

By Mr. Cox of Lowell, petition of John F. Cox relative to the taxation of banks and other financial institutions. Taxation.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Two.

AN ACT RELATIVE TO BANK TAXATION AND COMPETITIVE EQUALITY.

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. Chapter 63 of the General Laws is hereby
2 amended by striking out sections 1 and 2, as appearing in the 1988
3 Official Edition, and inserting in place thereof the following three
4 sections: —

5 Section 1. When used in sections one to three, inclusive, and
6 section thirty-eight B, the following words shall, unless the context
7 otherwise requires, have the following meaning: —

8 1. "Bank," (a) any bank, banking association, trust company,
9 federal or state saving and loan association, or community credit
10 union as herein defined, including all banks for cooperatives
11 organized under the United States Farm Credit Act of 1933,
12 whether of issue or not, existing by authority of the United States,
13 or of any state, or of a foreign country, or of any law of the
14 commonwealth. For the purpose of this section, "community
15 credit union" whose assets exceed four million dollars, shall mean
16 a credit union which does not impose as a condition for
17 membership employment by a common employer, membership
18 in any religious, social, or business association, or group, or other
19 organizational criteria.

20 (b) any other institution, the deposits or accounts of which
21 are insured under the Federal Deposit Insurance Act or by the
22 Federal Deposit Insurance Corporation, any institution which is
23 a member of a Federal Home Loan Bank, any other bank or thrift
24 institution incorporated or organized under the laws of a state

25 which is engaged in the business of receiving deposits, any corpo-
26 ration organized under the provisions of 12 USC 611-631 and
27 12 USC 3101;

28 (c) Any corporation subject to chapter one hundred and
29 sixty-seven A, or registered under the Federal Bank Holding
30 Company Act of nineteen hundred and fifty-six, as amended, or
31 registered as a savings and loan holding company under the
32 Federal National Housing Act, as amended; or

33 (d) any other corporation organized under the laws of the
34 United States, of this state or of any other state which is principally
35 carrying on the business of a financial institution.

36 2. "Business of a financial institution," (a) the business that a
37 bank may be authorized to carry on under state or federal law
38 or by appropriate regulatory authorities;

39 (b) the business that any corporation carries on or has the
40 authority to carry on which is substantially similar to the business
41 which a bank carries on or has the authority to carry on; or

42 (c) the business that any corporation carries on or has the
43 authority to carry on if such corporation derives more than fifty
44 per cent of its gross income, excluding nonrecurring, extraordi-
45 nary items, from loan origination or lending activities (including
46 discounting obligations) in substantial competition with a bank.

47 3. "Engaged in business in the commonwealth," having a
48 business location in the commonwealth; having employees, repre-
49 sentatives or independent contractors conducting business
50 activities on its behalf in the commonwealth; regularly performing
51 services in the commonwealth; regularly engaging in transactions
52 with customers in the commonwealth that involve intangible
53 property and result in income flowing to the bank from residents
54 of the commonwealth; regularly receiving interest income from
55 loans secured by tangible personal or real property located in the
56 commonwealth; or regularly soliciting and receiving deposits from
57 customers in the commonwealth. The foregoing activities shall be
58 presumed, subject to rebuttal, to be conducted on a regular basis
59 within the commonwealth if any of such activities are conducted
60 with twenty or more residents of the commonwealth during any
61 taxable year or if the bank has five million dollars or more of assets
62 attributable to sources within the commonwealth.

63 4. (a) "Gross income," gross income as defined under the
64 provisions of the Federal Internal Revenue Code, as amended and

65 in effect for the taxable year, plus the interest from bonds, notes
66 and evidences of indebtedness of any state, including this
67 commonwealth.

68 (b) "Net income," gross income, other than dividends from
69 or on account of the ownership of any class of stock if the banks
70 own fifteen percent or more of the voting stock of the corporation
71 paying the dividend, less the deductions, but not credits, allowable
72 under the provisions of the Federal Internal Revenue code, as
73 amended and in effect for the taxable year. The provisions of
74 section two hundred and ninety-one of said code shall not apply;
75 and the provisions of sections one hundred and seventy-one (a)(2)
76 and two hundred and sixty-five of said Code shall only apply to
77 the extent that the income to which the deductions relate is
78 excludable from gross income. Deductions with respect to the
79 following items, however, shall not be allowed: —

80 (i) dividends received;

81 (ii) losses sustained in other taxable years; provided,
82 however, that net operating losses as defined in section one
83 hundred and seventy-two of the federal Internal Revenue Code
84 as amended and in effect for the taxable year of the losses which
85 are sustained in taxable years ending on or after December thirty-
86 first, nineteen hundred and ninety-one, shall be allowed; provided,
87 further, that such deduction shall be limited to a percentage of
88 the net income for the taxable year as follows: twenty-five per cent
89 of net income for taxable years ending on or after December
90 thirty-first, nineteen hundred and ninety-two, and before
91 December thirty-first, nineteen hundred and ninety-three; fifty per
92 cent of net income for taxable years ending on or after December
93 thirty-first, nineteen hundred and ninety-three, and before
94 December thirty-first, nineteen hundred and ninety-four; seventy-
95 five per cent of net income for taxable years ending on or after
96 December thirty-first, nineteen hundred and ninety-four and
97 before December thirty-first, nineteen hundred and ninety-five;
98 and one hundred per cent of net income for taxable years ending
99 on and after December thirty-first, nineteen hundred and ninety-
100 five. Losses sustained in any taxable year may be carried forward
101 for not more than five years and may not be carried back.

102 (iii) taxes on or measured by income, franchise taxes
103 measured by net income, franchise taxes for the privilege of doing
104 business and capital stock taxes imposed by any state.

105 5. "State," a state of the United States; the District of
106 Columbia; the Commonwealth of Puerto Rico; any territory or
107 possession of the United States; any foreign country; or a political
108 subdivision of any of the foregoing.

109 6. "Taxable year," any fiscal or calendar year or period for
110 which the bank is required to make a return to the federal govern-
111 ment; or the period for which a return is made by the bank, if
112 a return is made (i) for a period of less than twelve months, or
113 (ii) for a period for which no return to the federal government
114 is required.

115 Section 2. Every bank engaged in business in the common-
116 wealth shall pay, on account of each taxable year, an excise
117 measured by its net income determined to be taxable under
118 section three of the rate of ten and one-half per cent.

119 If two or more banks participate in the filing of a consolidated
120 return of income to the federal government, the commissioner
121 may require or such banks may, if all banks so participating elect,
122 make a single return on their combined net income for purposes
123 of determining the tax imposed by this section, in which case the
124 tax shall be assessed to all said banks upon their combined net
125 income and collected from any one or more of them. In computing
126 such combined net income, the net income of each bank that has
127 income from business activity which is taxable both within and
128 without the commonwealth, shall first be separately apportioned
129 pursuant to the provisions of section three and only the resulting
130 apportioned net income of such bank shall be subject to
131 combination.

132 Section 3. The commissioner shall determine the part of the net
133 income of a bank derived from business carried on within the
134 commonwealth as follows: —

135 (a) Net income as defined in section one shall constitute taxable
136 income.

137 (b) If the bank does not have income from business activity
138 which is taxable in another state, the whole of its taxable net
139 income shall be taxable under section two. For purposes of this
140 section, a bank is taxable in another state if (1) in that state, such
141 bank is subject to a net income tax, a franchise tax measured by
142 net income, a franchise tax for the privilege of doing business or
143 a corporate stock tax, or (2) that state has jurisdiction to subject

144 such corporation to a net income tax regardless of whether, in
145 fact, that state does or does not impose such a tax.

146 (c) If the bank has income from business activity which is
147 taxable both within and without this commonwealth, its net
148 income shall be apportioned to this commonwealth by multiplying
149 its net income by a fraction, the numerator of which is the payroll
150 factor plus the receipts factor and the denominator of which is
151 two.

152 (d) The payroll factor is a fraction, the numerator of which is
153 the total amount paid in this commonwealth during the taxable
154 year by the bank for compensation, and the denominator of which
155 is the total amount of compensation paid everywhere during the
156 taxable year. Neither the numerator nor the denominator of the
157 payroll factor shall include compensation paid to an employee in
158 a state without jurisdiction to tax.

159 As used in this subsection, "compensation" means wages,
160 salaries, commissions and any other form of remuneration paid
161 to employees for personal services. Compensation is paid in this
162 commonwealth if (i) the employee's service is performed entirely
163 within this commonwealth; or (ii) the employee's service is
164 performed both within and without this commonwealth, but the
165 service performed without this commonwealth is incidental to the
166 employee's service within the commonwealth; or (iii) some of the
167 service is performed in this commonwealth and (1) the base of
168 operations or, if there is no base of operations, the place from
169 which the service is directed or controlled is in this common-
170 wealth, or (2) the base of operations or the place from which the
171 service is directed or controlled is not in any state in which some
172 part of the service is performed, but the employee's residence is
173 in this commonwealth.

174 (e) The receipts factor is a fraction, the numerator of which is
175 the total receipts of the bank in this commonwealth during the
176 taxable year and the denominator of which is the total receipts
177 of the bank everywhere during the taxable year.

178 As used in this subsection, "receipts" means gross income,
179 including net taxable gain on disposition of assets and money
180 market transactions in the regular course of the bank's trade or
181 business. The numerator of the receipts factor shall include, in
182 addition to items otherwise assignable, the following receipts
183 attributable to the commonwealth: —

184 (i) Receipts from the lease or rental of real or tangible
185 personal property (including both finance leases and true leases)
186 shall be attributed to the commonwealth if the property is located
187 in the commonwealth. Property which is security for a loan shall
188 be considered to be located in the state in which such property
189 is physically situated. Movable tangible personal property shall
190 be considered to be located in the state in which the operation
191 of the property is entirely located, or if the operation of the
192 property is in two or more states, in the state which is the principal
193 base of operations from which the property is sent out.

194 (ii) Interest income and other receipts from assets in the
195 nature of loans which are secured primarily by real estate or
196 tangible personal property shall be attributed to the common-
197 wealth if such security property is located in the commonwealth.

198 (iii) Interest income and other receipts from consumer loans
199 not secured by real or tangible personal property that are made
200 to residents of the commonwealth (whether at a place of business,
201 by travelling loan officer, by mail, by telephone or other electronic
202 means) shall be attributed to the commonwealth.

203 (iv) Interest income and other receipts from commercial
204 loans not secured by real or tangible personal property shall be
205 attributed to the commonwealth if the proceeds of the loan are
206 to be applied in the commonwealth. If it cannot be determined
207 where the funds are to be applied, such income and receipts shall
208 be attributed to the office of the bank in the state in which the
209 business applied for the loan. The phrase "applied for" means
210 initial inquiry (including customer assistance in preparing the loan
211 application) or submission of a completed loan application,
212 whichever occurs first in time.

213 (v) Interest income and other receipts from a participating
214 bank's portion of participation loans shall be attributed under the
215 rules set forth in paragraphs (i) through (iv), inclusive.

216 (vi) Interest income and other receipts including service
217 charges from credit card and travel and entertainment credit card
218 receivables and credit card holders' fees shall be attributed to the
219 state to which such card charges and fees are regularly billed.

220 (vii) Merchant discount income derived from financial insti-
221 tution credit card holder transactions with a merchant shall be
222 attributable to the state in which the merchant is located. In the

223 case of merchants located within and without the state, only
224 receipts from merchants' discounts attributable to sales made
225 from locations within the commonwealth shall be attributed to
226 the commonwealth. It shall be presumed that the location of a
227 merchant is the address shown on the invoice submitted by the
228 merchant to the taxpayer.

229 (viii) Receipts from the performances of fiduciary and other
230 services shall be attributed to the state in which the services are
231 performed.

232 (ix) Receipts from the issuance of travelers checks and
233 money orders shall be attributed to the state in which such checks
234 and money orders are purchased.

235 (x) Receipts from investments in securities of the common-
236 wealth, its political subdivisions, agencies and instrumentalities
237 shall be attributed to the commonwealth.

238 (xi) Receipts from investments in other securities and from
239 money market instruments shall be apportioned to the common-
240 wealth based upon the ratio that total deposits from the common-
241 wealth, its residents, its political subdivisions, agencies and
242 instrumentalities bear to the total deposits from all states, their
243 residents, their political subdivisions, agencies and instrumentality-
244 ties. In the case of an unregulated financial institution such
245 receipts shall be apportioned to the commonwealth based upon
246 the ratio that its gross business income earned from sources within
247 the commonwealth bears to gross business income earned from
248 sources within all states.

249 (xii) All receipts located by this rule in a state without juris-
250 diction to tax shall be excluded from both the numerator and
251 denominator of the receipts factor.

252 (f) If the provisions of subsections (a) through (e) of this
253 section are not reasonably adapted to approximate the net income
254 derived from business carried on within the commonwealth, a
255 bank may apply to the commissioner to have its income derived
256 from business carried on within this commonwealth determined
257 by a method other than that set forth in subsections (a) through
258 (e) of this section. Such application shall be made by attaching
259 to its duly-filed return a statement of the reasons why the bank
260 believes that the provisions of this section are not reasonably
261 adapted to approximate its net income derived from business

262 carried on within this commonwealth and a description of the
263 method sought by it. A bank which so applies shall, upon receipt
264 of a request therefor from the commissioner, file with the commis-
265 sioner, under oath of its treasurer, a statement of such additional
266 information as the commissioner may require.

267 If, after such application by the bank, the commissioner
268 determines that the provisions of this section are not reasonably
269 adapted to approximate the bank's net income derived from
270 business carried on within the commonwealth, the commissioner
271 shall by reasonable methods determine the amount of net income
272 derived from business activity carried on within the common-
273 wealth. The amount thus determined shall be the net income
274 taxable under section two and the foregoing determination shall
275 be in lieu of the determination required by subsections (a)
276 through (e) of this section. If an alternative method is used by
277 the commissioner hereunder, the commissioner, in his discretion,
278 with respect to the two next succeeding taxable years, may require
279 similar information from such bank if it shall appear that the
280 provisions of subsections 3(a) through (e) of this chapter are not
281 reasonably adapted to approximate for the applicable year the
282 bank's net income derived from business carried on within this
283 commonwealth and may by reasonable methods determine such
284 income in the same manner as if the bank had applied to have
285 its income so determined.

1 SECTION 2. Section 30 of said chapter 63, as so appearing,
2 is hereby amended by striking out paragraphs 1 and 2 and
3 inserting in place thereof the following paragraphs: —

4 1. "Domestic corporations," every corporation organized
5 under or subject to chapter one hundred and fifty-six, chapter one
6 hundred and fifty-six A, chapter one hundred and fifty-six B or
7 chapter one hundred and eighty which has privileges, powers,
8 rights or immunities not possessed by individuals or partnerships;
9 provided, however, that said term shall not apply to corporations
10 organized under the provisions of section ten of chapter one
11 hundred and fifty-seven; domestic manufacturing corporations as
12 defined in section thirty-eight C; corporations exempt from
13 taxation under the provisions of section five hundred and one of
14 the federal Internal Revenue Code, as amended and in effect for

15 the taxable year; or corporations subject to tax under section two
16 of this chapter. A mutual holding company subject to chapter one
17 hundred and sixty-seven (H) shall also be considered to be a
18 corporation that is a domestic corporation for purposes of this
19 chapter.

20 2. "Foreign corporations", every corporation, association, or
21 organization established, organized or chartered under laws other
22 than those of the commonwealth, for purposes for which domestic
23 corporations may be organized under chapter one hundred and
24 fifty-six, chapter one hundred and fifty-six A, chapter one
25 hundred and fifty-six B, or chapter one hundred and eighty which
26 has privileges, powers, rights or immunities not possessed by
27 individuals or partnerships; provided, however, that said term
28 shall not apply to such corporations, associations or organizations
29 without capital stock as are subject to taxation under
30 section eighteen of chapter one hundred and fifty-seven; to foreign
31 manufacturing corporations as defined in section forty-two B; to
32 such corporations, associations or organizations as are exempt
33 from taxation under the provisions of section five hundred and
34 one of the federal Internal Revenue Code, as amended and in
35 effect for the taxable year; or to such corporations, associations
36 or organizations subject to tax under section two of this chapter.

1 SECTION 3. Said chapter 63, as so appearing, is hereby
2 further amended by striking out section 38B and inserting in place
3 thereof the following section: —

4 Section 38B. (a) Every bank, domestic business corporation or
5 foreign corporation which is engaged exclusively in buying,
6 selling, dealing in, or holding securities in its own behalf and not
7 as a broker, except securities of a corporation defined in this
8 chapter as a DISC, and is not a regulated investment or bank
9 holding company under the federal Internal Revenue Code, as
10 amended and in effect for the taxable year, and, which either
11 applies to the commissioner to be classified as a security corpo-
12 ration before the end of the taxable year and is so classified, or
13 has been so classified by the commissioner for a prior taxable year
14 and such classification has not been revoked before the end of
15 the taxable year, shall pay, on account of each taxable year, an
16 excise equal to one and thirty-two one-hundredths per cent of the

17 gross income, as defined in section thirty of this chapter, received
18 by such corporation during the taxable year or four hundred and
19 fifty-six dollars, whichever is greater.

20 (b) Every bank, domestic business corporation or foreign
21 corporation, which is engaged exclusively in buying, selling,
22 dealing in, or holding securities on its own behalf and not as a
23 broker, except securities of a corporation defined in this chapter as
24 a DISC, and is a regulated investment or bank holding company
25 under the federal Internal Revenue Code, as amended and in effect
26 for the taxable year, and which either applies to the commissioner
27 to be classified as a security corporation before the end of the
28 taxable year and is so classified, or has been so classified by the
29 commissioner for a prior taxable year and such classification has
30 not been revoked before the end of the taxable year, shall pay,
31 on account of such taxable year, an excise equal to thirty-three
32 one-hundredths per cent of the gross income, as defined in section
33 thirty of this chapter, received by such corporation during the
34 taxable year or four hundred and fifty-six dollars, whichever is
35 greater.

36 (c) Any corporation taxable under this section shall not be
37 subject to the excise imposed by section two, thirty-two or thirty-
38 nine.

1 SECTION 4. Notwithstanding the provisions of any general or
2 special law to the contrary, the provisions of this act shall not
3 apply to any entity or group of entities which have been taxed
4 under Massachusetts laws other than sections one through seven,
5 inclusive, of chapter sixty-three of the General Laws prior to the
6 effective date of this act.

1 SECTION 5. The provisions of this act shall apply to taxable
2 years beginning on or after October thirty-first, nineteen hundred
3 and ninety-one.

