

SENATE NO. 1833

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 hereby
2 amended by deleting subsection (c) of section 38 and replacing it with the following new subsection:-

3 (c) If a corporation, other than a defense corporation as described in subsection (k), a
4 manufacturing corporation as described in subsection (l), or a mutual fund service corporation to the
5 extent of its mutual fund sales as described in subsection (m), has income from business activity which
6 is taxable both within and without this commonwealth, its taxable net income, as determined under the
7 provisions of subsection (a), shall be apportioned to this commonwealth by multiplying said taxable
8 net income by one hundred percent of the sales factor.

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

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

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

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

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

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

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

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

48 The commissioner shall promulgate regulations to implement this paragraph.