

# HOUSE . . . . . No. 74

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Accompanying the fifth recommendation of the Commissioner of Corporations and Taxation (House, No. 69). Taxation.

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## The Commonwealth of Massachusetts

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

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### An Act amending the Laws relating to Taxation of Certain Classes of 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 im-  
4 mediate 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. Chapter sixty-three of the General  
2 Laws is hereby amended by striking out section  
3 thirty-two and inserting in place thereof the follow-  
4 ing:—

5 *Section 32.* Except as otherwise provided in sec-  
6 tions thirty-four and thirty-eight B, every domestic  
7 business corporation shall pay annually, an excise  
8 equal to the sum of the following, provided, that every  
9 such corporation shall pay annually an excise not less  
10 than an amount equal to two dollars per thousand  
11 upon the value of its assets, on the day fixed for deter-

12 mination of the value of its corporate excess other than  
13 such as are locally assessable within the commonwealth  
14 and such as have a taxable situs in another state or  
15 country:—

16 (1) An amount equal to five dollars per thousand  
17 upon the value of its corporate excess.

18 (2) An amount equal to two and one half per cent  
19 of its net income determined to be taxable in accord-  
20 ance with the provisions of this chapter.

21 Liability for such excise shall be incurred by corpo-  
22 rate existence at any time within the year, or, in case  
23 the taxable corporation is not established a taxable  
24 year, upon April first.

1 SECTION 2. Section thirty-two A of said chapter  
2 sixty-three is hereby repealed.

1 SECTION 3. Section thirty-eight of said chapter  
2 sixty-three is hereby amended by adding at the end  
3 thereof the following new paragraph:—

4 10. A corporation shall be deemed to carry on  
5 business outside this commonwealth within the mean-  
6 ing of this section only when its activities in another  
7 state or country give such state or country jurisdiction  
8 to tax the corporation in respect to such activities.

1 SECTION 4. Said chapter sixty-three is hereby  
2 amended by striking out section thirty-nine and in-  
3 serting in place thereof the following:—

4 *Section 39.* Except as otherwise provided herein,  
5 every foreign corporation shall pay annually, with  
6 respect to the carrying on or doing of business by it  
7 within the commonwealth, an excise equal to the sum  
8 of the following, provided that every such corporation

9 shall pay annually an excise not less than an amount  
10 equal to two dollars per thousand upon the value of  
11 its assets other than such as are locally assessable,  
12 tangible and intangible, situated or employed in busi-  
13 ness in this commonwealth on the day fixed for deter-  
14 mination of the value of the corporate excess employed  
15 within the commonwealth: —

16 (1) An amount equal to five dollars per thousand  
17 upon the value of the corporate excess employed by it  
18 within the commonwealth.

19 (2) An amount equal to two and one half per cent  
20 of its net income determined to be taxable in accord-  
21 ance with the provisions of this chapter.

22 If two or more foreign corporations doing business  
23 in this commonwealth participated in the filing of a  
24 consolidated return of income to the federal govern-  
25 ment, the tax under paragraph (2) above may, at their  
26 option, be assessed upon their combined net income,  
27 in which case the tax shall be assessed to all said cor-  
28 porations and collected from any one or more of them.  
29 Foreign corporations thus affiliated and doing business  
30 in this commonwealth which do not elect, under the  
31 foregoing provision, to be assessed upon their com-  
32 bined net income, and all other foreign corporations  
33 doing business in this commonwealth, which have filed  
34 with one or more corporations not subject to this sec-  
35 tion a consolidated return of net income to the federal  
36 government, shall each file with the commissioner, as  
37 a part of the return required by this chapter, a state-  
38 ment of net income in such form as he may prescribe,  
39 showing the gross income and deductions in accordance  
40 with the law and regulations governing the usual  
41 federal returns of corporations not thus affiliated; and  
42 the net income thus shown, after making additions

43 thereto as provided in paragraph five of section thirty,  
44 shall be the "net income" under this chapter.

45 Liability for such excise shall be incurred by corpo-  
46 rate activity within the commonwealth at any time  
47 within the taxable year or, in case the corporation is  
48 not established a taxable year upon April first.

1 SECTION 5. Section thirty-nine C of said chapter  
2 sixty-three is hereby repealed.

1 SECTION 6. Said chapter sixty-three is hereby  
2 amended by striking out section forty-two and insert-  
3 ing in place thereof the following:—

4 *Section 42.* A foreign corporation carrying on part  
5 of its business outside the commonwealth may, by  
6 notification to the commissioner on or before the time  
7 when its return under this chapter is due to be filed,  
8 refuse to accept the allocating method set forth in the  
9 preceding section. A foreign corporation, which so  
10 refuses, and every such corporation, which is foreign  
11 to the United States, and which is required to return  
12 to the federal government only income from sources  
13 within the United States, shall, on or before May  
14 tenth, file with the commissioner, under oath of its  
15 treasurer, a statement in such detail as the commis-  
16 sioner shall require, showing the amount of its annual  
17 net income derived from business carried on within the  
18 commonwealth, and such further information as the  
19 commissioner may require with reference thereto, and  
20 the commissioner shall determine the amount of the  
21 net income received from business carried on within  
22 the commonwealth. The commissioner may in his  
23 discretion require similar information from any other  
24 foreign corporation if he considers that the allocating

25 method set forth in the preceding section does not  
26 fairly reflect the income received from business carried  
27 on within the commonwealth and may by reasonable  
28 methods determine such income. Income determined  
29 by the commissioner pursuant to the provisions of this  
30 section to be income received from business carried on  
31 within the commonwealth shall be the net income  
32 taxable under this chapter, and such determination  
33 shall be in lieu of the determination required by the  
34 preceding section.

1 SECTION 7. This act shall take effect as of January  
2 first, nineteen hundred and thirty-three, and shall  
3 apply to taxes assessed in the year nineteen hundred  
4 and thirty-three and thereafter.





