

HOUSE No. 2203

The Commonwealth of Massachusetts.

HOUSE OF REPRESENTATIVES, February 29, 1912.

The committee on Taxation, to whom were referred the petition (accompanied by bill, Senate, No. 29), of Aaron H. Werner that transfers of stock be taxed; and on the petition (accompanied by bill, House, No. 337), of Junius T. Auerbach for legislation to provide for the taxation of transfers of stock, report the accompanying bill.

For the committee,

WILLIAM S. KINNEY.

HOUSE OF REPRESENTATIVES, April 22, 1912.

The committee on Ways and Means, to whom was referred the Bill to provide for the taxation of transfers of stock, report that the same ought not to pass.

For the committee,

WILTON B. FAY.

The Commonwealth of Massachusetts.

In the Year One Thousand Nine Hundred and Twelve.

AN ACT

To provide for the Taxation of Transfers of Stock.

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. There is hereby imposed and
2 there shall immediately accrue and be collected
3 an excise as herein provided on all sales or agree-
4 ments to sell or memoranda of sales or deliveries
5 or transfers of shares or certificates of stock in
6 any domestic or foreign corporation made after
7 the first day of December, nineteen hundred and
8 twelve, whether made upon or shown by the
9 books of the corporation, or by any assignment
10 in blank, or by any delivery, or by any paper or
11 agreement or memorandum or other evidence of
12 transfer or sale, whether or not entitling the
13 holder in any manner to the benefit of such stock
14 or to secure the future payment of money or the
15 future transfer of any stock, on each one hundred
16 dollars of face value or fraction thereof, two

17 cents. It is not intended by this act to impose
18 an excise upon an agreement evidencing the de-
19 posit of stock certificates as collateral security
20 for money loaned thereon which stock certificates
21 are not actually sold, nor upon such stock certi-
22 ficates so deposited; nor upon the transfer of
23 stock certificates of a deceased person to his
24 executor or administrator; nor upon the transfer
25 of stock certificates by a trustee to his successor
26 or co-trustee under the same trust.

27 The payment of the said excise shall be denoted by
28 an adhesive stamp or stamps affixed as follows:
29 in case of sale where the evidence of transfer is
30 shown only by the books of the company, the
31 stamp shall be placed upon the said books; and
32 where the change of ownership is by transfer of
33 a certificate the stamp shall be placed upon the
34 certificate; and in cases of an agreement to sell
35 or where the transfer is by delivery of the certifi-
36 cate assigned in blank there shall be made and
37 delivered by the seller to the buyer a bill or
38 memorandum of sale, to which the stamp pro-
39 vided for by this act shall be affixed; and every
40 such bill or memorandum of sale or agreement to
41 sell shall show the date thereof, the name of the
42 seller, the amount of the sale, and the matter or
43 thing to which it refers, and no further excise is
44 hereby imposed upon the delivery of the certificate
45 of stock, or upon the actual issue of a new certifi-
46 cate when the original certificate of stock is accom-
47 panied by the duly stamped memorandum of sale
48 as herein provided.

1 SECTION 2. No person, firm, company, associa-
2 tion or corporation other than a corporation
3 organized under the banking laws of this state or
4 under the national bank act of the United States,
5 or a duly authorized agent of the tax commissioner
6 shall sell or expose for sale any stamp issued
7 pursuant to this act, without first obtaining
8 from the tax commissioner his written consent,
9 except that in connection with a sale of or agree-
10 ment to sell stock a broker or agent of the prin-
11 cipal making such sale or agreement to sell may
12 supply and affix the stamp or stamps required by
13 this act. No person shall sell any such stamp for a
14 sum less than the face value thereof without
15 the written consent of the tax commissioner. Any
16 person violating any provision of this section
17 shall be guilty of a misdemeanor.

1 SECTION 3. Adhesive stamps for the purpose
2 of paying the excise provided for by this act
3 shall be prepared by the tax commissioner, in
4 such form, and of such denominations and in such
5 quantities as he may from time to time prescribe,
6 and shall be sold by him to the person or persons
7 desiring to purchase the same. He shall make
8 provision for the sale of such stamps in such
9 places and at such times as in his judgment may
10 be necessary.

1 SECTION 4. In every case where an adhesive
2 stamp is used to denote the payment of the
3 excise provided for by this act, the person using or

4 affixing the same shall write or stamp thereupon
5 the initials of his name and the date upon which
6 the same is attached or used, and shall cut
7 or perforate the stamp in a substantial manner,
8 so that the stamp cannot be used again.

1 SECTION 5. The tax commissioner is hereby
2 directed to make and execute in behalf of the
3 commonwealth contracts for dies, plates and
4 printing necessary for the manufacture of the
5 stamps provided for by this act; he shall be the
6 custodian of the stamps, dies, plates or other
7 material or thing used in the manufacture of the
8 said stamps, and all expenses incurred by him
9 in carrying out the provisions of this act shall be
10 paid from any sums appropriated for that purpose.

1 SECTION 6. If any such stamp shall be affixed to
2 any memorandum of sale with the intention of
3 paying an excise, but delivery pursuant to the sale
4 shall not be made in conformity with the memo-
5 randum thereof, then such stamp may be removed
6 from the memorandum and subsequently used on
7 some other memorandum of sale: *provided*, that
8 when so used there shall be attached to the
9 memorandum, to which said stamp shall be so
10 affixed, a written statement signed by the vendor
11 or the agent making the sale, setting forth in
12 detail the facts justifying such re-use.

1 SECTION 7. Every person, firm, company,
2 association or corporation making a sale, agree-

3 ment to sell, delivery, or transfer, of shares or
4 certificates of stock, or conducting or transacting
5 a brokerage business, shall keep or cause to be
6 kept a true book of account wherein shall be
7 recorded plainly and legibly the date of
8 making every sale, agreement to sell, delivery, or
9 transfer, of shares or certificates of stock, and
10 every transaction in relation to any stock; the
11 number of shares, the total amount covered by
12 every such sale, agreement to sell, delivery, trans-
13 fer or transaction, and the name of the other
14 party thereto, and such book shall at all times be
15 subject to the inspection of the tax commissioner,
16 or any of his representatives between the hours of
17 ten o'clock in the forenoon and three o'clock in
18 the afternoon, except on Saturdays, Sundays and
19 legal holidays. The tax commissioner may, at
20 any time after transfers of stock which by the
21 provisions of this act are subject to an excise,
22 inquire into and ascertain whether the excise
23 imposed by the provisions of this act has been
24 paid. For the purpose of ascertaining such fact,
25 the tax commissioner shall have the right, and
26 it shall be his duty to examine the books and
27 papers of any person, firm, company, association
28 or corporation: *provided*, that no bill or memoran-
29 dum of sale as provided for in section one of this
30 act need be preserved for the inspection of the
31 tax commissioner for a longer period than ninety
32 days after the date thereof. The tax com-
33 missioner may enforce his right to examine the
34 books and papers of any person, firm, company,

35 association or corporation by mandamus. Every
36 person, firm, company, association or corporation
37 who shall refuse to permit the tax commissioner or
38 any of his representatives to inspect such books or
39 papers or any memoranda or record relating to
40 such sale, agreement to sell, delivery or transfer
41 or transaction at any time as above provided, or
42 who shall fail to keep the said book of account, or
43 who shall fail to preserve for ninety days from the
44 date thereof all bills and memoranda of sales,
45 shall be deemed guilty of a misdemeanor and on
46 conviction thereof shall for every such offense be
47 punished by a fine of not less than five hundred
48 dollars nor more than five thousand dollars, or by
49 imprisonment for not less than three months nor
50 more than two years, or by both such fine and
51 imprisonment at the discretion of the court.

1 SECTION 8. The excise herein provided for
2 may be recovered in an action brought in the
3 county of Suffolk in the name of the common-
4 wealth, or it may be recovered by an informa-
5 tion in equity in the name of the attorney-gen-
6 eral brought in the supreme judicial court for
7 the county of Suffolk.

1 SECTION 9. No transfer of stock made after
2 the first day of December in the year nineteen
3 hundred and eleven on which an excise is imposed
4 by this act, which excise is not paid at the
5 time of such transfer, shall be made the basis of
6 any action or legal proceedings, nor shall proof
7 thereof be offered or received in evidence in any

8 court in this commonwealth: *provided, however,*
9 that nothing contained in this section shall apply
10 to proceedings authorized by this act.

1 SECTION 10. The excise provided for by this
2 act shall be imposed and shall accrue and be col-
3 lected on all sales or agreements to sell or mem-
4 oranda of sales or deliveries or transfers of the
5 certificates of participation or shares of all vol-
6 untary associations existing under a witten in-
7 strument or declaration of trust the beneficial
8 interest under which is divided into transferable
9 certificates of participation or shares.

1 SECTION 11. If any stamps shall have er-
2 roneously been affixed to any book, certificate
3 of stock or bill or memorandum of sale, the tax
4 commissioner upon presentation of a claim for
5 the amount of such stamps, and upon the produc-
6 tion of evidence satisfactory to him that such
7 stamps were erroneously affixed so as to cause
8 loss to the persons making the claim by the said
9 amount, or such part thereof as he may allow,
10 shall certify to the auditor the amount so errone-
11 ously paid, and the treasurer and receiver general
12 shall pay said amount without any further act or re-
13 solve making appropriation therefor. Such claims
14 shall be presented to the tax commissioner in
15 writing duly verified, and shall state the full
16 name and address of the claimant, the date of
17 the erroneous affixing, the face value of the
18 stamps, and shall describe the instrument to
19 which the stamps were affixed, and contain such

20 evidence as may be available upon which the de-
21 mand for the repayment is based. Such claims
22 shall be presented within ninety days after the
23 alleged erroneous affixing. If the tax commis-
24 sioner rejects a claim or any part thereof, the
25 claimant may within thirty days after the date
26 of the rejection apply to the board of appeal
27 established by section sixty-eight of part III of
28 chapter four hundred and ninety of the acts of
29 the year nineteen hundred and nine. Said board
30 of appeal shall thereupon review the facts in the
31 case and shall forthwith give a decision in writing
32 to the claimant and to the tax commissioner; and
33 if the board grants any repayment to the claimant
34 the amount of said repayment shall be certified
35 and paid as is herein provided.

1 SECTION 12. For the purpose of carrying out
2 the provisions of this act the tax commissioner
3 may, with the advice and consent of the governor
4 and council, appoint, and with their consent re-
5 move, a fourth assistant and examiners not ex-
6 ceeding four in number, and may employ such
7 clerical and other assistance as he may deem
8 necessary. The fourth assistant and the ex-
9 aminers provided for by this act shall be paid
10 such salaries as the tax commissioner may de-
11 termine, with the approval of the governor and
12 council, and they shall be allowed their necessary
13 travelling and other expenses.

1 SECTION 13. All moneys received by the tax
2 commissioner from the sale of stamps provided

3 for by this act shall be paid by the tax commis-
4 sioner into the state treasury at least once in each
5 month.

1 SECTION 14. The excises provided for by this
2 act shall accrue and be payable on and after the
3 first day of December, of the year nineteen hun-
4 dred and twelve; otherwise this act shall take
5 effect upon its passage.

