SENATE . . . . . No. 1722

The Commonwealth of Massachusetts

SENATE, May 16, 1988.

The committee on Taxation, to whom was referred so much of the recommendations of the Department of Revenue (House, No. 244) as relates to making corrective changes in the existing tax laws (accompanied by bill, House, No. 271); the petition (accompanied by bill, House, No. 2789) of Stephen W. Doran relative to compliance with tax laws by certain licensed professions, trades or businesses; and the petition (accompanied by bill, House, No. 3714) of Sherwood Guernsey for legislation to require refunds of state income tax to be made within sixty days of filing of tax returns; reports the accompanying bill (Senate, No. 1722).

For the committee,

JOHN W. OLVER.

The Commonwealth of Massachusetts

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

AN ACT MAKING CORRECTIVE CHANGES IN EXISTING TAX LAWS.

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. The first sentence of section 40 of chapter 62C of the General Laws, as appearing in the 1986 Official Edition, is hereby amended by striking out, in lines 55 and 56, the words "twelve per cent per annum, or such adjusted rate as is established under section thirty-two", and inserting in place thereof the words: — eighteen per cent per annum.

SECTION 2. Section 1 of chapter 63 of the General Laws, as appearing in the 1986 Official Edition, is hereby amended by striking out, in lines 39 and 40, the definition of "Taxable year" and inserting in place thereof the following definition: —

"Taxable year" any fiscal or calendar year or period for which the bank is required to make a return to the federal government; or the period for which a return is made, if a return is made (i) for a period of less than twelve months, or (ii) for a period for which no return to the federal government is required.

SECTION 3. Section 30 of said chapter 63 is hereby amended by striking out paragraph 6, as so appearing, and inserting in place therof the following paragraph: —

6. "Taxable year", any fiscal or calendar year or period for which the corporation is required to make a return to the federal government; or the period for which a return is made, if a return is made (i) for a period of less than twelve months, or (ii) for a period for which no return to the federal government is required.

SECTION 4. Subsection (1) of section 52A of said chapter 63 is hereby amended by striking out paragraph (c), as so appearing, and inserting in place thereof the following paragraph: —

(c) "Taxable year", means any fiscal or calendar year or period for which the utility corporation is required to make a return to the federal government; or the period for which a return is made, if a return is made (i) for a period of less than twelve months, or (ii) for a period for which no return to the federal government is required.

SECTION 5. Paragraph (q) of section 6 of chapter 64H of the General Laws, as appearing in the 1986 Official Edition, is hereby amended by striking out the first sentence, in lines 239 to 244, inclusive, and inserting in place thereof the following sentence: —

Sales of (1) both returnable and nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container; (2) containers when sold with the contents if the sales price of the contents is not required to be included in the measure of the taxes imposed by this chapter; and (3) returnable containers when sold with the contents or resold for refilling.

SECTION 6. Section 16 of chapter 181 of the General Laws, as appearing in the 1986 Official Edition, is hereby amended by striking out the last paragraph and inserting in place thereof the following paragraph: —

The state secretary shall not receive for filing a certificate of withdrawal unless it is accompanied by a certificate of the commissioner of revenue that all taxes referred to in section two of chapter sixty-two C due and payable by the foreign corporation to the commonwealth have been paid or provided for.

SECTION 7. The second paragraph of section 5 of chapter 62B of the General Laws, as appearing in the 1986 Official Edition, is hereby amended by striking out the second sentence and inserting in place thereof the following sentence: — The term "employer", as used in this paragraph, includes an officer, director or employee of a corporation or of a dissolved corporation, a member or employee of a partnership or an employee of an individual proprietorship who as such officer, director, employee or member is under a duty to withhold and pay over taxes in accordance with this section and section two.

SECTION 8. Section 7 of said chapter 62C, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence: — Every partnership, other than a corporate trust as defined in chapter sixty-two, engaged within the commonwealth in any business, activity or transaction, whether or not it maintains an office or place of business within the commonwealth, shall file, on or before the fifteenth day of the fourth month following the close of each taxable year, an information return sworn to by a member of the partnership.

SECTION 9. Section 24 of chapter 62C of the General Laws, as appearing in the 1986 Official Edition, is hereby amended by adding at the end thereof the following paragraph: —

If the books, papers, records and other data of the taxpayer are so voluminous as to make a complete audit thereof impractical and inefficient, the commissioner may use such statistical sample methods in conducting such audit as may be agreed to by the parties and project the audit findings derived therefrom over the entire audit period to determine the proper tax. If, after a good faith effort, the parties cannot reach such an agreement, the commissioner may utilize such statistical sample methods as he deems appropriate.

SECTION 10. Section 30 of said chapter 62C, as so appearing, is hereby amended by striking out the third paragraph and inserting in place thereof the following paragraph: —

Any person or estate failing to comply with the provisions contained in the first paragraph hereof shall be assessed the penalties applicable to returns and taxes under sections twenty-eight and thirty-three.

SECTION 11. Section 33 of said chapter 62C, as so appearing, is hereby amended by striking out subsection (a) and inserting in place thereof the following subsection: —

(a) If any return is not filed with the commissioner on or before its due date or within any extension of time granted by him, there shall be added to and become a part of the tax, as an additional tax, a penalty of one percent of the amount required to be shown

as the tax on such return for each month or fraction thereof during which such failure continues, not exceeding, in the aggregate, twenty-five percent of said amount; provided, however, that such penalty shall not be less than one hundred dollars, or ten percent of the amount required to be shown as the tax on such return, whichever sum is the lesser.

SECTION 12. Said chapter 62C, as so appearing, is hereby amended by inserting after section 40 the following section: —

Section 40A. If a refund of any tax or other overpaying is made in error by the commissioner, such amount shall bear interest at the rate provided in section thirty-two commencing upon the expiration of thirty days from the date upon which the commissioner mails a notice of error to the taxpayer or other payee.

SECTION 13. Section 52 of said chapter 62C, as so appearing, is hereby amended by striking out the second sentence and inserting in place thereof the following sentence: — There shall be charged and collected a fee for each application for such waiver or certificate and a fee for each duplicate copy of any waiver or certificate issued.

SECTION 14. Section 79 of said chapter 62C, as so appearing, is hereby amended by adding at the end thereof the following subsection: —

(e) Any interest, penalty or addition to tax imposed by this chapter shall be computed upon the amount of tax exclusive of any interest, penalty or addition to tax that may be assessed as a part thereof. Interest under section thirty-two shall be imposed upon any assessed penalty; however, no interest shall be imposed upon any assessed interest.

SECTION 15. Section 7B of chapter 64G of the General Laws, appearing in the 1986 Official Edition, is hereby amended by striking out the last sentence and inserting in place thereof the following sentence: — The term "operator", as used in this section includes an officer, director or employee of a partership

or an employee of an individual proprietorship who as such officer, director, employee or member is under a duty to pay over the taxes imposed by this chapter.

SECTION 16. Section 16 of chapter 64H of the General Laws, as appearing in the 1986 Official Edition, is hereby amended by striking out the last sentence and inserting in place thereof the following sentence: — The term "person", as used in this section, includes an officer, director or employee of a corporation or of a dissolved corporation, a member or employee of a partnership or an employee of an individual proprietorship who as such officer, director, employee or member is under a duty to pay over the taxes imposed by this chapter.

SECTION 17. Section 17 of chapter 64I of the General Laws, as appearing in the 1986 Official Edition, is hereby amended by striking out the last sentence and inserting in place thereof the following sentence: — The term "person", as used in this section, includes an officer, director or employee of a corporation or of a dissolved corporation, a member or employee of a partnership or an employee of an individual proprietorship who as such officer, director, employee or member is under a duty to pay over the taxes imposed by this chapter.