

By Mr. Pokaski of Boston, petition of James V. Young and Daniel F. Pokaski that cities and towns be authorized to impose an excise on the payrolls of certain employers. Taxation.

**The Commonwealth of Massachusetts**

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

AN ACT PERMITTING CITIES AND TOWNS TO IMPOSE AN EXCISE ON EMPLOYER PAYROLLS.

*Be it enacted by the Senate and House of Representatives in General Court assembled and by the authority of the same, as follows:*

1 The General Laws are hereby amended by inserting after chapter  
2 64I the following chapter: —

3 CHAPTER 64J

4 EXCISE ON EMPLOYER PAYROLLS IN CERTAIN CITIES  
5 AND TOWNS.

6 *Section 1.* As used in this chapter the following words, unless  
7 the context otherwise indicates, shall have the following meanings:

8 (1) "Board", the appellate tax board.

9 (2) "Commissioner", the commissioner of revenue.

10 (3) "Employee", any person who is compensated for services  
11 formed for or on behalf of an employer, whether as owner, partner,  
12 subordinate or independent contractor.

13 (4) "Employer", any person, corporation, company, associa-  
14 tion, society, club, firm, partnership, joint stock company, trust,  
15 estate, or foundation, having one or more employees other than:

16 (a) The government of the United States and its agencies and  
17 instrumentalities;

18 (b) The commonwealth and its political subdivisions, its and  
19 their agencies and instrumentalities.

20 (5) "Payroll", the total remuneration paid by an employer to an  
21 employee for services, as salary, wages, commissions, payments  
22 under a contract, distribution of assets or earnings whether in the  
23 form of money, goods or anything else of value,

24 (a) For services performed totally within a city or town adopt-  
25 ing the provisions of this chapter, or

26 (b) Where services are performed partly within and partly with-  
27 out such city or town, that portion of total remuneration attributa-  
28 ble to services performed within such city or town according to a  
29 formula to be determined by the commissioner.

30 (6) "Treasurer", the treasurer of any city or town adopting the  
31 provisions of this chapter.

32 *Section 2.* It is hereby declared that certain cities and towns in  
33 the commonwealth provide extraordinary business opportunities  
34 for employers because of the concentration of transportation,  
35 goods, construction, employees, marketing facilities, consumers,  
36 governmental offices, and financial, educational, cultural and  
37 medical institutions. Great concentrations of such resources in  
38 certain cities and towns have increased their attraction for employ-  
39 ers. Such concentrations, however, have not increased the taxable  
40 property in such cities and towns to the same extent as they have  
41 increased the burdens imposed by the influx of commuters and  
42 other users attracted by those facilities, such as police and fire  
43 protection, public transportation, traffic control and parking. It is,  
44 therefore, reasonable to permit cities and towns so impacted to  
45 impose an excise on the payrolls of employers benefitting from  
46 such business opportunities to assist those cities and towns in  
47 defraying such added costs.

48 *Section 3.* Any city or town which accepts the provisions of this  
49 chapter as hereinafter provided may impose and collect an  
50 employer excise for the general municipal purposes of the munici-  
51 pality at a rate not to exceed three percent per annum of an  
52 employer's payroll. Such excise shall be imposed on all employers  
53 whose annual payrolls exceed forty thousand dollars.

54 *Section 4.* Every employer shall report his payroll for the  
55 preceding calendar quarter to the treasurer on or before the last  
56 day of April, July, October and January, in each year on a form

57 prescribed by the commissioner stating the number of persons  
58 employed, the total amount of wages or other remuneration paid  
59 to each, the total amount paid to all employees, and such further  
60 information as the commissioner may require for the proper  
61 administration of this chapter. One quarter of the annual excise  
62 shall be due and payable at the time the return is filed.

63 It shall be presumed that any employer whose quarterly reported  
64 payroll does not exceed ten thousand dollars shall owe no excise;  
65 provided, however, that if the January return filed by such an em-  
66 ployer indicates that payroll in excess of forty thousand dollars  
67 has been paid during the preceding year, the total excise imposed  
68 by this chapter shall be due and payable at the time the January  
69 return is filed.

70 Any excise imposed under this chapter which is not paid when  
71 due shall bear interest at the rate of one percent per month.

72 *Section 5.* If any employer who has been notified by the treas-  
73 urer that he has filed an incorrect or insufficient return refuses or  
74 neglects within twenty days after receiving such notice to file a  
75 correct or sufficient return, or if any person fails to file a return in  
76 accordance with the requirements of this chapter, or files a fraudu-  
77 lent return, the treasurer shall determine the payroll of such  
78 employer taxable under this chapter according to his best informa-  
79 tion and belief and assess the excise due at not more than double  
80 the amount so determined. The treasurer shall forthwith notify the  
81 employer of such determination by mail, postage prepaid. The  
82 employer shall forthwith after receipt of such notice pay to the  
83 treasurer the amount determined to be due. Any employer may,  
84 within three months of the date of notice of such determination,  
85 apply to the commissioner upon a form prescribed by him for an  
86 abatement, and may appeal to the board from the decision of the  
87 commissioner on such application for an abatement within ten  
88 days of the date of notice of such decision, which notice the commis-  
89 sioner shall send by mail, postage prepaid, to the employer forth-  
90 with upon making such decision. Any employer who shall discover  
91 that any over payment of an excise has been made under section  
92 four may within one year of the date of overpayment apply to the  
93 commissioner on a form prescribed by him for a refund and may

94 appeal to the board from the decision of the commissioner on such  
95 application for a refund within ten days of the date of notice of such  
96 decision, which notice the commissioner shall send by mail,  
97 postage prepaid, to the employer forthwith upon making such deci-  
98 sion.

99 *Section 6.* No employer shall withhold any amount from com-  
100 pensation payable to an employee on account of the excise  
101 imposed by this chapter.

102 *Section 7.* Where any dispute as to the liability for an employer  
103 payroll excise to more than one city or town for services performed  
104 by an employee is not resolved by an agreement between the  
105 employer and the city or town, the employer or a city or town may  
106 refer the matter to the commissioner for resolution. The determi-  
107 nation of the commissioner shall be final.

108 *Section 8.* No tax shall be imposed pursuant to this chapter  
109 with respect to services performed prior to January first, nineteen  
110 hundred and seventy-nine, or in a calendar quarter prior to accept-  
111 ance of this chapter.

112 *Section 9.* Sums due to a city or town under this chapter as  
113 excise or as penalties or forfeitures may be recovered by such city  
114 or town in an action brought in the name of the treasurer. The  
115 treasurer shall have the same powers and remedies with respect to  
116 the collection of said sums as he has with respect to the collection of  
117 taxes under chapter sixty of the General Laws.

118 *Section 10.* Any employer who fails, neglects or refuses to make  
119 any report required by this chapter, any person who refuses to  
120 permit the treasurer or his agent to examine an employer's books,  
121 records and papers, and any person who knowingly makes any  
122 incomplete, false, or fraudulent report or attempts to do anything  
123 whatever to avoid the payment of the whole or any part thereof  
124 shall be punished by a fine of not more than one thousand dollars  
125 or by imprisonment for not more than one year.

126 *Section 11.* The commissioner shall adopt such regulations as  
127 he deems necessary to carry out the purposes of this chapter.

128 *Section 12.* This chapter shall take effect in a city or town at the  
129 beginning of the next calendar quarter following its acceptance in  
130 the following manner: in a city having a plan D or plan E charter,

131 by a majority vote of the city council; in any other city, by vote of its  
132 city council, approved by the mayor; and in a town, by submission  
133 for acceptance to the registered voters in the form of the following  
134 question which shall be printed upon the official ballot to be used  
135 at election: — “shall the town impose an excise on the payrolls of  
136 certain employers within the town?” To the record of such accept-  
137 ance shall be attached a finding approved by the city council,  
138 mayor or board of selectmen, as the case may be, setting forth the  
139 costs attributable to the extent by which the ratio of the number of  
140 persons employed in such city or town to the residents in such city  
141 or town, as determined in the last state or federal census, exceeds  
142 the ratio of such employees to such residents in all other cities and  
143 towns in the commonwealth. Such findings shall be considered by  
144 any court wherein the validity of an excise imposed under author-  
145 ity of this chapter is challenged.

146 *Section 13.* If any part, subdivision or section of this chapter  
147 shall be declared unconstitutional, the validity of its remaining  
148 provisions shall not be affected thereby.





