

HOUSE No. 317

By Mr. Airola of Revere, petition of Henry F. Long, Commissioner of Corporations and Taxation, for amendments of the laws relating to taxation of certain classes of domestic and foreign corporations. Taxation.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty-Three.

An Act changing the Laws relating to Taxation of Certain Classes of Domestic and Foreign Corporations.

1 *Whereas*, The deferred operation of this act would
2 tend to defeat its purpose, therefore it is hereby de-
3 clared to be an emergency law, necessary for the
4 immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section thirty of chapter sixty-three
2 of the General Laws, as most recently amended by
3 section sixty-seven of chapter four hundred and
4 twenty-six of the acts of nineteen hundred and thirty-
5 one, is hereby further amended by striking out the
6 whole of paragraphs numbered three and four.

1 SECTION 2. Sections thirty-one, thirty-two A and
2 thirty-nine C of chapter sixty-three of the General
3 Laws, as amended, are hereby repealed.

1 SECTION 3. Chapter sixty-three of the General
2 Laws is hereby further amended by striking out sec-
3 tion thirty-two and inserting in place thereof the
4 following: —

5 *Section 32.* Except as otherwise provided in sec-
6 tions thirty-four and thirty-eight B, every domestic
7 corporation shall pay annually an excise equal to
8 four per cent of its net income determined to be
9 taxable in accordance with the provisions of this
10 chapter, provided that every such corporation shall
11 pay annually an excise not less in amount than ten
12 dollars nor less than two fifths of one per cent of the
13 value of all its assets, both tangible and intangible,
14 on the last day of the taxable year, other than the
15 following: —

16 (a) The works, structures, real estate, motor ve-
17 hicles, machinery, poles, underground conduits, wires
18 and pipes owned by it within the commonwealth
19 subject to local taxation. The term "real estate" as
20 used in this paragraph shall include the corporation's
21 interest as lessee in such buildings on land held under
22 a lease as by the terms of the lease are the property
23 of and may be removed by the lessee, and such build-
24 ings for the purposes of this paragraph and of sections
25 fifty-five and fifty-seven shall not be deemed real
26 estate of the lessor.

27 (b) Securities, the income of which, if any, if re-
28 ceived by a natural person resident in this common-
29 wealth, would not be liable to taxation.

30 (c) Its tangible property situated in another state
31 or country.

32 (d) If any portion of its cash and accounts and
33 bills receivable, excluding notes, is attributable to an
34 office outside the commonwealth, the same propor-

35 tion of its cash and accounts and bills receivable,
36 excluding notes, which its real estate, machinery
37 and merchandise situated in another state or coun-
38 try bear to its total real estate, machinery and mer-
39 chandise.

40 (e) The value of its interests in ships and vessels
41 subjected to such excise.

1 SECTION 4. Section thirty-four of chapter sixty-
2 three of the General Laws, amended by section one of
3 chapter five hundred and forty-nine of the acts of
4 nineteen hundred and twenty, is hereby further
5 amended by striking out in the third line the words
6 "Under paragraph (2) of section thirty-two" and in-
7 serting in place thereof the following: — With respect
8 to income, — so that the first sentence of said section
9 will read as follows: — If two or more domestic busi-
10 ness corporations participated in the filing of a con-
11 solidated return of income to the federal government,
12 the tax with respect to income may, at their option,
13 be assessed upon their combined net income, which
14 tax shall be assessed to all said corporations and
15 collected from any one or more of them.

1 SECTION 5. Chapter sixty-three of the General
2 Laws is hereby amended by striking out section thirty-
3 five and inserting in place thereof the following: —

4 *Section 35.* Every domestic business corporation
5 shall, on or before the tenth day of April, make a
6 return, sworn to by its treasurer or assistant treas-
7 urer, or in their absence or incapacity by any other
8 principal officer, in such form as the commissioner
9 prescribes, giving (a) a copy of such parts as he may
10 designate of the federal return or returns for the year

11 on the income of which the tax is to be assessed,
12 which is made singly or with one or more corporations,
13 (b) such other data as he requires to determine the
14 net income subject to tax under this chapter, (c)
15 such information as he requires for determination of
16 the minimum tax measured by the value of assets,
17 (d) such other information as he may reasonably re-
18 quire for assessment of the excise provided by this
19 chapter. Whenever the time for filing its federal
20 return has been extended, the commissioner may
21 extend the time for filing the return required by this
22 section.

1 SECTION 6. Chapter sixty-three of the General
2 Laws is hereby amended by striking out section thirty-
3 nine, as last amended by section four of chapter two
4 hundred and fifty-eight of the acts of nineteen hun-
5 dred and twenty-seven, and inserting in place thereof
6 the following: —

7 *Section 39.* Except as otherwise provided herein,
8 every foreign corporation shall pay annually, with
9 respect to the carrying on or doing of business by it
10 within the commonwealth, an excise equal to four per
11 cent of its net income determined to be taxable in
12 accordance with the provisions of this chapter, pro-
13 vided that every such corporation shall pay annually
14 an excise not less in amount than ten dollars nor less
15 than two fifths of one per cent of the value of its
16 assets, both tangible and intangible, employed in any
17 business within the commonwealth on the last day of
18 the taxable year, other than the following: —

19 (a) Works, structures, real estate, motor vehicles,
20 machinery, poles, underground conduits, wires and
21 pipes owned by it within the commonwealth subject
22 to local taxation.

23 (b) Securities the income of which, if any, if re-
24 ceived by a natural person resident therein, would not
25 be liable to taxation. In determining the assets em-
26 ployed within the commonwealth, the commissioner
27 shall include the whole or such part of bank deposits
28 in other states as are employed in the conduct of the
29 business in the commonwealth.

30 If two or more foreign corporations doing business
31 in this commonwealth participated in the filing of a
32 consolidated return of income to the federal govern-
33 ment, the tax with respect to income may, at their
34 option, be assessed upon their combined net income,
35 in which case the tax shall be assessed to all said
36 corporations and collected from any one or more of
37 them. Foreign corporations thus affiliated and doing
38 business in this commonwealth, which do not elect,
39 under the foregoing provision, to be assessed upon
40 their combined net income, and all other foreign
41 corporations doing business in this commonwealth,
42 which have filed with one or more corporations not
43 subject to this section a consolidated return of net
44 income to the federal government, shall each file with
45 the commissioner, as a part of the return required by
46 this chapter, a statement of net income in such form
47 as he may prescribe, showing the gross income and
48 deductions in accordance with the law and regula-
49 tions governing the usual federal returns of corpora-
50 tions not thus affiliated; and the net income thus
51 shown, after making deductions therefrom and addi-
52 tions thereto as provided in paragraph five of section
53 thirty, shall be the "net income" under this chapter.

1 SECTION 7. Section forty of chapter sixty-three of
2 the General Laws is hereby amended by striking out
3 all after the word "corporations" in the third line, —

4 so that said section will read as follows:— *Section 40.*
5 Every foreign corporation shall make returns as pro-
6 vided in sections thirty-five and thirty-six; and all
7 provisions of said sections shall apply to such corpo-
8 rations.

1 SECTION 8. Section forty-three of chapter sixty-
2 three of the General Laws is hereby amended by strik-
3 ing out in the second line the words “under paragraph
4 (2) of section thirty-nine” and inserting in place
5 thereof the following:— with respect to income,—
6 and by striking out in the sixth and seventh lines the
7 words “under said paragraph” and inserting in place
8 thereof the following:— with respect to income,—
9 so that said section will read as follows:— *Section 43.*
10 After determining the amount of tax due from any
11 foreign corporation with respect to income, the com-
12 missioner shall then credit the corporation with a sum
13 equal to five per cent of the dividends paid by it, dur-
14 ing the previous calendar year, to inhabitants of this
15 commonwealth, and the amount then remaining due
16 shall be the amount of tax to be levied upon the corpo-
17 ration with respect to income; provided, that if more
18 than one half of the capital stock of any such corpora-
19 tion is owned by another foreign corporation not sub-
20 ject to taxation under sections thirty to fifty-one, in-
21 clusive, but has stockholders who are inhabitants of
22 this commonwealth and are subject to taxation upon
23 their income under section one of chapter sixty-two,
24 such corporation, upon filing with the commissioner
25 such information as he shall deem necessary for the
26 purpose, shall be credited with a sum equal to five per
27 cent of such a proportion of its total dividends as will
28 prevent double taxation of the income of the corpo-

29 ration and of the dividends of such other foreign
30 corporation actually taxed to inhabitants of this
31 commonwealth.

1 SECTION 9. Said chapter sixty-three is hereby
2 further amended by striking out section forty-four
3 and inserting in place thereof the following:—

4 *Section 44.* The commissioner shall determine,
5 from the returns required by this chapter and from
6 any other available information, the tax imposed by
7 this chapter upon every domestic business corporation,
8 every domestic manufacturing corporation, every
9 foreign corporation and every foreign manufacturing
10 corporation and shall assess the same. He shall not
11 assess any such corporation which has filed a return
12 within the time prescribed by law with respect to an
13 amount of income in excess of the income shown in
14 the return, without notifying the corporation and
15 giving it an opportunity to explain the apparent
16 incorrectness of the return. For the purpose of veri-
17 fying any such return, the commissioner may, within
18 two years after September first of the year in which
19 such return was due, examine personally or by deputy
20 or agent the books and papers of the corporation,
21 which shall be open to such officer for verification.

1 SECTION 10. Section sixty-seven of said chapter
2 sixty-three as amended by section three of chapter
3 one hundred and forty-three of the acts of nineteen
4 hundred and twenty-eight is hereby further amended
5 by striking out the last sentence and inserting in place
6 thereof the following:— If the commissioner is satis-
7 fied of the truth of the return he shall deduct said
8 value from the value of its corporate franchise, if it is
9 taxable under section fifty-eight.

1 SECTION 11. Section eighty-one of said chapter
2 sixty-three, as inserted by section eight of chapter
3 three hundred and seventy-nine of the acts of nine-
4 teen hundred and twenty-eight, is hereby amended
5 by striking out the word "thirty" in the second line
6 and inserting in place thereof the following:—
7 thirty-two, thirty-nine, — so that said section will
8 read as follows:— *Section 81.* For the purposes of
9 sections thirty-two, thirty-nine, fifty-five and sixty-
10 eight A, the words "local taxation", or their equiva-
11 lent, as used in said sections with respect to motor
12 vehicles shall include the excise tax on motor vehicles
13 assessed and levied under chapter sixty A.

1 SECTION 12. This act shall apply to taxes assessed
2 in the year nineteen hundred and thirty-three and
3 thereafter.