

Income/Franchise:

Massachusetts: Out-of-State Company Deemed Corporate Excise Tax “Manufacturer” Required to Use Single Sales Factor Apportionment

Docket No. C344671, Mass. App. Tax Bd. (5/5/25). The Massachusetts Appellate Tax Board (ATB) held that an out-of-state company that designed, marketed, and sold footwear was substantially involved in the entirety of its shoe creation process as a “manufacturing corporation” under G.L. c. 63, § 38 despite using overseas third-party manufacturers to physically produce the shoes, and thus had to apportion its net income using single sales factor apportionment, rather than the three-factor formula based upon property, payroll, and sales factors for non-manufacturers, to compute its state corporate excise tax liability for the tax years at issue. Rejecting the company’s assertions that nothing it created was either physically useful in the ultimate manufacture of footwear or had a tangible application in the manufacturing process, the ATB held that state caselaw supports a broad construction of the phrase “engaged in manufacturing” that focuses less on the technical means and materials used by a taxpayer and more on its role in the overall production of the items. [URL: https://www.mass.gov/doc/skechers-usa-inc-v-commissioner-of-revenue-may-5-2025/download](https://www.mass.gov/doc/skechers-usa-inc-v-commissioner-of-revenue-may-5-2025/download)

Based on the facts in this case, the ATB explained that the materials produced by the footwear company throughout the process were physically useful in the creation of the ultimate footwear products, and its employees interacted physically with the products throughout the shoe-creation process – from writing changes to be made directly on a pullover model to engaging in fit testing and other quality testing at many stages of the creation and production process – and such employee feedback was incorporated into (that is, had a physical impact on) subsequent renditions of that shoe, including its ultimate construction and design. Under the facts, the footwear company utilized overseas third-party manufacturers to physically produce the shoes, and such factories generally were allowed to source their own raw materials and negotiate their prices, so long as the suppliers satisfied the footwear company’s specifications as to testing and other requirements. Please contact us with any questions.

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