KPMG

This Week in State Tax (TWIST)

August 10, 2026

Massachusetts: Taxpayer found to be qualified manufacturer; ‘subjective test’ is a one-way street

A Massachusetts appellate court upheld an Appellate Tax Board ruling that a shoe company qualified as a manufacturer and was therefore required to use single sales factor apportionment. [For background on this matter, see our TWIST of June 16, 2025.] Recall that, prior to 2025, Massachusetts allowed non-manufacturers to use a three-factor apportionment method but required manufacturers to use the (now-default) single sales factor method. A manufacturing corporation is a corporation that is “engaged, in substantial part, in transforming raw or finished physical materials by hand or machinery, and through human skill and knowledge, into a new product possessing a new name, nature and adapted to a new use.” In its decision, the Board agreed with the Commissioner of Revenue that the taxpayer’s product development and prototype design activities—performed before third-party mass production—satisfied the statutory quantitative thresholds for manufacturer treatment. The taxpayer appealed.

The appellate court largely affirmed the determinations made by the Board, concluding that the taxpayer’s activities were an essential part of the manufacturing process. The court emphasized that the taxpayer controlled key aspects of product design, prototyping, materials selection, revisions, molds, and testing standards, even though third-party manufacturers performed the mass production.

The taxpayer sought to raise an additional argument that, even if its manufacturing activities met the quantitative, percentage-based test, these activities were “merely trivial or only incidental to its principal business.” The taxpayer noted that “there is also a subjective -- or qualitative -- component to the analysis under the statute.” The appellate court disagreed on three grounds. First, the argument had been waived because it was not raised at the lower level. Second, while Massachusetts does allow a taxpayer that does not meet any of the four quantitative tests to argue that subjectively it is a manufacturer based on other factors. The court ruled that a taxpayer’s manufacturing activities are, by definition, “substantial” if they meet one of the quantitative tests, and there is nothing to suggest that satisfying one of the four tests is not dispositive. Finally, based on the facts, the taxpayer’s manufacturing activities were not trivial or incidental, and objectively, it is engaged in manufacturing.

Contact James Carregal with questions about *Sketchers USA v. Commissioner of Revenue*.

Learn about us: in | **kpmg.com**