

# HOUSE . . . . . No. 21

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Accompanying the seventh recommendation of the Commissioner of Corporations and Taxation (House, No. 14). Taxation.

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## The Commonwealth of Massachusetts

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

### AN ACT RELATIVE TO THE TAXATION OF INCOME EARNED IN THE COMMONWEALTH BY NON-RESIDENTS.

*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 one of chapter sixty-two of  
2 the General Laws, as last amended by chapter four  
3 hundred and eighty-nine of the acts of nineteen hun-  
4 dred and thirty-five, is hereby further amended by  
5 striking out subsection (e) and inserting in place  
6 thereof the following:—

7 (e) Dividends on shares of any partnership, associa-  
8 tion or trust, of the classes designated in paragraphs  
9 first, second and third of subsection (c), shall be sub-  
10 ject to taxation under this section unless the trustees  
11 or managers thereof file with the commissioner, in  
12 such form as he determines, its agreement to pay to  
13 the commonwealth annually the tax imposed by  
14 subsection (d) and any taxes imposed by sections five  
15 and five A. In case of any breach of the terms of any  
16 such agreement, the same may be enforced by infor-

17 mation in equity brought by the attorney general at  
18 the relation of the commissioner in the supreme judi-  
19 cial court for Suffolk county. This remedy shall be  
20 in addition to all other means of collection provided  
21 by this chapter, and to the penalties hereinafter  
22 imposed.

1 SECTION 2. Subsection (b) of section two of said  
2 chapter sixty-two is hereby amended by striking out  
3 the third paragraph and inserting in place thereof the  
4 following:—

5 Persons described in paragraph (a) of this section  
6 may, if the deductions allowed by subsections (a),  
7 (b), (c), (d), (e) and (f) of section six exceed the total  
8 income taxable under subsections (b) and (c) of sec-  
9 tion five and section five A, deduct from their taxable  
10 interest and dividends, after deducting the aforesaid  
11 interest deduction, an amount of such excess which  
12 bears the same proportion to the total excess as their  
13 income taxable under section one bears to their total  
14 net income as determined under section three.

1 SECTION 3. Section three of said chapter sixty-two  
2 is hereby amended by striking out the third para-  
3 graph and inserting in place thereof the following:—

4 From said return and information the commis-  
5 sioner shall determine the amount of interest paid  
6 during the year by the taxpayer on debts of class  
7 (a) or (b) enumerated in the preceding section, for  
8 which deduction is authorized by said section, which  
9 interest, for the purposes of this section, shall be  
10 called the net interest. He shall also determine the  
11 total net income of the taxpayer, exclusive of income  
12 taxable under section five and section five A, as such  
13 total net income would be if no deduction were made

14 for interest paid during the year. The taxpayer may  
15 deduct from his income taxable under section one an  
16 amount of interest paid by him during the year which  
17 shall bear the same proportion to the net interest paid  
18 as his income taxable under section one bears to his  
19 total net income as above determined.

1 SECTION 4. Section five of said chapter sixty-two,  
2 as last amended by chapter four hundred and eighty-  
3 nine of the acts of nineteen hundred and thirty-five,  
4 is hereby further amended by striking out subsection  
5 (d) and inserting in place thereof the following:—  
6 (d) Income of the classes enumerated in subsec-  
7 tions (a), (b) and (c) and section five A received by  
8 any partnership, association or trust, the beneficial  
9 interests in which are represented by transferable  
10 shares, shall be taxed under this section unless the  
11 dividends on the transferable shares issued by such  
12 partnership, association or trust are taxable under  
13 section one.

1 SECTION 5. Said chapter sixty-two is hereby fur-  
2 ther amended by inserting after section five the  
3 following new section:—

4 *Section 5A.* Income of the class taxable under sub-  
5 section (b) of section five earned in the common-  
6 wealth and received by persons not inhabitants thereof  
7 shall be taxed in the same manner and to the same  
8 extent as such income would be taxed if received by  
9 inhabitants of the commonwealth.

1 SECTION 6. Section six of said chapter sixty-two  
2 is hereby amended by striking out the first paragraph  
3 thereof and inserting in place thereof the following:—

4 Income taxable under subsection (b) of section five

5 and section five A shall be the gross income from the  
6 profession, employment, trade or business, in the  
7 year for which the income is computed, not including  
8 income exempt from taxation under this chapter or  
9 taxable hereunder otherwise than under said sub-  
10 section (b) and section five A, but including gains  
11 from the sale of capital assets, other than intangible  
12 personal property, employed therein; less the follow-  
13 ing deductions:

1 SECTION 7. Section eight of said chapter sixty-two  
2 is hereby amended by striking out subsection (d) and  
3 inserting in place thereof the following:—

4 (d) Such part of the income received by trustees  
5 or other fiduciaries as is payable to or accumulated  
6 for persons not inhabitants of the commonwealth,  
7 except income taxable under section five A.

1 SECTION 8. Section nine of said chapter sixty-two  
2 is hereby amended by striking out the second para-  
3 graph and inserting in place thereof the following:—

4 The income received by the estates of such de-  
5 ceased persons shall be subject to all the taxes imposed  
6 by this chapter to the extent that the persons to  
7 whom such income is payable, or for whose benefit it  
8 is accumulated are inhabitants of the commonwealth,  
9 except income taxable under section five A; and such  
10 income shall include as and when received by the  
11 executor or administrator all income taxable under  
12 section one of this chapter which would have been  
13 taxable to the decedent if he had survived to receive  
14 it, and the taxes upon such income as shall have  
15 become a part of the corpus of his estate under the

16 rules of probate accounting, may be charged against  
17 principal in any accounting made by the executor or  
18 administrator. All taxes under this section shall be  
19 assessed to the executor or administrator and before  
20 the appointment of an executor or administrator said  
21 taxes may be assessed in general terms to the estate  
22 of the deceased and the executor or administrator  
23 subsequently appointed shall be liable for the taxes  
24 so assessed as though they were assessed to him. No  
25 person shall be taxed under this chapter for income  
26 received from any executor or administrator which  
27 income has itself been taxed under this section.

1 SECTION 9. Section ten of said chapter sixty-two  
2 is hereby amended by striking out the first paragraph  
3 and inserting in place thereof the following:—

4 The income received by estates held in trust by  
5 trustees or other fiduciaries under the law of a person  
6 who died an inhabitant of the commonwealth or under  
7 a trust created by a person who was either at the time  
8 of the creation of the trust or at any time during the  
9 year for which the income is computed an inhabitant  
10 of the commonwealth, any one of which trustees or  
11 other beneficiaries is an inhabitant of the common-  
12 wealth or has derived his appointment from a court  
13 of the commonwealth, shall be subject to the taxes  
14 imposed by this chapter to the extent that the persons  
15 to which the income from the trust is payable or for  
16 whose benefit it is accumulated are inhabitants of  
17 the commonwealth, except income taxable under sec-  
18 tion five A. Income so received and accumulated for  
19 unborn or unascertained persons or persons with un-  
20 certain interests shall be taxed as if accumulated for  
21 the benefit of a non-inhabitant.

1 SECTION 10. Said chapter sixty-two is hereby  
2 further amended by striking out section seventeen  
3 and inserting in place thereof the following:—

4 *Section 17.* Partnerships doing business in the  
5 commonwealth shall be subject to the taxes imposed  
6 by this chapter. If any of the members of the part-  
7 nership are not inhabitants of the commonwealth,  
8 only so much of the income thereof, except income  
9 taxable under section five A, as is proportionate to the  
10 aggregate interest of the partners who are inhabit-  
11 ants of the commonwealth in the profits of the part-  
12 nership shall be taxed. The tax shall be assessed on  
13 such partnership by the name by which it does busi-  
14 ness and the partners shall not be taxed with respect  
15 to the income derived by them from such a part-  
16 nership.

1 SECTION 11. Said chapter sixty-two is hereby  
2 further amended by striking out section eighteen and  
3 inserting in place thereof the following:—

4 *Section 18.* A partnership, in computing its tax-  
5 able income, may deduct at the request of any partner  
6 the whole or any part of the amount of the exemp-  
7 tions to which such partner may be entitled under  
8 sections five and eight and of the deduction for family  
9 to which he may be entitled under clause (h) of sec-  
10 tion six; provided the commissioner is satisfied by  
11 an affidavit from the partner for whose benefit any  
12 such exemption or deduction is claimed, or otherwise,  
13 that such partner is not allowed, in all partnerships  
14 in which he may be a partner and on account of all  
15 income on which he is liable to taxation under this  
16 chapter, more than the total amount of such exemp-

17 tions and deductions to which he is entitled. Each  
18 amount so deducted shall be set forth in the return  
19 of the partnership, and the partner requesting the  
20 same shall be allowed no further exemption or deduc-  
21 tion on account thereof.

1 SECTION 12. Section twenty-two of said chapter  
2 sixty-two is hereby amended by adding at the end  
3 thereof the following paragraph:—

4 Every person, not an inhabitant of the common-  
5 wealth, and every partnership having a usual place of  
6 business in the commonwealth whose annual income  
7 from profession, employment, trade or business  
8 earned in the commonwealth exceeds two thousand  
9 dollars, shall annually make a return of such income.

1 SECTION 13. Section thirty-three of said chapter  
2 sixty-two, as last amended by chapter one hundred  
3 and eighty-six of the acts of nineteen hundred and  
4 thirty-two, is hereby further amended by striking out  
5 the first paragraph and inserting in place thereof the  
6 following:—

7 Every employer, being an inhabitant of the com-  
8 monwealth or having a place of business therein, shall  
9 annually file with the commissioner a return in such  
10 form as he shall from time to time prescribe, giving  
11 the names and addresses of all regular employees,  
12 whether or not residing in the commonwealth to  
13 whom said employer has paid wages, salary or other  
14 compensation in excess of two thousand dollars dur-  
15 ing the preceding calendar year, and may give the  
16 amount paid to each. In any individual case, upon  
17 request of the commissioner, the exact wages, salary  
18 or other compensation shall be stated.

1 SECTION 14. Said section sixty-two is hereby  
2 further amended by inserting after section thirty-five  
3 the following new section: —

4 *Section 35A.* Whenever a taxpayer other than a  
5 resident of the commonwealth has become liable to  
6 income tax to the state or country where he resides  
7 upon his business income for the taxable year, derived  
8 from sources within the commonwealth and subject  
9 to taxation under this chapter, the commissioner shall  
10 credit the amount of income tax payable by him  
11 under this chapter with such proportion of the tax so  
12 payable by him to the state or country where he  
13 resides as his income subject to taxation under this  
14 chapter bears to his entire income upon which the  
15 tax so payable to such other state or country was  
16 imposed; provided, that such credit shall be allowed  
17 only if the laws of said state or country: (1) grant a  
18 substantially similar credit to residents of this com-  
19 monwealth subject to income tax under such laws, or  
20 (2) impose a tax upon the personal incomes of its resi-  
21 dents derived from sources in this commonwealth and  
22 exempt from taxation the personal incomes of resi-  
23 dents of this commonwealth. No credit shall be  
24 allowed against the amount of the tax on any income  
25 taxable under this chapter which is exempt from  
26 taxation under the laws of such other state or country.

1 SECTION 15. This act shall apply to income re-  
2 ceived during the years nineteen hundred and thirty-  
3 nine and thereafter.