

**Code of Massachusetts Regulations**

**Department 830 CMR. DEPARTMENT OF REVENUE**

**Title 830 CMR 63.00. Taxation of corporations (§§ 63.29.1 to 63.42.1)**

## **Section 63.38.3. Apportionment of Income of Motor Carriers**

(1) General. If a motor carrier has income derived from business carried on both within and outside Massachusetts, the Commissioner shall determine the amount of the motor carrier's income derived from business carried on within Massachusetts pursuant to M.G.L. c. 63, § 38, and applicable regulations, in particular 830 CMR 63.38.1, except to the extent that 830 CMR 63.38.1 and the applicable regulations are modified pursuant to 830 CMR 63.38.2. 830 CMR 63.38.3, has been issued pursuant to the commissioner's authority under M.G.L. c. 63, § 38(j).

830 CMR 63.38.3 states rules for determining the property factor and the payroll factor of the apportionment formula that applies to motor carriers, because the apportionment provisions of M.G.L. c. 63, § 38 are not reasonably adapted under the Apportionment of Income regulation, 830 CMR 63.38.1, to approximate the net income derived from business carried on within Massachusetts by a motor carrier with respect to the property and payroll factors. The rules for determining the sales factor for a motor carrier under the Apportionment of Income regulation, 830 CMR 63.38.1(9), particularly at *830 CMR 63.38.1(9)(d)4.b.iii.*, however, are reasonably adapted to approximate such income with respect to the sales factor, and are thus not restated in 830 CMR 63.38.3. See also *830 CMR 63.38.1(9)(d)1.h.*, "Industry-specific Alternative Apportionment Rules."

Once the property and payroll factors of the apportionment formula for a motor carrier are determined under the provisions of 830 CMR 63.38.3, a taxpayer will use those factors in calculating its apportionment percentage under M.G.L. c. 63, § 38, and the applicable regulations.

A taxpayer may have characteristics of a motor carrier, a courier and package delivery service, as defined in 830 CMR 63.38.4, and/or an airline, as defined in 830 CMR 63.38.2, as in the example of a taxpayer that accepts and delivers a package using both air and ground transportation. In such cases, the Apportionment of Income of Courier and Package Delivery Services regulation, 830 CMR 63.38.4, applies.

(2) Definitions.

Mobile Property, all motor vehicles, including trailers, engaged directly in the movement of property or passengers, other than vehicles eighty percent or more of whose mileage is traveled in one state. Mobile property may be owned, rented, or leased by the motor carrier.

**Motor Carrier, any business entity, including an individual owner/operator, which engages in the carriage of passengers or freight, for compensation, on the public roads or highways.** A vendor that uses its own vehicles to transport goods that it has sold is not, on that account alone, a motor carrier.

Operating Personnel, personnel who operate or travel in mobile property as the predominant activity of their employment.

(3) Determining Property and Payroll Factors for Motor Carriers.

(a) Property Factor. A motor carrier's property factor is a fraction, the numerator and denominator of which are determined according to the following rules.

1. The denominator of the property factor is the average value of all of the motor carrier's real and tangible personal property owned, rented, or leased, and used during the taxable year. All property values are

determined according to M.G.L. c. 63, § 38, and 830 CMR 63.38.1.

2. The numerator of the property factor is the sum of the following two amounts:

- a. the value of the real and tangible personal property of the motor carrier, other than mobile property, situated in Massachusetts; and
- b. the value of the mobile property owned, rented, or leased and used by the motor carrier in Massachusetts.

3. The value of the mobile property owned, rented, or leased, and used by the motor carrier in Massachusetts is the total value of the motor carrier's mobile property, multiplied by the percentage of miles traveled by the motor carrier's mobile property in Massachusetts.

4. Example 1. During the taxable year, Kiepahn Trucking owned real and tangible personal property, other than mobile property, with an average value of \$10,000,000. Of this property, a portion with an average value of \$5,000,000 was located in Massachusetts. Kiepahn also owned mobile property worth \$7,000,000. 30% of Kiepahn's mileage was traveled in Massachusetts. The numerator of Kiepahn's property factor is \$5,000,000 (the value of its real and tangible personal property other than mobile property located in Massachusetts) plus \$2,100,000 (30% of the value of its mobile property). The denominator of Kiepahn's property factor is \$17,000,000 (the total value of Kiepahn's real and tangible personal property, including mobile property). Thus, Kiepahn's property factor equals:

$$\$5,000,000 + \$2,100,000 / \$17,000,000$$

or .4176.

(b) Payroll Factor. A motor carrier's payroll factor is a fraction, the numerator and denominator of which are determined according to the following rules.

1. The denominator of the payroll factor is the total compensation paid by the motor carrier during the taxable year.

2. The numerator of the payroll factor is the sum of the following two amounts:

- a. the compensation paid in Massachusetts to personnel other than operating personnel; and
- b. the compensation paid in Massachusetts to operating personnel.

3. The compensation paid in Massachusetts to operating personnel shall be computed by multiplying the motor carrier's total payroll for operating personnel by the percentage of miles traveled by the motor carrier's mobile property in Massachusetts.

4. Example 2. During the taxable year, Kiepahn Trucking, the motor carrier described in Example 1, had a total payroll for personnel other than operating personnel of \$3,000,000, of which \$1,000,000 was paid in Massachusetts. Kiepahn had a total payroll for operating personnel of \$4,000,000. 30% of Kiepahn's miles were traveled in Massachusetts. The numerator of Kiepahn's payroll factor is \$1,000,000 (the Massachusetts payroll for persons other than operating personnel) plus \$1,200,000 (30% of Kiepahn's payroll for operating personnel). The denominator of Kiepahn's payroll factor is its total payroll of \$7,000,000. Thus, Kiepahn's payroll factor equals:

$\$1,000,000 + \$1,200,000 / \$7,000,000$

or .3143.

(4) Determining the Sales Factor for Motor Carriers. The sales factor of a motor carrier is determined according to the rules generally applicable to corporations under the Apportionment of Income regulation. See generally 830 CMR 63.38.1(9). See also 830 CMR 63.38.1(9)(d)4.b.iii. ("Transportation and Delivery Services"), 830 CMR 63.38.1(9)(d)1.h. ("Industry-specific Alternative Apportionment Rules").

(5) Effective Date. 830 CMR 63.38.3, is effective for taxable years beginning on or after January 1, 2014.

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