

Redline reflecting final changes to MA Regulations as adopted.

4. Sale of a Service.

a. General Rule. The sale of a service is in Massachusetts if and to the extent that the service is delivered at a location in Massachusetts. In general, the term “delivered” shall be construed to refer to the location of the taxpayer’s market for the service provided and is not to be construed by reference to the location of the property or payroll of the taxpayer as otherwise determined for corporate apportionment purposes pursuant to 830 CMR 63.38.1(7)-(8). The rules to determine the location of the delivery of a service in the context of several specific types of service transactions are set forth at 830 CMR 63.38.1(9)(d)4.b-d.

b. In-Person Services.

i. In General. Except as otherwise provided in this subsection 830 CMR 63.38.1(9)(d)4.b, in-person services are services that are physically provided in person by the taxpayer, where the customer or the customer’s real or tangible property upon which the services are performed is in the same location as the service provider at the time the services are performed. This rule includes situations where the services are provided on behalf of the taxpayer by a third-party contractor. Examples of in-person services include, without limitation, warranty and repair services; cleaning services; plumbing services; carpentry; construction contractor services; pest control; landscape services; medical and dental services, including medical testing and x-rays and mental health care and treatment; child care; hair cutting and salon services; live entertainment and athletic performances; and in-person training or lessons. In-person services include services within the description above that are performed at (1) a location that is owned or operated by the service provider or (2) a location of the customer, including the location of the customer’s real or tangible personal property. Various professional services, including legal, accounting, financial and consulting services, and other such services as described in 830 CMR 63.38.1(9)(d)4.d, although they may involve some amount of in-person contact, are not treated as in-person services within the meaning of this section, 830 CMR 63.38.1(9)(d)4.b.

ii. Assignment of Sales. Except as otherwise provided in this subsection 830 CMR 63.38.1(9)(d)4.b, where the service provided by the taxpayer is an in-person service, the delivery of the service is at the location where the service is received. Therefore, the sale is in Massachusetts if and to the extent the customer receives the in-person service in Massachusetts. In assigning its sales of in-person services, a taxpayer shall first attempt to determine the location where a service is received, as follows:

(A) Where the service is performed with respect to the body of an individual customer in Massachusetts (e.g. hair cutting or x-ray services) or in the physical presence of the customer in Massachusetts (e.g. live entertainment or athletic performances), the service is received in Massachusetts.

(B) Where the service is performed with respect to the customer’s real estate in Massachusetts or where the service is performed with respect to the customer’s tangible personal property at the customer’s residence or in the customer’s possession in Massachusetts, the service is received in Massachusetts.

(C) Where the service is performed with respect to the customer’s tangible personal property and the tangible personal property is to be shipped or delivered to the

customer, whether the service is performed in Massachusetts or outside Massachusetts, the service is received in Massachusetts if such property is shipped or delivered to the customer in Massachusetts.

In any instance in which the state or states where a service is actually received cannot be determined, but the taxpayer has sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, the taxpayer shall reasonably approximate such state or states. In any instance where the state to which the sale is to be assigned can be determined or reasonably approximated, but the taxpayer is not taxable in such state, the sale that would otherwise be assigned to such state shall be excluded from the numerator and denominator of the taxpayer's sales factor. See 830 CMR 63.38.1(9)(d)1.f.ii.

iii. Transportation and Delivery Services.

(A) In ~~general~~General. Transportation and delivery services, ~~where a taxpayer physically transports involving the physical transportation of~~ people or ~~freight~~tangible personal property from one destination to another, are in-person services within the meaning of this section, 830 CMR 63.38.1(9)(d)4.b. ~~However, special~~Special rules of assignment apply to receipts from the provision of transportation and delivery services. The assignment of receipts from such services depends upon whether such services are provided by air or by other means as provided in 830 CMR 63.38.1(9)(d)4.b.iii(B) and (C). Receipts from a taxpayer's sale of transportation and delivery services are assigned pursuant to this section whether the transportation and delivery services are provided directly by the taxpayer or indirectly by another entity under common ownership with the taxpayer as defined in 830 CMR 63.32B.2. If a taxpayer provides transportation and delivery services exclusively by air, the rule in 830 CMR 63.38.1(9)(d)4.b.iii(B) applies to receipts from such services. If a taxpayer provides transportation and delivery services both by air and by means other than air, the rule in 830 CMR 63.38.1(9)(d)4.b.iii(C) applies to receipts from such services. If a taxpayer that provides transportation and delivery services also derives receipts from activities other than transportation and delivery services, such other receipts are apportioned according to the applicable rules under 830 CMR 63.38.1(9).

(B) Transportation and Delivery Services Provided Exclusively by Air. Transportation and delivery services provided exclusively by air are assigned to the state or states of the ~~taxpayer's~~ aircraft departures ~~- associated with such services.~~ Therefore, the ~~amount of flight revenue~~receipts assigned to Massachusetts shall be determined by multiplying the taxpayer's total ~~flight revenue~~receipts from such services by the percentage of the ~~taxpayer's~~ aircraft departures occurring in Massachusetts relative to the aircraft departures that take place everywhere. ~~In any case where the taxpayer operates services are provided by~~ multiple aircraft types, the calculation shall be weighted by the values of the aircraft types ~~operated by the taxpayer~~ as provided in 830 CMR 63.38.2(3)(a). ~~These rules supersede the rules set forth in 830 CMR 63.38.2 to the extent of any inconsistency.~~

(C) Transportation and Delivery Services Provided by ~~a~~ Means other than Exclusively by Air.

1. Except as otherwise provided by this section, 830 CMR 63.38.1(9)(d)4.b.iii(C), transportation and delivery services (other than exclusively by air) are assigned to the state or states of the ~~taxpayer's~~

departures and arrivals (in the case of the transportation of people), or pickups and deliveries (in the case of the transportation of ~~freight~~-tangible personal property), associated with such services. Therefore, the ~~amount of sales revenue~~ receipts assigned to Massachusetts shall be determined by multiplying the taxpayer's total ~~revenues~~ receipts from such services by the percentage of the ~~taxpayer's~~ total departures (or pickups) and arrivals (or deliveries) that take place in Massachusetts relative to the ~~taxpayer's~~ departures (or pickups) and arrivals (or deliveries) that take place everywhere. -Transportation and delivery services ~~within the meaning of~~ which this section, 830 CMR 63.38.1(9)(d)4.b.iii(C), applies include, without limitation, such services as provided by cars, buses, trains, and trucks, and with respect to a taxpayer that provides transportation and delivery services by both air and means other than air, all of such transportation services. These rules supersede the rules set forth in 830 CMR 63.38.3 (motor carriers) and 830 CMR 63.38.4 (courier and package delivery services) to the extent of any inconsistency. The rules set forth in this section, 830 CMR 63.38.1(9)(d)4.b.iii(C), do not apply to transportation and delivery services as provided through the means of ~~air travel or pipelines; transportation and delivery services provided through the means of air travel are governed by 830 CMR 63.38.1(9)(d)4.b.iii(B), and the transportation and delivery services provided through the means of pipelines, which~~ are governed by the industry-specific alternative apportionment rules in 830 CMR 63.38.8.

2. For purposes of this section, 830 CMR 63.38.1(9)(d)4.b.iii(C),

- i. The location of a "pickup" shall be the location at which an item of tangible personal property is transferred from the customer or the customer's designee for transportation and subsequent delivery; and
- ii. The location of a "delivery" shall be the location at which an item of tangible personal property that has been transported is transferred to the customer or the customer's designee.

- iv. Examples. Assume in each of these examples that the taxpayer that provides the service is taxable in Massachusetts and is to apportion its income pursuant to M.G.L. c. 63, § 38. Also, assume, where relevant, unless otherwise stated, that the taxpayer is taxable in each state other than Massachusetts to which its sale or sales would be assigned, so that there is no requirement in such examples that such sale or sales be eliminated from the numerator and denominator of the taxpayer's sales factor. See 830 CMR 63.38.1(9)(d)1.f.ii. Note that for purposes of the examples it is irrelevant whether the services are performed by an employee of the taxpayer or by an independent contractor acting on the taxpayer's behalf.

Example 1. Salon Corp has retail locations in Massachusetts and in other states where it provides hair cutting services to individual and business customers, the latter of whom are paid for through the means of a company account. The sales of services provided at Salon Corp's Massachusetts locations are in Massachusetts. The sales of services provided at Salon Corp's locations outside Massachusetts, even when provided to Massachusetts residents, are not Massachusetts sales.

Example 2. Landscape Corp provides landscaping and gardening services in Massachusetts and in neighboring states. Landscape Corp provides landscaping services at the Massachusetts vacation home of an individual who is a resident of another state and who is located outside Massachusetts at the time the services are performed. The sale of services provided at the Massachusetts location is in Massachusetts.

Example 3. Same facts as in Example 2, except that Landscape Corp provides the landscaping services to Retail Corp, a corporation with retail locations in several states, and the services are with respect to such locations of Retail Corp that are in Massachusetts and in other states. The sale of services provided to Retail Corp is in Massachusetts to the extent the services are provided in Massachusetts.

Example 4. Camera Corp provides camera repair services at a Massachusetts retail location to walk-in individual and business customers. In some cases, Camera Corp actually repairs a camera that is brought to its Massachusetts location at a facility that is in another state. In such cases, the repaired camera is then returned to the customer at Camera Corp's Massachusetts location. The sale of such services is in Massachusetts.

Example 5. Same facts as in Example 4, except that a customer located in Massachusetts mails the camera directly to the out-of-state facility owned by Camera Corp to be fixed, and receives the repaired camera back in Massachusetts by mail. The sale of the service is in Massachusetts.

Example 6. Teaching Corp provides seminars in Massachusetts to individual and business customers. The seminars and the materials used in connection with the seminars are prepared outside the state, the teachers who teach the seminars include teachers that are resident outside the state, and the students who attend the seminars include students that are resident outside the state. Because the seminars are taught in Massachusetts the sales of the services are in Massachusetts.

Example 7. Bus Corp sells bus tickets to individual and business customers at bus depots located in Massachusetts and in other states, and also through phone and Internet sales. The bus tickets are for travel to locations in Massachusetts and to locations in other states. During the taxable year, Bus Corp sells 150,000 bus tickets. Each ticket has a departure location and an arrival location, for a total of 300,000 departure and arrival locations. Of these bus tickets, 25,000 have a departure location in Massachusetts and 20,000 have an arrival location in Massachusetts. The sale of such transportation services shall be assigned by multiplying Bus Corp's total revenues from such services by the percentage of Bus Corp's total departures and arrivals that take place in Massachusetts relative to Bus Corp's total number of departures and arrivals. Therefore, Bus Corp must determine the amount of its ticket sales that are to be assigned to Massachusetts by multiplying its total such sales by a fraction equal to 45,000 divided by 300,000, or .15. For purposes of the analysis it is irrelevant where and how the bus tickets are sold or whether the customer is an individual or business customer.

- c. Services Delivered to the Customer or on Behalf of the Customer, or Delivered Electronically Through the Customer.
  - i. In General. Where the service provided by the taxpayer is not an in-person service within the meaning of 830 CMR 63.38.1(9)(d)4.b or a professional service within the meaning of 830 CMR 63.38.1(9)(d)4.d, and the service is delivered to or on behalf of the customer, or delivered electronically through the customer, the sale is in Massachusetts

if and to the extent that the service is delivered in Massachusetts. For purposes of this section, 830 CMR 63.38.1(9)(d)4.c.7, a service that is delivered “to” a customer is a service in which the customer and not a third party is the ~~direct~~ recipient of the service, ~~and a~~. A service that is delivered “on behalf of” a customer is one in which a customer contracts for a service ~~to be delivered to a third party but one~~ or more third parties. ~~Services that are delivered on behalf of a, rather than the~~ customer include, is the recipient of the service, such as fulfillment services ~~where the taxpayer’s service is (see 830 CMR 63.38.1(9)(d)4.c.ii(A)) or~~ the direct or indirect delivery of advertising to the customer’s intended audience. ~~Services that are (see 830 CMR 63.38.1(9)(d)4.c.ii(C)). A service that is~~ delivered electronically “through” a customer ~~are services is a service~~ that ~~are is~~ delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to an end user or other third-party recipient. Except in the instance of ~~services a service~~ that ~~are is~~ delivered through a customer (where the ~~services service~~ must be delivered electronically), ~~services are a service is~~ included within the meaning of this section, 830 CMR 63.38.1(9)(d)4.c, irrespective of the method of delivery, e.g., whether such ~~services are a service is~~ delivered by a physical means or through an electronic transmission.

- ii. Assignment of Sales. The assignment of a sale to a state or states in the instance of a service that is delivered to the customer or on behalf of the customer, or delivered electronically through the customer, depends upon the method of delivery of the service and the nature of the customer. Separate rules of assignment apply to services delivered by physical means and services delivered by electronic transmission. (For purposes of this section, 830 CMR 63.38.1(9)(d)4.c.7, a service delivered by an electronic transmission shall not be considered a delivery by a physical means). In any instance where, applying the rules set forth in this section, 830 CMR 63.38.1(9)(d)4.c, the rule of assignment depends on whether the customer is an individual or a business customer, and the taxpayer acting in good faith cannot reasonably determine whether the customer is an individual or business customer, the taxpayer shall treat the customer as a business customer. In any instance where the state to which the sale is to be assigned can be determined or reasonably approximated, but the taxpayer is not taxable in such state, the sale that would otherwise be assigned to such state shall be excluded from the numerator and denominator of the taxpayer’s sales factor. See 830 CMR 63.38.1(9)(d)1.f.ii.
  - (A) Delivery to or on Behalf of a Customer by Physical Means, Whether to an Individual or Business Customer. Services delivered to a customer or on behalf of a customer through a physical means include, for example, product delivery services where property is delivered to the customer or to a third party on behalf of the customer; the delivery of brochures, fliers or other direct mail services; the delivery of advertising or advertising-related services to the customer’s intended audience in the form of a physical medium; and the sale of custom software (e.g., where software is developed for a specific customer in a case where the transaction is properly treated as a service transaction for purposes of M.G.L. c. 63) where the taxpayer installs the custom software at the customer’s site. The rules in this subsection 830 CMR 63.38.1(9)(d)4.c.ii(A) apply whether the taxpayer’s customer is an individual customer or a business customer.
    1. Rule of Determination. In assigning the sale of a service delivered to a customer or on behalf of a customer through a physical means, a taxpayer must first attempt to determine the state or states where such services are delivered. Where the taxpayer is able to determine the state or states where the service is delivered, it shall assign the sale to such state or states.

2. Rule of Reasonable Approximation. Where the taxpayer cannot determine the state or states where the service is actually delivered, but has sufficient information regarding the place of delivery from which it can reasonably approximate the state or states where the service is delivered, it shall reasonably approximate such state or states.
3. Examples. Assume in each of these examples that the taxpayer that provides the service is taxable in Massachusetts and is to apportion its income pursuant to M.G.L. c. 63, § 38. Also, assume, where relevant, unless otherwise stated, that the taxpayer is taxable in each state other than Massachusetts to which its sale or sales would be assigned, so that there is no requirement in such examples that such sale or sales must be eliminated from the numerator and denominator of the taxpayer's sales factor. See 830 CMR 63.38.1(9)(d)1.f.ii.

Example 1. Direct Mail Corp, a corporation based outside Massachusetts, provides direct mail services to its customer, Business Corp. Business Corp transacts with Direct Mail Corp to deliver printed fliers to a list of customers that is provided to it by Business Corp. Some of Business Corp's customers are in Massachusetts and some of those customers are in other states. Direct Mail Corp will use the postal service to deliver the printed fliers to Business Corp's customers. The sale of Direct Mail Corp's services to Business Corp is assigned to Massachusetts to the extent that the services are delivered on behalf of Business Corp to Massachusetts customers (i.e., to the extent that the fliers are delivered on behalf of Business Corp to Business Corp's intended audience in Massachusetts).

Example 2. Ad Corp is a corporation based outside Massachusetts that provides advertising and advertising-related services in Massachusetts and in neighboring states. Ad Corp enters into a contract at a location outside Massachusetts with an individual customer who is not a Massachusetts resident to design advertisements for billboards to be displayed in Massachusetts, and to design fliers to be mailed to Massachusetts residents. All of the design work is performed outside Massachusetts. The sale of the design services is in Massachusetts because the service is physically delivered on behalf of the customer to the customer's intended audience in Massachusetts.

Example 3. Same facts as example 2, except that the contract is with a business customer that is based outside Massachusetts. The sale of the design services is in Massachusetts because the services are physically delivered on behalf of the customer to the customer's intended audience in Massachusetts.

Example 4. Fulfillment Corp, a corporation based outside Massachusetts, provides product delivery fulfillment services in Massachusetts and in neighboring states to Sales Corp, a corporation located outside Massachusetts that sells tangible personal property through a mail order catalog and over the Internet to customers. In some cases when a customer purchases tangible personal property from Sales Corp to be delivered in Massachusetts, Fulfillment Corp will, pursuant to its contract with Sales Corp, deliver that property from its fulfillment warehouse located outside Massachusetts. The sale of the fulfillment services of Fulfillment Corp to Sales Corp is assigned to

Massachusetts to the extent that Fulfillment Corp's deliveries on behalf of Sales Corp are to recipients in Massachusetts.

Example 5. Software Corp, a software development corporation, enters into a contract with a business customer, Buyer Corp, which is physically located in Massachusetts, to develop custom software to be used in Buyer Corp's business. Software Corp develops the custom software outside Massachusetts, and then physically installs the software on Buyer Corp's computer hardware located in Massachusetts. The development and sale of the custom software is properly characterized as a service transaction, and the sale is assigned to Massachusetts because the software is physically delivered to the customer in Massachusetts.

Example 6. Same facts as Example 5, except that Buyer Corp has offices in Massachusetts and several other states, but is commercially domiciled outside Massachusetts and orders the software from a location outside Massachusetts. The receipts from the development and sale of the custom software service are assigned to Massachusetts because the software is physically delivered to the customer in Massachusetts.

- (B) Delivery to a Customer by Electronic Transmission. Services delivered by electronic transmission include, without limitation, services that are transmitted through the means of wire, lines, cable, fiber optics, electronic signals, satellite transmission, audio or radio waves, or other similar means, whether or not the service provider owns, leases or otherwise controls the transmission equipment. In the case of the delivery of a service by electronic transmission to a customer, the following rules apply.
1. Services Delivered By Electronic Transmission to an Individual Customer.
    - a. Rule of Determination. In the case of the delivery of a service to an individual customer by electronic transmission, the service is delivered in Massachusetts if and to the extent that the taxpayer's customer receives the service in Massachusetts. If the taxpayer can determine the state or states where the service is received, it shall assign the sale to such state or states.
    - b. Rules of Reasonable Approximation. If the taxpayer cannot determine the state or states where the customer actually receives the service, but has sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, it shall reasonably approximate such state or states. Where a taxpayer does not have sufficient information from which it can determine or reasonably approximate the state or states in which the service is received, it shall reasonably approximate such state or states using the customer's billing address.
  2. Services Delivered By Electronic Transmission to a Business Customer
    - a. Rule of Determination. In the case of the delivery of a service to a business customer by electronic transmission, the service is delivered in Massachusetts if and to the extent that the taxpayer's customer receives the service in Massachusetts. If the taxpayer can determine the state or

states where the service is received, it shall assign the sale to such state or states. For purposes of this section, 830 CMR 63.38.1(9)(d)4.c.ii(B)2, it is intended that the state or states where the service is received reflect the location at which the service is directly used by the employees or designees of the customer.

- b. Rule of Reasonable Approximation. If the taxpayer cannot determine the state or states where the customer actually receives the service, but has sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, it shall reasonably approximate such state or states.
  - c. Secondary Rule of Reasonable Approximation. In the case of the delivery of a service to a business customer by electronic transmission where a taxpayer does not have sufficient information from which it can determine or reasonably approximate the state or states in which the service is received, such state or states shall be reasonably approximated as set forth in this section. In such cases, unless the taxpayer can apply the safe harbor set forth in 830 CMR 63.38.1(9)(d)4.c.ii(B)2.d the taxpayer shall reasonably approximate the state or states in which the service is received as follows: first, by assigning the sale to the state where the contract of sale is principally managed by the customer; second, if the state where the customer principally manages the contract is not reasonably determinable, by assigning the sale to the customer's place of order; and third, if the customer's place of order is not reasonably determinable, by assigning the sale using the customer's billing address; provided, however, that in any instance in which the taxpayer derives more than 5% of its sales of services from a customer, the taxpayer is required to identify the state in which the contract of sale is principally managed by that customer.
  - d. Safe Harbor. In the case of the delivery of a service to a business customer by electronic transmission a taxpayer may not be able to determine, or reasonably approximate under 830 CMR 63.38.1(9)(d)4.c.ii(B)2.b, the state or states in which the service is received. In these cases, the taxpayer may, in lieu of the rule stated at 830 CMR 63.38.1(9)(d)4.c.ii(B)2.c, apply the safe harbor stated in this section, 830 CMR 63.38.1(9)(d)4.c.ii(B)2.d. Under this safe harbor, a taxpayer may assign its sales to a particular customer based upon the customer's billing address in any taxable year in which the taxpayer (1) engages in substantially similar service transactions with more than ~~a thousand~~250 customers, whether business or individual, and (2) does not derive more than 5% of its sales of services from such customer. This safe harbor applies only for purposes of 830 CMR 63.38.1(9)(d)4.c.ii(B)2, to services delivered by electronic transmission to a business customer, and not otherwise.
3. Examples. Assume in each of these examples that the taxpayer that provides the service is taxable in Massachusetts and is to apportion its income pursuant to M.G.L. c. 63, § 38. Also, assume, where relevant, unless otherwise stated, that the taxpayer is taxable in each state other than Massachusetts to which its sale or sales would be assigned, so that there is no requirement in such examples that such sale or sales must be eliminated from the numerator and denominator of the taxpayer's sales factor. See 830 CMR 63.38.1(9)(d)1.f.ii.



Further, assume where relevant, unless otherwise stated, that the safe harbor set forth at 830 CMR 63.38.1(9)(d)4.c.ii(B)2.d, does not apply.

Example 1. Support Corp, a corporation that is based outside Massachusetts, provides software support and diagnostic services to individual and business customers that have previously purchased certain software from third-party vendors. These individual and business customers are located in Massachusetts and other states. Support Corp supplies its services on a case by case basis when directly contacted by its customer. Support Corp generally provides these services through the Internet but sometimes provides these services by phone. In all cases, Support Corp verifies the customer's account information before providing any service. Using the information that Support Corp verifies before performing a service, Support Corp can determine where its services are received, and therefore must assign its sales to these locations. The sales made to Support Corp's individual and business customers are in Massachusetts to the extent that Support Corp's services are received in Massachusetts. See 830 CMR 63.38.1(9)(d)4.c.ii(B)1 and 2.

Example 2. Online Corp, a corporation based outside Massachusetts, provides web-based services through the means of the Internet to individual customers who are resident in Massachusetts and in other states. These customers access Online Corp's web services primarily in their states of residence, and sometimes, while traveling, in other states. For a substantial portion of its sales, either Online Corp can determine the state or states where such services are received, or, where it cannot determine such state or states, it has sufficient information regarding the place of receipt to reasonably approximate such state or states. However, Online Corp cannot determine or reasonably approximate the state or states of receipt for all of such sales. Assuming that Online Corp reasonably believes, based on all available information, that the geographic distribution of the sales for which it cannot determine or reasonably approximate the location of the receipt of its services generally tracks those for which it does have this information, Online Corp must assign to Massachusetts the sales for which it does not know the customers' location in the same proportion as those sales for which it has this information. See 830 CMR 63.38.1(9)(d)1.e.ii.

Example 3. Same facts as in Example 2, except that Online Corp reasonably believes that the geographic distribution of the sales for which it cannot determine or reasonably approximate the location of the receipt of its web-based services do not generally track the sales for which it does have this information. Online Corp must assign the sales of its services for which it lacks information as provided to its individual customers using the customers' billing addresses. See 830 CMR 63.38.1(9)(d)4.c.ii(B)1.b.

Example 4. Same facts as in Example 3, except that Online Corp is not taxable in one state to which some of its sales would be otherwise assigned. The sales that would be otherwise assigned to that state are to be excluded from the numerator and denominator of Online Corp's sales factor. See 830 CMR 63.38.1(9)(d)4.c.ii(B); 830 CMR 63.38.1(9)(d)1.f.ii.

Example 5. Net Corp, a corporation based outside Massachusetts, provides web-based services to a business customer, Business Corp, a company with offices in Massachusetts and two neighboring states. Particular employees of

Business Corp access the services from computers in each ~~Net~~Business Corp office. Assume that Net Corp determines that Business Corp employees in Massachusetts were responsible for 75% of Business Corp's use of Net Corp's services, and Business Corp employees in other states were responsible for 25% of Business Corp's use of Net Corp's services. In such case, 75% of the sale is received in Massachusetts, and therefore 75% of the sale is in Massachusetts. See 830 CMR 63.38.1(9)(d)4.c.ii(B)2.a. Assume alternatively that Net Corp lacks sufficient information regarding the location or locations where Business Corp's employees used the services to determine or reasonably approximate such location or locations. Under these circumstances, if Net Corp derives 5% or less of its sales from Business Corp, Net Corp must assign the sale under 830 CMR 63.38.1(9)(d)4.c.ii(B)2.c to the state where Business Corp principally managed the contract, or if that state is not reasonably determinable, to the state where Business Corp placed the order for the services, or if that state is not reasonably determinable, to the state of Business Corp's billing address. If Net Corp derives more than 5% of its sales of services from Business Corp, Net Corp is required to identify the state in which its contract of sale is principally managed by Business Corp and must assign the receipts to that state.

Example 6. Net Corp, a corporation based outside Massachusetts, provides web-based services through the means of the Internet to more than ~~a thousand~~250 individual and business customers in Massachusetts and in other states. Assume that for each customer Net Corp cannot determine the state or states where its web services are actually received, and lacks sufficient information regarding the place of receipt to reasonably approximate such state or states. Also assume that Net Corp does not derive more than 5% of its sales of services from any single customer. Net Corp may apply the safe harbor stated in CMR 830 63.38.1(9)(d)4.c.ii(B)2.d, and may assign its sales using each customer's billing address. If Net Corp is not taxable in one or more states to which some of its sales would be otherwise assigned, it must exclude those sales from the numerator and denominator of its sales factor. See 830 CMR 63.38.1(9)(d)1.f.ii.

- (C) Services Delivered Electronically Through or on Behalf of an Individual or Business Customer. ~~Services~~A service delivered electronically ~~to third-party recipients~~ "on behalf of" the customer ~~include~~is one in which a customer contracts for a service to be delivered electronically but one or more third parties, rather than the customer, is the recipient of the service, such as the direct or indirect delivery of advertising on behalf of a customer to the customer's intended audience. ~~Services~~A service delivered electronically "through" a customer to third-party recipients ~~are~~services is a service that ~~are~~is delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to end users or other third-party recipients.

1. Rule of Determination. In the case of the delivery of a service by electronic transmission, where the service is delivered electronically to end users or other third-party recipients through or on behalf of the customer, the service is delivered in Massachusetts if and to the extent that the end users or other third-party recipients are in Massachusetts. For example, in the case of the direct or indirect delivery of advertising on behalf of a customer to the customer's intended audience by electronic means, the service is delivered in Massachusetts to the extent that the audience for such advertising is in

Massachusetts. In the case of the delivery of a service to a customer that acts as an intermediary in reselling the service in substantially identical form to third-party recipients, the service is delivered in Massachusetts to the extent that the end users or other third-party recipients receive such services in Massachusetts. The rules in this subsection 830 CMR 63.38.1(9)(d)4.c.ii(C) apply whether the taxpayer's customer is an individual customer or a business customer and whether the end users or other third-party recipients to which the services are delivered through or on behalf of the customer are individuals or businesses.

2. Rule of Reasonable Approximation. If the taxpayer cannot determine the state or states where the services are actually delivered to the end users or other third-party recipients either through or on behalf of the customer, but has sufficient information regarding the place of delivery from which it can reasonably approximate the state or states where the services are delivered, it shall reasonably approximate such state or states.
3. Select Secondary Rules of Reasonable Approximation.
  - i. Where a taxpayer's service is the direct or indirect electronic delivery of advertising on behalf of its customer to the customer's intended audience, if the taxpayer lacks sufficient information regarding the location of the audience from which it can determine or reasonably approximate such location, the taxpayer shall reasonably approximate the audience in a state for such advertising using the following secondary rules of reasonable approximation. Where a taxpayer is delivering advertising directly or indirectly to a known list of subscribers, the taxpayer shall reasonably approximate the audience for advertising in a state using a percentage that reflects the ratio of the state's subscribers in the specific geographic area in which the advertising is delivered relative to the total subscribers in such area. For a taxpayer with less information about its audience, the taxpayer shall reasonably approximate the audience in a state using the percentage that reflects the ratio of the state's population in the specific geographic area in which the advertising is delivered relative to the total population in such area.
  - ii. Where a taxpayer's service is the delivery of a service to a customer that then acts as the taxpayer's intermediary in reselling such service to end users or other third-party recipients, if the taxpayer lacks sufficient information regarding the location of the end users or other third-party recipients from which it can determine or reasonably approximate such location, the taxpayer shall reasonably approximate the extent to which the service is received in a state by using the percentage that reflects the ratio of the state's population in the specific geographic area in which the taxpayer's intermediary resells such services, relative to the total population in such area.
4. Examples. Assume in each of these examples that the taxpayer that provides the service is taxable in Massachusetts and is to apportion its income pursuant to M.G.L. c. 63, § 38. Also, assume, where relevant, unless otherwise stated, that the taxpayer is taxable in each state other than Massachusetts to which its sale or sales would be assigned, so that there is no requirement in such

examples that such sale or sales must be eliminated from the numerator and denominator of the taxpayer's sales factor. See 830 CMR 63.38.1(9)(d)1.f.ii.

Example 1. Cable TV Corp, a corporation that is based outside of Massachusetts, has two revenue streams. First, Cable TV Corp sells advertising time to business customers pursuant to which the business customers' advertisements will run as commercials during Cable TV Corp's televised programming. Some of these business customers, though not all of them, have a physical presence in Massachusetts. Second, Cable TV Corp sells monthly subscriptions to individual customers in Massachusetts and in other states. Cable TV Corp's sale of advertising time to its business customers is assigned to Massachusetts to the extent that the audience for Cable TV Corp's televised programming during which the advertisements run is in Massachusetts. See 830 CMR 63.38.1(9)(d)4.c.ii(C)1. If Cable TV Corp is unable to determine the actual location of its audience for the programming, and lacks sufficient information regarding audience location to reasonably approximate such location, Cable TV Corp must approximate its Massachusetts audience using the percentage that reflects the ratio of its Massachusetts subscribers in the geographic area in which Cable TV Corp's televised programming featuring such advertisements is delivered relative to its total number of subscribers in such area. See 830 CMR 63.38.1(9)(d)4.c.ii(C)3.i. To the extent that Cable TV Corp's sales of monthly subscriptions represent the sale of a service, such sales are properly assigned to Massachusetts in any case in which the programming is received by a customer in Massachusetts. See 830 CMR 63.38.1(9)(d)4.c.ii(B)1. In any case in which Cable TV Corp cannot determine the actual location where the programming is received, and lacks sufficient information regarding the location of receipt to reasonably approximate such location, such sales of Cable TV Corp's monthly subscriptions are assigned to Massachusetts where its customer's billing address is in Massachusetts. See 830 CMR 63.38.1(9)(d)4.c.ii(B)1.b. Note that whether and to the extent that the monthly subscription fee represents a fee for a service or for a license of intangible property does not affect the analysis or result as to the state or states to which the sales are properly assigned. See 830 CMR 63.38.1(9)(d)5.e.

Example 2. Network Corp, a corporation that is based outside of Massachusetts, sells advertising time to business customers pursuant to which the customers' advertisements will run as commercials during Network Corp's televised programming as distributed by unrelated cable television and satellite television transmission companies. Network Corp's sale of advertising time to its business customers is assigned to Massachusetts to the extent that the audience for Network Corp's televised programming during which the advertisements will run is in Massachusetts. See 830 CMR 63.38.1(9)(d)4.c.ii(C)1. If Network Corp cannot determine the actual location of the audience for its programming during which the advertisements will run, and lacks sufficient information regarding audience location to reasonably approximate such location, Network Corp must approximate the amount of the sales that constitutes Massachusetts sales by multiplying the amount of such sales by a percentage that reflects the ratio of the Massachusetts population in the specific geographic area in which the televised programming containing the advertising is run relative to the total population in such area. See 830 CMR 63.38.1(9)(d)4.c.ii(C)3.i. In any case in which Network Corp's sales would be assigned to a state in which Network Corp is not taxable, such

sales shall be excluded from the numerator and denominator of Network Corp's sales factor. See 830 CMR 63.38.1(9)(d)1.f.ii.

Example 3. Web Corp, a corporation that is based outside Massachusetts, provides Internet content to viewers in Massachusetts and other states. Web Corp sells advertising space to business customers pursuant to which the customers' advertisements will appear in connection with Web Corp's Internet content. Web Corp receives a fee for running the advertisements that is determined by reference to the number of times the advertisement is viewed or clicked upon by the viewers of its website. Web Corp's sale of advertising space to its business customers is assigned to Massachusetts to the extent that the viewers of the Internet content are in Massachusetts, as measured by viewings or clicks. See 830 CMR 63.38.1(9)(d)4.c.ii(C)1. If Web Corp is unable to determine the actual location of its viewers, and lacks sufficient information regarding the location of its viewers to reasonably approximate such location, Web Corp must approximate the amount of its Massachusetts sales by multiplying the amount of such sales by a percentage that reflects the Massachusetts population in the specific geographic area in which the content containing the advertising is delivered relative to the total population in such area. See 830 CMR 63.38.1(9)(d)4.c.ii(C)3.i. In any case in which Web Corp's sales would be assigned to a state in which Web Corp is not taxable, such sales shall be excluded from the numerator and denominator of Web Corp's sales factor. See 830 CMR 63.38.1(9)(d)1.f.ii.

Example 4. Retail Corp, a corporation that is based outside of Massachusetts, sells tangible property through its retail stores located in Massachusetts and other states, and through a mail order catalog. Answer Co, a corporation that operates call centers in multiple states, contracts with Retail Corp to answer telephone calls from individuals placing orders for products found in Retail Corp's catalogs. In this case, the phone answering services of Answer Co are being delivered to Retail Corp's customers and prospective customers. Therefore, Answer Co is delivering a service electronically to Retail Corp's customers or prospective customers on behalf of Retail Corp, and must assign the proceeds from this service to the state or states from which the phone calls are placed by such customers or prospective customers. If Answer Co cannot determine the actual locations from which phone calls are placed, and lacks sufficient information regarding the locations to reasonably approximate such locations, Answer Co must approximate the amount of its Massachusetts sales by multiplying the amount of its fee from Retail Corp by a percentage that reflects the Massachusetts population in the specific geographic area from which the calls are placed relative to the total population in such area. See 830 CMR 63.38.1(9)(d)4.c.i; 830 CMR 63.38.1(9)(d)4.c.ii(C). Answer Co's sales shall also be excluded from the numerator and denominator of its sales factor in any case in which such sales would be assigned to a state in which Answer Co is not taxable. See 830 CMR 63.38.1(9)(d)1.f.ii.

Example 5. Web Corp, a corporation that is based outside of Massachusetts, sells tangible property to customers via its Internet website. Design Co designed and maintains Web Corp's website, including making changes to the site based on customer feedback received through the site. Design Co's services are delivered to Web Corp, the proceeds from which are assigned pursuant to 830 CMR 63.38.1(9)(d)4.c.ii(B). The fact that Web Corp's customers and prospective customers incidentally benefit from Design Co's

services, and may even interact with Design Co in the course of providing feedback, does not transform the service into one delivered “on behalf of” Web Corp to Web Corp’s customers and prospective customers.

**Example 6.** Wholesale Corp, a corporation that is based outside Massachusetts, develops an Internet-based information database outside Massachusetts and enters into a contract with Retail Corp whereby Retail Corp will market and sell access to this database to end users. Depending on the facts, the provision of database access may be either the sale of a service or the license of intangible property or may have elements of both. Assume that on the particular facts applicable in this example Wholesale Corp is selling database access in transactions properly characterized as involving the performance of a service. When an end user purchases access to Wholesale Corp’s database from Retail Corp, Retail Corp in turn compensates Wholesale Corp in connection with that transaction. In this case, Wholesale Corp’s services are being delivered through Retail Corp to the end user. Wholesale Corp must assign its sales to Retail Corp to the state or states in which the end users receive access to Wholesale Corp’s database. If Wholesale Corp cannot determine the state or states where the end users actually receive access to Wholesale Corp’s database, and lacks sufficient information regarding the location from which the end users access the database to reasonably approximate such location, Wholesale Corp must approximate the extent to which its services are received by end users in Massachusetts by using a percentage that reflects the ratio of the Massachusetts population in the specific geographic area in which Retail Corp regularly markets and sells Wholesale Corp’s database relative to the total population in such area. See 830 CMR 63.38.1(9)(d)4.c.ii(C)3.ii. Note that it does not matter for purposes of the analysis whether Wholesale Corp’s sale of database access constitutes a service or a license of intangible property, or some combination of both. See 830 CMR 63.38.1(9)(d)5.e. In any case in which Wholesale Corp’s sales would be assigned to a state in which Wholesale Corp is not taxable, such sales shall be excluded from the numerator and denominator of Wholesale Corp’s sales factor. See 830 CMR 63.38.1(9)(d).1.f.ii.

d. Professional Services.

i. ~~\_\_\_\_\_~~ i. ~~\_\_\_\_\_~~ In General. ProfessionalExcept as otherwise provided in 830 CMR 63.38.1(9)(d)4.d.ii, professional services are services that require specialized knowledge and in some cases require a professional certification, license or degree. Professional services include, without limitation, management services, bank and financial services, financial custodial services, investment and brokerage services, fiduciary services, tax preparation, payroll and accounting services, lending and credit card services, legal services, consulting services, video production services, graphic and other design services, engineering services, and architectural services. ~~Whether~~

ii. ~~\_\_\_\_\_~~ Overlap with Other Categories of Services.

(A) Certain services that fall within the ~~sale~~definition of a “professional service is services” set forth in Massachusetts is determined pursuant to this section, 830 CMR 63.38.1(9)(d)4.d, provided, however, that professional services, such as carpentry, medical and dental services or child care services, that significantly involve or require in-person contact, are nevertheless treated as

“in-person services” within the meaning of 830 CMR 63.38.1(9)(d)4.b, and are assigned under the rules of 830 CMR 63.38.1(9)(d)4.b. Specifically, professional services that are physically provided in person by the taxpayer such as carpentry, certain medical and dental services or child care services, where the customer or the customer’s real or tangible property upon which the services are provided is in the same location as the service provider at the time the services are performed, are “in-person services” and are assigned as such, notwithstanding that they may also be considered to be “professional services”. However, professional services where the service is of an intellectual or intangible nature, such as legal, accounting, financial and consulting services, are assigned as professional services under the rules of section 830 CMR 63.38.1(9)(d)4.d.iii, notwithstanding the fact that such services may involve some amount of in-person contact.

~~(A)~~(B) Professional services may in some cases include the transmission of one or more documents or other communications by mail or by electronic means. However, in such cases, despite this transmission, the assignment rules that apply are those set forth in ~~this section~~, 830 CMR 63.38.1(9)(d)4.d.iii, and not those set forth in 830 CMR 63.38.1(9)(d)4.c, pertaining to services delivered to a customer or through or on behalf of a customer.

~~ii.~~iii. Assignment of Sales. In the case of a professional service, it is generally possible to characterize the location of delivery in multiple ways by emphasizing different elements of the service provided, no one of which will consistently represent the market for the services. Therefore, for purposes of consistent application of the market sourcing rule stated in M.G.L. c. 63, § 38(f), the Commissioner has concluded that the location of delivery in the case of professional services is not susceptible to a general rule of determination, and must be reasonably approximated. The assignment of a sale of a professional service depends in many cases upon whether the customer is an individual or business customer. In any instance in which the taxpayer, acting in good faith, cannot reasonably determine whether the customer is an individual or business customer, the taxpayer shall treat the customer as a business customer. For purposes of assigning the sale of a professional service, a taxpayer’s customer is the person who contracts for such service, irrespective of whether another person pays for or also benefits from the taxpayer’s services. Except as provided in 830 CMR 63.38.1(9)(d)4.d.~~iii~~(D) (mutual fund sales), in any instance in which the taxpayer is not taxable in the state to which a sale shall be assigned, the sale shall be excluded from the numerator and denominator of the taxpayer’s sales factor. *See* 830 CMR 63.38.1(9)(d)1.f.ii.

- (A) General Rule. Sales of professional services other than those services described in CMR 63.38.1(9)(d)4.d.~~iii~~(B) (architectural and engineering services), 830 CMR 63.38.1(9)(d)4.d.~~iii~~(C) (services provided by a financial institution) and 830 CMR 63.38.1(9)(d)4.d.~~iii~~(D) (certain services provided to RICs), are assigned in accordance with this section 830 CMR 63.38.1(9)(d)4.d.~~iii~~(A).
1. Professional Services Delivered to Individual Customers. Except as otherwise provided in this section, 830 CMR 63.38.1(9)(d)4.d, in any instance in which the service provided is a professional service and the taxpayer’s customer is an individual customer, the state or states in which the service is delivered shall be reasonably approximated as set forth in this section, 830 CMR 63.38.1(9)(d)4.d.~~iii~~(A)1. In particular, the taxpayer shall assign the sale to the customer’s state of primary residence, or, if the taxpayer cannot reasonably

identify the customer's state of primary residence, to the state of the customer's billing address; provided, however, in any instance in which the taxpayer derives more than 5% of its sales of services from an individual customer, the taxpayer is required to identify the customer's state of primary residence and must assign the receipts from the service or services provided to that customer to that state.

2. Professional Services Delivered to Business Customers. Except as otherwise provided in this section, 830 CMR 63.38.1(9)(d)4.d, in any instance in which the service provided is a professional service and the taxpayer's customer is a business customer, the state or states in which the service is delivered shall be reasonably approximated as set forth in this section, 830 CMR 63.38.1(9)(d)4.d. iii(A)2. In particular, unless the taxpayer may use the safe harbor set forth at 830 CMR 63.38.1(9)(d)4.d. iii(A)3, the taxpayer shall assign the sale as follows: first, by assigning the receipts to the state where the contract of sale is principally managed by the customer; second, if such place of customer management is not reasonably determinable, to the customer's place of order; and third, if such customer place of order is not reasonably determinable, to the customer's billing address; provided, however, in any instance in which the taxpayer derives more than 5% of its sales of services from a customer, the taxpayer is required to identify the state in which the contract of sale is principally managed by the customer.
  3. Safe Harbor; Large Volume of Transactions. Notwithstanding the rules set forth in 830 CMR 63.38.1(9)(d)4.d. iii(A)1 and 2, a taxpayer may assign its sales to a particular customer based on the customer's billing address in any taxable year in which the taxpayer (1) engages in substantially similar service transactions with more than ~~a thousand~~250 customers, whether individual or business, and (2) does not derive more than 5% of its sales of services from such customer. This safe harbor applies only for purposes of 830 CMR 63.38.1(9)(d)4.d. iii(A), and not otherwise.
- (B) Architectural and Engineering Services with respect to Real or Tangible Personal Property. Architectural and engineering services with respect to real or tangible personal property are professional services within the meaning of this section, 830 CMR 63.38.1(9)(d)4.d. However, unlike in the case of the general rule that applies to professional services, (1) the sale of such an architectural service is assigned to a state or states if and to the extent that the services are with respect to real estate improvements located, or expected to be located, in such state or states; and (2) the sale of such an engineering service is assigned to a state or states if and to the extent that the services are with respect to tangible or real property located in such state or states, including real estate improvements located in, or expected to be located in, such state or states. These rules apply whether or not the customer is an individual or business customer. In any instance in which architectural or engineering services are not described in this section 830 CMR 63.38.1(9)(d)4.d. iii(B), the sale of such services shall be assigned under the general rule for professional services. See 830 CMR 63.38.1(9)(d)4.d. iii(A).
- (C) Services provided by a Financial Institution. The apportionment rules that apply to financial institutions are set forth at M.G.L. c. 63, § 2A. That section includes specific rules to determine a financial institution's sales factor. See M.G.L. c. 63, § 2A(d). However, M.G.L. c. 63, § 2A also provides that receipts from sales, other than sales of tangible personal property, including service transactions, that are



not otherwise apportioned under M.G.L. c. 63, § 2A(d), are to be assigned pursuant to the rules of M.G.L. c. 63, § 38(f). See M.G.L. c. 63, § 2A(d)(xi). In any instance in which a financial institution performs services that are to be assigned pursuant to M.G.L. c. 63, § 38(f), including, for example, financial custodial services, those services shall be considered professional services within the meaning of this section, 830 CMR 63.38.1(9)(d)4.d, and shall be assigned according to the general rule for professional service transactions as set forth at 830 CMR 63.38.1(9)(d)4.d. ~~iii~~(A).

- (D) Mutual Fund Sales. Mutual fund sales within the meaning of this regulation, 830 CMR 63.38.1, generally are sales of professional services for purposes of 830 CMR 63.38.1(9)(d)4.d. See 830 CMR 63.38.1(2) (definition of mutual fund sales). However, the rules to assign mutual fund sales made by a mutual fund service corporation are those set forth in 830 CMR 63.38.7, and not those set forth in this regulation, 830 CMR 63.38.1. Also, in the case of mutual fund sales made by a taxpayer that is not a mutual fund service corporation, such mutual fund sales shall be assigned ~~to Massachusetts to the extent that the shareholders of the RIC to whom the mutual fund sales are made are domiciled in Massachusetts, in a manner consistent with~~ by applying the sourcing methodology described in 830 CMR 63.38.7(4)(c)4 to such sales. In these cases, consistent with the rules of M.G.L. c. 63, § 38(f) and 830 CMR 63.38.7, the mutual fund sales made by the taxpayer directly or indirectly to the RIC are included in the numerator and denominator of the taxpayer's sales factor irrespective as to whether the taxpayer is taxable in one or more of the states in which the RIC's shareholders are domiciled.

~~iii~~y. Examples. Unless otherwise stated, assume in each of these examples, where relevant: (a) that the taxpayer that provides the service is taxable in Massachusetts and is to apportion its income pursuant to M.G.L. c. 63, § 38; (b) that the taxpayer is taxable in each state other than Massachusetts to which its sale or sales would be assigned, so that there is no requirement in such examples that such sale or sales must be excluded from the numerator and denominator of the taxpayer's sales factor, see 830 CMR 63.38.1(9)(d)1.f.ii; (c) that the safe harbor set forth at 830 CMR 63.38.1(9)(d)4.ii(A)3 does not apply; and (d) that the taxpayer's service at issue is not provided directly or indirectly to a RIC, see 830 CMR 63.38.1(9)(d)4.d. ~~iii~~(D).

Example 1. Broker Corp provides securities brokerage services to individual customers who are resident in Massachusetts and in other states. Assume that Broker Corp knows the state of primary residence for many of its customers, and where it does not know this state of primary residence, it knows the customer's billing address. Also assume that Broker Corp does not derive more than 5% of its sales of services from any one individual customer. Where Broker Corp knows its customer's state of primary residence, it shall assign the sale to that state. Where Broker Corp does not know its customer's state of primary residence, but rather knows the customer's billing address, it shall assign the sale to that state. See 830 CMR 63.38.1(9)(d)4.d. ~~iii~~(A)1.

Example 2. Same facts as in Example 1, except that Broker Corp has several individual customers from whom it derives, in each instance, more than 5% of its sales of services. Sales to customers from whom Broker Corp derives 5% or less of its sales of services shall be assigned as described in example 1. For each customer from whom it derives more than 5% of its sales of services, Broker Corp is required to determine the customer's state of primary residence and must assign the receipts from the services provided to that customer to that state. In any case in which a 5% customer's state of

primary residence is Massachusetts, a sale made to that customer must be assigned to Massachusetts; in any case in which a 5% customer's state of primary residence is not Massachusetts a sale made to that customer is not assigned to Massachusetts. Where a sale is assigned to a state other than Massachusetts, if the state of assignment (i.e., the state of primary residence of the individual customer) is a state in which Broker Corp is not taxable, receipts from the sales shall be excluded from the numerator and denominator of Broker Corp's sales factor. See 830 CMR 63.38.1(9)(d)4.d. [§§\(A\)](#); 830 CMR 63.38.1(9)(d)1.f.ii.

Example 3. Architecture Corp provides building design services as to buildings located, or expected to be located, in Massachusetts to individual customers who are resident in Massachusetts and other states, and to business customers that are based in Massachusetts and other states. Architecture Corp's sales are assigned to Massachusetts because the locations of the buildings to which its design services relate are in Massachusetts, or are expected to be in Massachusetts. For purposes of assigning these sales, it is not relevant where, in the case of an individual customer, the customer primarily resides or is billed for such services, and it is not relevant where, in the case of a business customer, the customer principally manages the contract, placed the order for the services or is billed for such services. Further, such sales are assigned to Massachusetts even if Architecture Corp's designs are either physically delivered to its customer in paper form in a state other than Massachusetts or are electronically delivered to its customer in a state other than Massachusetts. See 830 CMR 63.38.1(9)(d)4.d. [§§\(B\)](#).

Example 4. Law Corp provides legal services to individual clients who are resident in Massachusetts and in other states. In some cases, Law Corp may prepare one or more legal documents for its client as a result of these services and/or the legal work may be related to litigation or a legal matter that is ongoing in a state other than where the client is resident. Assume that Law Corp knows the state of primary residence for many of its clients, and where it does not know this state of primary residence, it knows the client's billing address. Also assume that Law Corp does not derive more than 5% of its sales of services from any one individual client. Where Law Corp knows its client's state of primary residence, it shall assign the sale to that state. Where Law Corp does not know its client's state of primary residence, but rather knows the client's billing address, it shall assign the sale to that state. For purposes of the analysis it is irrelevant whether the legal documents relating to the service are mailed or otherwise delivered to a location in another state, or the litigation or other legal matter that is the underlying predicate for the services is in another state. See 830 CMR 63.38.1(9)(d)4.d. [§§\(B\)](#) and [§§\(A\)1](#).

Example 5. Same facts as in Example 4, except that Law Corp provides legal services to several individual clients who it knows have a primary residence in a state where Law Corp is not taxable. Receipts from these services shall be excluded from the numerator and denominator of Law Corp's sales factor even if the billing address of one or more of these clients is in a state in which Law Corp is taxable, including Massachusetts. See 830 CMR 63.38.1(9)(d)4.d. [§§\(A\)1](#); 830 CMR 63.38.1(9)(d)1.f.ii.

Example 6. Law Corp provides legal services to several multistate business clients. In each case, Law Corp knows the state in which the agreement for legal services that governs the client relationship is principally managed by the client. In one case, the agreement is principally managed in Massachusetts; in the other cases, the agreement is principally managed in a state other than Massachusetts. Where the agreement for legal services is principally managed by the client in Massachusetts the sale of the

services shall be assigned to Massachusetts; in the other cases, the sale is not assigned to Massachusetts. In the case of the sale that is assigned to Massachusetts, the sale shall be so assigned even if (1) the legal documents relating to the service are mailed or otherwise delivered to a location in another state, or (2) the litigation or other legal matter that is the underlying predicate for the services is in another state. See 830 CMR 63.38.1(9)(d)4.d.ii(B) and iii(A)2.

Example 7. Same facts as in example 6, except that Law Corp is not taxable in one of the states other than Massachusetts in which Law Corp's agreement for legal services that governs the client relationship is principally managed by the business client. Receipts from these latter services shall be excluded from the numerator and denominator of Law Corp's sales factor. See 830 CMR 63.38.1(9)(d)4.d.ii and iii, iii(A)2; 830 CMR 63.38.1(9)(d)1.f.ii.

Example 8. Consulting Corp, a company that provides consulting services to law firms and other customers, is hired by Law Corp in connection with legal representation that Law Corp provides to Client Co. Specifically, Consulting Corp is hired to provide expert testimony at a trial being conducted by Law Corp on behalf of Client Co. Client Co pays for Consulting Corp's services directly. Assuming that Consulting Corp knows that its agreement with Law Co is principally managed by Law Corp in Massachusetts, the sale of Consulting Corp's services shall be assigned to Massachusetts. It is not relevant for purposes of the analysis that Client Co is the ultimate beneficiary of Consulting Corp's services, or that Client Co pays for Consulting Corp's services directly. See 830 CMR 63.38.1(9)(d)4.d.iii(A)2.

Example 9. Bank Corp provides financial custodial services to ~~500~~100 individual customers who are resident in Massachusetts and in other states, including the safekeeping of some of its customers' financial assets. Assume for purposes of this example that Bank Corp knows the state of primary residence for many of its customers, and where it does not know this state of primary residence, it knows the customer's billing address. Also assume that Bank Corp does not derive more than 5% of its sales of all of its services from any single customer. Note that because Bank Corp does not have more than ~~1000~~250 customers, it may not apply the safe harbor for professional services stated in 830 CMR 63.38.1(9)(d)4.d.iii(A)3. Where Bank Corp knows its customer's state of primary residence, it must assign the sale to that state. Where Bank Corp does not know its customer's state of primary residence, but rather knows the customer's billing address, it must assign the sale to that state. Applying these rules, Bank Corp's sales are assigned to Massachusetts if the customer's state of primary residence (or billing address, in cases where it does not know the customer's state of primary residence) is in Massachusetts, even if Bank Corp's financial custodial work, including the safekeeping of the customer's financial assets, takes place in a state other than Massachusetts. See 830 CMR 63.38.1(9)(d)4.d.iii(A)1, (C).

Example 10. Same facts as Example 9, except that Bank Corp has more than a ~~thousand~~250 customers, individual or business. Bank Corp may apply the safe harbor for professional services stated in 830 CMR 63.38.1(9)(d)4.d.iii(A)3, and may assign its sales to a state or states using each customer's billing address. If Bank Corp is not taxable in one or more states to which some of its sales would be assigned, it must exclude the sales that would be assigned to those states from the numerator and denominator of its sales factor. See 830 CMR 63.38.1(9)(d)4.d.ii, iii, iii(C); 830 CMR 63.38.1(9)(d)1.f.ii.

Example 11. Same facts as Example 10, except that Bank Corp derives more than 5% of its sales from a single individual customer. As to the sales made to this customer, Bank Corp is required to determine the individual customer's state of primary residence and must assign the receipts from the service or services provided to that customer to that state. See 830 CMR 63.38.1(9)(d)4.d. [§§\(A\)1](#), [§§\(C\)](#). Sales to all other customers are assigned as described in [example](#) [Example](#) 10.

Example 12. Advisor Corp, a corporation that provides investment advisory services, provides such advisory services to Investment Co. Investment Co is a multistate business client of Advisor Corp that uses Advisor Corp's services in connection with investment accounts that it manages for individual clients, who are the ultimate beneficiaries of Advisor Corp's services. Assume that Investment Co's individual clients are persons that are resident in numerous states, which may or may not include Massachusetts. Assuming that Advisor Corp knows that its agreement with Investment Co is principally managed by Investment Co in Massachusetts, the sale of Advisor Corp's services shall be assigned to Massachusetts. It is not relevant for purposes of the analysis that the ultimate beneficiaries of Advisor Corp's services may be Investment Co's clients, who are residents of numerous states. See 830 CMR 63.38.1(9)(d)4.d. [§§\(A\)2](#).

Example 13. Same facts as Example 12, except that in addition to providing investment advisory services to Investment Co, Advisor Corp also provides its advisory services to Mutual Fund Co, a regulated investment company with shareholders that are resident in numerous states, including Massachusetts. Advisor Corp is not a mutual fund service corporation; however Advisor Corp's services provided to Mutual Fund Co. constitute mutual fund sales within the meaning of this regulation, 830 CMR 63.38.1. See 830 CMR 63.38.1(2). Advisor Corp's mutual fund sales to Mutual Fund Co shall be assigned to Massachusetts to the extent that Mutual Fund Co's shareholders of record are domiciled in Massachusetts. See 830 CMR 63.38.1(9)(d)4.d. [§§\(D\)](#). However, unlike in the rule set forth generally in this section, 830 CMR 63.38.1(9)(d), there shall be no exclusion of such sales from the numerator and denominator of Advisor Corp's sales factor in any case in which such shareholders of record are domiciled in a state in which Advisor Corp is not taxable. See *id.* In contrast to its mutual fund sales made to Mutual Fund Co, Advisor Corp's advisory services provided to Investment Co are assigned as stated in Example 12, and its sales to Investment Co shall be excluded from the numerator and denominator of Advisor Corp's sales factor if such sales would be assigned to a state in which Advisor Corp is not taxable. See 830 CMR 63.38.1(9)(d)4.d. [§§ and §§, §§\(A\)2](#).

Example 14. Advisor Corp provides investment advisory services to Investment Fund LP, a partnership that invests in securities and other assets. Assuming that Advisor Corp knows that its agreement with Investment Fund LP is principally managed by Investment Fund LP in Massachusetts, the sale of Advisor Corp's services shall be assigned to Massachusetts. See 830 CMR 63.38.1(9)(d)4.d. [§§\(A\)2](#). Note that, unlike in the case of mutual fund sales (see 830 CMR 63.38.1(9)(d)4.d. [§§\(D\)](#)), it is not relevant for purposes of the analysis that the partners in Investment Fund LP are residents of numerous states.

Example 15. Design Corp is a corporation based outside Massachusetts that provides graphic design and similar services in Massachusetts and in neighboring states. Design Corp enters into a contract at a location outside Massachusetts with an individual customer to design fliers for the customer. Assume that Design Corp does not know the individual customer's state of primary residence and does not derive more than 5% of

its sales of services from the individual customer. All of the design work is performed outside Massachusetts. The sale is in Massachusetts if the customer's billing address is in Massachusetts. See 830 CMR 63.38.1(9)(d)4.d. [§§§\(A\)1](#).