

**VIA EMAIL & U.S. MAIL**

January 19, 2018

Christopher C. Harding, Commissioner of Revenue  
Massachusetts Department of Revenue (DOR)

RE: Comments Opposing Changes to 830 CMR 63.39.1 Corporate Nexus

Dear Mr. Harding:

We, the undersigned, write in opposition to the “Proposed Update - 12/19/17” 830 CMR 63.39.1. Using the presence of independent contractors in the state to establish nexus for tax purposes is inconsistent with current case law and statute, adds confusion to the marketplace and serves as a disincentive to individuals engaging in business in Massachusetts.

Every year many thousands of citizens of Massachusetts avail themselves of the opportunity to work as independent contractors for companies located outside the state. These independent contractors add many millions of dollars to the Massachusetts economy and provide needed products and services to customers.

Companies have been relying for many years on the language from the current regulation that states, “[f]or the purposes of determining whether a foreign corporation is subject to the excise under M.G.L. c. 63, § 39, the activities of employees, agents, or representatives, however designated, of the foreign corporation will be imputed to the corporation. An agent or representative may be an individual, corporation, partnership, or other entity. **Activities of an independent contractor will not be imputed to the corporation.**”

While we appreciate the desire to streamline and modernize 830 CMR 63.39.1, we are very concerned about the language regarding the use of independent contractors. Many companies that engage independent contractors in the state lack nexus for most state tax purposes if the only presence in the state is through independent contractors. Independent contractors in the state are obligated to pay other taxes such as individual state income taxes. These companies do submit IRS 1099 Misc. forms on their independent contractor to the IRS and the Massachusetts Department of Revenue (DOR).

The current regulation appears to more clearly carve out independent contractors from being indicia of nexus. We believe the proposed change related to independent contractors will be confusing and lead to more uncertainty with regard to nexus in Massachusetts and possibly lead to more litigation. Clearer and more definitive language with regard to independent contractors in the current regulation, while not perfect, is preferable to the change.

We respectfully request that the DOR reconsider these revisions and or amend the revisions to clarify that independent contractors do not trigger or serve as indicia of nexus in Massachusetts for excise tax purposes.

Sincerely,

Direct Selling Association

International Franchise Association

Competitive Enterprise Institute

Financial Services Institute, Inc.

The Insights Association