COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

SKECHERS USA, INC. **v.** **COMMISSIONER OF REVENUE**

Docket No. C344671

Promulgated:
May 5, 2025

This is an appeal filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 62C, § 39(c) from the refusal of the Commissioner of Revenue ("Commissioner" or "appellee") to grant an abatement of corporate excise assessed to Skechers USA, Inc. ("Skechers" or "appellant") under G.L c. 63, § 38 for the tax years ended December 31, 2015, December 31, 2016, and December 31, 2017 (collectively, "tax years at issue").

Chairman DeFrancisco heard this appeal and was joined in the decision for the appellee by Commissioners Good, Elliott, Metzer and Bernier.

These findings of fact and report are made at the request of the appellant pursuant to G.L. c. 58A, § 13 and 831 CMR 1.32.[1]

Michael J. Bowen, Esq., for the appellant.

Celine E. de la Foscade-Condon, Esq., and *Brett M. Goldberg,* Esq., for the appellee.

[1] This citation is to the regulation in effect prior to January 5, 2024.

FINDINGS OF FACT AND REPORT

I. Introduction and Jurisdiction

At all times relevant to this appeal, the appellant was a Delaware corporation whose principal place of business was in Manhattan Beach, California. Founded as a footwear company in 1992, Skechers employed thousands of people at locations within the United States as well as at overseas offices in China and Vietnam. The issue in this appeal was whether the appellant was a "manufacturing corporation" within the meaning of G.L. c. 63, § 38(l)(1) ("§ 38") during the tax years at issue, such that it was required to apportion its net income using a single-factor apportionment formula.

The appellant timely filed a Massachusetts combined corporate excise return on Form 355 for each of the tax years at issue. On November 13, 2020, following an audit, the Commissioner issued to the appellant a Notice of Intent to Assess additional corporate excise. By Notice of Assessment dated December 28, 2020, the Commissioner assessed to the appellant additional corporate excise in the amount of $155,043.00, plus penalties and interest, for the tax years at issue. On April 7, 2021, the appellant filed an Application for Abatement with the Commissioner on Form ABT. By Notice of Abatement Determination dated September 28, 2021, the

Commissioner denied the appellant's abatement application.[2] On November 9, 2021, the appellant filed its Petition with the Appellate Tax Board ("Board"). On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

The evidence in this appeal consisted of a Statement of Agreed Facts and stipulated exhibits offered by the parties, additional documentary evidence, and the testimony of two Skechers' employees: Frank Chuang, Vice President of Research and Development, and Paul Curtis, Vice President of Production. The testimony and documentary evidence described the way in which Skechers footwear comes into being, and the role played by Skechers employees and third-party contract manufacturers ("third-party manufacturers" or "factories") in that process.

II. The Skechers' Shoe-Creation Process

The Skechers' shoe-creation process begins with a product development brief, which sets forth the "concept, [the] inspiration, [the] direction of the new product for that new season." A product development brief is created by Skechers' employees and a meeting to launch such a brief may be attended by designers, merchandisers, colorists, and product technicians. A

[2] Penalties for each of the tax years at issue had also been assessed but were abated following a hearing at the Commissioner's Office of Appeals.

product development brief is for internal use only. It is not shared with third-party manufacturers.

The second step in the process is the creation of a design spec by Skechers' employees. The design spec contains more detailed information regarding almost every aspect of the shoe-to-be, including: the materials to be used for various parts of the shoe; features such as stitching, colors, and dimensions; and technological aspects of the shoe. Additionally, the design spec may specify a particular construction process, and it may also indicate which mold is to be used. Skechers' annual reports referred to the design specs as "prototype blueprints" that are "forwarded to our manufacturers for design prototypes."

Once completed, the design specs are sent to the appellant's overseas offices. Skechers' employees at the overseas offices then identify which third-party manufacturer can produce the product. Skechers has on-going relationships with many of the factories, such that the factories have a ready understanding of what Skechers is looking for in a product. Skechers generally allows the factories to source their own raw materials and negotiate their prices, so long as the suppliers satisfy Skechers' specifications as to testing and other requirements. However, there have been instances when Skechers requires that certain suppliers be used.

The next step in the process is the creation of "spec sheets," which are created by the factories. Spec sheets list the materials

to be used in each part of the shoe-to-be. Skechers' employees review the spec sheets and the spec sheets can be modified if Skechers is not satisfied with the listed materials. In addition, testing is performed to ensure that the materials selected meet Skechers' standards. This testing includes checking the durability of the products as to wear and other physical stresses, as well as color testing. Testing is sometimes performed by the factories, but Skechers reviews the testing reports. If a factory uses materials that Skechers did not approve, Skechers can refuse the products altogether or enforce monetary sanctions.

Next comes the creation of the "pullover," which is a prototype shoe upper, and this takes place at the factories. A pullover allows for fit testing and other design scrutiny. The physical pullover is first inspected by Skechers employees at the overseas offices, then later by designers and product technicians at the appellant's US offices. This part of the process is referred to as the "initial line review," and in addition to the pullover, which relates to the shoe upper, the blueprint for the outsole of the shoe is also reviewed. This is considered to be a critical part of the shoe-creation process. If Skechers' designers and product technicians are not satisfied with the pullover, they will physically draw on it to indicate to the factories which changes need to be made. The factories then incorporate those changes into the designs for the shoe, and during the tax years at

issue, Skechers' US employees frequently visited the overseas offices to convey in person what changes needed to be made to the shoe.

Up to the initial line review, Skechers may decline to move forward with a prospective product. For products that are not dropped at this stage, the next step involves the creation of the molds to be used in the manufacturing process, including the lasts, which are molds shaped like a human foot. Although the factories generally contract out to other factories for the production of the molds and lasts, the record showed that Skechers often specifies the exact mold and last to be used, as many of them have been used previously. Skechers likewise employs mold technicians who work with the factories on the specifications for the molds. After production has been completed, the factories may melt down or recycle the molds or lasts, but they must get permission from Skechers to take either action.

Following the creation and approval of the molds is the middle line review. This is when sample shoes are created in two color patterns, and then those samples are reviewed. Revisions to the shoe design may still be made at this point, particularly with respect to aesthetic details. Next comes the final line review. At this point, the shoe is made in the full spectrum of colors, and quality assurance is conducted. During quality assurance, a

percentage of shoes are pulled from the manufacturing line and inspected.

Skechers' US employees review the products after both the initial and middle line reviews. In addition, fit testing is conducted throughout the shoe-creation process. Fit testers are Skechers' employees, although the factories may also conduct their own independent fit testing. If a fit tester reports a problem with a shoe, a Skechers' product technician is notified, who in turn notifies a Skechers' employee in the overseas offices about changes that need to be made. Skechers' overseas employees will communicate the issue to the factories.

Once the design and fit issues have been addressed, showroom and sales samples are created. Skechers' sales personnel can show these to potential buyers who can then place purchase orders. The factories then make a "confirmation sample," which must match the showroom and sales samples. However, mass production does not commence at this point. Prior to mass production, Skechers' commercialization and development teams meet with the factories to address any issues not previously addressed, including design alterations, if any, required for extreme sizes. Additionally, die[3] tests are performed. At this stage, the factories make cutting dies for every size of a shoe and produce two to three pairs in

[3] Dies are specialized tools that are used in manufacturing to cut and shape materials into specific shapes.

each size. Skechers' quality assurance personnel are present at the factories during the die tests and review the samples produced. If the die test is not satisfactory, additional revisions will be made. If the die test is satisfactory, the factories can proceed into preproduction. Grade sheets, which contain measurements for all components of a shoe for all sizes, are then prepared. Skechers' employees review and sign off on the grade sheets.

Factories then commence the first production run. Following the first production run, Skechers' quality assurance personnel again review the products, and, if they are satisfactory, they sign off on a report authorizing the factory to go forward with additional production. During this stage of production, samples of the products will be shipped to Skechers' US offices for inspection, and comments as to what aspects of the shoe could be improved, if any, are forwarded to the factories. The resulting improvements are then incorporated into the shoe.

Once a production run is completed, Skechers performs a final inspection. Skechers' quality assurance personnel continue to inspect the products, and fit testing and additional quality inspection likewise continue to this point. The completed, manufactured products are then packaged into shoe boxes, designed by Skechers' employees, and shipped to Skechers' distribution centers, where they are again inspected.

III (a). Skechers Was "Engaged in Manufacturing."

On the basis of the record in its entirety, the Board concluded that Skechers was "engaged in manufacturing" for purposes of § 38. The Board found that Skechers' activities, from the initial conception of an idea for a shoe to its ultimate creation, involved the transformation of "raw or finished physical materials by hand or machinery, and through human skill and knowledge, into a new product possessing a new name, nature, and adapted to a new use." G.L. c. 63, § 38(l)(1). In reaching this conclusion, the Board found that the materials created by Skechers were physically useful in making the footwear products that it ultimately sold. They were not valuable solely for their artistic or intellectual content, but for the exact and precise information they specified for every component of every shoe. Further, the Board found that Skechers employees physically interacted with the footwear products throughout the creation and production process, including fit testing and quality inspection, and that their feedback resulted in physical modifications to the products.

III (b). Skechers' Efforts to Minimize its Role in the Manufacturing Process Were Unavailing.

It was Skechers' position in this appeal that it merely designs, markets, and sells footwear, and is not involved in the manufacture of footwear. Skechers' arguments were primarily

focused on distinguishing the facts in the present appeal from those in a highly analogous appeal, ***Deckers Outdoors Corporation, Inc. v. Commissioner of Revenue,*** Mass. ATB Findings of Fact and Reports 2018-227, 238 ("**Deckers**"), in which the Board found and ruled that a US-based footwear company that engaged third-party contract manufacturers for the mass production of its products was likewise engaged in manufacturing for purposes of § 38. As with the taxpayer in ***Deckers***, the Board found here that Skechers' efforts to minimize its involvement in the manufacturing of its name-brand products lacked merit.

For example, in its efforts to paint itself as being very hands-off with respect to the overseas manufacturing process, Skechers made much of the fact that it utilized a quality assurance protocol, rather than a quality control protocol. The record showed that when Skechers switched from the quality control model to the quality assurance approach around 2010, the number of Skechers' employees involved in that function was reduced from approximately 120 to between seventy and seventy-five. The Board found this to be a distinction without a difference, as the record showed that quality inspection – regardless of its label - was conducted by Skechers' employees throughout the shoe-creation process, on-site in the factories. Indeed, Mr. Curtis acknowledged that Skechers' quality assurance personnel were present at the factories on a "daily basis."

Additionally, the appellant argued that the Commissioner ignored the guidance provided in his own regulation, which describes what activities will and will not constitute manufacturing. More specifically, 830 CMR 58.2.1(6)(b) states:

> 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.

Id.

The appellant contended that Skechers' involvement in the shoe creation process was limited to the design and creation of a prototype, ending after the creation of that prototype, in other words, at the initial line review. This argument was squarely contradicted by the record evidence, which showed a near-continuous back and forth between Skechers' US employees, its overseas employees, and the factories - including e-mail communications and in-person visits - throughout the entire shoe-creation process.

So, too, was the Board unpersuaded by the fact that Skechers gave its contract manufacturers leeway in the sourcing of materials and the ability to negotiate the prices for those materials. While this business model may be different than those employed by Skechers' competitors, it in no way diminishes the vital role played by Skechers' employees throughout the entirety of the shoe

creation process. The Board therefore rejected Skechers' arguments.

III (c). Skechers Was Engaged in Manufacturing in Substantial Part.

Finally, to be considered a § 38 manufacturer, a company must not only "engag[e] in manufacturing," but must do so "in substantial part." G.L. c. 63, § 38(l)(1). The statute sets out methodologies for determining substantiality, including numerical thresholds based on a taxpayer's gross receipts, tangible property, and payroll, as well as by reference to the Commissioner's regulations.

The appellant in the present appeal did not offer evidence to demonstrate that it fell short of the statutory thresholds determining substantiality, instead relying solely on its position that it did not engage in manufacturing to any extent. This argument was negated by the Board's findings that the appellant was in fact "engaged in manufacturing." Further, the Board found that the only logical inference from the record was that Skechers derived in excess of the 25% threshold of its gross receipts from the sale of products that it manufactured. As the appellant had the burden of proof, the Board ruled that the appellant did not meet its burden of demonstrating that it was not "engaged in manufacturing . . . in substantial part[.]" G.L. c. 63, § 38 (l)(1).

In conclusion, based on the record in its entirety and the reasonable inferences drawn therefrom, the Board found and ruled that Skechers was a "manufacturing corporation" for purposes of § 38, and as such, it was required to use a single-factor apportionment formula for the tax years at issue. Accordingly, the Board issued a decision for the appellee in this appeal.

OPINION

Pursuant to § 38, a "manufacturing corporation" that has income from business activity that is taxable both within and without Massachusetts is required to apportion its net income using a single-factor formula, based entirely on its sales, rather than the three-factor formula based upon property, payroll, and sales factors. The use of a single-factor formula based on sales for businesses with little payroll or property within Massachusetts tends to increase their tax liability as compared to the use of a three-factor formula that non-manufacturing corporations were entitled to use during the tax years at issue.[4] That was precisely the case for Skechers, and the issue presented for the Board's consideration was whether Skechers was a "manufacturing corporation" for purposes of § 38.

[4] For tax years beginning on and after January 1, 2025, all corporations with income from business activity both within and without the Commonwealth are required to use a single-factor formula based on sales. *See* St. 2023, c. 50, § 31.

Section 38 defines "manufacturing corporation" as follows:

> [A] corporation that is engaged in manufacturing. In order to be engaged in manufacturing, the corporation must be engaged, in substantial part, in transforming raw or finished physical materials by hand or machinery, and through human skill and knowledge, into a new product possessing a new name, nature, and adapted to a new use.

G.L. c. 63, § 38(l)(1). The statutory definition closely follows the definition articulated by the Supreme Judicial Court decades ago in ***Boston & Me. R.R. v. Billerica***, 262 Mass. 439, 444-45 (1928): "[c]hange wrought through the application of forces directed by the human mind, which results in the transformation of some pre-existing substance or element into something different, with a new name, nature or use." Because status as a manufacturing corporation has significance for tax purposes beyond § 38, what activities constitute manufacturing is a question that courts and this Board have long and often been asked to consider. *See* ***Commissioner of Revenue v. Houghton Mifflin Company***, 423 Mass. 42, 44 (1996) (noting that this issue has "spawned a great body of caselaw").

A focal point in these cases has been "whether the processes under study 'effect[ed] the kind of change and caus[ed] a correlative degree of refinement to the source material,' sufficient to qualify as 'manufacturing.'" ***Houghton Mifflin,*** 423 Mass. at 47 (quoting ***William F. Sullivan & Co. v. Commissioner of Revenue***, 413 Mass. 576, 581 (1992)). For example, converting frozen

steak into cooked steak and crushing larger stones into smaller stones were not activities constituting manufacturing. ***York Steak House Sys., Inc. v. Commissioner of Revenue,*** 393 Mass. 424, 426 (1984); ***Tilcon-Warren Quarries, Inc. v. Commissioner of Revenue***, 392 Mass. 670 (1984). However, scouring raw waste wool into wool ready to be spun into thread or cloth; converting cast off pipe, appliances, automotive parts, and other metal items into compressed and baled scrap metal; and converting standing timber into cut lumber all constituted manufacturing. *See* ***Assessors of Boston v. Commissioner of Corps. & Taxation,*** 323 Mass. 730, 748 (1949); ***William F. Sullivan & Co.***, 413 Mass. at 581; ***Joseph T. Rossi Corp. v. State Tax Comm'n,*** 369 Mass. 178, 181-82 (1975).

In recent years, there have been numerous opportunities to consider scenarios substantially similar to the present appeal, *i.e.*, whether a company was "engaged in manufacturing" when it created drafts, plans, designs, or blueprints for products and then sent them off-site or to a third party for mass production. That question has consistently been answered in the affirmative. *See* ***Houghton Mifflin***, 423 Mass. at 49 (holding that a book publisher that edited and compiled photographs, drawings, and text onto discs and sent them to a third-party printer for the production of books was "engaged in manufacturing"); ***The First Years, Inc. v. Commissioner of Revenue***, Mass. ATB Findings of Fact and Reports 2007-1004, 1013 (finding that creation of designs for

child-care products, building of models and development of specifications for molds produced by third parties, returned to company for testing, and then sent to third-party factories for production was "engaged in manufacturing"); ***Onex Communications Corporation v. Commissioner of Revenue***, 457 Mass. 419, 431 (2010) (holding that the development of computer-edited blueprints containing the technical specifications and detailed manufacturing instructions for certain components that were then sent elsewhere for final production constituted manufacturing); ***Duracell, Inc. v. Commissioner of Revenue***, Mass. ATB Findings of Fact and Reports 2007-903, 918 (ruling that extensive research and development and quality testing that was incorporated into sample batteries that were ultimately mass produced elsewhere constituted manufacturing); ***Random House, Inc. v. Commissioner of Revenue***, Mass. ATB Findings of Fact and Reports 2012-973, 981 (ruling that company that edited and formatted content that was ultimately transmitted electronically to a third-party printer for production, to taxpayer's exact specifications, was "engaged in manufacturing").

Perhaps the case most directly analogous to the case at bar is the aforementioned ***Deckers***. The question before the Board in that appeal was whether a California-based footwear company that utilized third-party manufacturing facilities located in Asia was

"engaged in manufacturing" for the purposes of § 38. Once again, the Board answered that question in the affirmative.

In reaching these determinations, courts have encouraged a broad construction of the phrase "engaged in manufacturing." *See* ***Assessors of Boston,*** 323 Mass. at 748-49 ("The words 'engaged in manufacturing' are not to be given a narrow or restrictive meaning."). *See also* ***William F. Sullivan & Co.,*** 413 Mass. at 579. To that end, processes which themselves do not yield a finished product have nonetheless been found to constitute manufacturing, so long as "'they constitute an essential and integral part of a total manufacturing process.'" ***William F. Sullivan & Co.,*** 413 Mass. at 579-80 (quoting ***Joseph T. Rossi Corp.,*** 369 Mass. at 181-82). *See also* ***Commissioner of Revenue v. Fashion Affiliates, Inc.,*** 387 Mass. 543, 545-46 (1982) (holding that a computer system used to produce dress patterns on paper markers, which were then transferred for use onto the actual fabric for the mass production of dresses, provided "a function that is an integral and necessary" step in the making of dresses and thus constituted manufacturing). *See also* 830 CMR 58.2.1(b)(7).

Courts have recognized that manufacturing involves a "multiplicity of processes," ***William F. Sullivan & Co.,*** 413 Mass. at 580, and that, in analyzing these cases, "the requisite inquiry should focus less on the technical means and materials used by [the taxpayer] and more on [the taxpayer's] role in the overall

production of the [products]." ***Random House***, Mass. ATB Findings of Fact and Reports at 2012-985-86. Significant to the Court in ***Houghton Mifflin***, and described in some detail, was Houghton Mifflin's involvement in every step of the "book-production process," described as follows:

> Initially, editors, ordinarily employed by [Houghton], engage in extensive research and development activities regarding a proposed book. These activities include researching the probable marketability and developing the content and format of a proposed book. [Houghton's] employees then design, write, and produce a manuscript to serve as the content of a proposed book. Various writers and editors working on different portions and aspects of a proposed book combine their work on a network.
>
> Next, [Houghton's] employees produce and then circulate among the company's marketing, production, and editing personnel thumbnail sketches for further processing and refinement. After that step, electronic-production specialists transform the manuscript and thumbnail sketches into templates which are analogous to blueprints or page outlines without any text. [Houghton's] art department then creates drawings, develops charts and graphs, and creates line art for inclusion in the ultimate product. The art department also selects, retrieves, and transforms photographs for incorporation into the ultimate product.
>
> Following these steps, all of the aforementioned items are assembled into layouts. First proofs are subsequently produced and marked for changes and corrections, resulting in the production of second proofs which further refine the product. The second proofs are then converted into color proofs. Throughout this process, [Houghton] uses, among other things, human skill and knowledge as well as various implements, materials, and machines or machinery such as computers, digital modems, printers, photocopiers, writing utensils, lighting machines, drawing equipment and materials, graphic art tools, electronic equipment, sophisticated software, and scanners.

> From the color proof stage of the process, [Houghton] either produces CD ROM tapes which are then sent to independent contractors for final packaging in compact discs, or it sends the proofs (usually on computer diskettes) to independent contractors for printing and binding into conventional books.

Houghton Mifflin, 423 Mass. at 43-45.

Likewise, in ***The First Years***, the Board noted that the taxpayer's employees were:

> integrally involved in every step of the product creation process, from the conception of an idea for a new product through the completion of the final product offered for sale to consumers. [The First Years] employees were responsible for proposing new products, conducting extensive background and consumer research for any proposed new product, creating and/or overseeing the creation of intricate preliminary models, establishing the regimen of tests for a proposed new product, conducting the testing of the product and overseeing independent testing of the product, overseeing the creation of the "final model," overseeing the tooling and molding process, and finally, auditing the final product manufacturing process and conducting quality assurance tests even during this final stage. At any point in the process if the product did not satisfy quality assurance tests conducted by or on behalf of [The First Years], [The First Years] re-directed the design of the product, from minor to significant changes.

The First Years, Mass. ATB Findings of Fact and Reports at 2007-1012-13.

As in all of the aforementioned cases, the evidence here demonstrated Skechers' continuous involvement in the creation of its footwear products, from the conception of an idea for a shoe in an initial product brief to its ultimate mass production. The

record showed that Skechers transformed "ideas, art, information, and photographs, by application of human knowledge, intelligence, and skill," ***Houghton Mifflin***, 423 Mass. at 48, into something new, ultimately resulting in a completed shoe. Based on these facts, the Board found that the activities undertaken by Skechers amounted to the transformation of "raw or finished physical materials by hand or machinery, and through human skill and knowledge, into a new product possessing a new name, nature, and adapted to a new use." G.L. c. 63, § 38(l)(1).

The appellant attempted to distinguish Skechers' activities from those of the taxpayers in these cases by asserting that nothing created by Skechers was either physically useful in the ultimate manufacture of footwear or had a tangible application in the manufacturing process. Skechers' creations, according to the appellant, were unlike the blueprints created in ***Onex Communications,*** which contained detailed manufacturing instructions that were physically useful in the ultimate creation of the end product in that case - computer chips - as well as the CD-ROMS and computer diskettes compiled by ***Houghton Mifflin*** that were ultimately sent to third-party printers for printing en-masse. ***Onex Communications***, 457 Mass. at 431; ***Houghton Mifflin***, 423 Mass. at 44.

The Board found this argument unpersuasive. The record amply demonstrated the involvement of Skechers' employees throughout the

shoe creation process. The conception of an idea for a shoe began at Skechers with a product developer, and through the various stages of the creation process that idea was developed and refined into a more precise and technical format. The design documents created by Skechers contained detailed specifications – including size specifications, materials, stitching styles, and the like. Thus, the Board found that the materials produced by Skechers throughout the process were physically useful in the creation of the ultimate footwear products.

Further, Skechers' employees interacted physically with the products throughout the shoe-creation process, from writing changes to be made directly on a pullover model to engaging in fit testing and other quality testing at many stages of the creation and production process, and their feedback was incorporated into – that is, had a physical impact on – subsequent renditions of that shoe, including its construction and design. *See* ***Duracell***, Mass. ATB Findings of Fact and Reports at 2007-923. Skechers' activities were not merely prerequisites to the manufacturing process, as they occurred throughout its entirety, including quality inspection of the mass-produced goods. *See* 830 CMR 58.2.1(b)(5). In sum, the Board found that Skechers' activities were very much like those of the taxpayers in ***Deckers***, ***Houghton Mifflin***, ***The First Years***, ***Duracell***, ***Onex Communications***, and ***Random House***, and it therefore found and ruled that Skechers was

"engaged in manufacturing" for purposes of § 38.

The statute imposes one additional requirement. To be considered a manufacturing corporation for purposes of § 38, a corporation must be "engaged in manufacturing. . . *in substantial part*[.]" G.L. c. 63, § 38(l)(1) (emphasis added). The statute sets forth specific tests for determining whether a taxpayer's manufacturing activities will be considered "substantial." A corporation's manufacturing activities will be considered "substantial" if any one of the follow five tests is met:

> 1. twenty-five percent or more of its gross receipts are derived from the sale of manufactured goods that it manufactures;
>
> 2. twenty-five percent or more of its payroll is paid to employees working in its manufacturing operations and fifteen percent or more of its gross receipts are derived from the sale of manufactured goods that it manufactures;
>
> 3. twenty-five percent or more of its tangible property is used in its manufacturing operations and fifteen percent or more of its gross receipts are derived from the sale of manufactured goods that it manufactures;
>
> 4. thirty-five percent or more of its tangible property is used in its manufacturing operations; or
>
> 5. the corporation's manufacturing activities are deemed substantial under relevant regulations promulgated by the commissioner.

G.L. c. 63, § 38(l)(1).

In the present appeal, the appellant did not offer evidence to demonstrate that it fell short of the applicable numerical thresholds set forth in the statute, instead relying entirely on

its claim that it was not engaged in manufacturing at all. Having concluded that the appellant was so engaged, and considering the evidence of record, the Board further found that the only reasonable inference was that the appellant derived more than 25% of its gross receipts from the sale of products that it manufactured, thereby crossing the statutory threshold. In turn, the Board ruled that the appellant did not meet its burden of demonstrating that it was not "engaged in manufacturing... in substantial part[.]" G.L. c. 63, § 38(l)(1). *See* ***Staples v. Commissioner of Corp. & Tax***, 305 Mass. 20, 26 (1940) (finding that a person who claims to be aggrieved by the refusal of the Commissioner to abate a tax in whole or in part has the burden of establishing the right to an abatement).

In conclusion, based on the evidence of record, the Board found and ruled that the appellant was "engaged in manufacturing . . . in substantial part" for purposes of § 38 during the tax years at issue, such that it was required to use a single-factor apportionment formula. Accordingly, the Board issued a decision for the appellee in this appeal.

THE APPELLATE TAX BOARD

By: _____
Mark J. DeFrancisco, Chairman

A true copy,

Attest: _____
Clerk of the Board

ATB 2025-117