

**2017 Massachusetts General Laws**  
**PART I ADMINISTRATION OF THE GOVERNMENT**  
**TITLE IX TAXATION**  
**Chapter 63 TAXATION OF CORPORATIONS**  
**Section 1 Definitions**

**Universal Citation:** MA Gen L ch 63 § 1 (2017)

Section 1. When used in sections one to two A, inclusive, and section thirty-eight B, the following words shall, unless the context otherwise requires, have the following meaning:

"Billing address", the location indicated in the books and records of the taxpayer on the first day of the taxable year, or on such later date in the taxable year when the customer relationship began, as the address where any notice, statement or bill relating to a customer's account is mailed.

"Borrower or credit card holder located in this commonwealth", (a) a borrower, other than a credit card holder, that is engaged in a trade or business which maintains its commercial domicile in this commonwealth; or (b) a borrower that is not engaged in a trade or business or a credit card holder whose billing address is in this commonwealth.

"Code", the Internal Revenue Code of the United States, as amended and in effect for the taxable year, unless otherwise provided.

"Commercial domicile", (a) the headquarters of the trade or business, that is, the place from which the trade or business is principally managed and directed; or (b) if a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, such taxpayer's commercial domicile shall be deemed to be the state of the United States or the District of Columbia from which such taxpayer's trade or business in the United States is principally managed and directed. It shall be presumed, subject to rebuttal, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable year.

"Compensation", wages, salaries, commissions and any other form of remuneration paid to employees for personal services that are included in such employee's gross income under the Internal Revenue Code. In the case of employees not subject to the Internal Revenue Code, such as those employed in foreign countries, the determination of whether such payments would constitute gross income to such employees under the Internal Revenue Code shall be made as though such employees were subject to the Internal Revenue Code.

"Credit card", credit, travel or entertainment card.

"Credit card issuer's reimbursement fee", the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.

"Employee", with respect to a particular taxpayer, any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

"Engaged in business in the commonwealth", (a) having a business location in the commonwealth; (b) having employees, representatives or independent contractors conducting business activities on its behalf in the commonwealth; (c) maintaining, renting or owning any tangible or real property in the commonwealth; (d) regularly performing services in the commonwealth; (e) regularly engaging in transactions with customers in the commonwealth that involve intangible property and result in income flowing to the taxpayer from residents of the commonwealth; (f) regularly receiving interest income from loans secured by tangible personal or real property located in the commonwealth; or (g) regularly soliciting and receiving deposits from customers in the commonwealth. With respect to the activities described in clauses (d) to (g), inclusive, activities shall be presumed, subject to rebuttal, to be conducted on a regular basis within the commonwealth, if any of such activities are conducted with one hundred or more residents of the commonwealth during any taxable year or if the taxpayer has ten million dollars or more of assets attributable to sources within the commonwealth, or has in excess of five hundred thousand dollars in receipts attributable to sources within the commonwealth.

"Financial institution", (a) any bank, banking association, trust company, federal or state savings and loan association, including all banks for cooperatives organized under the United States Farm Credit Act of 1933, whether of issue or not, existing by authority of the United States, or any state, or a foreign country, or any law of the commonwealth; (b) any other institution, association or entity, the deposits or accounts of which are insured under the Federal Deposit Insurance Act or by the Federal Deposit Insurance Corporation, any institution, association or entity, which is a member of a federal Home Loan Bank, excluding corporations described in section 1 of chapter 171, any other bank or thrift institution incorporated or organized under the laws of a state which is engaged in the business of receiving deposits, any corporation organized under the provisions of 12 USC 611?631 and 12 USC 3101; (c) any corporation subject to chapter 167A, or registered under the Federal Bank Holding Company Act of 1956, or registered as a savings and loan holding company under federal law, but excluding a diversified savings and loan holding company unless it satisfies the definition of a financial institution elsewhere herein, including any subsidiary which participates in the filing of a consolidated return of income to the federal government; (d) any corporation subject to supervision by the division of banks including but not limited to corporations described in section 24 of chapter 93, sections 96 to 104, inclusive, or section 114C of chapter 140; section 38 of chapter 167; section 5 of chapter 167B; chapter 169A; chapter 255B; chapter 255C; chapter 255D; and chapter 255E; or (e) any other corporation organized under the laws of the United States, the commonwealth or any other state or a foreign country which, in substantial competition with financial institutions as defined in any or all of clauses (a) to (d), inclusive, derives more than 50 per cent of its gross income, excluding nonrecurring, extraordinary items, from loan origination, from lending activities, including discounting obligations, or from credit card activities; but, corporations described in section 1 of chapter 171 shall be excluded from the definition of financial institution. The term "corporation" as used in this definition shall mean any corporation, or any "other entity" as

defined in section 1.40 of chapter 156D, whether the corporation or other entity may be formed, organized, or operated in or under the laws of the commonwealth or any other jurisdiction, that is classified for the taxable year as a corporation for federal income tax purposes.

"Gross income", gross income as defined under the provisions of the Internal Revenue Code, as amended and in effect for the taxable year, plus the interest from bonds, notes and evidences of indebtedness of any state, including this commonwealth. Gross income shall be determined without regard to section 108(i) of the Code.

"Gross rents", the actual sum of money or other consideration payable for the use or possession of property. "Gross rents" shall include, but not be limited to:

- (a) any amount payable for the use or possession of real property or tangible property whether designated as a fixed sum of money or as a percentage of receipts, profits or otherwise;
- (b) any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs or any other amount required to be paid by the terms of a lease or other arrangement; and
- (c) a proportionate part of the cost of any improvement to real property made by or on behalf of the taxpayer which reverts to the owner or lessor upon termination of a lease or other arrangement. The amount to be included in gross rents shall be the amount of amortization or depreciation allowed in computing the taxable income base for the taxable year; provided, however, where a building is erected on leased land by or on behalf of the taxpayer, the value of the land shall be determined by multiplying the gross rent by eight and the value of the building shall be determined in the same manner as if owned by the taxpayer.
- (d) the following shall not be included in the term "gross rents":
  - (i) reasonable amounts payable as separate charges for water, steam, and electric service furnished by the lessor;
  - (ii) reasonable amounts payable as service charges for janitorial services furnished by the lessor;
  - (iii) reasonable amounts payable for storage, provided such amounts are payable for space not designated and not under the control of the taxpayer; and
  - (iv) that portion of any rental payment which is applicable to the space subleased from the taxpayer and not used by it.

"Loan", any extension of credit resulting from direct negotiations between the taxpayer and its customer, or the purchase, in whole or in part, of such extension of credit from another. Loans include participations, syndications and leases treated as loans for federal income tax purposes. Loans shall not include: properties treated as loans under section 595 of the Internal Revenue Code; futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; non-interest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreement to resell; assets held in a trading account; securities; interests in a

REMIC as defined in section 860D of the Internal Revenue Code, or other mortgage-backed or asset-backed security; and other similar items.

"Loan secured by real property", a loan in which fifty percent or more of the aggregate value of the collateral, when valued at fair market value as of the time the original loan was incurred, was real property.

"Merchant discount", the fee or negotiated discount charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for the merchandise or services sold to the card holder.

"Net income", gross income, other than ninety-five percent of dividends received in any taxable year beginning on or after January first, nineteen hundred and ninety-nine from or on account of the ownership of any class of stock if the financial institution owns fifteen percent or more of the voting stock of the institution paying the dividend, less the deductions, but not the credits allowable under the provisions of the Internal Revenue Code, as amended and in effect for the taxable year. The term 'dividends received' shall be treated in the same manner as under the Code, as amended and in effect for the taxable year. The term "dividends received", as it relates to distribution from a real estate investment trust, as provided in sections 856 to 859, inclusive, of the Code, shall be treated in the same manner as under the Code, as amended and in effect for the taxable year. For purposes of this section, any dividend received directly or indirectly from the real estate investment trust shall not be treated as a dividend. Any dividend received directly or indirectly from a regulated investment company, as provided in sections 851 to 855, inclusive, of the Code, shall not be included as part of the dividends received deduction otherwise available under this section. For taxable years beginning on or after January first, nineteen hundred and ninety-nine, the provisions of section two hundred and ninety-one of said Code shall not apply; and the provisions of section one hundred and seventy-one (a)(2) and two hundred and sixty-five of said Code shall only apply to the extent that the income to which the deductions relate is excludable from gross income. Deductions with respect to the following items, however, shall not be allowed except as otherwise provided:

- (a) dividends received, except as otherwise provided;
- (b) losses sustained in other taxable years;
- (c) taxes on or measured by income, franchise taxes measured by net income, franchise taxes for the privilege of doing business and capital stock taxes imposed by a state;
- (d) the deduction allowed by section 168 (k) of the Code;
- (e) the deduction allowed by section 199 of the Code; or
- (f) the deduction described in section 163(e)(5) of the Code, to the extent increased by amendments to section 163(e)(5)(F) and section 163(i)(1) of the Code, inserted by section 1232 of the American Recovery and Reinvestment Act of 2009.

"Participation", an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the

creditor originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

"Person", an individual, estate, trust, partnership, corporation and any other business entity.

"Principal base of operations", with respect to transportation property means the place of more or less permanent nature from which said property is primarily directed or controlled. With respect to an employee, the "principal base of operations" means the place of more or less permanent nature from which the employee primarily (1) starts his work and to which he customarily returns in order to receive instructions from his employer or (2) (if (1) is not applicable) communicates with his customers or other persons, or (3) (if (1) and (2) are both not applicable) performs any other functions necessary to the exercise of his trade or profession.

"Real property owned" and "tangible personal property owned", real and tangible personal property respectively, (1) on which the taxpayer may claim depreciation for federal income tax purposes, or (2) property to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes, or could claim depreciation if subject to federal income tax. Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

"Regular place of business", an office at which the taxpayer carries on its business in a regular and systematic manner and which is consistently maintained, occupied and used by employees of the taxpayer.

"State", a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States; any foreign country; or a political subdivision of any of the foregoing.

"Syndication", an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

"Taxable", (a) that a taxpayer is subject in another state to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax, including a bank shares tax, a single business tax, or an earned surplus tax, or any tax which is imposed upon or measured by net income; or (b) that another state has jurisdiction to subject the taxpayer to any of such taxes regardless of whether, in fact, the state does or does not.

"Taxable year", any fiscal or calendar year or period for which the taxpayer is required to make a return to the federal government; or the period for which a return is made by the taxpayer, if a return is made (1) for a period less than twelve months, or (2) for a period for which no return to the federal government is required.

"Taxpayer", a financial institution engaged in business in the commonwealth.

"Transportation property", vehicles and vessels capable of moving under their own power, including, but not limited to, aircraft, trains, water vessels and motor vehicles, as well as any

equipment or containers attached to such property, such as rolling stock, barges, trailers or the like.