

HOUSE No. 1569

The Commonwealth of Massachusetts.

HOUSE OF REPRESENTATIVES, May 21, 1918.

The committee on Taxation, to whom was referred the message from His Excellency the Governor relative to the taxation of corporations, to conserving all possible sources of revenue and to imposing a moderate levy of new taxes (House, No. 1490), report (in part) the accompanying bill.

For the committee,

CHAS. F. ROWLEY.

The Commonwealth of Massachusetts.

In the Year One Thousand Nine Hundred and Eighteen.

AN ACT

Imposing an Additional Tax upon the Net Incomes of
Domestic Corporations.

*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. Every corporation incorporated under the
2 laws of this commonwealth and doing business for profit
3 shall pay a tax to the commonwealth computed upon the
4 net income for its fiscal or calendar year next preceding,
5 as hereinafter provided, upon which income such company
6 is required to pay a tax to the United States. Each
7 company subject to the tax imposed by this act shall
8 render to the tax commissioner, under oath or affirma-
9 tion of its treasurer or assistant treasurer, on or before
10 the first day of July in the year nineteen hundred and
11 eighteen, unless the fiscal year of such company for
12 which it made return to the collector of internal revenue
13 ended between the thirtieth day of April and the first
14 day of July, both inclusive, in which case such report
15 shall be rendered by such company within sixty days
16 after the date of the closing of its said fiscal year, a true
17 copy of the last return made to the collector of internal
18 revenue, of the annual net income arising or accruing

19 from all sources in its fiscal or calendar year next pre-
20 ceding, stating: the name and location of the principal
21 place of business of such company; the kind of business
22 transacted, and a list of all subsidiary companies, if any,
23 with the location of the principal place of business of
24 each; the gross amount of its income, received during
25 such year from all sources, and the amount of its ordi-
26 nary necessary expenses paid out of earnings in the
27 maintenance and operation of the business and properties
28 of such company; such other information as may be
29 requested by the United States treasury department for
30 the purpose of ascertaining the total amount of net in-
31 come taxable under the United States income tax act;
32 the net income of such company after making the de-
33 ductions authorized; the amount of taxes paid upon its
34 income to the internal revenue department for the year
35 next preceding the one for which such return is made;
36 in case of a company which carries on business outside
37 the commonwealth, the fair cash value of its real estate
38 and tangible personal property in each town in this
39 commonwealth, and the fair cash value of its real
40 estate and tangible personal property located outside this
41 commonwealth; in case of a company deriving profits
42 principally from the holding or sale of intangible prop-
43 erty, the gross receipts from its business within and
44 without this commonwealth and the gross receipts from
45 its business within this commonwealth.

1 SECTION 2. If the amount of the net income as re-
2 turned by each such company to the collector of internal
3 revenue is changed or corrected by the commissioner of
4 internal revenue or by other official of the United States,
5 such company within ten days after the receipt of noti-
6 fication of such change or correction shall make return

7 under oath or affirmation to the tax commissioner of such
8 changed or corrected net income upon which the tax is
9 required to be paid to the United States. In case a
10 corporation fails to file the return within the time pre-
11 scribed, there shall be added to, and become a part of
12 the tax, as an additional tax, the sum of five dollars for
13 every day during which such corporation is in default.
14 If any deduction is made from the net income as re-
15 turned, the tax commissioner shall certify to the auditor
16 the amount of any tax paid upon such deduction, and
17 the treasurer and receiver general shall pay said amount
18 without any further act or resolve making appropriation
19 therefor, or if any addition is made, such company shall
20 within thirty days after receipt of notice from the tax
21 commissioner of the amount of such addition pay the
22 tax thereon.

1 SECTION 3. If such company carries on business out-
2 side of this state, a portion of the net income on which
3 the tax is imposed by the United States shall be appor-
4 tioned to this state as follows: In case of a company
5 deriving profits principally from the ownership, sale, or
6 rental of real estate, and in case of a company deriving
7 profits principally from the sale or use of tangible per-
8 sonal property, such proportion as the fair cash value
9 of its real estate and tangible personal property in this
10 state on the date of the close of the fiscal year of such
11 company in the year next preceding is to the fair cash
12 value of its entire real estate and tangible personal prop-
13 erty then owned by it, with no deduction on account of
14 any incumbrance thereon; in case of a corporation de-
15 riving profits principally from the holding or sale of in-
16 tangible property, such proportion as its gross receipts
17 in this state for the year ended on the date of the close

18 of its fiscal year next preceding is to its gross receipts
19 for such year within and without the state. In case
20 neither of the above methods are applicable, the tax
21 commissioner shall determine, in such manner as he
22 deems equitable, the proportion of the net income re-
23 ceived from business carried on within this common-
24 wealth.

1 SECTION 4. The tax commissioner, on or before the
2 first day of September in the current year, shall make a
3 list of companies subject to the tax computed upon
4 their net incomes, with the amount apportioned to this
5 commonwealth, as provided in section three, and a tax
6 is hereby laid on each said company of one per centum
7 of such income, and the tax commissioner shall enter the
8 amount of such tax against the name of each said com-
9 pany. He shall certify to the correctness of the said
10 list, and said amounts, and deliver a copy thereof to the
11 treasurer and receiver-general, who shall collect such tax
12 in the manner and with the powers provided in Part III
13 of chapter four hundred and ninety of the acts of the
14 year nineteen hundred and nine. The tax commissioner
15 shall forthwith mail a statement of the amount of such
16 tax to each said company, but failure to receive such
17 statement shall not excuse non-payment of the tax.
18 Within ten days after the date of such notice the corpo-
19 ration may apply for a correction of said tax, and be
20 heard thereon by the board of appeal provided for by
21 section sixty-eight of Part III of chapter four hundred
22 and ninety of the acts of the year nineteen hundred and
23 nine, and the decision of said board shall be final and
24 conclusive. Such tax shall be payable on or before the
25 first day of October in the current year, and to any
26 sum or sums due and unpaid after the said first day of

27 October, after ten days' notice and demand thereon by
28 the treasurer and receiver general, shall be added interest
29 at the rate of six per centum per annum from the time
30 when such taxes were payable until they are paid, if
31 such payment is made before the commencement of
32 proceedings for recovery thereon, and twelve per centum
33 if made after the commencement thereof. In case of
34 failure to make such return, or in case of false or fraud-
35 ulent return, the tax commissioner, upon discovery thereof
36 at any time within three years after the same is due,
37 shall make a return of such net income, and a tax com-
38 puted thereon shall be paid by such company upon
39 notification of the amount thereof, and the treasurer and
40 receiver general shall have the same powers of collection
41 as given by said Part III.

1 SECTION 5. Any such company which fails to make
2 any return required by the provisions of this act, or
3 renders a false or fraudulent return, shall be liable to a
4 penalty of not less than one hundred dollars nor more
5 than ten thousand dollars, to be paid to the common-
6 wealth, and to be collected in the manner prescribed by
7 section seventy-four of Part III of chapter four hundred
8 and ninety of the acts of the year nineteen hundred and
9 nine, and any person or any officer of any such company
10 who makes a false or fraudulent return or statement with
11 intent to defeat or evade payment of the tax required by
12 the provisions of this act shall be fined not more than
13 two thousand dollars or imprisoned not more than one
14 year, or both.

1 SECTION 6. If any such company fails to render any
2 return required by the provisions of this act, or renders
3 a false or fraudulent return, the tax commissioner, ac-

4 cording to the best information obtainable, shall make
5 such return, according to the form prescribed, of the in-
6 come liable to a tax, and shall lay such tax on the amount
7 so determined, and in case of false or fraudulent return
8 shall add one hundred per centum to such tax, or in case
9 of failure to make a return, or to verify the same, he
10 shall add fifty per centum to such tax. The amount so
11 added to the tax shall be collected at the same time and
12 in the same manner as the tax, unless such failure or
13 falsity is discovered after the tax has been paid, in which
14 case the tax so added shall be collected in the same man-
15 ner as the tax. If such company fails to make such
16 return or to permit an examination of its books, the tax
17 commissioner may apply to the supreme judicial court
18 for the county of Suffolk, for an order requiring such
19 company to give such return, or to permit such ex-
20 amination. Said court, after such notice as it may find
21 reasonable of the pendency of such application and hear-
22 ing thereon, may make such order as it finds proper, and
23 may punish for contempt the president, vice-president,
24 treasurer, or assistant treasurer, and may restrain such
25 company from further prosecution of its business until
26 it has made such return, caused its officers or employees
27 to give the information, or permitted the examination of
28 its books, as the case may be.

1 SECTION 7. Any company aggrieved by the exaction
2 of said tax or any portion thereof may, within six months
3 after the payment of the same, whether such payment
4 be made after or before the issue of the warrant men-
5 tioned in section sixty-nine of Part III of chapter four
6 hundred and ninety of the acts of the year nineteen
7 hundred and nine, apply by petition to the supreme
8 judicial court, setting forth the amount of the tax and

9 cost thereon so paid, the general legal grounds and the
10 specific grounds in fact, if any, upon which it is claimed
11 such tax should not have been exacted. Said petition
12 shall be the exclusive remedy and shall be entered and
13 heard in the county of Suffolk. A copy of the same
14 shall be served upon the treasurer and receiver general
15 and upon the attorney-general. The proceedings upon
16 such petition shall conform, as nearly as may be, to
17 proceedings in equity, and an abatement shall be made
18 of only such portion of the tax as was assessed without
19 authority of law.

1 SECTION 8. If the court, upon a hearing or trial,
2 judges that said tax, and the costs thereon, have been
3 illegally exacted, a copy of the judgment or decree shall
4 be transmitted by the clerk of the court to the auditor,
5 who shall thereupon audit and certify the amount judged
6 to have been illegally exacted, with interest, and costs,
7 to be taxed by the clerk of the court in the same manner
8 as other claims against the commonwealth, and the
9 treasurer and receiver general shall pay the same, without
10 any further act or resolve, making appropriation therefor.

1 SECTION 9. The income taxes provided by this act
2 shall be retained for the general purposes of the com-
3 monwealth. Returns shall be open to the inspection of
4 the tax commissioner or his deputies, assistants and
5 clerks, when acting under his authority. The disclosure
6 by the tax commissioner, or by any deputy, assistant,
7 clerk or other employee of the commonwealth, or of any
8 city or town therein, to any person of any information
9 whatever contained in and set forth by any such return,
10 except in proceedings to collect the tax, or by proper
11 judicial order, shall be punishable by a fine not exceeding

12 one thousand dollars, or by imprisonment for a time not
13 exceeding six months, or by both such fine and im-
14 prisonment. Said returns shall be preserved for two
15 years, and thereafter, until the tax commissioner orders
16 them to be destroyed.

1 SECTION 10. The deputy tax commissioner, under the
2 direction of the tax commissioner, shall have direction
3 of the assessment of the income taxes provided for by
4 this act, and shall receive a salary of one thousand
5 dollars in addition to the sum now fixed by statute.
6 He may procure such additional clerical and other assist-
7 ants as may be necessary for the proper administration
8 of this act, and shall receive such appropriation for the
9 expenses thereof as the general court may allow.

1 SECTION 11. This act shall take effect upon its passage
2 and shall be operative for one year only from the date
3 thereof.

