

By Mr. Piro of Somerville, petition of Vincent J. Piro and John J. Long relative to taxation of life insurance companies. Taxation.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Seventy-Seven.

AN ACT RELATIVE TO TAXATION OF LIFE INSURANCE 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 SECTION 1. The second paragraph of section 20 of chapter  
2 63 of the General Laws, as most recently amended by section 24  
3 of chapter 415 of the acts of 1976, is hereby further amended by  
4 striking out the second through eighth sentences thereof,  
5 inclusive.

1 SECTION 2. Section 22 of said chapter 63, as most recently  
2 amended by section 45 of chapter 698 of the acts of 1966, is  
3 hereby further amended by adding, after the words, as they first  
4 appear in said section, "with respect to", the words: — amounts  
5 received as consideration for annuity contracts and

1 SECTION 3. Section 22A of said chapter 63, as inserted by  
2 section 27 of chapter 555 of the acts of 1971, is hereby amended  
3 by adding, after the words, "chapter one hundred and seventy-  
4 five", a comma and the words, followed by a comma: — except  
5 life insurance companies as defined by section one hundred and  
6 eighteen of chapter one hundred and seventy-five which are also  
7 life insurance companies as defined under subsection (a) of  
8 section eight hundred and one of the Federal Internal Revenue  
9 Code, as amended and in effect for the taxable year.

1 SECTION 4. Said chapter 63 is hereby further amended by  
2 inserting after section 22A, as amended by section 3 of this act,  
3 the following section: —

4     *Section 22B.* (1) Every domestic life insurance company not  
5 subject to tax under section twenty-two A of this chapter shall  
6 annually pay an investment privilege excise based on its net  
7 investment income as adjusted and as apportioned to the  
8 commonwealth in accordance with this section at the rate  
9 specified in subdivision (2) of subsection (a) of section thirty-two  
10 of Chapter sixty-three. Any surtax applicable to the excise  
11 imposed under section thirty-two of Chapter sixty-three shall be  
12 applicable to the investment privilege excise imposed hereunder.

13     (2) As used in this section, "net investment income" means  
14 taxable investment income as defined by paragraph two of  
15 subsection (a) of section eight hundred and four of the Federal  
16 Internal Revenue Code, as amended and in effect for the taxable  
17 year. Deductions or exclusions to the extent included therein  
18 shall not be allowed with respect to the following items:

19     (a) dividends received,

20     (b) taxes on or measured by investment income, franchise taxes  
21 measured by net investment income, franchise taxes for the  
22 privilege of doing business and capital stock taxes imposed by  
23 any state, and

24     (c) interest from bonds, notes, and evidence of indebtedness of  
25 any state, other than this commonwealth.

26     (3) Net investment income, as defined above shall be adjusted  
27 as follows:

28     (a) Dividends included therein shall be deducted other than  
29 dividends from or on account of the ownership of:

30     (i) shares in a corporate trust, as defined in section one of  
31 chapter sixty-two, engaged in business in the commonwealth, or

32     (ii) deemed distributions and actual distributions, except actual  
33 distributions out of previously taxed income, from a DISC which  
34 is not a wholly-owned DISC, or

35     (iii) any class of stock in a foreign corporation as defined in  
36 section thirty of Chapter sixty-three, if the insurer owns less than  
37 fifteen percent of the voting stock of the corporation paying such  
38 dividend.

39     (b) Charitable contributions, as defined by section one hundred  
40 and seventy of the Federal Internal Revenue Code shall be  
41 deducted.

42     (4) Net investment income, as adjusted by this section, shall be  
43 apportioned to this commonwealth by multiplying such income

44 by the lesser of twenty percent or the percentage which is the sum  
45 of ninety percent of the insurer's premium factor, and ten percent  
46 of the insurer's payroll factor, as hereinafter defined:

47 (a) The premium factor is a fraction, the numerator of which is  
48 the sum of life insurance premiums, annuity considerations and  
49 accident and health premiums received during the taxable year  
50 with respect to direct business in the commonwealth, and in  
51 addition all such life insurance premiums, annuity considerations  
52 and accident and health premiums received during the taxable  
53 year with respect to direct business in other jurisdictions unless  
54 the insured at the time of payment of the premiums therefor is a  
55 resident of a state or county in which such company is subject to  
56 an insurance excise. The denominator of which is the sum of all  
57 life insurance premiums, annuity considerations and accident and  
58 health premiums received during the taxable year with respect to  
59 direct business, exclusive in each case of premiums and annuity  
60 considerations waived, dividends applied to shorten endowment  
61 or premium paying periods, and dividends applied to purchase  
62 paid-up additions and annuities.

63 (b) The payroll factor is a fraction, the numerator of which is  
64 the compensation paid in this commonwealth during the taxable  
65 year by the insurer and the denominator of which is total  
66 compensation paid everywhere during the taxable year. As used  
67 in this section, "compensation" means wages, salaries, com-  
68 missions and any other form of remuneration paid to employees  
69 for personal services and all commissions for the sale of insurance  
70 paid to persons whether or not employees of the insurer. The  
71 determination of compensation paid in this commonwealth shall  
72 be made in accordance with the provisions of subdivisions (1), (2)  
73 and (3) of subsection (e) of section thirty-eight of this chapter.

1 SECTION 5. Said chapter 63 is hereby further amended by  
2 inserting after section 22B, as inserted by section 4 of this act, the  
3 following section:—

4 *Section 22C.* The total tax imposed under sections twenty,  
5 twenty-two and twenty-two B of this chapter for a taxable year,  
6 and payable by an insurer subject to said section twenty-two B,  
7 shall not exceed an amount equal to two and sixty-five one  
8 hundredths percent of such insurer's premiums taxable for such  
9 taxable year under said sections twenty and twenty-two.

1 SECTION 6. Said chapter 63 is hereby further amended by  
2 inserting after section 22C, as inserted by section 5 of this act, the  
3 following section: —

4 *Section 22D.* A domestic life insurance company subject to the  
5 investment privilege excise imposed by section twenty-two B of  
6 this chapter, having admitted assets of two hundred million  
7 dollars or less at the close of a taxable year, shall be allowed a  
8 credit against such excise in the amount of twenty thousand  
9 dollars. Any such company, whose admitted assets at the close of  
10 a taxable year are in excess of two hundred million dollars, shall  
11 be allowed a credit against such excise in the amount of twenty  
12 thousand dollars, reduced, pro rata, by five hundred dollars for  
13 each one million dollars by which value of the admitted assets of  
14 such company at any year end exceeds two hundred million  
15 dollars. For purposes of this section, assets shall be valued by the  
16 commissioner in accordance with standards established with  
17 respect to annual statements under chapter one hundred and  
18 seventy-five of the General Laws.

1 SECTION 7. Section 24A of said chapter sixty-three as  
2 inserted by section thirty-one of chapter 555 of the acts of 1971 is  
3 hereby amended by adding the following after the phrase "shall  
4 not apply to insurance companies" as that phrase first appears in  
5 said section 24A of chapter sixty-three, a comma and the words,  
6 followed by a comma: — other than life insurance companies as  
7 defined by section one hundred and eighteen of chapter one  
8 hundred and seventy-five, which are also life insurance companies  
9 as defined under subsection (a) of section eight hundred and one  
10 of the Federal Internal Revenue code as amended and in effect for  
11 the taxable year authorized to transact business in the com-  
12 monwealth.

1 SECTION 8. Notwithstanding the provisions of subsection (e)  
2 of section twelve of chapter 62C of the General Laws, if for any  
3 taxable year the time for filing an insurance company's Federal  
4 income tax return has been extended by the Secretary of the  
5 Treasury or his delegate, the time for filing the return required  
6 under said section shall likewise be extended by the commissioner  
7 provided that notice has been given to the commissioner and  
8 provided further that such company pays on or before March  
9 fifteenth, the amount of tax reasonably estimated to be due.

1 SECTION 9. Section 2 of chapter 531 of the acts of 1943, as  
2 most recently amended by section 5 of chapter 558 of the acts of  
3 1960, is hereby further amended by adding after the words, as  
4 they first appear, "to pay a premium excise", a comma and the  
5 words, following by a comma: — computed without regard to  
6 amounts received as consideration for annuity contracts; and by  
7 striking out the second sentence thereof and inserting in its place  
8 the following sentence: — Said excise, computed without regard  
9 to the net value of annuity contracts, shall be paid for each year  
10 until the year for which the amount thereof equals or exceeds the  
11 amount of the premium excise imposed by said section twenty,  
12 computed without regard to amounts received as consideration  
13 for annuity contracts, as amended by section one of this act, and  
14 for that year and annually thereafter such company shall pay an  
15 excise on the premium basis, computed without regard to  
16 amounts received as consideration for annuity contracts.

1 SECTION 10. Notwithstanding the provisions of section  
2 eighteen of chapter five hundred and forty-six of the acts of  
3 nineteen hundred and sixty-nine, the surtax imposed by said  
4 section shall not apply to taxes imposed by section twenty,  
5 twenty-two, twenty-two C and twenty-three of chapter sixty-three  
6 of the General Laws and under the provisions of chapter five  
7 hundred and thirty-one of the acts of nineteen hundred and forty-  
8 three upon life insurance companies, as defined by section one  
9 hundred and eighteen of chapter one hundred and seventy-five of  
10 the General Laws, which are also life insurance companies as  
11 defined under subsection (a) of section eight hundred and one of  
12 the Federal Internal Revenue Code as amended and in effect for  
13 the taxable year.

1 SECTION 11. For the taxable year ending December thirty-  
2 first, nineteen hundred and seventy-seven, in addition to the  
3 excise payable under section twenty-two B of chapter sixty-three,  
4 as inserted by section four of this act, an insurer subject to said  
5 section twenty-two B, and having admitted assets at year end of  
6 one billion dollars or more as valued by the commissioner in  
7 accordance with standards established with respect to annual  
8 statements for such year under chapter one hundred and seventy-  
9 five of the General Laws, shall pay an additional investment

10 privilege tax of two times the amount of its excise payable for  
11 such year under said section twenty-two B. For the taxable year  
12 ending December thirty-first, nineteen hundred and seventy-  
13 eight, such additional investment privilege tax shall be equal to  
14 one times the amount of the excise payable for such year under  
15 said section twenty-two B by the insurer.

1 SECTION 12. For the taxable year ending December thirty-  
2 first, nineteen hundred and seventy-seven, in addition to the  
3 excise payable under section twenty-two B of chapter sixty-three,  
4 as inserted by section four of this act, an insurer subject to said  
5 section twenty-two B, and having admitted assets of more than  
6 two hundred million but less than one billion dollars, as valued by  
7 the commissioner in accordance with standards established with  
8 respect to annual statements for such year under chapter one  
9 hundred and seventy-five of the General Laws shall pay an  
10 additional investment privilege excise equal to one and one-half  
11 of the amount of the excise payable for such year under said  
12 section twenty-two B by the insurer. For the taxable year ending  
13 December thirty-first, nineteen hundred and seventy-eight, such  
14 additional investment privilege tax shall be three-fourths of the  
15 amount of the excise payable for such year under said section  
16 twenty-two B of the insurer.

1 SECTION 13. For the taxable years ending December thirty-  
2 first, nineteen hundred and seventy-seven and nineteen hundred  
3 and seventy-eight, an insurer subject to Section 22B of Chapter 63  
4 and having admitted assets as described in section twelve of this  
5 act shall be allowed a credit against any premium taxes, but not in  
6 excess thereof, payable under sections twenty and twenty-two of  
7 chapter sixty-three, as amended by sections one and two of this  
8 act or Section 2 of Chapter 531 of the Acts of 1943 as amended by  
9 section 9 of this act. The amount of such credit shall be equal to  
10 the amount, if any, by which the total taxes payable for the  
11 taxable year by such insurer under section twenty-two B of said  
12 chapter sixty-three, as inserted by section four of this act, and  
13 under section twelve of this act exceed a percentage of the amount  
14 of tax the insurer paid under section twenty-two A of said chapter  
15 sixty-three, as appearing in section twenty-seven of Chapter 555

16 of the acts of nineteen hundred and seventy-one, for the taxable  
17 year ending December thirty-first, nineteen hundred and seventy-  
18 six. The percentage of such tax shall be eighty percent for the  
19 taxable year ending December thirty-first, nineteen hundred and  
20 seventy-seven, and sixty percent for the taxable year ending  
21 December thirty-first, nineteen hundred and seventy-eight.

1 SECTION 14. Notwithstanding any other provision of  
2 Chapter sixty-three of the General Laws domestic life insurance  
3 companies subject to the excise imposed under section twenty-  
4 two B of said chapter may elect an adjusted basis for each item of  
5 property held on December thirty-first, nineteen hundred and  
6 seventy-six equal to the greater of the fair market value of such  
7 property on said date or the federal adjusted basis of such  
8 property as defined in section one thousand eleven of the  
9 Federal Internal Revenue Code on such date. The election  
10 provided herein shall be made irrevocably on the return filed by  
11 such company for its taxable year ending on December thirty-  
12 first, nineteen hundred and seventy-seven. Domestic life in-  
13 surance companies so electing shall compute their net investment  
14 income under section twenty-two B of said Chapter sixty-three by  
15 substituting the basis elected hereunder for their federal adjusted  
16 basis and by eliminating capital losses sustained in other taxable  
17 years.

1 SECTION 15. Subsection (e) of section 12 of Chapter 62C as  
2 it appears in section 22 of Chapter 415 of the Acts of 1976 is  
3 amended by inserting after the words "twenty-two A", a comma  
4 and the words "twenty-two B."

1 SECTION 16. All provisions of chapter sixty-two C relative to  
2 the assessment, collection, payment, abatement, verification and  
3 administration of taxes, including penalties, shall so far as  
4 pertinent be applicable to the taxes imposed and credits and  
5 deductions allowed under sections eleven, twelve and thirteen of  
6 this act.

1 SECTION 17. If any provision, section or subsection of this  
2 act or the application thereof shall be held to be invalid or  
3 unconstitutional by any court of competent jurisdiction, such  
4 invalidity or unconstitutionality shall not be construed to affect

5 the validity or constitutionality of any of the remaining  
6 provisions, sections or subsections of this act or their application  
7 to persons or circumstances other than those as to which it is held  
8 invalid. It is hereby declared to be the legislative intent that such  
9 remaining provisions, sections or subsections would have been  
10 adopted had such invalid or unconstitutional provision, section  
11 or subsection not been included therein.

1 SECTION 18. Sections one through four, inclusive, and  
2 sections six through eighteen, inclusive, of this act shall apply to  
3 taxable years commencing after December thirty-first, nineteen  
4 hundred and seventy-six. Section five of this act shall apply to  
5 taxable years commencing after December thirty-first, nineteen  
6 hundred and seventy-nine.