



General Assembly

February Session, 2000

***Raised Bill No. 5776***

LCO No. 2042

Referred to Committee on Finance, Revenue and Bonding

Introduced by:  
(FIN)

***An Act Concerning A Single Factor Apportionment Formula For  
Manufacturers Under The Corporation Business Tax.***

Be it enacted by the Senate and House of Representatives in General  
Assembly convened:

1 Section 12-218 of the general statutes, as amended by section 4 of  
2 public act 99-121, is repealed and the following is substituted in lieu  
3 thereof:

4 (a) Any taxpayer which is taxable both within and without this state  
5 shall apportion its net income as provided in this section. For purposes  
6 of apportionment of income under this section, a taxpayer is taxable in  
7 another state if in such state such taxpayer conducts business and is  
8 subject to a net income tax, a franchise tax for the privilege of doing  
9 business, or a corporate stock tax, or if such state has jurisdiction to  
10 subject such taxpayer to such a tax, regardless of whether such state  
11 does, in fact, impose such a tax.

12 (b) The net income of the taxpayer, when derived from business  
13 other than the manufacture, sale or use of tangible personal or real  
14 property, shall be apportioned within and without the state by means  
15 of an apportionment fraction, the numerator of which shall represent

16 the gross receipts from business carried on within Connecticut and the  
17 denominator shall represent the gross receipts from business carried  
18 on everywhere, except that any gross receipts attributable to an  
19 international banking facility, as defined in section 12-217, shall not be  
20 included in the numerator or the denominator. Gross receipts as used  
21 in this subsection shall have the same meaning as used in subdivision  
22 (3) of subsection (c) of this section.

23 (c) [The] Except as otherwise provided in subsection (k) of this  
24 section, the net income of the taxpayer when derived from the  
25 manufacture, sale or use of tangible personal or real property, shall be  
26 apportioned within and without the state by means of an  
27 apportionment fraction, to be computed as the sum of the property  
28 factor, the payroll factor and twice the receipts factor, divided by four.  
29 (1) The first of these fractions, the property factor, shall represent that  
30 part of the average monthly net book value of the total tangible  
31 property held and owned by the taxpayer during the income year  
32 which is held within the state, without deduction on account of any  
33 encumbrance thereon, and the value of tangible property rented to the  
34 taxpayer computed by multiplying the gross rents payable during the  
35 income year or period by eight. For the purpose of this section, gross  
36 rents shall be the actual sum of money or other consideration payable,  
37 directly or indirectly, by the taxpayer or for its benefit for the use or  
38 possession of the property, excluding royalties, but including interest,  
39 taxes, insurance, repairs or any other amount required to be paid by  
40 the terms of a lease or other arrangement and a proportionate part of  
41 the cost of any improvement to the real property made by or on behalf  
42 of the taxpayer which reverts to the owner or lessor upon termination  
43 of a lease or other arrangement, based on the unexpired term of the  
44 lease commencing with the date the improvement is completed,  
45 provided, where a building is erected on leased land by or on behalf of  
46 the taxpayer, the value of the land is determined by multiplying the  
47 gross rent by eight, and the value of the building is determined in the  
48 same manner as if owned by the taxpayer. (2) The second fraction, the  
49 payroll factor, shall represent the part of the total wages, salaries and

50 other compensation to employees paid by the taxpayer during the  
51 income year which was paid in this state, excluding any such wages,  
52 salaries or other compensation attributable to the production of gross  
53 income of an international banking facility as defined in section 12-217.  
54 Compensation is paid in this state if (A) the individual's service is  
55 performed entirely within the state; or (B) the individual's service is  
56 performed both within and without the state, but the service  
57 performed without the state is incidental to the individual's service  
58 within the state; or (C) some of the service is performed in the state  
59 and (i) the base of operations or, if there is no base of operations, the  
60 place from which the service is directed or controlled is in the state, or  
61 (ii) the base of operations or the place from which the service is  
62 directed or controlled is not in any state in which some part of the  
63 service is performed, but the individual's residence is in this state. (3)  
64 The third fraction, the receipts factor, shall represent the part of the  
65 taxpayer's gross receipts from sales or other sources during the income  
66 year, computed according to the method of accounting used in the  
67 computation of its entire net income, which is assignable to the state,  
68 and excluding any gross receipts attributable to an international  
69 banking facility as defined in section 12-217, but including receipts  
70 from sales of tangible property if the property is delivered or shipped  
71 to a purchaser within this state, other than a company which qualifies  
72 as a Domestic International Sales Corporation (DISC) as defined in  
73 Section 992 of the Internal Revenue Code of 1986, or any subsequent  
74 corresponding internal revenue code of the United States, as from time  
75 to time amended, and as to which a valid election under Subsection (b)  
76 of said Section 992 to be treated as a DISC is effective, regardless of the  
77 f.o.b. point or other conditions of the sale, receipts from services  
78 performed within the state, rentals and royalties from properties  
79 situated within the state, royalties from the use of patents or  
80 copyrights within the state, interest managed or controlled within the  
81 state, net gains from the sale or other disposition of intangible assets  
82 managed or controlled within the state, net gains from the sale or other  
83 disposition of tangible assets situated within the state and all other

84 receipts earned within the state.

85 (d) Any motor bus company which is taxable both within and  
86 without this state shall apportion its net income derived from carrying  
87 of passengers for hire by means of an apportionment fraction, the  
88 numerator of which shall represent the total number of miles operated  
89 within this state and the denominator of which shall represent the total  
90 number of miles operated everywhere, but income derived by motor  
91 bus companies from sources other than the carrying of passengers for  
92 hire shall be apportioned as herein otherwise provided.

93 (e) Any motor carrier which transports property for hire and which  
94 is taxable both within and without this state shall apportion its net  
95 income derived from carrying of property for hire by means of an  
96 apportionment fraction, the numerator of which shall represent the  
97 total number of miles operated within this state and the denominator  
98 of which shall represent the total number of miles operated  
99 everywhere, but income derived by motor carriers from sources other  
100 than the carrying of property for hire shall be apportioned as herein  
101 otherwise provided.

102 (f) (1) Each taxpayer that provides management, distribution or  
103 administrative services, as defined in this subsection, to or on behalf of  
104 a regulated investment company, as defined in Section 851 of the  
105 Internal Revenue Code shall apportion its net income derived, directly  
106 or indirectly, from providing management, distribution or  
107 administrative services to or on behalf of a regulated investment  
108 company, including net income received directly or indirectly from  
109 trustees, and sponsors or participants of employee benefit plans which  
110 have accounts in a regulated investment company, in the manner  
111 provided in this subsection. Income derived by such taxpayer from  
112 sources other than the providing of management, distribution or  
113 administrative services to or on behalf of a regulated investment  
114 company shall be apportioned as provided in this chapter.

115 (2) The numerator of the apportionment fraction shall consist of the

116 sum of the Connecticut receipts, as described in subdivision (3) of this  
117 subsection. The denominator of the apportionment fraction shall  
118 consist of the total receipts from the sale of management, distribution  
119 or administrative services to or on behalf of all the regulated  
120 investment companies. For purposes of this subsection, "receipts"  
121 means receipts computed according to the method of accounting used  
122 by the taxpayer in the computation of net income.

123 (3) For purposes of this subsection, Connecticut receipts shall be  
124 determined by multiplying receipts from the rendering of  
125 management, distribution or administrative services to or on behalf of  
126 each separate regulated investment company by a fraction (A) the  
127 numerator of which shall be the average of (i) the number of shares on  
128 the first day of such regulated investment company's taxable year, for  
129 federal income tax purposes, which ends within or at the same time as  
130 the taxable year of the taxpayer, that are owned by shareholders of  
131 such regulated investment company then domiciled in this state and  
132 (ii) the number of shares on the last day of such regulated investment  
133 company's taxable year, for federal income tax purposes, which ends  
134 within or at the same time as the taxable year of the taxpayer, that are  
135 owned by shareholders of such regulated investment company then  
136 domiciled in this state; and (B) the denominator of which shall be the  
137 average of the number of shares that are owned by shareholders of  
138 such regulated investment company on such dates.

139 (4) (A) For purposes of this subsection, "management services"  
140 includes, but is not limited to, the rendering of investment advice  
141 directly or indirectly to a regulated investment company, making  
142 determinations as to when sales and purchases of securities are to be  
143 made on behalf of the regulated investment company, or the selling or  
144 purchasing of securities constituting assets of a regulated investment  
145 company, and related activities, but only where such activity or  
146 activities are performed (i) pursuant to a contract with the regulated  
147 investment company entered into pursuant to 15 USC 80a-15(a), as  
148 from time to time amended, (ii) for a person that has entered into such

149 contract with the regulated investment company, or (iii) for a person  
150 that is affiliated with a person that has entered into such contract with  
151 a regulated investment company.

152 (B) For purposes of this subsection, "distribution services" includes,  
153 but is not limited to, the services of advertising, servicing, marketing  
154 or selling shares of a regulated investment company, but, in the case of  
155 advertising, servicing or marketing shares, only where such service is  
156 performed by a person that is, or, in the case of a closed end company,  
157 was, either engaged in the service of selling such shares or affiliated  
158 with a person that is engaged in the service of selling such shares. In  
159 the case of an open end company, such service of selling shares shall  
160 be performed pursuant to a contract entered into pursuant to 15 USC  
161 80a-15(b), as from time to time amended.

162 (C) For purposes of this subsection, "administrative services"  
163 includes, but is not limited to, clerical, fund or shareholder accounting,  
164 participant record keeping, transfer agency, bookkeeping, data  
165 processing, custodial, internal auditing, legal and tax services  
166 performed for a regulated investment company but only if the  
167 provider of such service or services during the income year in which  
168 such service or services are provided also provides, or is affiliated with  
169 a person that provides, management or distribution services to such  
170 regulated investment company.

171 (D) For purposes of this subsection, a person is "affiliated" with  
172 another person if each person is a member of the same affiliated group,  
173 as defined under Section 1504 of the Internal Revenue Code without  
174 regard to subsection (b) of said section.

175 (E) For purposes of this subsection, the domicile of a shareholder  
176 shall be presumed to be such shareholder's mailing address as shown  
177 in the records of the regulated investment company except that for  
178 purposes of this subsection, if the shareholder of record is an insurance  
179 company which holds the shares of the regulated investment company  
180 as depositor for the benefit of a separate account, then the taxpayer

181 may elect to treat as the shareholders the contract owners or  
182 policyholders of the contracts or policies supported by such separate  
183 account. An election made under this subparagraph shall apply to all  
184 shareholders that are insurance companies and shall be irrevocable for,  
185 and applicable for, five successive income years. In any year that such  
186 an election is applicable, it shall be presumed that the domicile of a  
187 shareholder is the mailing address of the contract owner or  
188 policyholder as shown in the records of the insurance company.

189 (g) (1) Each taxpayer that provides securities brokerage services, as  
190 defined in this subsection, shall apportion its net income derived,  
191 directly or indirectly, from rendering securities brokerage services in  
192 the manner provided in this subsection. Income derived by such  
193 taxpayer from sources other than the rendering of securities brokerage  
194 services shall be apportioned as provided in this chapter.

195 (2) The numerator of the apportionment fraction shall consist of the  
196 brokerage commissions and total margin interest paid on behalf of  
197 brokerage accounts owned by the taxpayer's customers who are  
198 domiciled in this state during such taxpayer's income year, computed  
199 according to the method of accounting used in the computation of net  
200 income. The denominator of the apportionment fraction shall consist of  
201 brokerage commissions and total margin interest paid on behalf of  
202 brokerage accounts owned by all of the taxpayer's customers,  
203 wherever domiciled, during such taxpayer's income year, computed  
204 according to the method of accounting used in the computation of net  
205 income.

206 (3) For purposes of this subsection:

207 (A) "Security brokerage services" means services and activities  
208 including all aspects of the purchasing and selling of securities  
209 rendered by a broker, as defined in 15 USC 78c(a)(4) and registered  
210 under the provisions of 15 USC 78a to 78kk, inclusive, as from time to  
211 time amended, to effectuate transactions in securities for the account of  
212 others, and a dealer, as defined in 15 USC 78c(a)(5) and registered

213 under the provisions of 15 USC 78a to 78kk, inclusive, as from time to  
214 time amended, to buy and sell securities, through a broker or  
215 otherwise. Security brokerage services shall not include services  
216 rendered by any person buying or selling securities for such person's  
217 own account, either individually or in some fiduciary capacity, but not  
218 as part of a regular business carried on by such person.

219 (B) "Securities" means security, as defined in 15 USC 78c(a)(10), as  
220 from time to time amended.

221 (C) "Brokerage commission" means all compensation received for  
222 effecting purchases and sales for the account or on order of others,  
223 whether in a principal or agency transaction, and whether charged  
224 explicitly or implicitly as a fee, commission, spread, markup or  
225 otherwise.

226 (4) For purposes of this subsection, the domicile of a customer shall  
227 be presumed to be such customer's mailing address as shown in the  
228 records of the taxpayer.

229 (h) (1) Any company that is (A) a limited partner in a partnership,  
230 other than an investment partnership, that does business, owns or  
231 leases property or maintains an office within this state and (B) not  
232 otherwise carrying on or doing business in this state shall pay the tax  
233 imposed under section 12-214 solely on its distributive share as a  
234 partner of the income or loss of such partnership to the extent such  
235 income or loss is derived from or connected with sources within this  
236 state, except that, if the commissioner determines that the company  
237 and the partnership are, in substance, parts of a unitary business  
238 engaged in a single business enterprise, the company shall be taxed in  
239 accordance with the provisions of subdivision (3) of this subsection  
240 and not in accordance with the provisions of this subdivision,  
241 provided, in lieu of the payment of tax based solely on its distributive  
242 share, such company may elect for any particular income year, on or  
243 before the due date or, if applicable the extended due date, of its  
244 corporation business tax return for such income year, to apportion its

245 net income within and without the state under the provisions of this  
246 chapter.

247 (2) Any company that is (A) a limited partner (i) in an investment  
248 partnership or (ii) in a limited partnership, other than an investment  
249 partnership, that does business, owns or leases property or maintains  
250 an office within this state and (B) otherwise carrying on or doing  
251 business in this state shall apportion its net income, including its  
252 distributive share as a partner of such partnership income or loss,  
253 within and without the state under the provisions of this chapter,  
254 except that the numerator and the denominator of its payroll factor,  
255 property factor, and receipts factor shall include its proportionate part,  
256 as a partner, of the numerator and the denominator of such  
257 partnership's payroll factor, property factor and receipts factor,  
258 respectively. For purposes of this section, such partnership shall  
259 compute its apportionment fraction and the numerator and the  
260 denominator of its payroll factor, property factor and receipts factor, as  
261 if it were a company taxable both within and without this state.

262 (3) Any company that is a general partner in a partnership that does  
263 business, owns or leases property or maintains an office within this  
264 state shall, whether or not it is otherwise carrying on or doing business  
265 in this state, apportion its net income, including its distributive share  
266 as a partner of such partnership income or loss, within and without the  
267 state under the provisions of this chapter, except that the numerator  
268 and the denominator of its payroll factor, property factor and receipts  
269 factor shall include its proportionate part, as a partner, of the  
270 numerator and the denominator of such partnership's payroll factor,  
271 property factor and receipts factor, respectively. For purposes of this  
272 section, such partnership shall compute its apportionment fraction and  
273 the numerator and the denominator of its payroll factor, property  
274 factor and receipts factor, as if it were a company taxable both within  
275 and without this state.

276 (i) The provisions of this section shall not apply to insurance

277 companies.

278 (j) (1) Any financial service company as defined in section 12-218b,  
279 that has net income derived from credit card activities, as defined in  
280 this subsection, shall apportion its net income derived from credit card  
281 activities in the manner provided in this subsection. Income derived by  
282 such taxpayer from sources other than credit card activities shall be  
283 apportioned as provided in this chapter.

284 (2) The numerator of the apportionment fraction shall consist of the  
285 Connecticut receipts, as described in subdivision (3) of this subsection.  
286 The denominator of the apportionment fraction shall consist of (A) the  
287 total amount of interest and fees or penalties in the nature of interest  
288 from credit card receivables, (B) receipts from fees charged to card  
289 holders, including, but not limited to, annual fees, irrespective of the  
290 billing address of the card holder, (C) net gains from the sale of credit  
291 card receivables, irrespective of the billing address of the card holder,  
292 and (D) all credit card issuer's reimbursement fees, irrespective of the  
293 billing address of the card holder.

294 (3) For purposes of this subsection, "Connecticut receipts" shall be  
295 determined by adding (A) interest and fees or penalties in the nature of  
296 interest from credit card receivables and receipts from fees charged to  
297 card holders, including, but not limited to, annual fees, where the  
298 billing address of the card holder is in this state and (B) the product of  
299 (i) the sum of net gains from the sale of credit card receivables and all  
300 credit card issuer's reimbursement fees multiplied by (ii) a fraction, the  
301 numerator of which shall be interest and fees or penalties in the nature  
302 of interest from credit card receivables and receipts from fees charged  
303 to card holders, including, but not limited to, annual fees, where the  
304 billing address of the card holder is in this state, and the denominator  
305 of which shall be the total amount of interest and fees or penalties in  
306 the nature of interest from credit card receivables and receipts from  
307 fees charged to card holders, including, but not limited to, annual fees,  
308 irrespective of the billing address of the card holder.

309 (4) For purposes of this subsection:

310 (A) "Credit card" means a credit, travel, or entertainment card;

311 (B) "Receipts" means receipts computed according to the method of  
312 accounting used by the taxpayer in the computation of net income;

313 (C) "Credit card issuer's reimbursement fee" means the fee that a  
314 taxpayer receives from a merchant's bank because one of the persons  
315 to whom the taxpayer or a related person, as defined in section 12-  
316 218b, has issued a credit card has charged merchandise or services to  
317 the credit card;

318 (D) "Net income derived from credit card activities" means (i)  
319 interest and fees or penalties in the nature of interest from credit card  
320 receivables and receipts from fees charged to card holders, including,  
321 but not limited to, annual fees, net gains from the sale of credit card  
322 receivables, credit card issuer's reimbursement fees, and credit card  
323 receivables servicing fees received in connection with credit cards  
324 issued by the taxpayer or a related person, as defined in section 12-  
325 218b, less (ii) expenses related to such income, to the extent deductible  
326 under chapter 208;

327 (E) "Billing address" shall be presumed to be the location indicated  
328 in the books and records of the taxpayer as the address where any  
329 notice, statement or bill relating to a card holder is to be mailed, as of  
330 the date of such mailing; and

331 (F) "Credit card activities" means those activities involving the  
332 underwriting and approval of credit card relationships or other  
333 business activities generally associated with the conduct of business by  
334 an issuer of credit cards from which it derives income.

335 (5) The Commissioner of Revenue Services may adopt regulations,  
336 in accordance with chapter 54, to permit a financial service company  
337 that is an owner of a financial asset securitization investment trust, as  
338 defined in Section 860H(a) of the Internal Revenue Code, to elect to

339 apportion its share of the net income from credit card activities carried  
340 on by such trust, and to provide rules for apportioning such share of  
341 net income that are consistent with this subsection.

342 (k)(1) For income years commencing on or after January 1, 2001, the  
343 net income of a taxpayer which is primarily engaged in activities that,  
344 in accordance with the North American Industrial Classification  
345 System, United States manual, United States Office of Management  
346 and Budget, 1997 edition, would be included in Sector 31, 32 or 33,  
347 shall be apportioned within and without the state by means of the  
348 apportionment fraction described in subdivision (2) of this subsection.

349 (2) The numerator of the apportionment fraction shall consist of the  
350 taxpayer's gross receipts, as described in subdivision (3) of subsection  
351 (c) of this section, which are assignable to the state, as provided in  
352 subdivision (3) of subsection (c) of this section. The denominator of  
353 the apportionment fraction shall consist of the taxpayer's total gross  
354 receipts, as described in subdivision (3) of subsection (c) of this section,  
355 whether or not assignable to the state.

356 (3) Any taxpayer which is described in subdivision (1) of this  
357 subsection and seventy-five per cent or more of whose total gross  
358 receipts, as described in subdivision (3) of subsection (c) of this section,  
359 during the income year are from the sale of tangible personal property  
360 directly, or in the case of a subcontractor, indirectly to the United  
361 States government may elect, on or before the due date or, if  
362 applicable, the extended due date, of its corporation business tax  
363 return for the income year, to apportion its net income within and  
364 without the state by means of the apportionment fraction described in  
365 subsection (c) of this section. The election, if made by the taxpayer,  
366 shall be irrevocable for, and applicable for, five successive income  
367 years.

***Statement of Purpose:***

To provide for a simpler and more equitable formula for apportioning the income of manufacturing businesses for purposes of the corporation business tax.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*