

HOUSE No. 1055

By Mr. Hays of Boston, petition of Martin Hays that a tax be imposed on retail sales of tangible personal property and that certain provisions of the income tax law be repealed. Taxation.

The Commonwealth of Massachusetts

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

An Act imposing a Tax upon Retail Sales of Tangible Personal Property and repealing Certain Provisions of the Income Tax Law.

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-four A,
3 under the title, Taxation of Retail Sales of Tangible
4 Personal Property, the following new chapter:—

5 CHAPTER 64B.

6 TAXATION OF RETAIL SALES OF TANGIBLE PERSONAL
7 PROPERTY.

8 *Section 1.* The following words and phrases, as
9 used in this chapter, shall have the following mean-
10 ings unless the context otherwise requires:—

11 “Association”, any partnership, limited partner-
12 ship or other form of unincorporated enterprise owned
13 by two or more persons.

14 “Department”, the department of corporations
15 and taxation.

16 “Gross income”, the value proceeding or accruing
17 from the sale of tangible personal property, includ-
18 ing all receipts, cash and credits without any de-
19 duction on account of the cost of the property sold,
20 the cost of materials used, labor or service cost,
21 interest or discount paid, or any other expense
22 whatsoever.

23 “Sale”, any transfer, exchange or barter in any
24 manner or by any means whatsoever for a con-
25 sideration.

26 “Vendor” shall include every person, association
27 or corporation who or which sells tangible personal
28 property to a consumer or to any person for any
29 purpose other than for resale, but the term “vendor”
30 shall not include farmers who sell their own farm
31 products. Whenever used in any clause prescribing
32 a fine or imprisonment, or both, the term “vendor”
33 as applied to associations shall mean the partners or
34 members thereof, and as applied to corporations, the
35 officers thereof.

36 *Section 2.* A tax is hereby imposed and assessed
37 upon sales of tangible personal property at the rate
38 of per centum upon each dollar of the
39 gross income derived from the sales of such property,
40 except such sales of tangible personal property made
41 to the United States government upon evidence
42 satisfactory to the department, and except such
43 sales as are not within the taxing power of the com-
44 monwealth under the commerce clause of the con-
45 stitution of the United States. Such tax shall be
46 paid at the time and in the manner hereinafter
47 provided.

48 *Section 3.* For the purpose of ascertaining the
49 amount of tax payable under this chapter, every
50 vendor shall, annually, on or before March first,
51 transmit to the department upon a form prescribed,
52 prepared and furnished by the department a return
53 under oath or affirmation of the gross income arising
54 from sales of tangible personal property during the
55 year ending on December thirty-first preceding.
56 Such return shall show such further information as
57 the department may prescribe.

58 *Section 4.* Every vendor at the time of making
59 the return required under the preceding section shall
60 compute and pay to the department the tax due to
61 the commonwealth by him for the preceding year.
62 The amount of all taxes imposed under the provisions
63 of this chapter shall be due and payable at the time
64 the return is required to be filed with the depart-
65 ment by this chapter.

66 *Section 5.* Every vendor shall maintain and keep
67 for a period of two years such record or records of
68 tangible personal property sold within the common-
69 wealth by such vendor, together with invoices, bills
70 of lading and other pertinent papers as may be re-
71 quired by the department.

72 *Section 6.* If the department is not satisfied with
73 the return and payment of tax made by any vendor
74 under the provisions of this chapter, it may make an
75 additional assessment of the tax due by such tax-
76 payer based upon the facts contained in the return
77 or upon any information within its possession or
78 that shall come into its possession. Promptly after
79 the date of such additional assessment, the depart-
80 ment shall give or send by mail or otherwise a notice
81 thereof to the vendor, together with written notice

82 of the time when, and the place where, the vendor
83 may be heard on a petition for reassessment as here-
84 inafter provided.

85 *Section 7.* If a vendor shall neglect or refuse to
86 make any return and payment of tax required by
87 this chapter, the department shall, if it deem it
88 more conducive to the public interest because of the
89 supposed smallness of the debt or for any other
90 reason not to compel the exhibition of the vendor's
91 account, make an estimated assessment of the prob-
92 able amount of the account of the delinquent, to-
93 gether with a penalty of ten per centum of the
94 amount so assessed. The department shall promptly
95 thereafter give or send by mail or otherwise notice
96 of such estimated assessment and penalty to the
97 vendor against whom the same was made. There
98 shall be no right to petition for reassessment or to
99 appeal from any such estimated assessment made on
100 account of the neglect or refusal of such vendor to
101 make any return and payment of tax within a time
102 prescribed by this chapter, but the department may
103 permit the required return to be filed and permit a
104 tax to be paid on the basis of such return subject to
105 investigation as in other cases. There shall be no
106 right to appeal from the refusal of the department
107 to permit the filing of a return in such a case.

108 *Section 8.* The department may make an esti-
109 mated additional assessment to which shall be added
110 a penalty of ten per centum of the assessment
111 against any vendor who has filed any return as re-
112 quired by this chapter, but who refuses to permit
113 the department or any duly authorized agent thereof
114 to examine his books of account and papers pertain-
115 ing to the business for which the return was made.

116 The department shall promptly thereafter give or
117 send, by mail or otherwise, notice of such estimated
118 additional assessment and penalty to the vendor,
119 together with written notice of the time when and
120 the place where the vendor may be heard on a
121 petition for reassessment as hereinafter provided.

1 SECTION 2. Section five of chapter sixty-two of
2 the General Laws is hereby amended by striking out
3 subsection (b).

1 SECTION 3. Section six of said chapter sixty-two
2 is hereby repealed.

1 SECTION 4. Clause (a) of section ten of said chap-
2 ter sixty-two is hereby amended by striking out, in
3 the third and fourth lines, the following: “, exclu-
4 sive of income taxable under subsection (b) of section
5 five,”,—so as to read as follows:—(a) Such proportion
6 of the following items as the amounts of income
7 taxable under section one and subsections (a) and
8 (c) of section five together bear to the total income
9 received by the trustee from all sources; (1) amounts
10 paid within the year for rental of safe deposit boxes;
11 and (2) amounts paid within the year for premiums
12 on surety bonds of the trustee.

