

Income/Franchise:

Massachusetts Appellate Tax Board Says Taxpayer is a “Manufacturer” Under Corporate Excise Tax

Docket Nos. C332360, C334907, C336909, Mass. App. Tax Bd. (12/10/21). The Massachusetts Appellate Tax Board (ATB) held that a company providing its customers with software-based solutions for accelerating, managing, and improving the delivery of web and media content over the internet should be classified as a “manufacturing corporation” under G.L. c. 63, § 38, and thus eligible to use single sales factor apportionment to compute its Massachusetts corporate excise tax liability for certain tax periods at issue. In doing so, the ATB found the company that both uses internally developed software and sells software under a software-as-a-service (SaaS) model qualified as a manufacturer. Specifically, the ATB explained that given the highly fact-intensive inquiry of the taxpayer’s business model and “reasonable inferences drawn therefrom:”

URL: <https://www.mass.gov/doc/akamai-technologies-v-commissioner-of-revenue-and-the-board-of-assessors-of-the-city-of-cambridge-intervenor-december-10-2021/download>

- The revenues from the taxpayer’s relevant business units for the periods at issue were derived from the development and sale of standardized computer software within the meaning of G.L. c. 63, § 42B, the use of which was by remote access;
- As of both January 1, 2017 and January 1, 2018, the taxpayer qualified as a manufacturing corporation and should be classified as such pursuant to G.L. c. 58, § 2 and G.L. c. 63, § 42B; and
- The taxpayer was entitled to status as a manufacturing corporation for the tax years 2010 through 2012 pursuant to G.L. c. 63, §§ 38 and 42B.

The Massachusetts Department of Revenue (Department) unsuccessfully claimed that the company was not selling a software product but merely selling services performed by software, and that there was no transfer of actual product or software to its customers and thus the company was *not* engaged in manufacturing.

However, the ATB agreed with the taxpayer that its engineers created, modified, improved, and oversaw the development and production of standardized software products that were provided to its customers via a SaaS model to meet the needs of its customers’ businesses – and thus was engaged in “manufacturing” for state corporate excise tax law purposes. The ATB’s analysis was heavily dependent upon the Department’s own administrative rulings under the sales tax concerning whether a particular transaction constitutes a taxable sale of software or a nontaxable service. The ATB also noted the Department’s reliance upon the “object of the purchaser” analysis to determine the substance of the company’s transactions where the company separately charged for services and software sales. In substance, the ATB concluded that where the company was selling software as well as providing services, the provision of services did not have the effect of changing the character of the software sales. Please contact us with any questions.

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