

SENATE No. 1936

The Commonwealth of Massachusetts

PRESENTED BY:

Michael O. Moore

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 adoption of the accompanying bill:

An Act relative to single sales factor.

PETITION OF:

NAME:

Michael O. Moore

DISTRICT/ADDRESS:

Second Worcester

SENATE No. 1936

By Mr. Moore, a petition (accompanied by bill, Senate, No. 1936) of Michael O. Moore for legislation relative to single sales factor in the calculation of taxes for certain financial institutions. Revenue.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 2607 OF 2019-2020.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act relative to single sales factor.

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

1 SECTION 1. Section 2A of chapter 63, as appearing in the 2018 Official Edition, is
2 hereby amended by striking out subsection (b) and inserting in place thereof the following 2
3 subsections:-

4 (b)(1) Except as provided by subsection (b)(2), if the financial institution has income
5 from business activity which is taxable both within and without this commonwealth, its net
6 income shall be apportioned to this commonwealth by multiplying its net income by the
7 applicable apportionment percentage. For purposes of subsection (b)(1), the applicable
8 apportionment percentage is determined by adding the taxpayer's receipts factor, property factor
9 and payroll factor together and dividing the sum by three. If one of the factors is missing, the two
10 remaining factors are added and the sum is divided by two. If two of the factors are missing, the

11 remaining factor is the apportionment percentage. If all three factors are missing, the whole of
12 the financial institution's net income shall be taxable under section two. A factor is missing if
13 both its numerator and denominator are zero, but it is not missing merely because its numerator
14 is zero.

15 (b)(2), Notwithstanding subsection (b)(1), a financial institution that has income from
16 business activity which is taxable both within and without this commonwealth, may elect to have
17 its net income apportioned to this commonwealth by multiplying said taxable net income by the
18 resulting percentage as determined in the following formulas:

19 (i) For taxable years beginning on or after January 1, 2015 but before January 1, 2016, 20
20 percent of the property factor plus 20 percent of the payroll factor plus 60 percent of the receipts
21 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 said section 2A of said chapter 63, as so appearing, is
34 hereby amended by inserting after paragraph (xiii) the following paragraph:-

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

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

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

50 SECTION 3. Section 2A of said chapter 63, as so appearing, is hereby amended by
51 adding the following subsection:-

52 (3)(a) The portion of net income derived from business carried on within the
53 commonwealth by a corporation subject to tax under this section shall be determined under the
54 provisions of sections thirty-eight and forty-two; provided, however, that under subsection (c)(1)
55 of section 38 its taxable net income shall be multiplied by a fraction, the numerator of which is
56 the property factor plus the payroll factor plus the sales factor, and the denominator is three.
57 Any corporation subject to tax under this section that has net income derived from business
58 carried on within the commonwealth may elect to determine the portion of such net income
59 subject to tax in accordance with subsection (c)(2) of section 38.

60 SECTION 4. Section 38 of said chapter 63, as so appearing, is hereby amended by
61 striking out subsection (c) and inserting in place thereof the following 2 subsections:-

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

70 (c)(2) Notwithstanding subsection (c)(1), any business corporation, other than a defense
71 corporation as described in subsection (k), a manufacturing corporation as described in
72 subsection (l), or a mutual fund service corporation, as described in subsection (m), to the extent
73 of its non-mutual fund sales, that has income from business activity which is taxable both within

74 and without this commonwealth, may elect to have its taxable net income, as determined under
75 the provisions of subsection (a), apportioned to this commonwealth by multiplying said taxable
76 net income by the resulting percentage as determined in the following formulas:

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

80 (ii) For taxable years beginning on or after January 1, 2016 but before January 1, 2017,
81 15 percent of the property factor plus 15 percent of the payroll factor plus 70 percent of the sales
82 factor.

83 (iii) For taxable years beginning on or after January 1, 2017 but before January 1, 2018,
84 10 percent of the property factor plus 10 percent of the payroll factor plus 80 percent of the sales
85 factor.

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

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

91 SECTION 5. Subsection (f) of section 38 of said chapter 63, as so appearing, is hereby
92 amended by inserting after the third paragraph the following paragraph:-

93 Notwithstanding the foregoing, a business corporation that elects to apportion its taxable
94 net income pursuant to subsection (c)(2) of this section shall apportion such income using the

95 sales factor rules set forth in this subsection, with the exception that (i) sales other than sales of
96 tangible personal property are sourced to this commonwealth if the gross receipts are derived
97 from customers in this commonwealth or otherwise attributable to this commonwealth's
98 marketplace; and (ii) gross receipts from the licensing of intangible property are sourced to this
99 commonwealth to the extent that the intangible property is used in the commonwealth.

100 SECTION 6. Sections 1 to 5 shall be effective for tax years beginning on or after January
101 1, 2018.