

HOUSE No. 399

At the request of Mr. Porter of Agawam, the petition of Henry F. Long (Commissioner of Corporations and Taxation) for a more equitable method of taxing corporate franchises and relative to the disposition of the proceeds, was taken from the files of the preceding annual session. Taxation.

The Commonwealth of Massachusetts

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

AN ACT TO PROVIDE A MORE EQUITABLE METHOD OF TAXING CORPORATE FRANCHISES AND RELATING TO THE DISPOSITION OF THE PROCEEDS.

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
2 hereby amended by striking out section 58, as ap-
3 pearing in the Tercentenary Edition, and inserting
4 in place thereof the following:—
5 *Section 58.* Every corporation subject to section
6 fifty-three or fifty-four shall annually pay a tax
7 upon its corporate franchise, after making the de-
8 ductions provided for in section fifty-five, at a rate
9 equal to the average of the annual rates for three
10 years preceding that in which such assessment is
11 laid, said annual rates to be determined by an ap-
12 portionment of the whole amount of money to be
13 raised by taxation upon property in the common-

14 wealth during each of the said three years, as
15 returned by the assessors of the several towns under
16 section forty-seven of chapter fifty-nine, upon the
17 aggregate valuation of all towns for each of the said
18 three years, as returned under said section forty-
19 seven; provided, that every such corporation shall
20 pay a minimum tax hereunder not less in amount
21 than one per cent of its gross revenue assignable to
22 this commonwealth for the calendar year next pre-
23 ceding. The term "gross revenue" as herein used

24 shall include any and all of the following revenue: —

25 (a) The gross revenue or value proceeding or
26 accruing from the performance by the corporation
27 of any public service or transportation business,
28 including operations incidental thereto, but without
29 any deductions on account of the cost of the com-
30 modity furnished or sold, the cost of materials used,
31 labor costs, interest, discount, delivery costs, taxes
32 or any other expenses whatsoever paid or accrued
33 and without any deduction on account of losses.

34 (b) The gross revenue, without deduction, from
35 rentals or other forms of compensation for the use
36 or benefit of any real estate or tangible personal
37 property, or any interest in real estate or tangible
38 personal property.

39 (c) The gross income from any source other than
40 from the performance by the corporation of any
41 public service or transportation business and from
42 rentals or other form of compensation for the use of
43 benefit of real estate or tangible personal property
44 or any interest in real estate or tangible personal
45 property.

46 If a corporation carries on no business and rents
47 no property owned by it outside this commonwealth,

48 all of its gross revenue shall be deemed to be assign-
49 able to this commonwealth.

50 If a corporation carries on business in part outside
51 the commonwealth or rents property owned by it
52 outside the commonwealth, its gross revenue assign-
53 able to this commonwealth shall be determined in
54 accordance with the following rules, provided that
55 if in any case the application of such rules is not
56 reasonably adapted to approximate the gross revenue
57 fairly assignable to this commonwealth, the com-
58 missioner may, either at the request of the corpora-
59 tion made prior to the time its tax return is due to
60 be filed or without such request, determine the gross
61 revenue assignable to this commonwealth by such
62 alternative method as will fairly reflect the gross
63 revenue assignable to this commonwealth:—

64 (a) In the case of a street railway or telegraph
65 company operating lines in part within and in part
66 without the commonwealth, the revenue assignable
67 to this commonwealth shall be deemed to be such
68 proportion of the entire gross revenue of the com-
69 pany as the length of lines operated by it in this
70 commonwealth bears to the length of lines operated
71 by it within and without the commonwealth.

72 (b) In the case of a street railway or telegraph
73 company not operating lines owned by it in part
74 without the commonwealth, but leasing or renting
75 the same, the revenue assignable to this common-
76 wealth shall be deemed to be such proportion of the
77 entire gross revenue of the company as the length of
78 lines owned and leased or rented by it in this com-
79 monwealth bears to the length of lines owned and
80 leased or rented by it within and without the com-
81 monwealth.

82 (c) In the case of a telephone company operating
83 in part outside the commonwealth, the gross revenue
84 assignable to this commonwealth shall be deemed
85 to be such proportion of the entire gross revenue of
86 the company as the number of telephones within
87 the commonwealth used or controlled by it or under
88 letters patent owned or controlled by it bears to the
89 number of telephones used or controlled by it, or
90 under any letters patent owned or controlled by it,
91 within and without the commonwealth.

92 (d) In all other cases, the gross revenue assignable
93 to this commonwealth shall be deemed to be such
94 proportion of the entire gross revenue of the com-
95 pany as the sum of the amounts charged for services
96 performed for or rendered to customers within the
97 commonwealth and rentals from the use of property
98 within the commonwealth bears to the sum of the
99 amounts charged for services performed for or
100 rendered to customers within and without the com-
101 wealth and rentals from the use of property within
102 and without the commonwealth.

1 SECTION 2. Section 53 of said chapter 63 as most
2 recently amended by section 7 of chapter 509 of the
3 acts of 1941, is hereby further amended by adding
4 at the end thereof the following new clause: —

5 Fifth. Such other information as the commissioner
6 may require for determination of the minimum tax
7 provided by section fifty-eight.

1 SECTION 3. Chapter 58 of the General Laws is
2 hereby amended by striking out section 25, as most
3 recently amended by chapter 687 of the acts of
4 1945, and inserting in place, thereof the following: —

5 *Section 25.* The commissioner shall ascertain and
6 determine the amount due to each town under
7 section twenty and the amount distributable under
8 section ten of chapter sixty-four B, notify the treas-
9 urer of each town thereof, specifying with respect to
10 said section twenty the amount determined to be
11 due to each town, or that no amount is due, as the
12 case may be, and certify the amount as determined
13 to the state treasurer who shall thereupon pay the
14 same. The commissioner in his discretion may from
15 time to time within the twelve month period pre-
16 scribed in section twenty make partial distributions
17 of taxes paid therein and distributable under the
18 provisions of section twenty, withholding such sums
19 as may to him seem proper to provide for refunds
20 and abatements.

1 SECTION 4. Said chapter 58 is hereby further
2 amended by striking out section 25A, as most re-
3 cently amended by section 5 of chapter 624 of the
4 acts of 1945, and inserting in place thereof the
5 following:—

6 *Section 25A.* Annually on or before May first, the
7 commissioner shall, upon the basis of the information
8 then in his possession, estimate the amount each
9 town is to receive under sections seventeen, eighteen
10 and twenty of this chapter and the amount each
11 town is to receive of the one third of the sums re-
12 ceived under chapter sixty-four B and distributable
13 under section ten of said chapter and notify the
14 assessors of such town thereof. Such assessors, in
15 determining the rate of taxation to be levied upon
16 taxable property for the year, shall include in the
17 estimated receipts, lawfully applicable to the pay-
18 ment of expenditures, the aforesaid amount.

1 SECTION 5. Section 27 of said chapter 58, as
2 most recently amended by section 1 of chapter 521
3 of the acts of 1943, is hereby further amended by
4 striking out the next to the last sentence and in-
5 serting in place thereof the following:— The state
6 treasurer shall retain from the sums, next to be
7 distributed to any city or town under sections
8 eighteen and twenty an amount equal to the sum
9 which has already been paid to such city or town on
10 account of any tax or excise refunded under this
11 section.

1 SECTION 6. Section 60 of said chapter 63, as
2 most recently amended by section 8 of chapter 509
3 of the acts of 1941, is hereby further amended by
4 striking out the last sentence and inserting in place
5 thereof the following:— If an abatement of a tax is
6 granted the overpayment with interest thereon at
7 the rate of six per cent per annum from the date of
8 payment shall be refunded to the taxpayer by the
9 state treasurer without any appropriation therefor
10 by the general court.

1 SECTION 7. Sections twenty-four and twenty-
2 four A of said chapter fifty-eight of the General
3 Laws are hereby repealed.

1 SECTION 8. This act shall apply with respect to
2 corporate franchise taxes assessed in the year nine-
3 teen hundred and forty-eight and thereafter.



