

SENATE No. 1322

By Mr. Walsh, a petition (accompanied by bill, Senate, No. 1322) of Joseph B. Walsh for legislation to provide for the fair taxation of major oil companies. Taxation.

The Commonwealth of Massachusetts

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

AN ACT TO PROVIDE FOR THE FAIR TAXATION OF MAJOR OIL COMPANIES.

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

1 Chapter sixty-three of the General Laws is hereby amend-
2 ed by inserting after section eighty-one the following: —

3 *Section 82.* An excise is hereby imposed by this section and
4 sections eighty-three through eighty-six, inclusive, on petro-
5 leum refining corporations which do business in the Common-
6 wealth. It is hereby determined and found that the excise im-
7 posed by these sections will provide the most equitable and
8 appropriate measure of an excise imposed and measured by
9 the earnings of such corporations, and that such excise will
10 fairly and reasonably reflect an appropriate allocation of the
11 earnings of such corporations attributable to their business
12 activity in the Commonwealth.

13 *Section 83. Definitions.* When used in this section and sec-
14 tions eighty-four to eighty-six, inclusive, the following terms
15 shall have the following meanings: —

16 (a) "Petroleum refining corporation", any domestic or for-
17 eign corporation which engages in whole or in part in the
18 business of refining any form of petroleum into any petroleum
19 product or products. Every corporation or other business en-
20 tity which is related to such a petroleum refining corporation
21 by common ownership or control and which engages in any
22 part of the business of petroleum production or distribution
23 and which is organized or incorporated under the laws of any
24 of the United States shall be treated as part of a single petro-
25 leum refining corporation for purposes of determining the

26 combined gross income, net income, and apportionment of in-
27 come of such combined corporation.

28 (b) "Gross income", gross income as defined under the pro-
29 visions of the Federal Internal Revenue Code, as amended and
30 in effect for the taxable year, plus the interest from bonds,
31 notes and evidences of indebtedness of any state, including
32 this commonwealth.

33 (c) "Net income", gross income less the deductions, but not
34 credits, allowable under the provisions of the Federal Internal
35 Revenue Code, as amended and in effect for the taxable year.
36 Deductions with respect to the following items, however, shall
37 not be allowed: —

38 (1) dividends received

39 (2) losses sustained in other taxable years

40 (3) taxes on or measured by income, franchise taxes meas-
41 ured by net income, franchise taxes for the privilege of doing
42 business and capital stock taxes imposed by any state, and

43 (4) intangible drilling costs, including ordinary loss deduc-
44 tions taken with respect to a nonproductive well.

45 (d) "Taxable year", any fiscal or calendar year or period
46 for which the corporation is required to make a return to the
47 federal government; provided, however, that in any case in
48 which the effective date or applicability of any provision of
49 this chapter is expressed in terms of taxable years beginning
50 or ending with reference to a specified date which is the first
51 or last day of a month, with respect to a corporation which
52 has elected to make a return to the federal government on
53 the basis of an annual period which varies from fifty-two to
54 fifty-three weeks, its taxable year shall be treated as begin-
55 ning with the first day of the calendar month beginning near-
56 est to the first day of such taxable year, or as ending with the
57 last day of the calendar month ending nearest to the last day
58 of such taxable year.

59 *Section 84. Imposition of excise.* Every petroleum refining
60 corporation exercising its charter, or qualified to do business
61 or actually doing business in the commonwealth, or owning
62 or using any part or all of its capital, plant or any other prop-
63 erty in the commonwealth, shall pay, on account of each tax-

64 able year, an excise equal to nine and one half per cent of its
65 net income determined to be taxable in accordance with the
66 provisions of this chapter.

67 The excise levied herein is due and payable on any one or
68 all of the following alternative incidents: —

69 (1) The qualification to carry on or do business in this
70 state or the actual doing of business with the commonwealth
71 in a corporate form. The term "doing business" as used here-
72 in shall mean and include each and every act, power, right,
73 privilege, or immunity exercised or enjoyed in the common-
74 wealth, as an incident to or by virtue of the powers and privi-
75 leges acquired by the nature of such organizations, as well as,
76 the buying, selling, or procuring of services or property.

77 (2) The exercising of a corporation's charter or the con-
78 tinuance of its charter within the commonwealth.

79 (3) The owning or using any part or all of its capital, plant
80 or other property in the commonwealth in a corporate ca-
81 pacity.

82 It is the purpose of this section to require the payment of
83 this excise to the commonwealth by petroleum refining cor-
84 porations for the right granted by the laws of the common-
85 wealth to exist as such an organization or for the enjoyment
86 under the protection of the laws of the commonwealth, of the
87 powers, rights, privileges and immunities derived by reason
88 of the corporate form of existence and operation.

89 *Section 85. Allocation of net income.* The commissioner
90 shall determine the part of the net income of a petroleum re-
91 fining corporation derived from business carried on within the
92 commonwealth as follows: —

93 (a) The combined net income of those corporations or other
94 entities treated as a single petroleum refining corporation as
95 defined in section eighty-three of this chapter shall constitute
96 the taxable net income of such corporation and shall be ap-
97 portioned to this commonwealth by multiplying its taxable net
98 income by a fraction, the numerator of which is the property
99 factor plus the payroll factor plus twice the sales factor, and
100 the denominator of which is four.

101 (b) The property factor, sales factor and payroll factor

102 shall be determined as provided by sub-sections (d), (e), (f)
103 and (g) of section thirty-eight of this chapter.

104 (c) If a corporation maintains an office, warehouse or other
105 place of business in a state other than this commonwealth,
106 for the purpose of reducing its tax under this chapter, the
107 commissioner shall, in determining the amount of taxable net
108 income apportionable to this commonwealth, adjust any factor
109 to properly reflect the amount which the factor ought rea-
110 sonably to assign this commonwealth.

111 (d) In the case of a combined or consolidated return by a
112 combined petroleum refining corporation as defined by sec-
113 tion eighty-three of this chapter, the commissioner shall ap-
114 portion the taxable net income, so far as practicable, in ac-
115 cordance with the apportionment rules set forth in this sec-
116 tion.

117 *Section 86. Exemption from excise on business corpora-*
118 *tions.* Any corporation which is subject to and pays the ex-
119 cise imposed by section eighty-four of this chapter with re-
120 spect to any taxable year shall, with respect to such taxable
121 year, be exempt from the excises imposed by sections thirty-
122 two, thirty-eight B, thirty-eight C, or thirty-nine of this chap-
123 ter.