

Income/Franchise:

Massachusetts DOR Explains its Position on ATB's Ruling that Software Developer is a "Manufacturer" Under Corporate Excise Tax

Technical Information Release (TIR) 23-8: Manufacturing Corporation Treatment for a Developer of Standardized Computer Software, Mass. Dept. of Rev. (7/12/23). The Massachusetts Department of Revenue (Department) issued a technical information release (TIR 23-8) explaining its position regarding a Massachusetts Appellate Tax Board (ATB) ruling from 2021, which held in the taxpayer's favor that in providing its customers with software-based solutions for accelerating, managing, and improving the delivery of web and media content over the internet, it should be classified as a "manufacturing corporation" eligible to use single sales factor apportionment to compute its Massachusetts corporate excise tax liability [see *State Tax Matters*, Issue 2022-2, for more details on the ATB's 2021 ruling]. TIR 23-8 explains that while the Department had argued that the taxpayer sold a content delivery service, the ATB held that it instead sold remote access to software that it developed and must be treated as a manufacturing corporation in each respect.

URL: <https://www.mass.gov/technical-information-release/tir-23-8-akamai-technologies-inc-v-commissioner-of-revenue-manufacturing-corporation-treatment-for-a-developer-of-standardized-computer-software>

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220114_3.html

TIR 23-8 concludes that the determination as to whether a corporation is selling services or standardized software "will depend upon the facts and circumstances of each case," and that corporations that develop and sell access to software that allows customers to input their own information, manipulate the software, and run reports without interaction with the corporation or its employees, "are engaged in the manufacture and sale of tangible personal property." Therefore, such corporations are entitled to be classified as manufacturing corporations pursuant to G.L. c. 58, § 2 and are required to file as manufacturing corporations pursuant to G.L. c. 63, §§ 38 and 42B. TIR 23-8 also notes that a corporation classified as a manufacturing corporation is entitled to a local property tax exemption on its machinery, as well as other Massachusetts benefits such as the investment tax credit and certain sales tax exemptions if it otherwise meets the requirements for those exemptions under applicable state statutes. Please contact us with any questions.

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