

# HOUSE . . . . . No. 3025

By Mr. Marzilli of Arlington, petition of J. James Marzilli, Jr., and others relative to instituting a “throw back rule” in determination of the net income derived from business carried on within the Commonwealth. Revenue.

## The Commonwealth of Massachusetts

### PETITION OF:

J. James Marzilli, Jr.	David B. Sullivan
Ellen Story	Carl M. Sciortino, Jr.
Patricia D. Jehlen	Kay Khan
Ruth B. Balser	Jennifer M. Callahan
Peter V. Kocot	Steven J. D’Amico

In the Year Two Thousand and Seven.

AN ACT INSTITUTING A THROW BACK RULE.

*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 38 of Chapter 63 of the General Laws, as appearing in the  
2 1998 Official Edition, is hereby amended by striking out subsection  
3 (f) and inserting in place thereof the following:—  
4 (f) The sales factor is a fraction, the numerator of which is the  
5 total sales of the corporation in this commonwealth during the tax-  
6 able year, and the denominator of which is the total sales of the cor-  
7 poration everywhere during the taxable year. As used in this  
8 subsection, “sales” means all gross receipts of the corporation except  
9 interest, dividends, and gross receipts from the maturity, redemption,  
10 sale, exchange or other disposition of securities. Sales of tangible  
11 personal property are in this commonwealth if:  
12 1. the property is delivered or shipped to a purchaser within this  
13 commonwealth regardless of the f. o. b. point or other conditions of  
14 the sale; or  
15 2. the corporation is not taxable in the state of the purchaser and  
16 the property was not sold by an agent or agencies chiefly situated at,  
17 connected with, or sent out from premises for the transaction of

18 business owned or rented by the corporation outside this common-  
19 wealth; or

20 3. the corporation is not taxable in the state of the purchaser and  
21 the property is shipped from an office, store, warehouse, factory, or  
22 other place of storage in this commonwealth. “Purchaser”, as used in  
23 clauses 1 through 3 of this paragraph, shall include the United States  
24 government.

25 Sales, other than sales of tangible personal property, are in this  
26 commonwealth if:

27 1. the income-producing activity is performed in this common-  
28 wealth; or

29 2. the income-producing activity is performed both in and outside  
30 this commonwealth and a greater proportion of this income-pro-  
31 ducing activity is performed in this commonwealth than in any other  
32 state, based on costs of performance.

33 For the purposes of this subsection the corporation will be  
34 deemed to be taxable in the state of the purchaser if the tangible per-  
35 sonal property is delivered or shipped to a purchaser in a foreign  
36 country; sales of tangible personal property to the United States  
37 Government or any agency or instrumentality thereof for purposes of  
38 resale to a foreign government or any agency or instrumentality  
39 thereof are not sales made in this commonwealth; and sales by a cor-  
40 poration to its wholly owned DISC shall be treated as though made  
41 directly by such corporation to the customer of such DISC.

42 Notwithstanding the foregoing, mutual fund sales by a mutual  
43 fund service corporation as defined in subsection (in), other than the  
44 sale of tangible personal property, shall be assigned to this common-  
45 wealth to the extent that shareholders of the regulated investment  
46 company are domiciled in this commonwealth as follows:

47 (a) by multiplying the mutual fund service corporation’s total  
48 dollar amount of sales of such services on behalf of each regulated  
49 investment company by a fraction, the numerator of which shall be  
50 the average of the number of shares owned by the regulated invest-  
51 ment company’s shareholders domiciled in this commonwealth at  
52 the beginning of and at the end of the regulated investment compa-  
53 ny’s taxable year that ends with or within the mutual fund service  
54 corporation’s taxable year, and the denominator of which shall be the  
55 average of the number of shares owned by the regulated investment  
56 company shareholders everywhere at the beginning of and at the end

57 of the regulated investment company's taxable year that ends with or  
58 within the mutual fund service corporation's taxable year.

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

62 The commissioner shall promulgate regulations to implement the  
63 provisions of this paragraph.