

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Richard R. Tisei

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 corporations.

PETITION OF:

NAME:

Richard R. Tisei

DISTRICT/ADDRESS:

Middlesex and Essex

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S01833 OF 2007-2008.]

The Commonwealth of Massachusetts

—————
In the Year Two Thousand and Nine
—————

AN ACT RELATIVE TO EXTENDING SINGLE SALES FACTOR APPORTIONMENT TO ALL
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
2 hereby amended by deleting subsection (c) of section 38 and replacing it with the following new
3 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), or a mutual fund service corporation to
6 the extent of its mutual fund sales as described in subsection (m), has income from business
7 activity which is taxable both within and without this commonwealth, its taxable net income, as
8 determined under the provisions of subsection (a), shall be apportioned to this commonwealth by
9 multiplying said taxable net income by one hundred percent of the sales factor.

10 SECTION 2. Section 38 of Chapter 63 of the General Laws, as so appearing, is hereby further
11 amended by deleting subsections (d) and (e).

12 SECTION 3. Section 38 of Chapter 63, as so appearing, is hereby further amended by striking
13 in subsection (f) all words after the phrase “Sales, other than the sales of tangible personal
14 property, are in this commonwealth if:-“ and replacing it with the following:-

15 Sales, other than the sales of tangible personal property, are in this commonwealth if:-

16 1. the income-producing activity is performed in this commonwealth; or

17 2. if the income-producing activity is performed both in and outside this commonwealth, the
18 sales are assigned to the commonwealth on a pro-rata basis to the extent the income-producing
19 activity occurred in the commonwealth.

20 For the purposes of this subsection: (1) in the case of the licensing of intangible property, the
21 income-producing activity shall be considered to be performed in the commonwealth to the
22 extent that the intangible property is used in the commonwealth; (2) the corporation shall be
23 considered to be taxable in the state of the purchaser if the tangible personal property is delivered
24 or shipped to a purchaser in a foreign country; (3) sales of tangible personal property to the
25 United States government or any agency or instrumentality thereof for purposes of resale to a
26 foreign government or any agency or instrumentality thereof are not sales made in the
27 commonwealth; (4) in the case of the sale, exchange or other disposition of a capital asset, as
28 defined in paragraph (m) of section 1 of chapter 62, used in a taxpayer's trade or business,
29 including a deemed sale or exchange of such asset, "sales" are measured by the gain from the
30 transaction; and (5) "security" means any interest or instrument commonly treated as a security
31 as well as other instruments which are customarily sold in the open market or on a recognized
32 exchange, including, but not limited to, transferable shares of a beneficial interest in any
33 corporation or other entity, bonds, debentures, notes, and other evidences of indebtedness,
34 accounts receivable and notes receivable, cash and cash equivalents including foreign currencies,
35 and repurchase and futures contracts.

36 Notwithstanding the foregoing, mutual fund sales by a mutual fund service corporation as
37 defined in subsection (m), other than the sale of tangible personal property, shall be assigned to
38 this commonwealth to the extent that shareholders of the regulated investment company are
39 domiciled in this commonwealth as follows:

40 (a) by multiplying the mutual fund service corporation's total dollar amount of sales of such
41 services on behalf of each regulated investment company by a fraction, the numerator of which
42 shall be the average of the number of shares owned by the regulated investment company's
43 shareholders domiciled in this commonwealth at the beginning of and at the end of the regulated
44 investment company's taxable year that ends with or within the mutual fund service corporation's
45 taxable year, and the denominator of which shall be the average of the number of shares owned
46 by the regulated investment company shareholders everywhere at the beginning of and at the end
47 of the regulated investment company's taxable year that ends with or within the mutual fund
48 service corporation's taxable year.

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

51 The commissioner shall promulgate regulations to implement this paragraph.

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