

HOUSE No. 2012

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, May 29, 1946.

The committee on Ways and Means, to whom was referred the Bill imposing a gift tax (House, No. 455), report that the same ought to pass in the form of a new draft herewith submitted (House, No. 2012).

For the committee,

CHARLES E. SHEPARD.

Representative MORIARTY of New Bedford dissenting.]

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Forty-Six.

AN ACT IMPOSING A GIFT TAX.

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. The General Laws are hereby
2 amended by inserting after chapter sixty-five B,
3 under the title "Gift Tax," the following new
4 chapter: —

5 CHAPTER 65C.

6 GIFT TAX.

7 *Section 1.* Gift taxes, as hereinafter prescribed,
8 are hereby levied upon the shares of the respective
9 beneficiaries in all property within the jurisdiction
10 of the commonwealth, real, personal and mixed, and
11 any interest therein, which shall in each calendar
12 year subsequent to nineteen hundred and forty-six
13 pass by gift. The taxes are levied whether the gift
14 is in trust or otherwise and whether the gift is direct
15 or indirect. In the case of a gift made by a non-
16 resident, the taxes are levied to the extent that the
17 property is within the jurisdiction of the common-
18 wealth. The tax is not levied on the passage of
19 property in trust where the power to revest in the
20 donor title to such property is vested in the donor,

21 either alone or in conjunction with any person not
 22 having a substantial adverse interest in the disposi-
 23 tion of such property or the income therefrom but the
 24 relinquishment or termination of such power, other
 25 than by the donor's death, shall be considered to be
 26 a passage from the donor by gift of the property
 27 subject to such power, and any payment of the
 28 income therefrom to a beneficiary other than the
 29 donor shall be considered to be a passage by the
 30 donor of such income by gift.

31 *Section 2.* For purposes of this chapter, the clas-
 32 sification of beneficiaries, their exemptions and the
 33 rates of taxation except as otherwise hereinafter
 34 provided shall be as set forth in the following table: —

*Rate per Centum of Tax or Aggregate Value of Property or Interest
 given Subsequent to 1946.*

RELATIONSHIP OF BENEFICIARY TO DONOR.	RATE PER CENTUM OF TAX ON VALUE OF PROPERTY OR INTEREST.								
	On Value not over \$10,000.	On Excess above \$10,000, not over \$25,000.	On Excess, above \$25,000, not over \$50,000.	On Excess above \$50,000, not over \$100,000.	On Excess above \$100,000, not over \$250,000.	On Excess above \$250,000, not over \$500,000.	On Excess above \$500,000, not over \$750,000.	On Excess above \$750,000, not over \$1,000,000.	On Excess above \$1,000,000.
CLASS A. Husband, wife, father, mother; child, adopted child, adoptive parent, grandchild	1%	2%	3%	4%	5%	6%	7%	8%	9%
CLASS B. Lineal ancestor, except father or mother; lineal descendant, ex- cept child or grandchild; lineal descendant of adopted child; lineal ancestor of adoptive pa- rent; wife or widow of a son; husband of a daughter	2%	3%	5%	6%	7%	8%	9%	10%	11%
CLASS C. Brother, sister, half brother, half sister, nephew, niece, step-child or step-parent	4%	6%	8%	10%	11%	12%	13%	14%	15%
CLASS D. All others	6%	8%	9%	10%	11%	12%	13%	14%	15%

35 Gifts which shall pass or accrue to or for the use
36 of a person in Class A shall not be subject to the tax
37 imposed by this chapter unless the aggregate value
38 thereof exceeds ten thousand dollars, and other
39 gifts shall not be subject to such tax unless their
40 aggregate value exceeds one thousand dollars; pro-
41 vided, that no tax shall be exacted which shall reduce
42 the aggregate value of the gifts below said respective
43 amounts. No gifts made in any one year to any
44 one donee having an aggregate value of less than
45 four thousand dollars shall be taxable, nor shall the
46 gift by one spouse to the other of premises, occupied
47 by them exclusively as a home, nor of the interest
48 of either therein, be taxable. Gifts to or for the use
49 of charitable, educational or religious societies or
50 institutions, the property of which is by the laws
51 of the commonwealth exempt from taxation, or for
52 or upon trust for any charitable purposes to be
53 carried out within the commonwealth, or to or for
54 the use of the commonwealth or any town therein
55 for public purposes, shall not be subject to the tax
56 imposed by this chapter. The rates of tax, afore-
57 said, to be applied shall be determined by the aggre-
58 gate value of all gifts by the same donor to the same
59 donee for all calendar years; provided, that in com-
60 puting such aggregate value there shall be excluded
61 gifts made in any one calendar year to any one donee
62 having an aggregate value of not more than four
63 thousand dollars and gifts by one spouse to another
64 of premises, occupied by them exclusively as a home,
65 or of the interest of either therein. A determination
66 shall be made as of the end of each calendar year
67 in which the donor makes any taxable gift. The tax
68 shall be determined on the basis of the rates pro-

69 vided in this section including all gifts to the same
70 donee by the same donor made on and after January
71 first, nineteen hundred and forty-seven, less any tax,
72 if any, determined to be due under this chapter
73 on account of gifts by the same donor to the same
74 donee in any calendar year prior to the year in which
75 the taxable gift was made.

76 *Section 3.* Where property is transferred for less
77 than an adequate and full consideration in money
78 or money's worth, then the amount by which the
79 value of the property exceeded the value of the
80 consideration shall, for the purpose of the tax im-
81 posed by this chapter, be deemed a gift and shall be
82 included in computing the amount of gifts made.

83 *Section 4.* If the gift is made in property, the
84 fair cash value thereof at the date of the gift shall be
85 considered the amount of the gift.

86 *Section 5.* Except as otherwise provided, the tax
87 imposed by this chapter shall be paid by the donor
88 on or before the fifteenth day of March following
89 the close of the calendar year in which the taxable
90 gift was made. The commissioner shall determine
91 all taxes assessable under this chapter and immedi-
92 ately upon such determination shall forward a state-
93 ment of the tax determined to the person or persons
94 primarily chargeable with the payment thereof.
95 Within six months after such tax has been forwarded,
96 any person aggrieved by the determination, may
97 apply in writing to the commissioner who may make
98 such correction of the tax as he may deem proper
99 and notify the applicant of his determination in
100 writing. At any time within three months after
101 the notice of such determination any person ag-
102 grieved by such determination may appeal from such

103 decision to the appellate tax board. Any overpay-
104 ment of tax determined by decision of such appellate
105 tax board shall be reimbursed by the commonwealth
106 with interest at the rate of four per cent per annum
107 from the time of payment. In any case where a
108 donor fails to file a return at the proper time, the
109 commissioner shall assess a penalty of ten per centum
110 of the tax determined by him, with interest upon
111 such tax and penalty at the rate of six per centum
112 per annum from the date when such report should
113 have been filed until the date of the assessment. If
114 any tax, or any assessment of tax penalties and
115 interest, or any part thereof, be not paid when due,
116 it shall bear interest at six per centum per annum
117 from the date of assessment until paid.

118 *Section 6.* The tax imposed by this chapter shall
119 be a lien upon all gifts that constitute the basis for
120 the tax. If the tax is not paid by the donor when due,
121 each donee shall be personally liable to the extent of
122 their respective gifts, for so much of the tax as may
123 have been assessed, or may be assessable thereon.
124 Any part of the property comprised in the gift that
125 may have been sold by the donee to a bona fide
126 purchaser for an adequate and full consideration in
127 money or money's worth shall be divested of the lien
128 hereby imposed and the lien to the extent of the value
129 of such gift, shall attach to all the property of the
130 donee (including after-acquired property) except
131 any part sold to a bona fide purchaser for an adequate
132 and full consideration in money or money's worth.

133 *Section 7.* The commissioner shall have for the
134 collection of taxes assessed under this chapter all the
135 remedies provided by chapter sixty for the collection
136 of taxes on personal estate by collectors of taxes of

137 towns, except that any warrant for the collection of
138 a tax assessed under this chapter may be issued to any
139 sheriff, deputy sheriff or constable, and he shall have
140 authority to proceed thereunder anywhere within the
141 commonwealth. The officer to whom the warrant
142 for the collection of such a tax is given shall collect
143 said tax and interest as herein provided, and may
144 collect and receive for his fees the sum which an
145 officer would be entitled by law to receive upon an
146 exaction for a like amount. Taxes imposed by this
147 chapter may be recovered by the commissioner in an
148 action of contract brought in the name of the com-
149 monwealth, or by an information in equity brought
150 in the supreme judicial court by the attorney general
151 at the relation of the commissioner.

152 *Section 8.* In any proceeding by warrant or other-
153 wise to enforce the collection of said tax, the donor
154 shall be liable for the full amount of the tax due by
155 reason of all the gifts constituting the basis of such tax
156 and each donee shall be liable only for so much of
157 said tax as may be due on account of his respective
158 gift.

159 *Section 9.* Except as provided in the next succeed-
160 ing section and in section twelve, the amount of taxes
161 imposed by this chapter shall be assessed within three
162 years after the return was filed.

163 *Section 10.* In the case of a false or fraudulent
164 return with intent to evade tax or for a failure to file
165 a return the tax may be assessed at any time.

166 *Section 11.* If a donor shall fail or refuse on de-
167 mand to file a correct and proper return as required
168 by this chapter, the commissioner may make an esti-
169 mate of the amount of taxes due the commonwealth
170 by such donor, and by the respective donees, from

171 any information in his possession, and assess the
172 taxes, penalties and interests due the state by such
173 persons.

174 *Section 12.* In every case where there shall be
175 a gift to take effect in possession or enjoyment after
176 the expiration of one or more life estates, or at any
177 time in the future, the tax shall be assessed on the
178 fair cash value of the property or the interest of the
179 beneficiary therein at the time when he or she becomes
180 entitled to the same in possession or enjoyment, and
181 shall be due and payable by such beneficiary thirty
182 days after such time. Such beneficiary shall within
183 ten days of such time make return in duplicate, under
184 penalties of perjury, to the commissioner, on forms
185 provided for that purpose, showing therein an
186 itemized schedule of the property or interests coming
187 into possession or enjoyment of the beneficiary, the
188 name of the donor, the value of the property or
189 interest at such time, the relationship of the bene-
190 ficiary to the donor, and any other information the
191 commissioner may reasonably require. The value
192 of an annuity or of a life interest in such property,
193 or any interest therein less than an absolute interest,
194 shall be determined by the "American Experience
195 Tables" at four per cent compound interest; but
196 when an annuity or a life interest is terminated
197 by the death of the annuitant or life tenant, and the
198 tax upon such interest is not due and has not been
199 paid in advance, the value of said interest for the
200 purposes of taxation under this chapter shall be the
201 amount of the annuity or income actually paid or
202 payable to the annuitant or life tenant during the
203 period for which he was entitled to the annuity or
204 was in possession of the life estate. In every case

205 in which it is impossible to compute the present
206 value of any interest in property so passing the
207 commissioner may effect such settlement of the
208 tax as he shall deem to be for the best interests of the
209 commonwealth, and payment of the same so agreed
210 upon shall be a full satisfaction of such taxes.

211 *Section 13.* In case a tax has been imposed under
212 this chapter upon any gift, and thereafter upon the
213 death of the donor the amount thereof is required
214 by any provision of chapter sixty-five to be included
215 in the gross estate of the decedent, then there shall be
216 credited against and applied in reduction of the tax
217 under said chapter, which would otherwise be charge-
218 able against the estate of the decedent or the respec-
219 tive shares of the beneficiaries thereof under such
220 chapter, an amount equal to the tax paid with
221 respect to such gifts.

222 *Section 14.* Whoever makes any gift or gifts,
223 taxable by this chapter, shall on or before the fifteenth
224 day of January of the following year make a return in
225 duplicate, under penalties of perjury, to the com-
226 missioner, on forms provided for that purpose,
227 showing therein an itemized schedule of all such
228 gifts, the name and residence of each donee, and
229 the actual value of the gift to each, the relationship
230 of each of such persons to the donor, and any other
231 information the commissioner may require. The
232 commissioner may grant a reasonable extension of
233 time for filing a return whenever in his judgment
234 good cause exists. The commissioner may require
235 all persons required to make returns under the provi-
236 sions of chapter sixty-two of the General Laws to
237 include in such returns such reasonable information

238 as he may desire with respect to the making of gifts
239 taxable under this chapter.

1 SECTION 2. Section one of chapter fifty-eight of
2 the General Laws, Tercentenary Edition, as last
3 amended by section two of chapter four hundred and
4 twenty-eight of the acts of nineteen hundred and
5 forty-three, is hereby further amended by striking
6 out, in the first sentence in the second line, the letter
7 "B" and inserting in place thereof the letter: — C,
8 — so that said first sentence of section one will read
9 as follows: — The commissioner of corporations and
10 taxation, in chapter fifty-eight to sixty-five C, inclu-
11 sive, called the commissioner, may visit any town,
12 inspect the work of its assessors and give them such
13 information and require of them such action as will
14 tend to produce uniformity throughout the common-
15 wealth in valuation and assessments.

1 SECTION 3. This act shall apply to gifts made in
2 the calendar year nineteen hundred and forty-seven
3 and thereafter.

