any one of the following five tests are met:

- 51 1. twenty-five percent or more of its gross receipts are derived from sales at wholesale;

- 52                   2. twenty-five percent or more of its payroll is paid to employees working in its  
53 wholesaling operations and fifteen percent or more of its gross receipts are derived  
54 from sales at wholesale;
- 55                   3. twenty-five percent or more of its tangible property is used in its wholesaling  
56 operations and fifteen percent or more of its gross receipts are derived from sales at  
57 wholesale;
- 58                   4. thirty-five percent or more of its tangible property is used in its wholesaling  
59 operations; or
- 60                   5. the corporation's wholesaling activities are deemed substantial under relevant  
61 regulations promulgated by the commissioner.

62

63                   (2) If a wholesale corporation, as defined in paragraph (p), has income from business activity  
64 which is taxable both within and without this commonwealth, its taxable net income, determined under  
65 the provisions of subsection (a), shall not be apportioned pursuant to the percentage that results from  
66 the three-factor formula set forth in subsection (c), but instead, shall be apportioned by multiplying said  
67 taxable net income by one hundred percent of the sales factor.

68