HOUSE DOCKET, NO. 2877 FILED ON: 1/21/2011

# HOUSE . . . . . No. 2502

The Commonwealth of Massachusetts

PRESENTED BY:

***Brian S. Dempsey***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

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

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|---|---|
| *Brian S. Dempsey* | *3rd Essex* |

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# HOUSE . . . . . No. 2502

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

## The Commonwealth of Massachusetts

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

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Section 2A of chapter 63, as appearing in the 2008 Official Edition, is hereby amended by striking out subsection (b) and inserting in place thereof the following subsection:-

(b)(1) Except as provided in subsection (b)(2), if the financial institution has income from business activity which is taxable both within and without this commonwealth, its net income shall be apportioned to this commonwealth by multiplying its net income by the applicable apportionment percentage. For purposes of this section, the applicable apportionment percentage is determined by adding the taxpayer's receipts factor, property factor and payroll factor together and dividing the sum by three. If one of the factors is missing, the two remaining factors are added and the sum is divided by two. If two of the factors are missing, the remaining factor is the apportionment percentage. If all three factors are missing, the whole of the financial institution's net income shall be taxable under section two. A factor is missing if both its numerator and denominator are zero, but it is not missing merely because its numerator is zero.

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

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

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

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

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

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

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

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

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

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

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

51 (c)(1) Except as provided in subsection (c)(2), if a business corporation, other than a
52 defense corporation as described in subsection (k), a manufacturing corporation as described in
53 subsection (l), or a mutual fund service corporation to the extent of its mutual fund sales as
54 described in subsection (m), has income from business activity which is taxable both within and
55 without this commonwealth, its taxable net income, as determined under the provisions of
56 subsection (a), shall be apportioned to this commonwealth by multiplying said taxable net
57 income by a fraction, the numerator of which is the property factor plus the payroll factor plus
58 twice times the sales factor, and the denominator of which is four.

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

66 (i) For taxable years beginning on or after January 1, 2012 but before January 1, 2013,
67 20 percent of the property factor plus 20 percent of the payroll factor plus 60 percent of the sales
68 factor.

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

72 (iii) For taxable years beginning on or after January 1, 2014 but before January 1, 2015,
73 10 percent of the property factor plus 10 percent of the payroll factor plus 80 percent of the sales
74 factor.

75 (iv) For taxable years beginning on or after January 1, 2015 but before January 1, 2016,
76 5 percent of the property factor plus 5 percent of the payroll factor plus 90 percent of the sales
77 factor.

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

80 SECTION 4. Subsection (f) of section 38 of said chapter 63, as so appearing,, is hereby
81 amended by inserting after the third paragraph the following paragraph:-

82 A business corporation that elects to apportion its taxable net income pursuant to
83 subsection (c)(2) of this section shall apportion such income using the sales factor rules set forth
84 in this subsection, with the exception that (i) sales other than sales of tangible personal property
85 are sourced to this commonwealth if the gross receipts are derived from customers in this
86 commonwealth or otherwise attributable to this commonwealth's marketplace; and (ii) gross
87 receipts from the licensing of intangible property are sourced to this commonwealth to the extent
88 that the intangible property is used in the commonwealth.

89 SECTION 5. Section 52A of said chapter 63, as so appearing,, is hereby amended by
90 striking out subsection (3) and inserting in place thereof the following subsection:-

91 (3)(a) The portion of net income derived from business carried on within the
92 commonwealth by a corporation subject to tax under this section shall be determined under the
93 provisions of sections 38 and 42; provided, however, that under subsection (c)(1) of section 38

94 its taxable net income shall be multiplied by a fraction, the numerator of which is the property
95 factor plus the payroll factor plus the sales factor, and the denominator is three.

96 (b) Any corporation subject to tax under this section that has net income derived from
97 business carried on within the commonwealth may elect to determine the portion of such net
98 income subject to tax in accordance with subsection (c)(2) of section 38.

99 SECTION 6. Sections 1 to 5 shall be effective for tax years beginning on or after January
100 1, 2012.

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