

CORPORATE TAX DISCLOSURE AT THE STATE LEVEL: THE MASSACHUSETTS EXPERIENCE

Public Disclosure of Corporate Tax Returns: Issues and Options

The University of North Carolina Tax Center
The Tax Policy Center
The National Tax Association

The Brookings Institution
Washington, DC
April 25, 2003

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THE RICHARD AND ROBERT SHOW

Everything You Always Wanted to Know About Corporate Tax Disclosure at the State Level

Robert P. Strauss, “State Disclosure of Tax Return Information: Taxpayer Privacy vs. The Public’s Right to Know, 5 *State Tax Notes* 24 (July 5, 1993)

Richard D. Pomp, “Corporate Tax Policy and the Right to Know: Enhancing Legislative and Public Access,” 6 *State Tax Notes* 603 (Mar. 7, 1994)

Robert P. Strauss, “The Political Economy of Business Tax Return Policy,” 8 *State Tax Notes* 873 (Feb. 27, 1995)

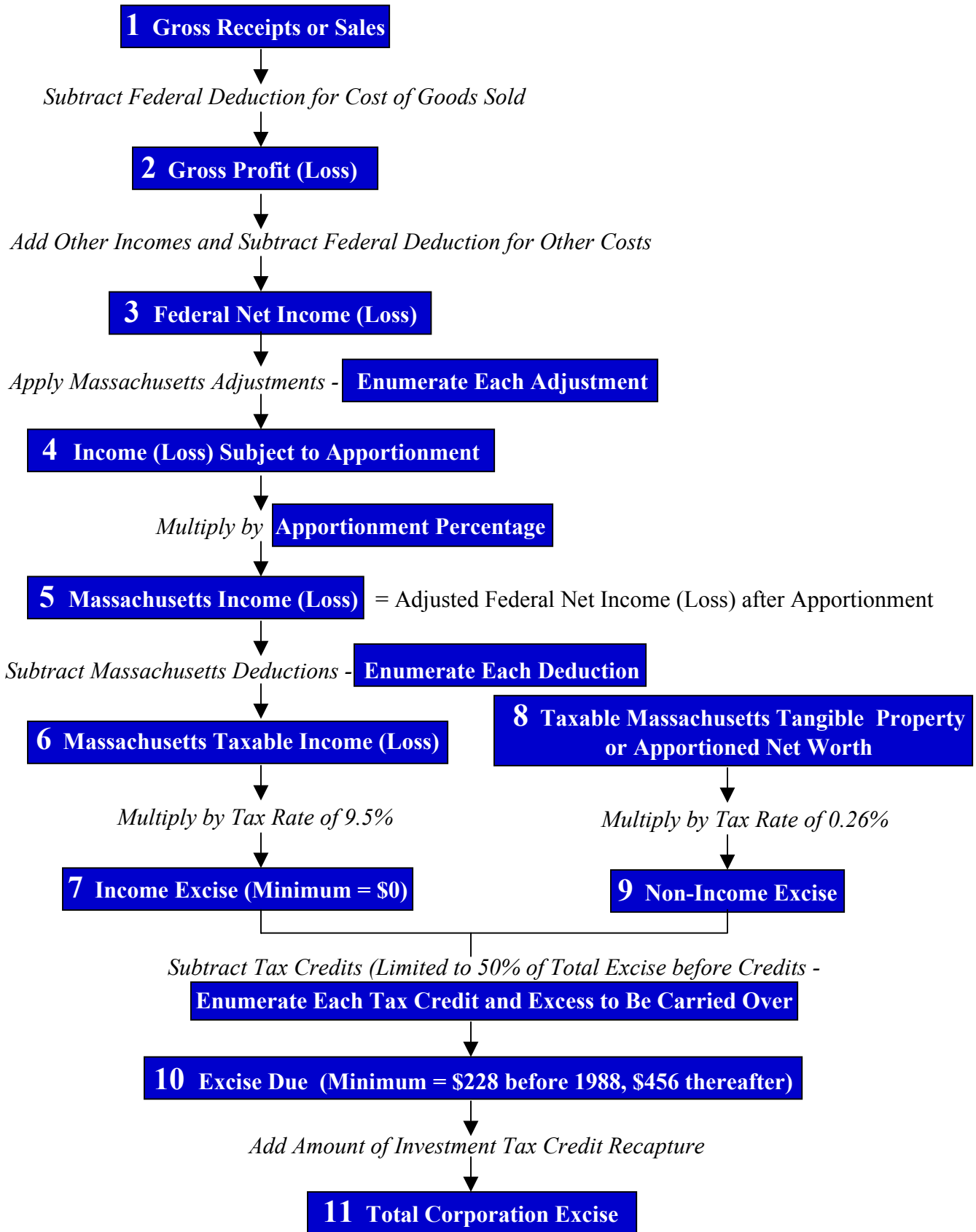
Richard D. Pomp, “The Political Economy of Tax Return Privacy—Revisited,” 8 *State Tax Notes* 2389 (June 12, 1995)

Robert Tannenwald, *et.al.*, “Corporate Tax Disclosure: Good or Bad for the Commonwealth,” 5 *State Tax Notes* 32 (July 5, 1993)

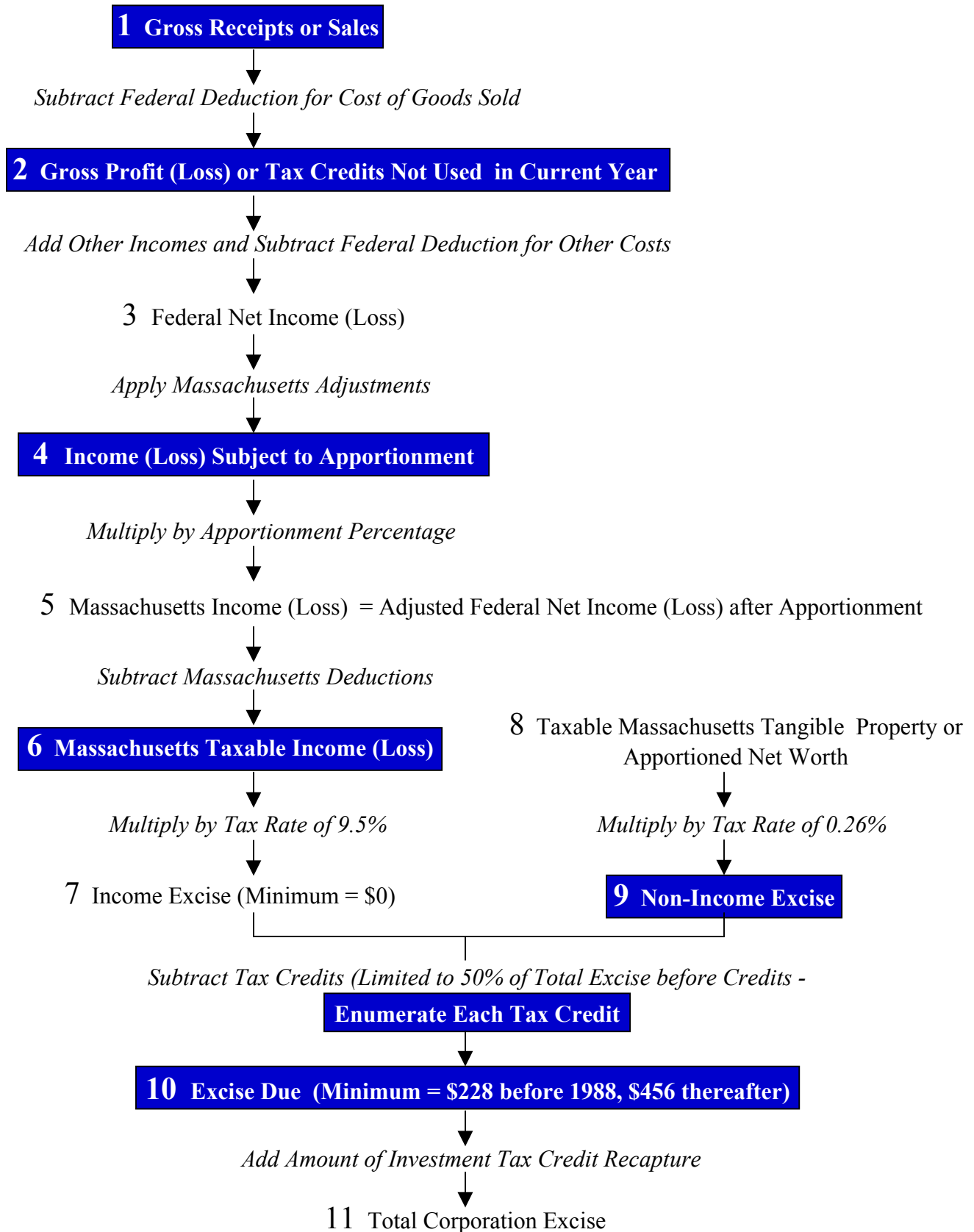
WHY INTEREST IN COMPANY-SPECIFIC DISCLOSURE IS RISING

- **Serious fiscal problems**
- **Declining corporate tax burdens**
- **Corporations renege on formal and informal promises of job creation**
- **Bullying tactics by both business and labor**
- **Slow job growth despite expansion of corporate tax breaks**
- **Fond distant memories of CTJ success in 1986**
- **Success in property tax disclosure – analysis of cost effectiveness**

Computation of the Massachusetts Business Corporation Excise and Disclosure Requirements Imposed by Question 2



Computation of the Massachusetts Business Corporation Excise and Requirements of “Slimmed Down Disclosure”



The Commonwealth of Massachusetts

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Secretary of the Commonwealth
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TAX DISCLOSURE REPORT Corporations

- 1. Exact name of corporation: _____
- 2. Location, including street address, of the corporation's principal office: _____
- 3. In the case of corporations that file combined returns, list the names and full addresses of all those corporations:

I, _____, the undersigned *Treasurer / *Assistant Treasurer, of the above-named corporation, do hereby certify that all the information contained herein is true and correct as of the date shown below.

SIGNED UNDER THE PENALTIES OF PERJURY, this _____ day of _____, 20 ____ .

(signature) _____, *Treasurer / *Assistant Treasurer

TAX DISCLOSURE REPORT Corporations

- 4. Tax year for which the report is filed: _____
- 5. Gross receipts or sales: \$ _____
- 6. Gross profit: \$ _____
-OR-
Excess tax credit: \$ _____
- 7. Income subject to apportionment: \$ _____
- 8. Income taxable in Massachusetts: \$ _____
- 9. Total non-income tax excise: \$ _____
- 10. Excise due: \$ _____
- 11. Set forth the amount of each tax credit taken: _____

**Delete the inapplicable words.
Note: You may furnish supplemental information in accordance with M.G.L. Ch 62C, s.83(j) on separate 8 1/2 x 11 sheets of white bond paper.*

**CORPORATE TAX DISCLOSURE ISSUES MORE SALIENT
AT THE STATE LEVEL THAN AT THE FEDERAL LEVEL**

- **Violation of information-sharing agreements between IRS and state revenue departments**
- **Revelation of sensitive information to business competitors**
- **Implications for “business tax climate”**
- **Importance of apportionment factors**

RESTRICTIONS IMPOSED BY INFORMATION SHARING ARRANGEMENTS BETWEEN STATE TAX ENFORCEMENT OFFICIALS AND IRS

Section 6103(p)(8)(A) of Internal Revenue Code of 1986:

“Notwithstanding any other provision of this section, no return or return information shall be disclosed after December 31, 1978, to any officer or employee of any State which requires a taxpayer to attach to, or include in, any State tax return a copy of any portion of *his* Federal return, *or information reflected on such Federal return*, unless such State adopts provisions of law which protect the confidentiality of the copy of the return (or portion thereof) attached to, *or the Federal return information reflected on, such State tax return.*” (italics and bold added)

“The section of the code at issue was introduced in the aftermath of Watergate....Because the Watergate abuses centered on individual and not corporations, it seems reasonable to read the relevant section of the code as being limited to individuals....This reading is supported by the text of the statute which refers to “*his* Federal return,” suggesting that the draftspersons were concerned about individuals....Also, because a corporation’s federal taxable income can be inferred from information contained in the Form 10-K and in annual reports, there is no need for an overly broad reading of the statute.” [Richard D. Pomp, “Corporate Tax Policy and the Right to Know: Enhancing Legislative and Public Access,” 6 *State Tax Notes* 639 (March 7, 1994)].

REVELATION OF SENSITIVE INFORMATION TO BUSINESS COMPETITORS

- **Entity within a specific state more likely to specialize in a particular product line**
- **Retailers especially vulnerable to release of “store specific” information**
- **“One thing will lead to another”**

**State-specific disclosure will still leave unanswered questions about taxpayer’s effective state tax burden. Taxpayer will be pressured to reveal “more” to give full story
Additional disclosed information will benefit competitors.**

- **Survey of “industry experts” in 1993 suggested that Massachusetts “slimmed down” disclosure would not lead to revelation of damaging corporate secrets**

IMPLICATIONS OF TAX DISCLOSURE FOR BUSINESS CLIMATE

- **Interstate business mobility is greater than international business mobility**
 - Especially in Northeast, where states are small
- **Massachusetts' tax climate is so poor that it can't afford to alienate business in any way**
- **Disclosed state-level company-specific information would yield so little insight that it would invite further public probes that would alienate business and divulge sensitive information to competitors.**
- **Surveys of Massachusetts business executives indicate regulation and tax compliance is the burden are least attractive feature of the Commonwealth**