AN ACT

Imposing an Excise Tax upon the Franchises of Domestic Business Corporations.

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 provisions of Part III of chapter four hundred and ninety of the acts of the year nineteen hundred and nine and acts in amendment thereof and in addition thereto, so far as they apply to the taxation of corporations organized under the laws of this commonwealth to which the provisions of chapter four hundred and thirty-seven of the acts of the year nineteen hundred and three and acts in amendment thereof and in addition thereto are applicable, are hereby repealed, except in so far as they are specifically made applicable by this act. Every such corporation, hereinafter called...
domestic business corporation, shall be subject to an excise tax on its corporate franchise, which shall be levied by the tax commissioner in the manner hereinafter provided.

Section 2. In the year nineteen hundred and nineteen, and in each year thereafter, there shall be levied as an excise upon the corporate franchise of every domestic business corporation a tax at the rate of four per cent of the net income, as hereinafter defined, received by such corporation during the previous calendar year from business carried on within this commonwealth. Such tax shall be levied by the tax commissioner in the manner hereinafter prescribed.

Section 3. The excise tax, provided by section two of this act, upon the corporate franchise of any domestic business corporation shall in no case be less than the greatest of the three amounts (a), (b), or (c) herein stated:—

(a) An amount equal to five tenths of one per cent of the fair cash value of the tangible personal property, other than machinery, owned by such corporation and not located outside this commonwealth: provided, that in determining the fair cash value of such tangible personal property the average amount of value for the year shall be taken to be the fair cash value thereof, and that such average amount of value shall be determined in such manner as the tax commissioner shall deem just.
(b) An amount equal to one tenth of one per cent of the amount of such corporation's issued and outstanding capital stock, surplus and undivided profits, on the last day of the previous calendar year, and of the average amount of such corporation's indebtedness during such year, in excess of two hundred per cent of such amount of issued and outstanding capital stock.

(c) An amount equal to three tenths of one per cent of the fair cash value of any securities the interest and dividends from which, if received by an inhabitant of this commonwealth, would be taxable under the provisions of chapter two hundred and sixty-nine of the acts of the year nineteen hundred and sixteen and acts in amendment thereof and in addition thereto.

Section 4. The net income of a domestic business corporation taxable under section two of this act shall be the gross income received from all sources in the previous calendar year, less the following deductions: —

(a) The ordinary and necessary expenses paid within the year in the maintenance and operation of its business and properties, including rentals or other payments required to be made as a condition to the continued use or possession of property in which such corporation has not taken or is not taking title, or in which it has no equity: provided, that no deduction shall be made for any expenditure for additions to
property, permanent improvements, or betterments.

(b) A reasonable allowance for the depreciation and obsolescence of property within the year, based upon the cost of such property and its estimated life, and for the depletion within the year of wasting assets owned by the corporation: provided, that no such allowance shall be made unless it is actually charged off within the year; and provided, further, that, in the case of property acquired prior to January first, nineteen hundred and seventeen, such allowance shall be based upon the fair cash value as of that date; and provided, further, that when such allowance shall equal the cost of such property or wasting assets, or, in case of such property acquired prior to January first, nineteen hundred and eighteen, shall equal the fair cash value of such property as of that date, no further allowance for depreciation, obsolescence, or depletion shall be made; and provided, further, that with the approval of the tax commissioner such corporation may, in lieu of the aforesaid allowance for depreciation and obsolescence, be allowed to deduct actual expenses of replacement and extraordinary repairs, and with such approval may in any year defer such deductions in whole or in part to one or more subsequent years.

c) All taxes paid within the year to the United States, or to any other nation, or to any state, county, city, town, or other taxing
district, except taxes due under this act and
assessments for benefits.

(d) Interest paid within the year on indebted-
ness of such corporation: *provided*, that such
deduction for interest shall not exceed the in-
terest upon an amount of indebtedness fifty
per cent in excess of the amount of the issued
and outstanding capital stock, surplus, and
undivided profits of such corporation; *provided*,
however, that in the case of indebtedness wholly
secured by property collateral, tangible or in-
tangible, the subject of sale or hypothecation in
the ordinary business of such corporation, as
dealer only in such property collateral, or as
lender of the funds thereby procured, the interest
paid upon such indebtedness may be deducted
up to an amount of such indebtedness not ex-
ceeding the value of such property collateral.

(e) Losses from the sale within the year of
capital assets, and losses sustained within the
year by fire, theft or other casualty, or amounts
paid within the year on account of claims in
law or equity, when not compensated by insur-
ance or otherwise: *provided*, that no deduction
shall be made for any such losses or payments
as have had the effect of decreasing the inven-
tory used in determining the taxable income of
such corporation.

(f) The amount of any debts receivable aris-
ing from the conduct of the business of such cor-
poration subsequent to December thirty-first,
nineteen hundred and sixteen, determined by
79 such corporation to be worthless and actually
80 charged off within the year: provided, that no
81 deduction shall be made for debts receivable as
82 income unless they have been included as in-
83 come in a return made under this act.

84 (g) An amount equal to five per cent of the
85 assessed value of the tangible property, real and
86 personal, owned by such corporation within and
87 without this commonwealth, upon which a prop-
88 erty tax has been paid within the year. In
89 case such assessed value is by law directed to be
90 placed at a fractional part of the true value, the
91 tax commissioner shall increase in due propor-
92 tion the deduction herein authorized. In case
93 any such tangible property located outside of this
94 commonwealth is actually taxed in respect of
95 its income and not in respect of its capital
96 value by the state in which it is located, the tax
97 commissioner may determine its value in such
98 manner as he may deem just, and may allow a
99 deduction of an amount equal to five per cent
100 of the value so determined.

101 (h) Interest or dividends which are exempt
102 from taxation under section two of chapter two
103 hundred and sixty-nine of the acts of the year
104 nineteen hundred and sixteen, and income de-
105 rived from forest lands classified under chapter
106 five hundred and ninety-eight of the acts of
107 the year nineteen hundred and fourteen.

1 Section 5. In case a domestic business cor-
2 poration carries on business outside this com-
3 monwealth, the tax commissioner shall deter-
mine in the following manner the proportion of
the net income received from business carried
on within this commonwealth.

7 (a) In the case of a manufacturing corpora-
tion two thirds of the net income shall be ap-
portioned to the state or states in which manu-
facturing operations are carried on, and one
third shall be apportioned to the state or states
in which such corporation owns or rents premises
for the sale of its products. If manufacturing
operations are carried on in two or more states,
the net income apportioned in respect of such
operations shall be divided between such states
in proportion to the amount of value of the
products manufactured in each such state; and
if such premises for the sale of products are
owned or rented in two or more states, the net
income apportioned in respect of such premises
shall be divided between such states in propor-
tion to the gross receipts in each such state.

(b) In the case of a mercantile corporation
one half of the net income shall be apportioned to
the state or states in which the tangible prop-
erty of such corporation is located, in propor-
tion to the average amount of value of such
property in each such state, and one half shall
be apportioned to the state or states in which
such corporation owns or rents premises for the
transaction of business, in proportion to the
gross receipts of such corporation in each such
state.
(c) In the case of a corporation carrying on both mercantile and manufacturing business, the net income from each class of business shall be apportioned, as nearly as may be, according to the rules laid down in (a) and (b).

(d) In the case of any other kind of corporation there shall be deducted from the total net income of such corporation a proportion corresponding to the proportion which the gross receipts of such corporation from business carried on outside the commonwealth in places where such corporation owns or rents premises for the transaction of business bears to the total gross receipts of such corporation.

Section 6. Corporations which customarily estimate their income and expenditure on a basis other than that of actual cash receipts and disbursements may, with the approval of the tax commissioner, compute upon a similar basis their income taxable under this act, in which case all the provisions of this act shall be construed to permit accounting upon such basis. Corporations which customarily estimate their income and expenditure on the basis of an established fiscal year instead of on that of the calendar year, may, with the approval of the tax commissioner and subject to such rules and regulations as he may establish, return their income taxable under this act, and report other information required by this act, on the basis of such fiscal year in lieu of that of the calendar.
year. In determining the gains or losses realized from the sale of capital assets, the value on January first, nineteen hundred and eighteen, of such property owned on that date shall be the basis of determination, and in case property is acquired after January first, nineteen hundred and eighteen, the value on the date that it is acquired shall be the basis of determination.

Section 7. On or before the first day of March in every year every domestic business corporation shall file with the tax commissioner, under oath of its treasurer, a return of its net income during the previous calendar year, which return shall also set forth such other information as may be reasonably required for the enforcement of this act. Such return shall be made in such form as the tax commissioner shall from time to time prescribe, and shall be open only to the inspection of the tax commissioner, his deputies, clerks and assistants, and such other officers of the commonwealth as may have occasion to inspect it for the purpose of assessing or collecting taxes. Whoever discloses to any unauthorized person any information contained in any such return, other than the name and address of the corporation filing it, except in proceedings to collect the tax or by proper judicial order, shall be punished by a fine not exceeding one thousand dollars. Returns made under this section shall be preserved for two years, and
Section 8. The tax commissioner shall determine from the returns required by this act, and from any other information, the income of every domestic business corporation, and shall assess thereon the tax herein provided; but he shall not determine the income of any such corporation which has filed a return within the time prescribed by law to be in excess of the income shown by such return, without notifying such corporation and giving an opportunity to explain the apparent incorrectness of such return. For the purpose of verifying any return made pursuant to this act the tax commissioner may, within two years after the date when such return was due, if he has reason to believe the return to be insufficient or incorrect, direct by special authorization a deputy or other agent to verify the return; and for the purpose of such verification the books and papers of the corporation shall be open to such examining officer and his assistants, or shall be produced for the purpose upon a summons which the tax commissioner, or such examining officer, is hereby authorized to issue. Any officer of the corporation which made the return may be examined by the tax commissioner, or by such examining officer, under oath.

If the tax commissioner discovers from the verification of a return filed under this act,
or otherwise, that the full amount of any tax due under this act has not been assessed, he may, at any time within two years after the first day of September of the year in which such assessment should have been made, assess the same, first giving notice to the corporation so to be assessed of his intention; and a representative of such corporation shall thereupon have an opportunity within ten days after such notification to confer with the tax commissioner as to the proposed assessment. After the expiration of ten days from such notification the tax commissioner shall assess the amount of such tax remaining due to the commonwealth, and shall give notice to the corporation so assessed. Any tax so assessed shall be payable fourteen days after the date of such notice; and the provisions of this act concerning the abatement and collection of taxes shall be applicable to any tax so assessed.

In case any corporation files a fraudulent return under this act, the tax commissioner shall assess upon such corporation an additional tax equal to the full amount of tax which he shall find to be due or to have been due, which additional tax shall be in addition to the other penalties provided by this act.

In determining the net income of corporations taxable under this act the tax commissioner may use, in such manner and to such extent as he may deem desirable, the services of the income tax deputy and such deputy's
62 clerical and other assistants. The tax com-
63 missioner shall also make, from time to time,
64 such rules and regulations, not inconsistent
65 with the provisions of this act, as he may deem
66 necessary for carrying out its provisions.
67 Whenever the tax commissioner shall re-
68 ceive notice of the abatement of the taxes of
69 any domestic business corporation, as pro-
70 vided in section eighty-four of Part I of chap-
71 ter four hundred and ninety of the acts of the
72 year nineteen hundred and nine and acts in
73 amendment thereof and in addition thereto,
74 he shall forthwith assess upon such corpora-
75 tion any portion of any tax that would have
76 been due under this act, if the valuation es-
77 tablished by such abatement had been adopted
78 by him when making the original assessment
79 upon the income of such corporation, which
80 amount of tax shall be paid and collected as
81 an addition to the corporate franchise tax
82 next assessed and levied upon such corporation.
83 The tax commissioner shall also, whenever he
84 has reason to believe that the real estate or
85 machinery of any domestic business corporation
86 has been assessed in any city or town within
87 this commonwealth for more than its fair cash
88 value, make an appraisal of such real estate
89 and machinery; and the value determined by
90 such appraisal shall be conclusive in the de-
91 termination of the deduction authorized by
92 paragraph (g) of section four of this act, and
93 such corporation shall be entitled to an abate-
ment under the provisions of sections seventy-two, seventy-three, seventy-four, seventy-five, eighty-one, and eighty-two of Part I of chapter four hundred and ninety of the acts of the year nineteen hundred and nine and acts in amendment thereof and in addition thereto, provided it has filed the list required by section seventy-three of such Part I of such chapter.

1 Section 9. Except as provided by section eight of this act, the tax commissioner shall annually, as soon as may be after the first Monday of August in every year, give notice to the treasurer of each domestic business corporation of the amount of any tax levied upon such corporation, under this act; and shall give notice to such treasurer of the date upon which such sum is payable and of the time within which such corporation may apply for a correction of such tax. Failure to receive such notice shall not affect the validity of such tax.

1 Section 10. The penalties provided by sections fifty-eight and fifty-nine, and the charge for interest imposed by section sixty of Part III of chapter four hundred and ninety of the acts of the year nineteen hundred and nine and acts in amendment thereof and in addition thereto, for failure to comply with the provisions of such Part III of such chapter, shall, so far as apt, be applicable to any
domestic business corporation which fails to comply with the provisions of this act; and such penalties and interest may be recovered in the manner provided by section sixty-two of such Part II of such chapter.

1. **Section 11.** Within ten days of the date upon which the notice provided by section nine of this act is sent to any domestic business corporation, such corporation may make application to the tax commissioner for the correction of any tax assessed under this act. Any party aggrieved by the decision of the tax commissioner upon such application may, within ten days after notice of such decision, appeal therefrom by filing a complaint with the clerk of the board of appeal provided for by section sixty-eight of Part III of chapter four hundred and ninety of the acts of the year nineteen hundred and nine. If, upon a hearing, the board of appeal finds that the party making an appeal is entitled to any abatement from any tax assessed under this act, the board shall make such abatement as it sees fit. The decision of the board of appeal shall be final and conclusive, and shall be communicated to the petitioner and the tax commissioner within five days after the decision is made. If the tax appealed from has been paid, the treasurer and receiver general shall repay to the petitioner the amount of any abatement and interest from the time of pay-
Section 12. Any party aggrieved by the refusal of the tax commissioner to abate in whole or in part, under the provisions of the preceding section, a tax assessed upon the provisions of this act may, instead of pursuing the remedy provided in the preceding section, appeal from such refusal by filing a complaint against the tax commissioner in the superior court for the county in which such party has its principal place of business, within thirty days after the notice by the tax commissioner of his decision in accordance with the preceding section. An order of notice shall be issued by said court and served upon the tax commissioner within such time as the court shall direct, and the subsequent proceedings shall be conducted in accordance with the provisions of sections seventy-seven to eighty, inclusive, of Part I of chapter four hundred and ninety of the acts of the year nineteen hundred and nine, and acts in amendment thereof and in addition thereto; but if the complainant was subject to taxation under this act, and did not file a return within the time prescribed by law, it shall not be entitled to have any part of its tax abated by the court, unless the court finds that it had good cause for its delay, or the tax commissioner had previously so found. If an abatement is granted,
the amount thereof shall be repaid to the com-
plainant by the treasurer and receiver general,
with interest at the rate of six per cent per
annum from the time when the tax was paid,
and costs.
The remedies provided by sections eleven and
twelve hereof shall be exclusive, whether or not
the tax is wholly illegal.

1 Section 13. Taxes levied under this act
shall be payable to the treasurer and receiver
general. Except as provided in section eight
such taxes shall be payable within thirty days
after the date of the notice required by section
nine, but not before the twentieth of October.
Such taxes remaining unpaid for ten days after
notice given through the mail by the treasurer
and receiver general to the treasurer or other
financial agent of any domestic business cor-
poration that any such tax is due and unpaid
shall be collected in the manner provided by
section sixty-nine of Part III of chapter four
hundred and ninety of the acts of the year nine-
hundred and nine and nine and acts in amendment
thereof and in addition thereto for taxes levied
upon corporations by such chapter, or under the
provisions of sections sixty-one, sixty-two, and
sixty-three of Part III of such chapter.

1 Section 14. Shares in the capital stock of
domestic business corporations shall be exempt
from taxation under the provisions of Part I of
Section 15. One sixth of every tax paid by any domestic business corporation under this act shall be retained by the commonwealth. The remainder shall be distributed, credited, and paid to the city or town of the commonwealth where the business of such corporation is carried on. If such corporation maintains an office, store, or factory in more than one city or town of the commonwealth, such remainder shall be distributed, credited and paid to such cities or towns in proportion to the value of the tangible property of such corporation in each of such cities or towns on the first day of April, or such other day as the tax commissioner shall determine, which value shall be determined in such manner as the tax commissioner shall deem just: provided, that if such corporation does not conduct its business in Massachusetts, and does not own any tangible property in any city or town of the commonwealth, other than furniture and equipment reasonably necessary for the use of the clerk or other executive officers of such corporation, all of such tax shall be retained by the commonwealth.

Section 16. If any part, section, or subdivision of this act shall be declared unconstitutional, the validity of the remaining parts of this act shall not be affected thereby.