

830 CMR 58.00: LOCAL TAXES

Section

58.2.1: Manufacturing Corporations

58.3.1: Qualifications of Assessors

58.2.1: Manufacturing Corporations

(1) Purpose.

(a) The purpose of 830 CMR 58.2.1 is to explain classification of manufacturing corporations and revocation of manufacturing classification.

(b) 830 CMR 58.2.1, is organized as follows:

1. Purpose
2. Definitions
3. General
4. Tax Treatment of Corporations Classified as Manufacturing Corporations
5. Tax Treatment of Corporations Not Applying for Manufacturing Corporation Classification
6. Requirements for Manufacturing Corporations Classification
7. Procedure for Obtaining Manufacturing Corporation Classification
8. Procedure for Reapplication for Manufacturing Corporation Classification
9. Revocation of Manufacturing Corporation Classification or Status
10. Appeal of Classification
11. Interaction with Sales Tax Law

(2) Definitions. The following terms have the following meanings unless the context requires otherwise.

Application, Massachusetts Form 355Q.

Board of assessors, board or officer assessing local property taxes.

Commissioner, the Commissioner of Revenue of the Commonwealth of Massachusetts or the Commissioner's designee duly authorized to act on the Commissioner's behalf.

Corporate headquarters, a facility where corporate staff are physically employed and where a significant portion of the corporation's financial, personnel, legal, or planning activities are handled on a regional or national basis.

Corporation, a corporation organized under or subject to M.G.L. c. 156B that is taxable under M.G.L. c. 63, or a corporation, association, or organization established under laws other than those of Massachusetts that is taxable under M.G.L. c. 63.

Corporations list or lists, for purposes of 830 CMR 58.2.1, the list or lists, including any supplements, forwarded by the Commissioner to the local boards of assessors, of all corporations known to him to be subject to taxation under M.G.L. chs. 59, 60A and 63 on January first of the current year. The list or lists will indicate those corporations which have been classified as manufacturing corporations.

Investment tax credit, the credit against corporate excise authorized by M.G.L. c. 63, § 31A.

Manufacturing corporation.

(a) a corporation (as defined above) organized under or subject to M.G.L. c. 156B, including a domestic research and development corporation, that is engaged in manufacturing in Massachusetts; or

(b) a corporation (as defined above) that is established under laws other than those of Massachusetts, that has a usual place of business in Massachusetts, and that is engaged in manufacturing in Massachusetts.

Open year, a tax year within the limitation period under M.G.L. c. 62C, §§ 26, 29 or 30, for which the Commissioner may assess tax.

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Recapture, the adding back to taxes due of a portion of the investment tax credit claimed for any asset that has a useful life beyond the date the asset ceases to be in qualified use, unless the property is in qualified use for twelve consecutive years.

Sales and use tax exemption, the exemption from sales and use tax for the sale or use of certain property used in research and development, authorized by M.G.L. c. 64H, § 6(r) and (s) and 830 CMR 64H.6.4.

Secretary of State, Secretary of the Commonwealth of Massachusetts.

(3) General. A corporation may be classified as a manufacturing corporation for any calendar year under M.G.L. c. 58, § 2, in which it is in existence and is engaged in manufacturing as defined in 830 CMR 58.2.1(6), as of January 1 of that year. A corporation properly classified as a manufacturing corporation may use certain tax benefits outlined in 830 CMR 58.2.1(4). The Commissioner determines whether a corporation is engaged in manufacturing under 830 CMR 58.2.1(6) through (9). If the Commissioner determines that a corporation is no longer engaged in manufacturing, the Commissioner may revoke the corporation's manufacturing classification under 830 CMR 58.2.1(9) and assess tax for any open year under M.G.L. c. 62C, § 26(b). A corporation aggrieved by its classification may appeal it under M.G.L. c. 58, § 2 and 830 CMR 58.2.1(10).

(4) Tax Treatment of Corporations Classified as Manufacturing Corporations. A corporation properly classified as a manufacturing corporation under M.G.L. c. 58, § 2 may use the following tax benefits:

- (a) a property tax exemption under M.G.L. c. 59, § 5(16)(3),
- (b) an investment tax credit under M.G.L. c. 63, § 31A, and
- (c) an exemption from sales and use tax for the sale or use of certain property used in research and development under M.G.L. c. 64H, § 6(r) and (s) and 830 CMR 64H.6.4.

(5) Tax Treatment of Corporations Not Applying for Manufacturing Corporation Classification.

(a) A corporation that does not apply for manufacturing corporation classification but that is engaged in manufacturing as defined in 830 CMR 58.2.1(6), may be treated as having manufacturing corporation "status." A corporation with manufacturing corporation status may use the tax benefits outlined in 830 CMR 58.2.1(4)(b) and (c); however, only those corporations with manufacturing corporation classification, are entitled to use the tax benefit outlined in 830 CMR 58.2.1(4)(a).

(b) A corporation that performs manufacturing activities that are not substantial, and that therefore is not engaged in manufacturing within the meaning of 830 CMR 58.2.1(6), may not use the tax benefits outlined in 830 CMR 58.2.1(4)(a),(b) or (c); however, it is still eligible to use, where applicable, the exemption in M.G.L. c. 64H, § 6(r), for sales of materials, tools and fuel, or any substitute therefor, which are consumed and used directly and exclusively in an industrial plant in the actual manufacture of tangible personal property to be sold, or the exemption in M.G.L. c. 64H, § 6(s), for sales of machinery, or replacement parts thereof, used directly and exclusively in an industrial plant in the actual manufacture, conversion, or processing of tangible personal property to be sold.

(6) Requirements for Manufacturing Corporation Classification.

(a) General. A corporation may be classified as a manufacturing corporation for any calendar year if it is in existence and is engaged in manufacturing in Massachusetts as of January 1 of that year. A corporation is engaged in manufacturing if both of the following requirements are satisfied:

1. the activities of the corporation involve manufacturing, and
2. the manufacturing activities performed by the corporation are substantial.

(b) Manufacturing. Manufacturing is the process of substantially transforming raw or finished materials by hand or machinery, and through human skill and knowledge, into a product possessing a new name, nature and adapted to a new use. In determining whether a process constitutes manufacturing, the Commissioner will examine the facts and circumstances of each case. However, the following principles will serve as guidelines:

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1. It is not required that manufacturing take place in an industrial plant, factory, or mill.
 2. If the process involves chemical change to property rather than only physical change, it is more likely to be manufacturing.
 3. If the process involves only physical change to property, the greater the degree of physical change, the more likely the process is manufacturing.
 4. A process which merely makes an item more attractive for sale without substantially altering the item is not manufacturing.
 5. Manufacturing ordinarily involves the production of products in standardized sizes and qualities and in multiple quantities. Market research, research and development, and design and creation of a prototype, although prerequisites to manufacturing, are not manufacturing.
 6. The process of adapting a previously-created model to a customer's specifications in recurring transactions may constitute manufacturing. However, the mere manipulation of information or performance of a personal service does not constitute manufacturing.
 7. A process which does not produce a finished product, but constitutes an essential and integral part of a total manufacturing process, may constitute manufacturing. A process that is a practical and necessary step in the production of a finished product for sale is generally an essential and integral part of a total manufacturing process.
 8. A process that produces intangible property, either in whole or in part, to be used in a manufacturing process may constitute manufacturing. However, the process by which the intangible property is created must transcend the mere manipulation of information and must be a substantial and integral step in the manufacturing process. Moreover, the intangible property must have a physical application in the final manufacturing activity.
 9. The transmission of information does not constitute manufacturing.
 10. The operation of a restaurant or other food service establishment is not manufacturing. Thus, any cooking, baking, and other preparation of food for on-site consumption is not manufacturing.
 11. The operation of a bakery is manufacturing. The baking of flour- and yeast-based foods, other than for on-site consumption, is manufacturing.
- (c) Examples. The following examples illustrate the principles in 830 CMR 58.2.1(6)(b); the numbers of the examples correspond to the principles which they explain.
- Example 1(a). Corporation A is a general contractor. Corporation A digs foundations and grades and otherwise prepares ground to make walkways and stairs. Corporation A then pours the cement from the trucks into molds and levels and finishes it to make foundations, walkways, and stairs. Corporation A's activities are not manufacturing for purposes of this section.
- Example 1(b). Corporation B operates a supermarket. In the back room of the supermarket employees bake bread and package various items which are then placed on the shelves for sale. Corporation B's activities are not manufacturing for purposes of this section.
- Example 1(c). Corporation C operates a chain of supermarkets. At its central plant in western Massachusetts, employees bake bread which is then delivered to and sold by its various supermarkets throughout Massachusetts. Corporation C's activities are manufacturing for purposes of this section.
- Example 2. Corporation D processes scrap metal for sale. The process involves using heat and chemicals to eliminate impurities, increase density and change the composition of the material so that it will have the metallurgical and chemical tolerances required by customers, which include mills, foundries, and smelters. This operation is manufacturing.
- Example 3(a). Corporation E is engaged in quarrying and crushing stone. Employees excavate gravel, load it onto trucks, and haul it to the corporation's plant. Other employees at the plant crush it and screen it for size. Larger pieces of stone are recrushed until they are no more than 1½ inches in circumference. Employees then place the stone on a screen and add water to wash away and separate the sand formed in the crushing process, and to separate the stone into three sizes. Corporation E then sells the stone to other companies which use it to make blocks and asphalt. Corporation E is not manufacturing.

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Example 3(b). Corporation F operates clothing factories. At the factories, employees operate cutting machines that cut many layers of fabric from a single pattern. Other employees sew together the different pieces of a garment at sewing machines. Other employees operate various machines that finish buttonholes, seams, and hems, attach closures and press the finished garment. Corporation F's activities are manufacturing activities.

Example 3(c). Corporation G purchases and sorts scrap metal for sale. Before the company purchases the scrap, it weighs and inspects the scrap metal, using a vibrating table to separate the metal from any dirt or ice, and then to separate various sizes and grades of metal. A magnetic belt removes iron pieces or flakes. After the scrap is purchased, it is sorted and cut, stripped, baked, or pressed into briquettes of a certain size. This process is not manufacturing.

Example 4(a). Corporation H's only Massachusetts operation is the labeling and packaging of clothing manufactured at its out-of-state plant. Corporation H is not manufacturing in Massachusetts.

Example 4(b). Corporation I receives shipments of ocean shells at its plant in Massachusetts. Each shell is cleaned and ground on an emery board wheel to remove several of the outer layers of the shell, until the shell's pearl interior is exposed. The shells are then polished and sold. Corporation I's activities are not manufacturing.

Example 5(a). Corporation L is an electrical engineering firm that does consulting. Corporation L develops computer devices which make automatic calculations for various purposes. Corporation L is hired to make only a prototype or a blueprint of a product. The process of making the product involves preliminary research, running various computer programs, and building and testing various trial prototypes, until a prototype is able to perform satisfactorily all required activities. Once the firm that has hired Corporation L approves Corporation L's product, the firm will contract with another company to mass produce and distribute the product. Corporation L is not performing manufacturing activities.

Example 5(b). Corporation XX is a computer software company engaged in writing a program to be used in a specific industry. Corporation XX has no outstanding contracts for the sale of its program, but hopes that the quality of its program when complete will generate industry-wide sales. Corporation XX is not performing manufacturing activity.

Example 6(a). Corporation KK is a computer software company which previously developed a software program that it reproduces and sells. The software is standardized, with minor deviations available upon request. The reproduction of the standardized computer program to be sold, with or without modification, is manufacturing.

Example 6(b). Corporation LL is a firm which previously developed and sold a software program. Corporation LL now exclusively provides telephone assistance and warranty service to persons that previously purchased its software. Corporation LL is not manufacturing.

Example 6(c). Corporation J is in the tailoring business. It makes alterations to suits to accommodate a customer's choice of length, etc. Corporation J is not manufacturing.

Example 6(d). Corporation ZZ is an advertising and graphic design firm which creates text, artwork, photographs, and video productions, either through its employees, or through the use of independent contractors. Corporation ZZ transfers its completed text, artwork, and photos to its clients in various forms, including paper, videotape, and disk. Corporation ZZ is not performing manufacturing activity.

Example 6(e). Corporation YY produces an advertising publication that it sells at retail. Corporation YY receives advertisements from the general public, arranges this information into page layouts, then submits the layouts to a printer for final printing. Corporation YY is not performing manufacturing activity.

Example 7(a). Corporation A's sawmill operation involves stripping bark and cutting lumber from logs. This process is an integral part of the total process of manufacturing a finished wood product, and it is manufacturing.

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Example 7(b). Corporation Q makes fine powders for a wide range of uses. Customers send Corporation Q raw materials such as resins, glass, chemicals, plastics, and metals, in various sizes. Employees at the corporation mill, crush, grind, or pulverize the materials, then fine sieve them to produce fine powders. The customers use the powders to produce helicopter blades, automotive parts, medical instruments, chromatography instruments, plastics, machinery components, and other items. Corporation Q is performing manufacturing activities.

Example 8(a). Corporation RR is engaged in the business of publishing books and producing canned software games in CD ROM form. It sells these finished products to retailers who, in turn, sell the products to the general public. Corporation RR develops the idea for a book or computer program and enters into contracts for text, artwork, information, and photographs. Corporation RR then edits and digitally manipulates this property and compiles it through a multi-step process into proofs or disks, which it modifies, refines, and transfers to a master disk. Corporation RR transfers the master disk to independent companies, either in-state or out-of-state, which mass produce the printed books or prepackaged CD ROMs in accordance with the specifications of Corporation RR. The master disks have physical application in the mass production process. The books and CD ROMs are returned to Corporation RR for final sale, or are shipped by the independent companies to Corporation RR's customers at the request of Corporation RR. Corporation RR is performing manufacturing activities with respect to both its book publishing and software production businesses.

Example 8(b). Corporation SS is a computer software company that previously developed a software program that it sold and continues to sell to a number of firms in a specific industry. Pursuant to these sales, Corporation SS also sells periodic updates. The underlying software program and updates are standardized, with minor changes software, customized to individual clients. Corporation SS develops the upgraded software, tests it, and refines it. Corporation SS then transfers the software, which is complete and represents the final software to be sold, by electronic means to an independent firm for replication. The master disk has physical application in the replication process, which is performed in accordance with the specifications of Corporation SS. Upon completion, the upgrades are returned to Corporation SS for sale to its clients or are shipped by the independent firm to Corporation SS's clients at the request of Corporation SS. Corporation SS is performing manufacturing activity.

Example 9(a). Corporation R operates an electronic digital computer time-sharing system. A customer stores information in the computer by transmitting electrical impulses to the computer over telephone lines. When the customer wishes to use the stored information for a particular purpose, the customer will enter a command in the computer in the form of a program or algorithm. The computer transmits the desired results by electrical impulses over telephone lines to the customer's terminal. A printer connected to the terminal then prints out the results. Corporation R is not manufacturing.

Example 9(b). Corporation S is a broadcasting company that makes television and radio broadcasts. In its creation of live programs, films, and videotapes, light is transformed into electrical impulses. In its production of video tapes, electrical impulses are further transformed into magnetic impulses, which are stored on the tapes. In all cases the electrical signals, after a complicated process, reach the television transmitting station. The transmitter transforms the signals into electromagnetic waves. These waves are received by television antennas. In its radio broadcasts, sound is converted into electrical impulses that are sent over telephone lines to a transmitter. The transmitter transforms the electrical impulses to a radio signal and transmits them to receiving sets (radios). Corporation S is not manufacturing.

Example 10(a). Corporation M operates a restaurant. Cooks at the restaurant wash and cut meats, poultry and fish into individual portions, trim fat from the portions, and wash and cut fruits and vegetables into various sizes. The cooks then prepare entrees by baking, broiling or frying the various food products and arranging them on individual dishes. Saladmakers wash, cut, and tear various vegetables and fruits, then arrange them in bowls and glasses to make individual salads and fruit cups. All foods prepared by the employees of the restaurant are served as meals to patrons of the restaurant. Corporation M is not performing manufacturing activities.

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Example 10(b). Corporation N operates a plant where employees make and package frozen food to be distributed to various supermarkets for retail sale. The employees wash, cut, cook, and bake various foods. Some machines weigh and arrange portions of different foods on aluminum platters. Other machines box the platters, seal the boxes, and wrap the boxes in waxed paper. Corporation N is manufacturing.

Example 11. Corporation O operates a bakery. Bakers at the bakery mix flour, water, yeast, eggs, and other ingredients to make dough, put the dough aside to rise, shape the dough to form various pastries, add toppings and fillings, and bake the pastries. Using somewhat different methods, the bakers also make breads, rolls, muffins, and cookies. Once the baked goods are cooled, other employees fill long trays with the baked goods and place them in the display case. All the baked goods are sold at retail to consumers. Corporation O is performing manufacturing activities.

(d) Substantial manufacturing. Whether a corporation's manufacturing activities are substantial depends on the facts and circumstances of each case. Upon and after the promulgation of 830 CMR 58.2.1, the Commissioner will ordinarily classify a corporation's manufacturing activities as substantial if any one of the following four tests is met:

1. The gross receipts fraction equals 25% or more; or
2. The employee fraction equals 25% or more and the gross receipts fraction equals 15% or more; or
3. The tangible property fraction equals 25% or more and the gross receipts fraction equals 15% or more; or
4. The tangible property fraction equals 35% or more.

These four tests are intended to establish general, prospective standards for corporations attempting to demonstrate that their manufacturing activities are substantial. A corporation whose activities satisfy none of the four tests for substantiality may nevertheless qualify for manufacturing corporation classification by establishing, through other relevant criteria, that its manufacturing activities are substantial, and by following the procedures set forth in 830 CMR 58.2.1(7). For example, a corporation which fails to qualify under the second substantiality test because of its volume of contract labor may nonetheless be classified as a manufacturing corporation if, in the discretion of the Commissioner, the corporation's manufacturing activity is otherwise substantial. In addition, a corporation which fails to qualify under any of the four substantiality tests because of the volume of its research and development activity may likewise be classified as a manufacturing corporation if, in the discretion of the Commissioner, the corporation's manufacturing activity is otherwise substantial.

(e) Gross receipts, tangible property, and employee fractions.

1. Gross receipts fraction. The gross receipts fraction is calculated by dividing the numerator explained in 830 CMR 58.2.1(6)(e)1.a. by the denominator explained in 830 CMR 58.2.1(6)(e)1.b..

- a. Numerator. The numerator is the gross receipts derived from manufacturing activities in Massachusetts in the preceding tax year. For the purpose of calculating the gross receipts fraction, "gross receipts derived from manufacturing activities in Massachusetts" means gross receipts derived from the sales of products manufactured in Massachusetts, whether or not the sales are "Massachusetts sales" within the meaning of M.G.L. c. 63, § 38(f), minus any portion of those receipts attributable to manufacturing performed outside of the Commonwealth.

The following two examples illustrate the calculation of "gross receipts derived from manufacturing activities in Massachusetts":

Example 1. Ubiquitous Corporation is a vertically integrated manufacturer of gizmos. Ubiquitous manufactures gizmos in three stages. It purchases raw materials and manufactures phase one gizmos at its plant in New Hampshire. It then ships the phase one gizmos to its Massachusetts plant where they are transformed into phase two gizmos. Finally, Ubiquitous ships the phase two gizmos to its plant in Rhode Island where they are processed into phase three (completed) gizmos and are sold to customers for \$1,000 each. The activity in each of the three states constitutes manufacturing.

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Ubiquitous's cost of producing each gizmo is as follows:

raw materials	\$75.00
labor, plant and equipment in NH	\$200.00
labor, plant and equipment in MA	\$150.00
labor, plant and equipment in RI	\$100.00
sales and administration	\$100.00
transportation	\$50.00
<u>profit</u>	<u>\$325.00</u>
sales price	\$1000.00

Ubiquitous's gross receipts from manufacturing activities in Massachusetts are:

$$\frac{\text{Massachusetts manufacturing costs}}{\text{total manufacturing costs}} \times (\text{times})$$

gross receipts from manufacturing, or

$$\frac{150}{200 + 150 + 100} \times \$1,000.00 = \$333.33.$$

Example 2. Concentrated Corporation is a specialty manufacturer whose only manufacturing activity is to transform phase one gizmos into phase two gizmos. (Gizmos are produced in three phases as described in 830 CMR 58.2.1(6)(e)1.a.: Example 1.) All of Concentrated Corporation's manufacturing activities are performed in Massachusetts. Therefore, all of Concentrated Corporation's gross receipts from the sale of phase two gizmos are gross receipts from manufacturing activities in Massachusetts.

b. Denominator. The denominator is the sum of the following:

- i. the numerator;
- ii. gross receipts derived from all business activities in Massachusetts in the previous tax year, less any portion of such gross receipts included in the numerator; and
- iii. the sum of all gross interest, dividends, and capital gains, excepting that portion of capital gain attributable to an extraordinary event such as the sale of a wholly owned subsidiary or division, etc., received or accrued, as applicable, in the preceding tax year, multiplied by the corporation's apportionment fraction, determined under M.G.L. c. 63, § 38(b) or (c), which it used on its previous Massachusetts corporate excise return. For purposes of 830 CMR 58.2.1(6)(e)1.b.iii, the term "dividend" shall not include amounts included in federal gross income pursuant to §§ 951 and 951A of the federal Internal Revenue Code, as amended and in effect for the taxable year.

The following example illustrates the calculation of the gross receipts fraction:

Example: Fraction Corporation, a cash basis taxpayer, manufactures in Massachusetts water purifiers and performs the service of chemically analyzing water for clients. In its previous tax year, it received \$200,000 for sales of water purifiers in Rhode Island; \$100,000 for sales of water purifiers in Massachusetts; \$50,000 for chemical analyses in Rhode Island; \$75,000 for chemical analyses in Massachusetts; and \$1,000 in dividends in a money market account. The corporation's apportionment formula on its corporate excise return filed for its previous tax year is 6/10.

The numerator, the corporation's gross receipts derived from manufacturing in Massachusetts in its previous tax year, is \$300,000. The denominator, the corporation's total gross receipts from all business activities in Massachusetts in the previous tax year, is \$300,000 for sales of water purifiers plus \$75,000 for chemical analyses, or \$375,000, plus its dividend income multiplied by 6/10.

The percentage of Fraction Corporation's gross receipts derived from manufacturing in Massachusetts in the previous tax year is calculated as follows:

$$\frac{100,000 + 200,000}{\$300,000 + (\$375,000 - 300,000) + .6 (\$1,000)},$$

or 80%.

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2. Tangible property fraction. The tangible property fraction is calculated by dividing the numerator explained in 830 CMR 58.2.1(6)(e)2.a. by the denominator explained in 830 CMR 58.2.1(6)(e)2.b..

a. Numerator. The numerator is the value of property used or purchased for use in manufacturing in Massachusetts by the corporation during the previous tax year. The value of property, for purposes of the tangible property fraction, is the original cost of owned property and eight times the net annual rental rate paid for rented property. Real property used in manufacturing includes only the floor space devoted to actual manufacturing. It does not include floor space used for executive or administrative offices, cafeterias, etc.

b. Denominator. The denominator is the value of all property used or purchased for use in Massachusetts during the previous tax year. In the case of a company that owns or rents a business facility outside the state, the denominator does not include the value of an in-state facility or portion of such facility used as a corporate headquarters.

The following example illustrates the calculation of the tangible property fraction:

Example: Fraction Corporation, described in the example in 830 CMR 58.2.1(6)(e)1. owns a building located in Massachusetts containing 10,000 square feet of floor space. The area in which it manufactures water purifiers is 4,000 square feet. The area containing offices and a laboratory for personnel engaged in the chemical analysis of water is 5,000 square feet. The remaining 1,000 square feet is used for various common areas. The value of the building is \$300,000. Fraction Corporation does not own or rent a business facility outside the state.

The value of Fraction Corporation's real property used in manufacturing in Massachusetts in the previous tax year is calculated as follows:

$$\frac{4,000 \text{ square feet used for manufacturing} \times \$300,000}{10,000 \text{ total square feet,}}$$

$$= \$120,000$$

Fraction Corporation owns all of the personal property it uses. The value of the machinery used for manufacturing in Massachusetts is \$150,000. The combined value of all other personal property used by the corporation in Massachusetts, including machinery used in researching and developing a prototype for a new water cooler, office furniture and equipment, and laboratory equipment and supplies, is \$200,000.

The value of Fraction Corporation's tangible property used in manufacturing in Massachusetts is \$120,000 in real estate and \$150,000 in personal property, or \$270,000. The total value of Fraction Corporation's tangible property in Massachusetts is \$300,000 in real estate and \$350,000 in personal property, or \$650,000. The percentage of Fraction Corporation's tangible property used in manufacturing in Massachusetts in the previous tax year is calculated as follows:

$$\frac{270,000}{650,000}, \text{ or } 41.5\%.$$

3. Employees fraction. The employees fraction is calculated by dividing the numerator explained in 830 CMR 58.2.1(6)(e)3.a. by the denominator explained in 830 CMR 58.2.1(6)(e)3.b.

a. Numerator. The numerator is the total payroll for Massachusetts employees performing manufacturing activities in Massachusetts in the previous tax year.

i. Massachusetts employees are employees whose "compensation is paid in (Massachusetts)," within the meaning of M.G.L. c. 63, § 38(e).

ii. Payroll has the meaning given to it in M.G.L. c. 63, § 38.

iii. "Employees performing manufacturing activities" means employees and their operational supervisors actually performing manufacturing activities. The term includes owners or employees performing quality assurance activities during the manufacturing process or immediately after the completion of manufacturing, but it does not include owners or employees who inspect or assure the quality of raw materials or parts received from suppliers, except to the extent that such owners or employees otherwise perform or supervise manufacturing activities.

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The term does not include owners and employees performing policy-making, financial, research and development, marketing, sale, retail, or restaurant functions of a company, except to the extent that such owners or employees otherwise perform or supervise manufacturing activities.

iv. If an employee performs manufacturing activities within the meaning of 830 CMR 58.2.1(3)(a)3., but does not do so full time, only that portion of the employee's salary attributable to his or her manufacturing activities shall be included in the numerator of the employees fraction.

b. Denominator. The denominator is the total payroll for Massachusetts employees in the previous tax year. In the case of a corporation that owns or rents a business facility outside the state, the denominator does not include the value of the payroll or portion of the payroll attributable to the functions of corporate staff physically employed at an in-state corporate headquarters, to the extent these functions pertain to the company's financial, personnel, legal, or planning activities.

The following example illustrates the calculation of the employees fraction:

Example: Fraction Corporation, described in the examples in 830 CMR 58.2.1(6)(e)1. and 2., employs a total of 62 persons at its plant in Massachusetts. 22 persons perform all activities relating to manufacturing water purifiers. Two managers supervise the production of water purifiers. One manager makes a marketing plan and arranges for distribution of the products. 13 employees go on-site to take water samples from customers in Rhode Island and Massachusetts, and return to the laboratory to analyze them. Eight employees are engaged in researching and designing the prototype for the new water cooler. One manager supervises these employees. Ten employees are employed as secretaries, clerks, inventory persons, shippers, cleaners, bookkeepers and accountants. The corporation has five officers. The corporation does not own or rent a business facility outside the state.

In this example 24 (22 production employees and two production supervisors) of Fraction Corporation's 62 Massachusetts employees are performing manufacturing activities in Massachusetts.

The total payroll of the corporation's 24 employees performing manufacturing activities in Massachusetts is \$200,000. The total payroll of the corporation's 38 employees not performing manufacturing activities in Massachusetts is \$310,000.

The payroll of Fraction Corporation's employees performing manufacturing activities in Massachusetts in the previous tax year is calculated as follows:

$$\frac{200,000}{510,000},$$

or 39%.

4. Gross receipts, tangible property, and employee fractions. Since the gross receipts fraction described in the example in 830 CMR 58.2.1(6)(e)1., equals 25% or more (*i.e.* 80%), Fraction Corporation's manufacturing activities are "substantial" under 830 CMR 58.2.1(6)(d)1.. If the gross receipts fraction in the example in 830 CMR 58.2.1(6)(e)1. were only 15%, then Fraction Corporation's manufacturing activities would still be "substantial" under either 830 CMR 58.2.1(6)(d)2. or 830 CMR 58.2.1(6)(d)3. because the tangible property and employee fraction described in the examples in 830 CMR 58.2.1(6)(e)2. and 3. equal 25% or more (*i.e.* 41.5% and 39%, respectively). If Fraction Corporation fails to meet any of the tests in 830 CMR 58.2.1(6)(d)1. through 3. (*i.e.* because its gross receipts fraction, tangible property fraction or employee fraction are less than the percentages required, Fraction Corporation's activities nonetheless would be "substantial" under 830 CMR 58.2.1(6)(d)4., if its tangible property fraction were equal to 35% or more.

5. New manufacturing operations.

a. A corporation which does not meet the provisions of 830 CMR 58.2.1(6)(d) solely because it was not in existence in the previous tax year may apply to the Commissioner to be classified as a manufacturing corporation in accordance with the provisions of 830 CMR 58.2.1(7), by submitting current information and reasonable projections of its business activity for its first year of existence.

b. A corporation which was in existence in a previous tax year, but which did not previously perform any manufacturing activities in Massachusetts and which is commencing manufacturing activities in this state, may apply to the Commissioner

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to be classified as a manufacturing corporation, in accordance with the provisions of 830 CMR 58.2.1(7), by submitting current information and reasonable projections of its business activity for the taxable year in which it begins manufacturing.

6. Tax avoidance rule. For purposes of 830 CMR 58.2.1(6)(d), the Commissioner will not classify a corporation's activities as substantial where it appears that the structuring of its operations has as its principal purpose the avoidance of Massachusetts taxation and no valid business purpose exists other than meeting the provisions of this section.
 - (f) The Commissioner will apply the test for substantiality outlined in 830 CMR 58.2.1(6)(d)1. through 3., (e), prospectively, for taxable years commencing on or after the effective date of 830 CMR 58.2.1. The Commissioner will apply the test for substantiality outlined in 830 CMR 58.2.1(6)(d)4., for calendar years commencing after December 31, 1991.
- (7) Procedure for Obtaining Manufacturing Corporation Classification.
 - (a) Application. Any corporation seeking manufacturing corporation classification must file a completed application with the Commissioner. A corporation may indicate on its application that it would like to have an informal conference with the Commissioner in the event that the Commissioner intends to deny the corporation manufacturing classification. A corporation that does not apply for manufacturing corporation classification will be classified as a business corporation.
 - (b) Review of application.
 1. Filing. A corporation must file its application prior to or during January of the calendar year for which it seeks manufacturing corporation classification. For these purposes, the application will be treated as timely filed if it is actually received by or is mailed to the Commissioner on or before January 31 of such year. The date of the United States Postal Service postmark or other substantiating date mark from such alternative private delivery service as the Commissioner may by regulation permit shall evidence when the application was mailed. Any application postmarked after January 31 will not be considered timely and will not be reviewed for the current year. The Commissioner will keep untimely applications on hand, and will treat them as applications to be classified as a manufacturing corporation effective as of January 1 of the following year.
 2. Incomplete applications. Incomplete applications will be returned to the corporation without review or determination.
 3. Inspection. If the information on a completed application is not sufficient to enable the Commissioner to determine whether the corporation is engaged in manufacturing, the Commissioner may inspect the corporation's facilities, observe its operations, and inspect its books, records, and tax returns.
 - (c) Determination.
 1. Conference. Upon review of an application and after any inspection or informal conference, the Commissioner will determine whether the corporation is engaged in manufacturing. The Commissioner will generally allow a corporation that has requested an informal conference the opportunity to come before the Department and make additional arguments on its classification if the Commissioner determines that an informal conference is necessary to make a proper determination on the corporation's application. However, the Commissioner's failure to grant an informal conference does not affect a corporation's classification or right to appeal the classification, nor does it grant any additional rights to the corporation.
 2. Hearing. If the Commissioner intends to deny a manufacturing classification request, it will provide notice to the corporation. A corporation that has been notified of the Commissioner's intent to deny its manufacturing application may request a hearing with the Department concerning its application. The notice of proposed denial will explain the corporation's right to a hearing and the manner in which that hearing can be obtained. See 830 CMR 58.2.1(10)(a). In addition, the notice will explain the corporation's right to appeal with the Appellate Tax Board on or before April 30th of the current tax year or the 30th day after the published list of corporations is sent out, whichever is later. See 830 58.2.1(10)(b).
 3. Classification. The Commissioner will classify as manufacturing corporations all corporations determined to be engaged in manufacturing. A corporation not classified as a manufacturing corporation will be classified as a business corporation.

58.2.1: continued

(d) Published corporations list. On or after April 1 of each year, the Commissioner will publish a corporations list or an update thereof containing the names and the classifications of all corporations subject to an excise in Massachusetts. All corporations determined by the Commissioner to be engaged in manufacturing in Massachusetts on January 1 of the calendar year will be classified on the list as manufacturing corporations. Any corporation not classified as a manufacturing corporation will have the appeal rights set forth in 830 CMR 58.2.1(10)(b). The corporations list will be mailed to all boards of assessors in Massachusetts to be used in assessing local property taxes.

(e) Notice to corporations. On the date the list is sent to the boards of assessors or as soon as possible thereafter, the Commissioner will mail to corporations that applied for manufacturing corporation classification, written notice informing them of the determinations on their applications. However, the Commissioner's failure to mail or a corporation's failure to receive the notice provided for in this paragraph shall not affect a corporation's classification or right to appeal the classification, nor shall it grant any additional rights to the corporation.

1. Manufacturing corporation classification granted. If the Commissioner classifies the corporation as a manufacturing corporation, the notice will contain the following information:

- a. the corporation's manufacturing classification, and
- b. the effective date of its classification.

2. Manufacturing corporation classification denied. If the Commissioner denies manufacturing corporation classification and classifies the corporation as a business corporation, the notice will contain the following information:

- a. the corporation's classification as a business corporation,
- b. the effective date of its classification,
- c. the date on which the list was sent to the board of assessors, and
- d. a statement of the corporation's right to file an appeal of its classification for the current year with the Appellate Tax Board under M.G.L. c. 58, § 2, on or before April thirtieth of said year or the 30th day after the date on which the list was sent out, whichever is later.

(8) Procedure for Reapplication for Manufacturing Corporation Classification.

(a) Mandatory reapplication. A corporation classified as a manufacturing corporation must reapply for manufacturing corporation classification by filing a new application on Form 355Q on or before December 31 of the year in which it:

1. changes its name,
2. undergoes a merger or consolidation,
3. is revived as a corporation after dissolving, or
4. reregisters with the Secretary of State after withdrawing from Massachusetts under M.G.L. c. 181, § 16, or
5. undergoes a material change in its activities.

(b) Material change in activities. A corporation has a material change in its activities if any of the following occur in a tax year:

1. It adds a new line of operation, manufacture or production that increases any of the denominators in 830 CMR 58.2.1(6)(e), by more than 10% or
2. It undergoes a change which might result in its failure to meet the provisions of 830 CMR 58.2.1(6)(d).

(c) Failure to reapply for manufacturing corporation classification. If a corporation does not file a new application for manufacturing corporation classification at the time required by 830 CMR 58.2.1(8)(a), the Commissioner may revoke the corporation's manufacturing classification for the current calendar year or any prior calendar year in accordance with the provisions of 830 CMR 58.2.1(9).

(d) Optional application. The Commissioner may require or a corporation may at its option file an application at any time, including after a change of all or a portion of its activities, for a determination of whether the corporation is still engaged in manufacturing.

(e) Review and determination. The Commissioner will follow the procedure described in 830 CMR 58.2.1(7) in determining whether to renew a corporation's manufacturing classification. The Commissioner will enter any change in classification on the list to be sent to the boards of assessors and may give notice of the classification to the corporation in accordance with 830 CMR 58.2.1(7).

58.2.1: continued

(f) Effect of denial of reapplication. If the Commissioner determines that a corporation is no longer engaged in manufacturing, the Commissioner will deny the corporation's new application for manufacturing corporation classification and reclassify the corporation as a business corporation for the following calendar year. Also, the Commissioner may revoke the corporation's manufacturing corporation classification for the current calendar year and any prior calendar year or portion thereof. See 830 CMR 58.2.1(9), for the consequences of revocation of manufacturing corporation classification. The Commissioner will publish the change of the corporation's classification in the list sent to the boards of assessors.

(g) A corporation that was classified as a manufacturing corporation before the promulgation of this regulation, 830 CMR 58.2.1, need not reapply for manufacturing corporation classification upon the promulgation of 830 CMR 58.2.1 unless:

1. since the date of its classification, the corporation has undergone any of the changes listed in 830 CMR 58.2.1(8)(a), or
2. under the tests listed in 830 CMR 58.2.1(6)(d)1. through 3., the corporation's manufacturing activities in Massachusetts in the taxable year in which 830 CMR 58.2.1 is promulgated are not substantial.

(9) Revocation of Manufacturing Corporation Classification or Status.

(a) General. The Commissioner may investigate at any time to determine whether a corporation is engaged in manufacturing. The Commissioner may revoke the manufacturing corporation classification or status of any corporation for the current year, or for any open prior tax year, if the Commissioner determines that the corporation was not engaged in manufacturing at any time during that year or those years.

(b) Notice to corporation. The Commissioner will mail written notice to a corporation if the Commissioner revokes the corporation's manufacturing classification or status, provided, however, that failure to mail this notice shall not affect a corporation's revocation or appeal rights, nor shall it grant any additional rights to the corporation. The notice of revocation will state the effective date of the revocation.

(c) Effect of revocation on investment tax credit.

1. Denial and recapture of investment tax credit. The Commissioner may deny investment tax credit taken in the current tax year or, retroactively, for any open prior tax year. If the revocation is retroactive, the Commissioner may recapture portions of investment tax credit claimed in any prior tax year for property which has ceased to be in qualified use, unless the property has been in qualified use for more than 12 consecutive years. Property ceases to be in qualified use as of the effective date that the Commissioner revokes a corporation's manufacturing classification or status. If property ceases to be in qualified use under the provisions of this section, it is a "disposition" for purposes of M.G.L. c. 63, § 31A(e). The Commissioner may assess additional tax under M.G.L. c. 62C on account of recaptured investment tax credit.

2. Amount of recapture. The amount of investment tax credit recaptured is the difference between the credit claimed and the credit properly allowed for qualified use of the property. The amount of investment tax credit recaptured is calculated by multiplying the credit claimed on that property by the following ratio: The numerator is the number of months of the useful life of the property minus the number of months that the property was in qualified use. The denominator is the total number of months of useful life of the property at the time the property was first used.

The following examples illustrate the recapture and denial of investment tax credit:
Example 1: H corporation, which files on a calendar year basis, places property in service on 1/1/80. The cost of the property is \$100,000 and its useful life is 120 months. In 1980 a three percent investment tax credit was available to the corporation. Thus, disregarding any federal basis reduction, the corporation was allowed a credit of \$3,000. As a result of a 1987 audit of the corporation, the Commissioner determines that the corporation discontinued its manufacturing activities in 1981. The Commissioner revokes the corporation's manufacturing classification or status effective 1/1/84. The property is deemed to have ceased to be in qualified use as of 1/1/84. The recapture of the investment tax credit is computed as if the property had been disposed of on that date. In this example the property on which the credit was claimed is deemed to have been in qualified use for only 48 of its 120 month useful life. Thus, the investment tax credit recaptured is $\frac{120 - 48}{120} \times \$3,000$ or \$1,800.

58.2.1: continued

Example 2: I corporation, which files on a calendar year basis, places property in service on 1/1/80. The cost of the property is \$200,000 and its useful life is 120 months. In 1980 a three percent investment tax credit was available to the corporation. Thus, disregarding any federal basis reduction, the corporation was allowed a credit of \$6,000. As a result of a 1987 audit of the corporation, the Commissioner determines that the corporation discontinued its manufacturing activities on 4/1/84. The Commissioner revokes the corporation's manufacturing classification or status retroactive to 4/1/84. Thus, the property is deemed to have ceased to be in qualified use as of 4/1/84. The recapture of the investment tax credit is computed as if the property was disposed of on 4/1/84. In this example, the property on which the credit was claimed is deemed to have been in qualified use for only 51 of its 120 month useful life. Thus, the investment tax credit recaptured is $\frac{120-51}{120} \times \$6,000$ or \$3,450.

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Example 3: J corporation, which files on a calendar year basis, is classified as a manufacturing corporation on 1/1/84. The corporation places property in service on 1/1/85 and 2/1/86 on which it was allowed credits of \$3,000 and \$6,000. As a result of a 6/1/87 audit, the Commissioner determines that the corporation was not engaged in manufacturing as of 1/1/85. The Commissioner revokes the corporation's manufacturing classification retroactive to 1/1/85. The denial of investment tax credit in this example is \$3,000 for 1985 and \$6,000 for 1986. (There is no recapture of investment tax credit in this example.)

(d) Denial of sales and use tax exemption. The Commissioner may deny the sales and use tax exemption for the current calendar year, and assess additional tax for any open prior calendar year.

(e) Reclassification as business corporation. The Commissioner may reclassify the corporation as a business corporation for later calendar years.

(10) Appeal of Classification.

A corporation aggrieved by its classification for the current year may appeal the classification directly to the Appellate Tax Board under M.G.L. c. 58, § 2, regardless of whether it has applied to the Commissioner for manufacturing corporation classification or received notice from the Commissioner regarding any such application. A corporation may file the appeal to the Board on or before April 30th of said year or the 30th day after the date on which the Commissioner mails the corporations list to the boards of assessors, whichever is later.

(11) Interaction with Sales Tax Laws. The term "manufacturing" described in this regulation has the same meaning as the term "manufacturing" used in M.G.L. c. 64H, §§ 6(i), (r), (s). However, these sections of Chapter 64H impose additional limits on the relevant sales tax exemptions beyond the presence of "manufacturing" activity. In particular, M.G.L. c. 64H, §§ 6(r), (s), require, *inter alia*, that in order for a sale to qualify for the applicable exemption, the property purchased must be used "directly and exclusively" in the "actual" manufacture of tangible personal property to be sold. Property purchased for use in an activity which is "manufacturing" will qualify for the relevant sales tax exemptions only if the additional statutory requirements under M.G.L. c. 64H are satisfied.

58.3.1: Qualifications of Assessors(1) Statement of Purpose, Outline of Topics

(a) Statement of Purpose. The purpose of 830 CMR 58.3.1 is to explain the training requirements for assessors relating to property valuation. An assessor shall complete training programs conducted or sponsored by the Commissioner under the provisions of M.G.L. c. 58 as the Commissioner shall deem necessary pursuant to M.G.L. c. 59, § 21B. In general, an assessor must complete any basic courses of training within one year of an original election or appointment as assessor.

(b) Outline of Topics. 830 CMR 58.3.1 is organized as follows:

1. Statement of Purpose, Outline of Topics
2. Definitions
3. General Rule
4. Required Training
5. Exceptions to Required Training
6. Continuing Education Requirements

58.3.1: continued

(2) Definitions. For purposes of 830 CMR 58.3.1, the following terms have the following meanings:

Assessor. Any person who has taken the oath prescribed by M.G.L. c. 41, § 29 to assess taxes or estimate the value of property for the purpose of taxation for a city or town of Massachusetts.

Certificate of Completion. A certificate issued by the Commissioner that signifies the successful completion of a required assessor's training program.

Commissioner. The Commissioner of Revenue or the Commissioner's duly authorized representative.

MAAO. The Massachusetts Association of Assessing Officers.

Massachusetts Accredited Assessor. The Massachusetts Association of Assessing Officers' award designation to those who demonstrate competency in the valuation and assessment of property and tax administration policies and statutes.

Residential Massachusetts Assessor (RMA). The Massachusetts Association of Assessing Officers' award designation to those who demonstrate professional competency in the valuation and assessment of residential properties.

(3) General Rule. Except as otherwise provided in 830 CMR 58.3.1, any person elected or appointed as an assessor must meet minimum qualification standards established by the Commissioner. M.G.L. c. 59, § 21B. The Commissioner has established courses of training to provide a basic knowledge of Massachusetts assessment law, administration, procedure, and techniques, including the income, cost and market approaches to property valuation. An assessor will be deemed to have met the Commissioner's minimum qualification standards upon completion of such courses of training and the issuance of a certificate of completion, as further provided in 830 CMR 58.3.1(4).

(4) Required Training. Except as provided in 830 CMR 58.3.1(5), any person who is elected or appointed as an assessor is required to complete basic courses of training and pass an examination prepared by the Commissioner within one year following election or appointment or within two years from September 16, 2022, whichever is later. Where a person is first appointed to fill a vacancy and then subsequently elected, the date of appointment is used to determine the one-year deadline. The Commissioner may extend the deadline for completing basic courses of training for one year where a person is unable to comply due to illness or other extraordinary circumstance. Basic courses of training shall be completed online using the Division of Local Services Gateway on the website of the Department of Revenue or any other location as determined by the Commissioner.

(5) Exceptions to Required Training. The training requirements provided in 830 CMR 58.3.1(4) shall not apply to the following persons:

(a) any assessor who, as of September 16, 2022, is a Massachusetts Accredited Assessor, Residential Massachusetts Assessor or has been awarded a Certified Massachusetts Assessors certificate by the MAAO; or

(b) any person who held office on October 6, 1980 as an assessor, and who is in office as of September 16, 2022, and who serves in a city or town whose city council, town council, or board of selectmen has accepted the provisions of St. 1980, c. 416.

(6) Continuing Education Requirements. Every assessor is required to meet such continuing education requirements as may be established by the Commissioner

REGULATORY AUTHORITY

830 CMR 58.00: M.G.L. c. 58; c. 14, § 6(1); c. 62C § 3.