

HOUSE No. 02502

The Commonwealth of Massachusetts

PRESENTED BY:

Brian Dempsey

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 to establish elective single sales factor apportionment for all Massachusetts corporations.

PETITION OF:

NAME:

Brian Dempsey

DISTRICT/ADDRESS:

3rd Essex

HOUSE No. 02502

By Mr. Dempsey of Haverhill, a petition (accompanied by bill, House, No. 2502) of Dempsey for legislation to establish elective single sales factor apportionment for corporations to determine net income subject to taxation Joint Committee on Revenue.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to establish elective single sales factor apportionment for all Massachusetts 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. Section 2A of chapter 63, as appearing in the 2008 Official Edition, is hereby
2 amended by striking out subsection (b) and inserting in place thereof the following subsection:-
3 (b)(1) Except as provided in subsection (b)(2), if the financial institution has income from
4 business activity which is taxable both within and without this commonwealth, its net income
5 shall be apportioned to this commonwealth by multiplying its net income by the applicable
6 apportionment percentage. For purposes of this section, the applicable apportionment percentage
7 is determined by adding the taxpayer's receipts factor, property factor and payroll factor together
8 and dividing the sum by three. If one of the factors is missing, the two remaining factors are
9 added and the sum is divided by two. If two of the factors are missing, the remaining factor is the
10 apportionment percentage. If all three factors are missing, the whole of the financial institution's

11 net income shall be taxable under section two. A factor is missing if both its numerator and
12 denominator are zero, but it is not missing merely because its numerator is zero.

13 (b)(2) A financial institution that has income from business activity which is taxable both within
14 and without this commonwealth, may elect to have its net income apportioned to this
15 commonwealth by multiplying said taxable net income by the resulting percentage as determined
16 in the following formulas:

17 (i) For taxable years beginning on or after January 1, 2012 but before January 1, 2013, 20
18 percent of the property factor plus 20 percent of the payroll factor plus 60 percent of the receipts
19 factor.

20 (ii) For taxable years beginning on or after January 1, 2013 but before January 1, 2014, 15
21 percent of the property factor plus 15 percent of the payroll factor plus 70 percent of the receipts
22 factor.

23 (iii) For taxable years beginning on or after January 1, 2014 but before January 1, 2015, 10
24 percent of the property factor plus 10 percent of the payroll factor plus 80 percent of the receipts
25 factor.

26 (iv) For taxable years beginning on or after January 1, 2015 but before January 1, 2016, 5
27 percent of the property factor plus 5 percent of the payroll factor plus 90 percent of the receipts
28 factor.

29 (v) For taxable years beginning on or after January 1, 2016, 100 percent of the receipts factor.

30 SECTION 2. Subsection (d) of section 2A of said chapter 63, as so appearing, is hereby
31 amended by inserting after paragraph (xiii) the following paragraph:-

32 (xiv) A financial institution that elects to apportion its taxable net income pursuant to subsection
33 (b)(2) shall apply the rules applicable to the receipts factor as set forth in this section, with the
34 following exceptions:

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

39 (B) In lieu of sourcing receipts pursuant to paragraph (xii), the numerator of the receipts
40 factor includes the income described in paragraph (xii)(A) multiplied by a fraction, the
41 numerator of which is the total amount included in the numerator of the receipts factor pursuant
42 to paragraphs (iii), (iv), (vi) and (xiv)(A) and the denominator of which is the taxpayer's total
43 amount of (1) interest and fees or penalties in the nature of interest from loans, (2) interest and
44 fees or penalties in the nature of interest from credit card receivables and receipts from fees
45 charged to card holders, such as annual fees, and (3) receipts from services subject to
46 apportionment pursuant to (xiv)(A).

47 SECTION 3. Section 38 of said chapter 63, as so appearing, is hereby amended by striking out
48 subsection (c) and inserting in place thereof the following subsection:-

49 (c)(1) Except as provided in subsection (c)(2), if a business corporation, other than a defense
50 corporation as described in subsection (k), a manufacturing corporation as described in
51 subsection (l), or a mutual fund service corporation to the extent of its mutual fund sales as
52 described in subsection (m), has income from business activity which is taxable both within and
53 without this commonwealth, its taxable net income, as determined under the provisions of

54 subsection (a), shall be apportioned to this commonwealth by multiplying said taxable net
55 income by a fraction, the numerator of which is the property factor plus the payroll factor plus
56 twice times the sales factor, and the denominator of which is four.

57 (2) Any business corporation, including a defense corporation as described in subsection (k), a
58 manufacturing corporation as described in subsection (l), or a mutual fund service corporation, as
59 described in subsection (m), to the extent of its non-mutual fund sales, that has income from
60 business activity which is taxable both within and without this commonwealth, may elect to have
61 its taxable net income, as determined under the provisions of subsection (a), apportioned to this
62 commonwealth by multiplying said taxable net income by the resulting percentage as determined
63 in the following formulas:

64 (i) For taxable years beginning on or after January 1, 2012 but before January 1, 2013, 20
65 percent of the property factor plus 20 percent of the payroll factor plus 60 percent of the sales
66 factor.

67 (ii) For taxable years beginning on or after January 1, 2013 but before January 1, 2014, 15
68 percent of the property factor plus 15 percent of the payroll factor plus 70 percent of the sales
69 factor.

70 (iii) For taxable years beginning on or after January 1, 2014 but before January 1, 2015, 10
71 percent of the property factor plus 10 percent of the payroll factor plus 80 percent of the sales
72 factor.

73 (iv) For taxable years beginning on or after January 1, 2015 but before January 1, 2016, 5
74 percent of the property factor plus 5 percent of the payroll factor plus 90 percent of the sales
75 factor.

76 (v) For taxable years beginning on or after January 1, 2016, 100 percent of the sales factor.

77 SECTION 4. Subsection (f) of section 38 of said chapter 63, as so appearing,, is hereby

78 amended by inserting after the third paragraph the following paragraph:-

79 A business corporation that elects to apportion its taxable net income pursuant to subsection

80 (c)(2) of this section shall apportion such income using the sales factor rules set forth in this

81 subsection, with the exception that (i) sales other than sales of tangible personal property are

82 sourced to this commonwealth if the gross receipts are derived from customers in this

83 commonwealth or otherwise attributable to this commonwealth's marketplace; and (ii) gross

84 receipts from the licensing of intangible property are sourced to this commonwealth to the extent

85 that the intangible property is used in the commonwealth.

86 SECTION 5. Section 52A of said chapter 63, as so appearing,, is hereby amended by striking

87 out subsection (3) and inserting in place thereof the following subsection:-

88 (3)(a) The portion of net income derived from business carried on within the commonwealth by

89 a corporation subject to tax under this section shall be determined under the provisions of

90 sections 38 and 42; provided, however, that under subsection (c)(1) of section 38 its taxable net

91 income shall be multiplied by a fraction, the numerator of which is the property factor plus the

92 payroll factor plus the sales factor, and the denominator is three.

93 (b) Any corporation subject to tax under this section that has net income derived from business

94 carried on within the commonwealth may elect to determine the portion of such net income

95 subject to tax in accordance with subsection (c)(2) of section 38.

96 SECTION 6. Sections 1 to 5 shall be effective for tax years beginning on or after January 1,
97 2012.

98 SECTION 7. This act shall take effect upon its passage.