To accompany the petition of Charles L. Gifford that an excise tax be imposed upon foreign corporations. Taxation.

The Commonwealth of Massachusetts.

In the Year One Thousand Nine Hundred and Nineteen.

AN ACT

Imposing an Excise Tax on Foreign 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 foreign corporations to which the provisions of chapter four hundred and thirty-seven of the acts of nineteen hundred and three and acts in amendment thereof and in addition thereto are applicable, are hereby repealed, except in so far as they are specifically made applicable by this act. The provisions of chapter seven hundred and twenty-four of the acts of the year
Section 2. In the year nineteen hundred and nineteen and in each year thereafter there shall be levied on every foreign 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. The net income of a foreign corporation taxable under this section 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 corpora-
tion: 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 indebtedness of such corporation: provided, that such deduction for interest shall not exceed the interest upon an amount of indebtedness fifty percent in excess of the amount of the issued and outstanding capital stock, surplus and undivided
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profits of such corporation; *provided, however,*

that in the case of indebtedness wholly secured

by property collateral, tangible or intangible,

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 exceeding

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 from any such losses or payments

as have had the effect of decreasing the inventory

used in determining the taxable income of such

corporation.

(f) The amount of any debts receivable arising

from the conduct of the business of such corpora-
tion subsequent to December thirty-first, nine-
teen hundred and sixteen, determined by such

corporation to be worthless and actually charged

off within the year: *provided,* that no deduction

shall be made for debts receivable as income

unless they have been included as income in a

return made under this act.

(g) An amount equal to five per cent of the

assessed value of the tangible property, real and

personal, owned by such corporation within or
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91 without this commonwealth, upon which a  
92 property tax has been paid within the year.  
93 In case such assessed value is by law directed to  
94 be placed at a fractional part of the true value,  
95 the tax commissioner shall increase in due pro-
96 portion the deduction herein authorized. In  
97 case any such tangible property located outside  
98 of this commonwealth is actually taxed in respect  
99 of its income and not in respect of its capital  
100 value by the state in which it is located, the tax  
101 commissioner may determine its value in such  
102 manner as he may deem just, and may allow a  
103 deduction of an amount equal to five per cent  
104 of the value so determined.

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

1 **SECTION 3.** In case a foreign corporation  
2 carries on business outside this commonwealth,  
3 the tax commissioner shall determine in the  
4 following manner the proportion of the net  
5 income received from business carried on within  
6 this commonwealth: —

7  \(a\) In the case of a manufacturing corporation  
8 two thirds of the net income shall be apportioned  
9 to the state or states in which manufacturing  
10 operations are carried on, and one third shall be
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11 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 proportion to the gross receipts in each such state.

24 (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 property of such corporation is located, in proportion 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 corre-
spending 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.

1  **SECTION 4.** The excise tax provided by section two of this act to be paid by any foreign corporation shall in no case be less than the greater of the two amounts (a) or (b) herein stated:—

6  (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 located in 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.

17  (b) An amount equal to one tenth of one per cent of the amount of such corporation's issued and outstanding capital stock employed within this commonwealth during the previous calendar year. Such amount of capital stock shall be deemed to be a proportion of the total issued and outstanding capital stock corresponding to the proportion of the net income received by such corporation from business carried on within this
26 commonwealth, as determined under the provisions of section three of this act.

1 Section 5. After determining the amount of tax due from any foreign corporation under the provisions of sections two and three of this act, the tax commissioner shall then credit such corporation with a sum equal to five per cent of the dividends paid by such corporation, during the previous calendar year, to inhabitants of this commonwealth, and the amount then remaining due shall be the amount of tax to be levied upon such corporation: provided, that such tax to be levied shall in no case be less than the minimum tax provided by section four of this act.

1 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 informa-
tion 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 foreign 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 thereafter until the tax commissioner orders them to be destroyed.

Section 8. The tax commissioner shall determine from the returns required by this act, and from any other information, the income of every foreign 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
29 verification of a return filed under this act, or
30 otherwise, that the full amount of any tax due
31 under this act has not been assessed, he may, at
32 any time within two years after the first day of
33 September of the year in which such assessment
34 should have been made, assess the same, first
35 giving notice to the corporation so to be assessed
36 of his intention; and a representative of such
37 corporation shall thereupon have an opportunity
38 within ten days after such notification to confer
39 with the tax commissioner as to the proposed
40 assessment. After the expiration of ten days
41 from such notification the tax commissioner
42 shall assess the amount of such tax remaining
43 due to the commonwealth, and shall give notice
44 to the corporation so assessed. Any tax so
45 assessed shall be payable fourteen days after
46 the date of such notice; and the provisions of
47 this act concerning the abatement and collection
48 of taxes shall be applicable to any tax so assessed.
49 In case any corporation files a fraudulent
50 return under this act, the tax commissioner
51 shall assess upon such corporation an additional
52 tax equal to the full amount of tax which he shall
53 find to be due or to have been due, which addi-
54 tional tax shall be in addition to the other
55 penalties provided by this act.
56 In determining the net income of corporations
57 taxable under this act the tax commissioner may
58 use, in such manner and to such extent as he may
59 deem desirable, the services of the income tax
60 deputy and such deputy's clerical and other
assistants. The tax commissioner shall also make, from time to time, such rules and regulations, not inconsistent with the provisions of this act, as he may deem necessary for carrying out its provisions.

Whenever an abatement is finally made to any foreign corporation upon any tax assessed by the assessors of any city or town upon property of such corporation subject to taxation in such city or town, such assessor shall forthwith notify the tax commissioner, in such form as he may prescribe, concerning such abatement; and the tax commissioner upon receipt of such notice shall forthwith assess upon such corporation any portion of any tax that would have been due under this act, if the valuation established by such abatement had been adopted by him when making the original assessment upon the income of such corporation, which amount of tax shall be paid and collected as an addition to the corporate franchise tax next assessed and levied upon such corporation. The tax commissioner shall also, whenever he has reason to believe that the real estate or machinery of any foreign corporation has been assessed in any city or town within this commonwealth for more than its fair cash value, make an appraisal of such real estate and machinery; and the value determined by such appraisal shall be conclusive in the determination of the deduction authorized by paragraph (g) of section four of this act, and such corporation shall be entitled
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 or other agent of each foreign corporation of the amount of any tax levied upon such corporation, under this act; and shall give notice to such treasurer or agent of the date upon which such sum is payable and at 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.

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 foreign 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.

Section 11. Within ten days of the date upon which the notice provided by section nine of this act is sent to any foreign 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 decisions 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 a 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 payment upon presentation to him by the petitioner of the notice of the decision of the board.
1 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 this commonwealth, within thirty days after the notice by the tax commissioner of his decision in accordance with the preceding section. An order or 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 has 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 complainant by the treasurer and receiver-general, with interest at the rate of six per cent per
32 annum from the time the tax was paid, and costs.
33 The remedies provided by sections eleven and
34 twelve hereafter shall be exclusive, whether or
35 not the tax is wholly illegal.

1 Section 13. Taxes levied under this act shall
2 be payable to the treasurer and receiver-general.
3 Except as provided in section eight such taxes
4 shall be payable within thirty days after the
5 date of the notice required by section nine, but
6 not before the twelfth of October. Such taxes
7 remaining unpaid for ten days after notice
8 given through the mail by the treasurer and
9 receiver-general to the treasurer or other finan-
10 cial agent of any foreign corporation that any
11 such tax is due and unpaid shall be collected in
12 the manner provided by section sixty-nine of
13 Part III of chapter four hundred and ninety of
14 the acts of the year nineteen hundred and nine
15 and acts in amendment thereof and in addition
16 thereto for taxes levied upon corporations by
17 such chapter, or under the provisions of sections
18 sixty-one, sixty-two and sixty-three of Part III
19 of such chapter.

1 Section 14. The tangible personal property,
2 other than machinery, of foreign corporations
3 shall be exempt from taxation under the pro-
4 visions of Part I of chapter four hundred and
5 ninety of the acts of the year nineteen hundred
6 and nine, and acts in amendment thereof and
7 in addition thereto. So much of section seventy-
8 one of chapter four hundred and thirty-seven  
9 of the acts of the year nineteen hundred and  
10 three, and all acts in amendment thereof and  
11 in addition thereto, as relates to the taxation of  
12 merchandise owned by foreign corporations and  
13 situated in this commonwealth is hereby re-  
14 pealed. So much of section twenty-three of  
15 Part I of chapter four hundred and ninety of  
16 the acts of the year nineteen hundred and nine  
17 and acts in amendment thereof and in addition  
18 thereto as relates to the taxation of the mer-  
19 chandise of foreign corporations is hereby re-  
20 pealed. Chapter one hundred and sixty-seven  
21 of the General Acts of the year nineteen hundred  
22 and fifteen, as amended by chapter eighty-three  
23 of the acts of the year nineteen hundred and  
24 sixteen, and by chapter eighty-nine of the acts  
25 of the year nineteen hundred and seventeen, is  
26 hereby repealed.

1  **Section 15.** One sixth of every tax paid by  
2 any foreign corporation under this act shall be  
3 retained by the commonwealth. The remainder  
4 shall be distributed, credited, and paid to the  
5 city or town of the commonwealth where the  
6 business of such corporation is carried on. If  
7 such corporation maintains an office, store, or  
8 factory in more than one city or town of the  
9 commonwealth, such remainder shall be dis-  
10 tributed, credited and paid to such cities or  
11 towns in proportion to the value of the tangible  
12 property of such corporation in each of such
13 cities or towns on the first day of April, or such
14 other day as the tax commissioner shall de-
15 termine, which value shall be determined in
16 such manner as the tax commissioner shall deem
17 just: provided, that if such corporation does not
18 own any tangible property in this commonwealth,
19 other than furniture or office equipment and
20 supplies, all of such tax shall be retained by the
21 commonwealth.

1 Section 16. If any part, section, or sub-
2 division of this act shall be declared unconsti-
3 tutional the validity of the remaining parts of
4 this act shall not be affected thereby.