SENATE DOCKET, NO. 464 FILED ON: 1/16/2013

SENATE . . . . . No. 1403

The Commonwealth of Massachusetts

PRESENTED BY:

Michael J. Rodrigues

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:
Michael J. Rodrigues	*First Bristol and Plymouth*

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SENATE . . . . . No. 1403

By Mr. Rodrigues, a petition (accompanied by bill, Senate, No. 1403) of Michael J. Rodrigues for legislation to establish elective single sales factor apportionment for all Massachusetts corporations. 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 new subsection:-

(b)(1) Except as provided by 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 subsection (b)(1), 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), Notwithstanding subsection (b)(1), 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, 2015 but before January 1, 2016, 20 percent of the property factor plus 20 percent of the payroll factor plus 60 percent of the receipts factor.

22 (ii) For taxable years beginning on or after January 1, 2016 but before January 1, 2017,
23 15 percent of the property factor plus 15 percent of the payroll factor plus 70 percent of the
24 receipts factor.

25 (iii) For taxable years beginning on or after January 1, 2017 but before January 1, 2018,
26 10 percent of the property factor plus 10 percent of the payroll factor plus 80 percent of the
27 receipts factor.

28 (iv) For taxable years beginning on or after January 1, 2018 but before January 1, 2019, 5
29 percent of the property factor plus 5 percent of the payroll factor plus 90 percent of the receipts
30 factor.

31 (v) For taxable years beginning on or after January 1, 2019, 100 percent of the receipts
32 factor.

33 SECTION 2. Subsection (d) of section 2A of chapter 63, as appearing in the 2008
34 Official Edition, is hereby amended by inserting after paragraph (xiii) the following new
35 paragraph:-

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

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

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

51 SECTION 3. Section 38 of chapter 63, as appearing in the 2008 Official Edition, is
52 hereby amended by striking out subsection (c) and inserting in place thereof the following new
53 subsection:-

54 (c)(1) Except as provided by subsection (c)(2), if a business corporation, other than a
55 defense corporation as described in subsection (k), a manufacturing corporation as described in
56 subsection (l), or a mutual fund service corporation to the extent of its mutual fund sales as

57 described in subsection (m), has income from business activity which is taxable both within and
58 without this commonwealth, its taxable net income, as determined under the provisions of
59 subsection (a), shall be apportioned to this commonwealth by multiplying said taxable net
60 income by a fraction, the numerator of which is the property factor plus the payroll factor plus
61 twice times the sales factor, and the denominator of which is four.

62 (2) Notwithstanding subsection (c)(1), any business corporation, other than a defense
63 corporation as described in subsection (k), a manufacturing corporation as described in
64 subsection (l), or a mutual fund service corporation, as described in subsection (m), to the extent
65 of its non-mutual fund sales, that has income from business activity which is taxable both within
66 and without this commonwealth, may elect to have its taxable net income, as determined under
67 the provisions of subsection (a), apportioned to this commonwealth by multiplying said taxable
68 net income by the resulting percentage as determined in the following formulas:

69 (i) For taxable years beginning on or after January 1, 2015 but before January 1, 2016, 20
70 percent of the property factor plus 20 percent of the payroll factor plus 60 percent of the sales
71 factor.

72 (ii) For taxable years beginning on or after January 1, 2016 but before January 1, 2017,
73 15 percent of the property factor plus 15 percent of the payroll factor plus 70 percent of the sales
74 factor.

75 (iii) For taxable years beginning on or after January 1, 2017 but before January 1, 2018,
76 10 percent of the property factor plus 10 percent of the payroll factor plus 80 percent of the sales
77 factor.

78 (iv) For taxable years beginning on or after January 1, 2018 but before January 1, 2019, 5
79 percent of the property factor plus 5 percent of the payroll factor plus 90 percent of the sales
80 factor.

81 (v) For taxable years beginning on or after January 1, 2019, 100 percent of the sales
82 factor.

83 SECTION 4. Subsection (f) of section 38 of said chapter 63, as appearing in the 2008
84 Official Edition, is hereby amended by inserting after the third paragraph the following new
85 paragraph:-

86 Notwithstanding the foregoing, a business corporation that elects to apportion its taxable
87 net income pursuant to subsection (c)(2) of this section shall apportion such income using the
88 sales factor rules set forth in this subsection, with the exception that (i) sales other than sales of
89 tangible personal property are sourced to this commonwealth if the gross receipts are derived
90 from customers in this commonwealth or otherwise attributable to this commonwealth's

91 marketplace; and (ii) gross receipts from the licensing of intangible property are sourced to this
92 commonwealth to the extent that the intangible property is used in the commonwealth.

93 SECTION 5. Section 52A of said chapter 63, as appearing in the 2008 Official Edition,
94 is hereby amended by striking out subdivision (3) and inserting in place thereof the following
95 new subdivision:-

96 (3)(a) The portion of net income derived from business carried on within the
97 commonwealth by a corporation subject to tax under this section shall be determined under the
98 provisions of sections thirty-eight and forty-two; provided, however, that under subsection (c)(1)
99 of section 38 its taxable net income shall be multiplied by a fraction, the numerator of which is
100 the property factor plus the payroll factor plus the sales factor, and the denominator is three.

101 (b) Notwithstanding subdivision(3)(a), any corporation subject to tax under this section
102 that has net income derived from business carried on within the commonwealth may elect to
103 determine the portion of such net income subject to tax in accordance with subsection (c)(2) of
104 section 38.

105 SECTION 6. Sections 1 to 5 shall be effective for tax years beginning on or after January
106 1, 2013.