

HOUSE No. 844

By Mr. Morton of Wellesley, petition of the Massachusetts Society of Certified Public Accountants, Inc., for legislation to abolish the levying of taxes against partnerships and substituting therefor a tax against the members of such partnerships. Taxation.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Sixty-One.

AN ACT TO CORRELATE MASSACHUSETTS TAXATION OF PARTNERSHIPS WITH FEDERAL PRACTICE IN REPLACING THE INCOME TAX PRESENTLY LEVIED AGAINST THE PARTNERSHIP WITH A TAX LEVIED AGAINST ITS MEMBERS.

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. Section 17 of chapter 62 of the General Laws, as
2 most recently amended by chapter 780 of the acts of 1955, is
3 hereby amended by striking out the period at the end of the
4 first sentence and inserting in place thereof the following:—
5 for taxable years beginning before January first, nineteen hun-
6 dred and sixty-one.

1 SECTION 2. Said chapter 62 is hereby amended by inserting
2 after section 17 a new section 17A as follows:—

3 *Section 17A. Partnerships.*—A partnership as such shall
4 not be subject to the tax imposed by this chapter. Each part-
5 nership having a usual place of business in the commonwealth
6 shall file an information return for each taxable year in the
7 form prescribed by the commissioner as provided in section
8 twenty-two. Each partner shall be subject to tax with respect
9 to his distributive share of the partnership income as otherwise
10 provided in this section provided that:

11 (a) In determining his income tax, each partner shall take
12 into account separately in his return his distributive share of
13 the partnership's income, gain, loss, deductions or credits

14 attributable to — (1) interest, (2) dividends, (3) annuities,
15 (4) professions, employment, trade and business, (5) gains or
16 losses from the sale or exchange on intangible personal property,
17 (6) gains or losses from the sale or exchange of real estate,
18 (7) gains from certain transactions in real estate described in
19 section seven A of this chapter, (8) and such other items of
20 income, gain, loss, deduction or credit as the commissioner, or
21 his delegate, may by regulations prescribe.

22 (b) The character of any item of income, gain, loss, deduc-
23 tion or credit included in a partner's distributive share shall
24 be determined as if such item were realized directly by the
25 partner from the source from which realized by the partnership,
26 or incurred in the same manner as incurred by the partnership.
27 The amount of each such item to be taken into account by the
28 partnership in determining the total of its income, gain, loss,
29 deductions or credits to be reported in the returns of its partners
30 shall be computed as in the case of a natural person as other-
31 wise provided by this chapter, except that there shall not be
32 allowed to the partnership — (1) the exemptions allowed by
33 section five (b), (2) the reduction on account of "net capital
34 losses" provided by section five (c), (3) the exemptions allowed
35 by section five (f), (4) the deduction for taxes allowed by sec-
36 tion six (c) and the credit for taxes allowed by section six A
37 to the extent that such taxes are assessed to the partners in
38 their individual capacities, but such deductions or credits shall
39 be allowed to the partners in their returns, (5) the deductions
40 allowed by section six (h).

41 (c) A partner's distributive share of any item of income,
42 gain, loss, deduction or credit shall be determined by the partner-
43 ship agreement. If the partnership agreement contains no
44 provision in respect of the partners' distributive shares of any
45 item of income, gain, loss, deduction or credit, such item shall
46 be apportioned in accordance with his ratio of sharing income
47 or losses from the profession, employment, trade or business.

48 (d) The partner's distributive share of the various classes
49 of income, gains, losses, deductions and credits shall be reported
50 by such partner in his return for his taxable year during which
51 or with which the partnership taxable year ends.

52 (1) In the case of a partnership having a usual place of busi-
53 ness in the commonwealth, a non-resident who is a partner
54 thereof shall include in his return his distributive share of the

55 various classes of income, gains, losses, deductions or credits
56 only to the extent that they are required to be included by sec-
57 tion five A.

58 (2) In the case of a partnership not having a usual place of
59 business in the commonwealth, an inhabitant who is a partner
60 thereof shall include in his return his distributive share of the
61 various classes of the income, gains, losses, deductions or credits
62 of the partnership to the extent that such items are required by
63 this chapter to be included in the returns of such a taxpayer.

64 (e) This section shall apply to partnership taxable years be-
65 ginning after December thirty-first, nineteen hundred and sixty.

1 SECTION 3. Section 18 of said chapter 62 is hereby amended
2 by inserting after the words "in computing its taxable income"
3 in the first sentence the following:— for taxable years begin-
4 ning before January first, nineteen hundred and sixty-one.

1 SECTION 4. Section 19 of said chapter 62 is hereby amended
2 by inserting at the beginning of the first sentence the follow-
3 ing:— For taxable years beginning before January first, nine-
4 teen hundred and sixty-one.

1 SECTION 5. Section 20 of said chapter is hereby amended by
2 striking out the words "subject to taxation under this chapter"
3 and inserting in place thereof the following:— having a usual
4 place of business within the commonwealth.

1 SECTION 6. Section 22 of said chapter 62, as last amended by
2 chapter 491 of the acts of 1958, is hereby amended by striking
3 out the first paragraph and inserting in place thereof the follow-
4 ing:—

5 Every individual inhabitant of the commonwealth, including
6 every association or trust, whose annual income from all sources,
7 including distributive partnership income or gains as provided
8 in section seventeen A, exceeds two thousand dollars shall
9 annually make a return of his entire income, except income
10 derived (a) from rentals of real estate, including reasonable
11 amounts charged on account of services, facilities or utilities
12 furnished tenants of said real estate, provided that said services,
13 facilities or utilities are related directly to the business of renting
14 real estate, or gains from the sale or exchange of real estate

15 which is used as the principal residence of the taxpayer;
16 (b) from dividends exempt from taxation under section one;
17 (c) from interest upon bonds or other obligations of the United
18 States; (d) from interest upon such bonds, notes and certifi-
19 cates of indebtedness of the commonwealth and political sub-
20 divisions thereof as are exempt from taxation under clause
21 twenty-fifth of section five of chapter fifty-nine; (e) from loans
22 secured exclusively by duly recorded mortgage of real estate,
23 taxable as real estate, situated in the commonwealth, to an
24 amount not exceeding the assessed value of the mortgaged
25 real estate less the amount of all prior mortgages; and (f) from
26 wages, salaries or compensation exempted from taxation by
27 subsection (b) of section five. Every other individual inhabi-
28 tant, including every association or trust who received income,
29 including distributive partnership income or gains as provided
30 in section seventeen A, taxable under section one or subsection
31 (a) or (c) of section five shall make an annual return of such
32 taxable income.

33 For taxable years beginning after December thirty-first,
34 nineteen hundred and sixty, every partnership having a usual
35 place of business in the commonwealth shall make a return of
36 its entire income for each taxable year, setting forth its income,
37 gains, losses, deductions or credits attributable to the various
38 classes of income described in paragraph (b) of section seventeen
39 A and such other information for the purpose of carrying out the
40 provisions of section seventeen A as the commissioner may pre-
41 scribe, and shall include in the return the names and addresses
42 of the partners and the distributive shares of the various classes
43 of partnership income, gains, losses, deductions or credits appor-
44 tioned to each.

1 SECTION 7. The amendments effected by this chapter shall be
2 effective for all taxable years beginning after December thirty-
3 first, nineteen hundred and sixty, except that a distributive
4 share of partnership income, gain, loss, deduction or credit which
5 has been reported in a partnership return, and for which the
6 partnership was taxable, shall not be reported in the return of
7 a taxpayer who was a member of such partnership.