

MASSACHUSETTS MARKET SOURCING – A POCKET GUIDE TO THE LABYRINTH

<u>830 CMR 63.38.1</u>	<u>Transaction Types and Examples</u>	<u>Sourcing Notes</u>																								
(9)(d)2	Sale, Rental, Lease or License of Real Property	To extent property is in state																								
(9)(d)3	Rental, Lease or License of Tangible Personal Property	To extent property is in state, except for mobile property																								
<hr/>																										
(9)(d)4	Sale of a Service	To extent service is delivered in state																								
(9)(d)4.b	In-Person Services	Where service is received, as determined or reasonably approximated																								
(9)(d)4.b.i	Services where customer, or customer’s real or tangible property upon which services are performed, are in the same location as the service provider	Sourced in state if performed <ul style="list-style-type: none"> - re. customer’s body in state - in physical presence of customer in state - re. customer’s real estate in state - re. tangible personal property (TPP) at customer’s residence in state - re. TPP in customer’s possession in state - re. TPP shipped or delivered to customer in state 																								
(9)(d)4.b.iii	Transportation and delivery <ul style="list-style-type: none"> Exclusively by air By other means <ul style="list-style-type: none"> People TPP 	Sourced based on <ul style="list-style-type: none"> - state(s) of aircraft departures - state(s) of departures and arrivals - state(s) of pickups and deliveries 																								
(9)(d)4.b.iv	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; padding: 5px;"><u>Examples</u></th> <th style="text-align: left; padding: 5px;"></th> <th style="text-align: left; padding: 5px;"><u>Sourcing To</u></th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;">1 Salon Corp</td> <td style="padding: 5px;">Hair cutting to individuals and businesses</td> <td style="padding: 5px;">Salon’s retail locations regardless of customer’s residency</td> </tr> <tr> <td style="padding: 5px;">2 Landscape Corp</td> <td style="padding: 5px;">Landscaping and gardening at vacation home</td> <td style="padding: 5px;">Location of home regardless of customer’s residency</td> </tr> <tr> <td style="padding: 5px;">3</td> <td style="padding: 5px;">- landscaping and gardening for Retail Corp’s locations</td> <td style="padding: 5px;">Retail Corp locations serviced regardless of Retail Corp’s domicile</td> </tr> <tr> <td style="padding: 5px;">4 Camera Corp</td> <td style="padding: 5px;">Walk-in camera repair services</td> <td style="padding: 5px;">Walk-in retail location, even if repaired out of state</td> </tr> <tr> <td style="padding: 5px;">5</td> <td style="padding: 5px;">Mail order/delivery camera repair services</td> <td style="padding: 5px;">Where camera returned by mail, even if first mailed out of state</td> </tr> <tr> <td style="padding: 5px;">6 Teaching Corp</td> <td style="padding: 5px;">Seminars</td> <td style="padding: 5px;">Where seminars taught, regardless of where prepared</td> </tr> <tr> <td style="padding: 5px;">7 Bus Corp</td> <td style="padding: 5px;">Travel</td> <td style="padding: 5px;">State(s) of departures and arrivals, regardless of where tickets are sold</td> </tr> </tbody> </table>	<u>Examples</u>		<u>Sourcing To</u>	1 Salon Corp	Hair cutting to individuals and businesses	Salon’s retail locations regardless of customer’s residency	2 Landscape Corp	Landscaping and gardening at vacation home	Location of home regardless of customer’s residency	3	- landscaping and gardening for Retail Corp’s locations	Retail Corp locations serviced regardless of Retail Corp’s domicile	4 Camera Corp	Walk-in camera repair services	Walk-in retail location, even if repaired out of state	5	Mail order/delivery camera repair services	Where camera returned by mail, even if first mailed out of state	6 Teaching Corp	Seminars	Where seminars taught, regardless of where prepared	7 Bus Corp	Travel	State(s) of departures and arrivals, regardless of where tickets are sold	
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Sourcing Notes

(9)(d)4.c **Services Delivered to the Customer or on Behalf of the Customer, or Delivered Electronically Through the Customer**

To extent service delivered in Massachusetts

(9)(d)4.c.ii(A)1, 2 Delivery to or on Behalf of a Customer by Physical Means, Whether to an Individual or Business Customer

Where delivered, as determined, or reasonably approximated

(9)(d)4.c.ii(A)3

<u>Examples</u>		<u>Sourcing To Where</u>	
1	Direct Mail Corp	Delivery of printed fliers	Delivered on behalf of Business Corp's intended audience
2	Ad Corp	Design of ads for billboards and fliers to be mailed	Billboards located and fliers mailed, even if designed elsewhere
3		- similar advertising services for businesses	Same as above - to where billboards located and fliers mailed
4	Fulfillment Corp	Product delivery fulfillment services for Sales Corp	Where products are delivered on behalf of Sales Corp
5	Software Corp	Software development for in-state Buyer Corp	Where software is physically installed, even if developed out of state
6		- development for Buyer Corp domiciled out of state	Same as above - to where physically installed

(9)(d)4.c.ii(B) Delivery To a Customer by Electronic Transmission

(9)(d)4.c.ii(B)1 Individual customer

Customer receives the service, as
 - Determined
 - Reasonably approximated
 - Reasonably approximated using billing address

(9)(d)4.c.ii(B)2 Business customer

State(s) where customer actually receives the service, i.e., where directly used by the customer's employees or designees, as
 - Determined
 - Reasonably approximated
 - Assigned by proxy rules of reasonable approximation
 - Billing address, if 250-customer safe harbor applies
 - Where customer principally manages contract of sale*
 * Required for >5% customers
 - Customer's place of order
 - Customer's billing address

(9)(d)4.c.ii(B)2.c

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Sourcing Notes

(9)(d)4.c.ii(B)3

<u>Examples</u>		<u>Sourcing to Where Received</u>
1	Support Corp Software support via phone and Internet	Based on verification of customer's account information
2	Online Corp Web-based services to individual customers	As determined, approximated or extrapolated from known sales
3	- extrapolation from known sales not reasonable	- as reasonably approximated using billing address
4	- not taxable	- throwout - excluded from numerator/denominator
5	Net Corp Web-based services to Business Corp - cannot be approximated - Business Corp a >5% customer	Based on employee use as determined, approximated, or assigned - assigned following tiered proxy rules - assigned to where Business Corp manages the contract
6	- 250-customer safe harbor applies - not taxable	- assigned using customer billing address safe harbor - throwout - excluded from numerator/denominator

(9)(d)4.c.ii(C)

Services Delivered Electronically Through or on Behalf of an Individual or Business Customer

Delivery to extent that end users or third party recipients are in state, as

- Determined
- Reasonably approximated
- Assigned by proxy rules of reasonable approximation
 - Advertising on behalf of - geographic area, population ratios
 - To intermediary for resale - population ratio in resale area

(9)(d)4.c.ii(C)4

<u>Examples</u>		<u>Sourcing</u>
1	Cable TV Corp Advertising time to business customers - monthly subscriptions to individual customers	To location of audience where advertising is featured, as determined, approximated or assigned by subscriber ratios Where programming is received, as determined, approximated or assigned by individual customer billing address
2	Network Corp Advertising time to business customers - not taxable	To location of audience where advertising will run as determined, approximated or assigned by population ratios - throwout - excluded from numerator/denominator
3	Web Corp Content; advertising space to business customers - not taxable	To extent of in-state viewers as determined by clicks or views, approximated, or assigned by population ratios Throwout - excluded from numerator/denominator
4	Answer Co Operates call centers for Retail Corp - not taxable	To state(s) from which Retail Corp's customers place calls as determined, approximated or assigned by population ratios Throwout - excluded from numerator/denominator
5	Design Co Designs and maintains Web Corp's website	Sourced as sale "to" not "through" Web Corp, despite end user feedback
6	Wholesale Corp Internet database marketed by Retail Corp to end users - not taxable	To where end users receive access to database as determined, approximated or assigned by population ratios Throwout - excluded from numerator/denominator

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- (9)(d)4.d **Professional Services**
- (9)(d)4.d.iii(A)1 Individual customers
- (9)(d)4.d.iii(A)2 Business customers
- (9)(d)4.d.iii(B) Architectural and Engineering Services
- (9)(d)4.d.iii(C) Provided by Financial Institutions
- (9)(d)4.d.iii(D) “Mutual fund sales” to RICs

Sourcing Notes

- To location of delivery as reasonably approximated, based on
- Billing address, if 250-customer safe harbor applies
 - Customer’s state of primary residence*
 - * Required for >5% customers
 - State of the customer’s billing address
- Billing address, if 250-customer safe harbor applies
- Where customer principally manages contract of sale*
 - * Required for >5% customers
 - Customer’s place of order
 - Customer’s billing address
- To extent services relate to in-state real estate or TPP
- Per general rule for professional services
- Per mutual fund service corporation regulation

(9)(d)4.d.iv

<u>Examples</u>		<u>Sourcing</u>
1	Broker Corp Securities brokerage services to individual customers	To customer’s state of primary residence, or billing address
2	- >5% customers - not taxable	- to >5% customers’ state of primary residence - throwout - excluded from numerator/denominator
3	Architecture Corp Building design services	Based on location of buildings, regardless of customer location
4	Law Corp Legal services to individual clients	To customer’s state of primary residence, or billing address
5	- not taxable	- throwout - excluded from numerator/denominator
6	- legal services to multistate business clients	- where client principally manages agreement for legal services
7	- not taxable	- throwout - excluded from numerator/denominator
8	Consulting Corp Expert testimony at trial of Law Corp client, Client Co	Where Law Corp principally manages agreement with Consulting Corp
9	Bank Corp Financial custodial services for individuals	To customer’s state of primary residence, or billing address
10	- 250-customer safe harbor applies - not taxable	- based on customer billing address - throwout - excluded from numerator/denominator
11	- individual >5% customer	- to individual’s state of primary residence
12	Advisor Corp Investment advisory services to Investment Co in connection with individual investment accounts	Where Investment Co principally manages agreement with Advisor Corp
13	- services to Mutual Fund Co - not taxable	- mutual fund sales sourced based on domicile of RIC shareholders - no throwout
14	- services to Investment Fund LP	- where LP principally manages agreement with Advisor Corp
15	Design Corp Graphic design services for individual customer	To billing address, where primary residence unknown

(9)(d)5	License or Lease of Intangible Property	To extent the intangible is used in state, based on taxpayer's market for the intangible's use
(9)(d)5.b	License of a Marketing Intangible	To extent of fees derived from sales to customers in state, as - Determined - Reasonably approximated based on population ratios where the intangible is ultimately used for marketing sales
(9)(d)5.c	Production Intangible Individual customers Business customers	To extent that use for which fees are paid occurs in state - presume all to MA if the DOR establishes some to MA - presume to licensee's state of primary residence - presume to licensee's commercial domicile
(9)(d)5.d	License of a Mixed Intangible	Fees presumed for marketing intangible, unless separately stated
(9)(d)5.e - (9)(d)4.c.ii(B) - (9)(d)4.c.ii(C)	License of Intangible Property where Substance of Transaction Resembles a Sale of Goods or Services	Follow rules for sales to a customer by electronic transmission, or delivered electronically through or on behalf of customer - sublicenses too

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Sourcing Notes

Examples		Sourcing
1	Crayon Corp Trademark license to Dealer Co; per-store fee	Based on ratio of Dealer Co's receipts from in-state stores to total
2	Program Corp License of programming to cable networks	Based on ratio of in-state audience to licensee's total audience absent evidence of actual viewers in state
3	Moniker Corp Trademark license to Wholesale Co for sports equipment - not taxable	Based on ratio of in-state population to total population - throwout - excluded from numerator/denominator
4	Formula, Inc Patent used by Appliance Co to manufacture appliances	Presumed to MA, where the DOR establishes some actual use, rather than licensee's commercial domicile
5	Axel Corp License to Biker Co to produce and sell patented scooters - fees not separately stated	Mixed intangible - sourced entirely as marketing intangible based on population
6	- separately stated fee for out-of-state production right	- fee paid for production intangible sourced out of state
7	Better Burger Corp Franchise - marketing, production, management fee	Marketing/production intangible used in MA; personal service fees
8	Online Corp Information database for individual customers	Where accessed, as determined, approximated, billing address proxy
9	Net Corp Information database for Business Corp - cannot determine or reasonably approximate	Where accessed, as determined, approximated - where Business Corp principally manages contract of sale, placed the order, or its billing address
	- Business Corp a >5% customer	- where Business Corp principally manages contract of sale
10	Information database for individual and business customers - 250-customer safe harbor applies - not taxable	Billing address safe harbor - throwout - excluded from numerator/denominator
11	Web Corp Information database licensed and sublicensed	To state where accessed by end users, as determined, approximated, or assigned by population ratios

(9)(d)6

Sale of Intangible Property

(9)(d)6.a.i, iii

Contract Right or Government License Authorizing Activity in Geographic Area

To extent intangible property is used or associated with state

- subject to throwout

(9)(d)6.a.ii, iii

Agreement Not to Compete

Ratio of state's population in specified area to total population
- subject to throwout

(9)(d)6.a.iv
- (9)(d)5

Sale that Resembles a License (Receipts are Contingent on Productivity, Use or Disposition of the Intangible Property)

Follow rules for license or lease of intangible property

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Sourcing Notes

- (9)(d)6.a.v **Sale that Resembles a Sale of Goods and Services**
 - (9)(d)5.e
 - (9)(d)4.c.ii(B)
 - (9)(d)4.c.ii(C)

Follow rules for licenses of intangible property that resemble sales

- (9)(d)6.a.vi **Excluded Sales**

Goodwill, similar intangible value, going concern, workforce in place

- (9)(d)6.b
 - (9)(d)6.a.i
 - (9)(d)6.a.i
- (9)(d)6.a.i
- (9)(d)6.a.ii
- (9)(d)6.a.vi
- (9)(d)6.a.vi

<u>Examples</u>		<u>Sourcing</u>
1	Airline Corp Sale of right to use gates at one airport	To state where contract right authorizes business activity
2	Wireless Corp Sale of FCC license to operate wireless services in state	To state where license authorizes business activity
3	- license to operate in multiple states	- reasonably approximate extent of use in state, credible data
4	- not taxable	- throwout - excluded from numerator/denominator
5	Sports League Corp Sale of broadcast rights to Network Corp	Reasonably approximate in-state use; audience measurement
6	- not taxable	- throwout - excluded from numerator/denominator
7	Business Corp Covenant not to compete with Competition Corp	Ratio of in-state population over total in specified geographic region
	- not taxable	- throwout - excluded from numerator/denominator
8	Business Corp - sale of all assets, including goodwill	Sale of goodwill excluded from numerator and denominator
9	Inventor Corp Sale of patented technology to Buyer Corp	Sale of technology excluded from numerator and denominator

Special Rules

- (9)(d)7.a **Software Transactions**
 - (9)(c)
 - (9)(d)4.c
 - Pre-written software transferred on a tangible medium
 - Development and sale of custom software
 - physically installed at customer's site
 - (9)(d)5.b
 - License of marketing intangible
 - (9)(d)5.c
 - License of production intangible
 - (9)(d)5.e
 - License of intangible property resembling sale
 - Database access, access to information, digital goods
 - Certain software not treated as sale of TPP
 - (9)(d)6
 - Sale of intangible property

Depending on the facts
Treated as sale of TPP
Treated as delivered to, on behalf or electronically through the customer
- Where physically delivered
To extent of fees derived from sales to customers in state
To extent of fees derived from sales to customers in state
Treated as delivered to, or electronically through the customer

- (9)(d)7.b **Sales or Licenses of Digital Goods or Services**
 - (9)(d)4.c.ii(B)
 - (9)(d)4.c.ii(C)
- (9)(d)5.e E.g., sale of video, audio and software products
- (9)(d)6.a.v

Treated under the rules for services
delivered to a customer by electronic transmission, or
delivered electronically through or on behalf of customer

Treated as sale of service under rules above