HOUSE . . . . . No. 3087

By Mr. Gallagher of Boston, petition of Thomas M. Gallagher and other members of the House relative to the use of unitary apportionment procedures pertaining to the corporate excise tax. Taxation.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Two.

AN ACT RELATIVE TO THE USE OF UNITARY APPORTIONMENT PROCEDURES PERTAINING TO THE CORPORATE EXCISE TAX.

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

SECTION 1. Chapter 63 of the General Laws is hereby amended by striking out the first sentence of subsection 5 (b) of Section 30 of said chapter and inserting in lieu thereof the following: —

"Net income", for purposes of this chapter means

(i) Gross income arising from transactions and activity in the regular course of the taxpayer's trade or business including income from tangible and intangible property to the extent that acquisition, management and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(ii) Less allocable deductions (except depreciation in excess of that currently provided under Section 167 and U.S. Treasury Regulations thereunder including the Class Life Asset Depreciation Range System and the deduction provided), but not credits, allowable under the provisions of the federal Internal Revenue Code, as amended and in effect for the taxable year.

SECTION 2. Chapter 63 is hereby amended by striking out the caption to Section 32B and inserting the following caption and new first paragraph before the text of the existing paragraph of Section 32B which shall become the second paragraph of Section 32B.

Section 32B. Corporations owned or controlled by same interests; combined return; combination or allocation of income and deductions; assessment.

In the case of domestic business corporations or foreign corporations, owned or controlled directly or indirectly by the same interests, the Commissioner shall require the filing of a combined return and such other information as he or she deems necessary and shall impose the tax due under this part as though the combined entire net income was that of one corporation, or to distribute, apportion, or allocate the gross income or deductions between or among such corporations, if he or she determines that such consolidation, distribution, apportionment, or allocation is necessary in order to reflect the proper income of any such corporations.

SECTION 3. Chapter 63 shall hereby be amended by inserting the following three paragraphs as the fourth through sixth paragraphs of Section 33.

In the case of a corporation liable to make a return under this chapter owning or controlling, either directly or indirectly, another corporation, or other corporations, and in the case of a corporation liable to make a return under this chapter and owned or controlled, either directly or indirectly, by another corporation, the commissioner shall require a consolidated return showing the combined net income or such other facts as he or she deems necessary. The commissioner is authorized and directed, in such manner he or she may determine, to assess the tax against either of the corporations whose net income is involved in the return upon the basis of the combined entire net income and such other information as he or she may possess, or he or she may adjust the tax in such other manner as he or she shall determine to be equitable and consistent with this section and section 38 if he or she determines it to be necessary in order to prevent evasion of taxes or to clearly reflect the net income earned by said corporation or corporations from business done in this commonwealth.

Direct or indirect ownership or control of more than 50 percent of the voting stock of the taxpayer shall constitute ownership or control for the purposes of this section.

In any case in which the tax of a corporation is or has been determined under this chapter with reference to the income and apportionment factors of another corporation with which it is doing or has done a unitary business, all dividends paid by one to

28 another of such corporations shall, to the extent such dividends are
29 paid out of such income of such unitary business, be eliminated
30 from the income of the recipient and shall not be taken into
31 account under Section 38 or in any other manner in determining
32 the tax of any such corporation.

1 SECTION 4. Chapter 63 of the General Laws is hereby amend-
2 ed by striking out the preamble of Section 38 and inserting in lieu
3 thereof the following: —
4 When the income of a domestic business corporation or foreign
5 corporation is subject to the tax imposed by this chapter is derived
6 from or attributable to sources both within and without the com-
7 monwealth, the tax imposed by this chapter shall be measured by
8 the net income derived from or attributable to sources within this
9 commonwealth as follows: —

1 SECTION 5. Chapter 63 is hereby amended by inserting after
2 subsection (c) of Section 38 the following parts (i) and (ii) including
3 subparts (A) through (D).
4 (i) For purposes of allocation and apportionment of income
5 under this act, a corporation is taxable in another state if (a) in that
6 state it is subject to a net income tax, a franchise tax measured by
7 net income, a franchise tax for the privilege of doing business, or a
8 corporate stock tax, or (b) that state has jurisdiction to subject the
9 taxpayer to a net income tax regardless of whether, in fact, the state
10 does or does not.
11 (ii) Rents and royalties from real or tangible personal property,
12 capital gains, interest, dividends, or patent or copyright royalties,
13 to the extent that they constitute nonbusiness income, shall be
14 allocated as:
15 A. Net rents and royalties
16 (1) Net rents and royalties from real property located in this
17 commonwealth are allocable to this commonwealth.
18 (2) Net rent and royalties from tangible personal property are
19 allocable to this commonwealth.
20 (a) If and to the extent that the property is utilized in this
21 commonwealth, or
22 (b) In their entirety if the corporation's commercial domicile is
23 in this commonwealth and the corporation is not organized under

24 the law of or taxable in the state in which the property is utilized.
25 (3) The extent of utilization of tangible personal property in a
26 state is determined by multiplying the rents and royalties by a
27 fraction, the numerator of which is the number of days of physical
28 location of the property in the commonwealth during the rental or
29 royalty period in the income year and the denominator of which is
30 the number of days of physical location of the property everywhere
31 during all rental or royalty periods in the income year. If the
32 physical location of the property during the rental or royalty
33 period is unknown or unascertainable by the corporation, tangible
34 personal property is utilized in the state in which the property was
35 located at the time the rental or royalty payor obtained possession.
36 (B) Capital gains and losses
37 (1) Capital gains and losses from sales or real property located
38 in this commonwealth are allocable to this commonwealth.
39 (2) Capital gains and losses from sales of tangible personal
40 property are allocable to this commonwealth if:
41 (a) The property had a situs in this commonwealth at the time of
42 the sale, or
43 (b) The corporation's commercial domicile is in this common-
44 wealth and the corporation is not taxable in the state in which the
45 property had a situs.
46 (c) Capital gains and losses from sales of intangible personal
47 property are allocable to this commonwealth if the coporation's
48 commercial domicile is in this commonwealth.
49 (C) Interest and dividends are allocable to this commonwealth
50 if the corporation's commercial domicile is in this commonwealth.
51 (D) Patent and copyright royalties.
52 (1) Patent and copyright royalties are allocable to this common-
53 wealth:
54 (a) If and to the extent that the patent or copyright is utilized by
55 the corporation in this commonwealth, or
56 (b) If and to the extent that the patent or copyright is utilized by
57 the corporation in a commonwealth in which the corporation is not
58 taxable and the corporation's commercial domicile is in this com-
59 monwealth.
60 (2) A patent is utilized in the commonwealth to the extent that it
61 is employed in production, fabrication, manufacturing, or other
62 processing in the commonwealth or to the extent that a patented

63 product is produced in the commonwealth. If the basis of receipts
64 from patent royalties does not permit allocation to states or if the
65 accounting procedures do not reflect states of utilization, the pat-
66 ent is utilized in the state in which the corporation's commercial
67 domicile is located.
68 (3) A copyright is utilized in a state to the extent that printing or
69 other publication originates in that state. If the basis of receipts
70 from copyright royalties does not permit allocation to states or if
71 the accounting procedures do not reflect states of utilization, the
72 copyright shall be deemed utilized in the state in which the taxpay-
73 er's commercial domicile is located.

1 SECTION 6. Chapter 63 of the General Laws is hereby amend-
2 ed by inserting a new Section 30A as follows: —
3 *Section 30A.* The deductions, exclusions, exemptions and cred-
4 its allowable in computing gross income and not income under
5 Section 30, Chapter 63, and in computing the payroll, sales and
6 property factors under Section 38 of such Chapter, shall be re-
7 viewed every five years to determine whether the benefit derived by
8 continuing such deductions, exclusions, exemptions and credits is
9 outweighed by the loss in the general revenue resulting from such
10 provision. Unless the General Court upholds each respective provi-
11 sion, then such provisions shall lapse and cease to the enforceable.