

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 63.38.4. Apportionment of Income of Courier and Package Delivery Services

(1) General. If a courier or package delivery service has income derived from business carried on both within and outside Massachusetts, the Commissioner shall determine the amount of its 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 830 CMR 63.38.1 and the applicable regulations are modified pursuant to 830 CMR 63.38.4. 830 CMR 63.38.4, has been issued pursuant to the commissioner's authority under M.G.L. c. 63, § 38(j).

830 CMR 63.38.4 states rules for determining the property factor and the payroll factor of the apportionment formula that applies to courier and package delivery services, 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 courier or package delivery service with respect to the property and payroll factors. The rules for determining the sales factor for a courier or package delivery services 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 net income with respect to the sales factor, and thus are not restated in 830 CMR 63.38.4. 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 courier or package delivery service are determined under the provisions of 830 CMR 63.38.4, 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 courier and package delivery service, an airline, as defined in 830 CMR 63.38.2, and/or a motor carrier, as defined in 830 CMR 63.38.3, as in the example of a taxpayer that accepts and delivers packages using both air and ground transportation. In such cases this regulation, Apportionment of Income of Courier and Package Delivery Services regulation, 830 CMR 63.38.4, applies.

(2) Definitions.

Aircraft Ready for Flight, aircraft in possession of the company that are available for service on its routes.

Courier or Package Delivery Service, any company that transmits packages or written communications primarily to residences and business addresses. A company that receives written communications, and transmits facsimiles to recipients by electronic or other means, shall also be a courier or package delivery service for purposes of 830 CMR 63.38.4. A vendor that transports goods that it has sold to its customers' residences or business addresses is not on that account alone, a courier or package delivery service.

Flight Personnel, the air crew aboard an aircraft assisting in the operations of the aircraft.

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

Nonflight Mobile Property, all motor vehicles, including trailers, engaged directly in the movement of property, other than aircraft and 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 courier or package delivery service.

(3) Determining Property and Payroll Factors for Courier or Package Delivery Services.

(a) Property Factor. A courier or package delivery service's property factor is a fraction, the numerator and denominator of which are determined according to 830 CMR 63.38.4(3)(a)1. through 6.

1. The denominator of the property factor is the average value of all of the company's real and tangible personal property owned or rented and used during the taxable year. All property values are determined according to the rules of M.G.L. c. 63, § 38, and 830 CMR 63.38.1.
2. The numerator of the property factor shall be the sum of the following three amounts:
 - a. the average value of the real and tangible personal property used by the company, other than aircraft ready for flight and nonflight mobile property, situated in Massachusetts;
 - b. the average value of the aircraft ready for flight owned or rented and used by the company in Massachusetts; and
 - c. the average value of the nonflight mobile property owned or rented and used by the company in Massachusetts.
3. The average value of the aircraft ready for flight owned or rented and used by the company in Massachusetts shall be computed separately for each type of aircraft operated by the company. For each type of aircraft, the average value shall consist of the total average value of that type of aircraft ready for flight owned by the company, multiplied by the percentage of departures of the company, of that aircraft type, taking place within Massachusetts. For further guidance on this method of valuation, see "Apportionment of Income of Airlines", 830 CMR 63.38.2(3)(a).
4. The average value of the nonflight mobile property owned or rented and used by the company in Massachusetts shall be the total value of the company's nonflight mobile property, multiplied by the percentage of miles traveled by the company's nonflight mobile property in Massachusetts.
5. Property in the possession of the company under the terms of a lease, which is treated as a lease for federal income tax purposes by operation of provisions contained or previously contained in 26 U.S. Code § 168 (the Internal Revenue Code) shall be treated as owned, not rented, by the company.
6. Example. Taxpayer is a corporation that operates a package delivery service. Taxpayer transmits packages using aircraft and trucks. Taxpayer owns property, as follows: real and tangible personal property other than aircraft ready for flight and other than nonflight mobile property, with an average value of \$10,000,000. The average value of this property situated in Massachusetts is \$6,000,000. Taxpayer also owns and/or rents aircraft ready for flight with an average value of \$30,000,000. The value of the aircraft ready for flight is multiplied by the percentage of departures of the company taking place in Massachusetts, in this case 15%, with the result of \$4,500,000 attributable to Massachusetts. Taxpayer also owns or rents nonflight mobile property, namely delivery trucks, with an average value of 8,000,000. The percentage of miles traveled by the company's trucks in Massachusetts is 20%, with the result of \$1,600,000 attributable to Massachusetts. Taxpayer's property factor is calculated as follows:

$$(\$6,000,000 + \$4,500,000 + \$1,600,000) = 12,100,000 / (\$10,000,000 + \$30,000,000 + \$8,000,000) = 48,000,000$$

$$= .252 \text{ property factor}$$

(b) Payroll Factor. A courier or package delivery service's payroll factor is a fraction, the numerator and denominator of which are determined according to 830 CMR 63.38.4(3)(b)1. through 4.

1. The denominator of the payroll factor is the total compensation paid by the company during the taxable year.
2. The numerator of the payroll factor shall be the sum of the following three amounts:
 - a. the compensation paid in Massachusetts to personnel other than flight personnel and nonflight mobile personnel during the taxable year;
 - b. the compensation paid in Massachusetts to flight personnel during the taxable year; and
 - c. the compensation paid in Massachusetts to nonflight mobile personnel during the taxable year.
3. The compensation paid in Massachusetts to flight personnel shall be computed by multiplying the company's total payroll for flight personnel by the percentage of the company's departures occurring in Massachusetts weighted, in a manner similar to that described in 830 CMR 63.38.4(3)(a), by the values of the aircraft types operated by the company.
4. The compensation paid in Massachusetts to nonflight mobile personnel shall be computed by multiplying the company's total payroll for nonflight mobile personnel by the percentage of miles traveled by the company's nonflight mobile property in Massachusetts.

(4) Determining the Sales Factor for Courier or Package Delivery Services. **The sales factor of a courier or package delivery service shall be 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) Corporation Serving as a Courier or Package Delivery Services, a Motor Carrier, and/or an Airline. A single company may be a courier or package delivery service, a motor carrier (as that term is defined in 830 CMR 63.38.3), and/or an airline (as that term is defined in 830 CMR 63.38.2) and if so its income from its **activities as a courier or package delivery service shall be apportioned as provided in 830 CMR 63.38.4, its income from its activities as a motor carrier shall be apportioned as provided in 830 CMR 63.38.3,** and its income from its activities as an airline shall be apportioned as provided in 830 CMR 63.38.2. **To the extent that a corporation's services as a courier or package delivery service overlap with its services as a motor carrier or an airline such that the income cannot be separated by function, the provisions of the courier and package delivery service, 830 CMR 63.38.4, apply.**

(6) Effective Date. 830 CMR 63.38.4, is effective for taxable years beginning on or after January 1, 2014.

Date of Promulgation: 9/15/89 Amended by Mass Register Issue S1277, eff. 1/2/2015.