Chapter 16: State and Local Taxation

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A. Administration

§16.1. The State Tax Commission. So far as the state tax scene is concerned, 1956 may be referred to as the year the regulations reappeared in the Commonwealth's tax law.\(^1\) Published regulations are an essential part of the proper administration of tax law. By setting out the tax administrator's official interpretation and explanation of the tax statutes, uniform treatment of taxpayers is assured.

The first regulations to be issued concern the personal income tax. Regulations were promulgated on the recently enacted nonresident income tax, on basis for determining gain or loss, and on interest and dividends.

Note should also be taken of Commissioner Dane's excellent innovation of publishing, immediately after the legislative year, the Department's brief statement of the meaning of each of the year's new tax laws. This undertaking by the Commissioner has saved practitioners countless hours and has gone far to make known and understood the many tax changes made by the General Court during the year.

A procedural manual on the inheritance tax has been under preparation. The need for this is great because of the wide lack of knowledge by nonspecialists as to the operation of the tax. It is not contemplated that regulations will be promulgated under the inheritance tax because of the expectation that our inheritance tax may be replaced by a federal type estate tax, but the manual will serve in the place of regulations. It will afford practitioners who are not experts on the inheritance tax a handbook of procedures to be followed.

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§16.1. \(^1\) Regulations under the personal income tax and corporation excise tax were canceled as of March 1, 1941, by the then Commissioner of Corporations and Taxation. From that date until 1956, Massachusetts has had no tax regulations. The present regulations are not numbered.
B. The Personal Income Tax

§16.2. Persons subject to tax: Nonresidents. Comprehensive regulations have been promulgated dealing with the nonresident income tax imposed by the Acts of 1955, c. 780. Issued in final approved form after hearings on the tentative drafts before the State Tax Commission, they cover effective date, persons subject to tax, what income is and is not subject to tax, rules for allocation of income to Massachusetts, exemptions and deductions, partnerships with nonresident partners, trusts under the wills of nonresidents, and returns. "The tax applies to income derived from professions, employment, trade or business carried on within Massachusetts." Working on company business at his out-of-state home on weekends and occasional travel to other parts of the country on company business do not relieve the nonresident corporate executive's full salary from Massachusetts taxation, so long as his full-time job is in Massachusetts.

The regulations find that a trade, profession, or business is "carried on" within Massachusetts if there is a place of business in the state where the nonresident's "affairs are systematically and regularly carried on, notwithstanding the occasional consummation of isolated transactions outside Massachusetts." Examples of a place of business are desk room, an office, shop, store, warehouse, factory, or an agency. Gains from the sale of Massachusetts real estate and personal property having a situs in Massachusetts are included in taxable business income, as are also rentals from such personal property. Patent license royalties paid to a nonresident for the right to the use of an invention in Massachusetts constitute income attributable to sources within Massachusetts subject to the tax. The tax does not apply to annuities, interest, dividends, or gains from the sale of intangibles, or rents from real estate which are not taxable to residents. Rules provide for the allocation of income to Massachusetts in cases where an individual derives income from sources both within and without Massachusetts. The three-factor formula of Massachusetts wages to total wages, Massachusetts property to total property, and Massachusetts sales to total sales is used to allocate business income derived from more than one state. Professional persons must include in gross income their fees or compensation for services performed in Massachusetts for their clients, even though not regularly engaged in carrying on their profession in Massachusetts.

The effective date of the regulations was June 15, 1956.

§16.3. Taxable income: Dividends. The Acts of 1956, c. 597 introduce into Massachusetts law the definition of a dividend appearing in Section 316(a) of the Internal Revenue Code of 1954. A distribution


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of money or property by a corporation will be a taxable dividend to the extent that the corporation has accumulated either (1) earnings or profits as of the beginning of the year of distribution, or (2) earnings or profits for the year in which the dividend is paid. Every distribution is considered as made out of earnings and profits to the extent that there are such, and out of the most recently accumulated earnings and profits. Thus, as in the case of the federal income tax, a dividend will be taxable despite an operating deficit in accumulated earnings and profits so long as there are current earnings and profits in the year of the dividend. Likewise, it is the status of the current year’s earnings or profits at the end of the year that is significant and not the status at the date the dividend is either declared or paid. Prior to this change a dividend could not be taxable in Massachusetts if there was a deficit in earned surplus.

Unlike the Internal Revenue Code definition, the new Massachusetts statute does not limit the fund of accumulated earnings or profits, as a source of taxable dividends, to those accumulated since the enactment of the income tax law. The reason for this is to be found in Commissioner v. Putnam,2 where the Supreme Judicial Court held taxable distributions of profits accumulated before the enactment of the Massachusetts income tax law.

The accomplishments from this legislation are several. A well tried and tested definition of dividends is adopted where practically no definition existed before. With minor exceptions, a dividend taxable for the federal income tax is now taxable for the Massachusetts tax.3 This simplifies not only the taxpayer’s determination, but also the Commissioner’s enforcement task. Chapter 597 is intended to close the stock dividend-capitalized earnings loophole whereby earned surplus was capitalized by the issuance of stock dividends so as no longer to be available for the issuance of a taxable dividend.4 Once all the earned surplus had been so capitalized, distributions of cash would not be taxable. This was understood as the doctrine of Commissioner v. Filoon5 and Commissioner v. Church.6

The regulations7 provide that a distribution of property8 as a divi-

3 This is not one of the areas where differences in the basic structures of the federal and Massachusetts income taxes make divergent rules desirable. For a case in such an area, see Commissioner v. Williston, 315 Mass. 648, 54 N.E.2d 43 (1941), involving the assignment of income. The Supreme Judicial Court refrained from following Helvering v. Horst, 311 U.S. 112, 61 Sup. Ct. 144, 85 L. Ed. 75 (1940), partly because Massachusetts does not have a graduated income tax.
5 310 Mass. 374, 38 N.E.2d 693 (1941).
7 Final regulations on interest and dividends were promulgated, effective September 28, 1956.
8 “Property” would include stock of corporations other than the dividend-declaring payor corporation.
dend is a taxable dividend in the amount of the fair market value of
the property at the time of distribution to the extent of available earn­
ings and profits. They further provide that such a dividend of prop­
erty which has appreciated in value in the hands of the corporation
will not increase the earnings and profits of the corporation.9

Stock dividends paid in newly issued stock of the payor corporation
and stock rights are not taxable,10 but a dividend paid in treasury
stock is taxable at its fair market value. A dividend paid in the payor's
newly issued stock is taxable if the stockholder had an election or other
right to receive payment in money or property.

Distributions in excess of the combined funds of accumulated earn­
ings and profits and earnings and profits of the year of distribution are
not dividends, but distributions of capital. The regulations provide
that such distributions will reduce the basis of the stock and, when
the basis has been reduced to zero, will be treated as amounts received
on the sale or exchange of the stock.

§16.4. Taxable income: Conversion of shares in statutory merger.
The recognized need for legislation of the federal type deferring the
tax on a gain resulting from the exchange of stock in corporate mergers
was pointed up by the decision of the Supreme Judicial Court in
Madden v. State Tax Commission.1 Massachusetts Corporation A was
merged into Pennsylvania Corporation B under the merger statutes
of both states, with Corporation B the surviving corporation. The
taxpayer, a Massachusetts shareholder of Corporation A, was held to
have realized taxable gain from a “sale” of his shares, the gain being
the difference between the value of the B stock received and the price
originally paid for his stock in Corporation A. The intent to tax an
exchange as a sale was found from the provision of G.L., c. 62, §5(c)
deferring the tax on an “exchange” of shares in a reorganization where
the new shares “represent the same interest in the same assets.”2 A
statutory merger is a reorganization, but not the extremely narrow
type of one made “tax-free” by our present law. The exchange was
nonetheless an exchange because it was by operation of law.

§16.5. Taxable income: Interest. The regulations1 define interest
as “the compensation fixed by a lender and a borrower or allowed
by law for the use of money, or as damages for its detention.” Enum­
eration is made of both taxable and nontaxable interest. Among
other examples given of taxable interest are finance charges
“to the extent they are stated separately from the purchase price.” If life

185, 80 L. Ed. 155 (1935); Commissioner v. Hirshon Trust, 213 F.2d 523 (2d Cir.
1954), cert. denied, 348 U.S. 861, 862 (1954); Commissioner v. Estate of Godley, 213
10 For a discussion of “basis,” see §16.4 infra.

2 The word “exchange” is now added to the taxable transactions by Acts of 1955,
c. 635, §2.

§16.5. 1 Income tax regulations, effective June 15, 1956.
insurance is paid to the beneficiary in a stated number of periodic payments, as the result of either the beneficiary's or the insured's election, and the insurance company does not segregate the payments into principal and interest, the excess of the total amount receivable over the lump sum that would otherwise have been payable at the insured's death is to be reported as interest income ratably over the period of payments. This rule does not apply if the payments are to continue for the beneficiary's life rather than as a stated number of payments. In this latter situation, however, the payments are taxable as annuities.

§16.6. Accounting methods. The regulations adopt the federal principle of constructive receipt. Thus interest income is taxable to the cash basis taxpayer in the year when he has the unqualified right to receive it whether or not he exercises the right. An interest coupon payable December 15 is income in the year in which available even though the taxpayer does not present it for payment until the following January. An interest check mailed December 31, which reaches the taxpayer January 2 in the regular course of the mails, is income in the year actually received since it does not meet the test of constructive receipt. While an accrual basis lender is required to report discount as interest income ratably over the term of the loan, a cash basis lender reports the discount ratably if the note is payable in installments. Otherwise, he reports the discount as interest income in the year the note is paid.

§16.7. Basis for determining gain or loss. Regulations on the basis of property for determining gain or loss were issued in final form effective September 20, 1956. Under the statute, the basis of property acquired by gift prior to July 1, 1954, is the fair market value on the date acquired, while the basis of property acquired after June 30, 1954, is the lower of donor's basis or the fair market value at the date of the gift. The regulations add that the question of which rule applies turns on whether or not the gift was "completed" before or after the dividing date, and the "date acquired" means the date upon which the donor made an irrevocable completed gift.

These gift basis rules apply despite the fact the property may have been subject to inheritance tax at the donor's death as a gift in contemplation of death, or intended to take effect in possession or enjoyment after death. The gift basis rules apply to the donee's half interest where a donor transfers property he has purchased into a joint tenancy or tenancy in common with another. But the basis of property purchased by either spouse in a tenancy by the entirety is the cost when the purchase was made or the tenancy by the entirety created. Since a surviving joint owner does not acquire the property by bequest, devise, or inheritance, he does not acquire a new basis on the death of the other tenant. The basis of trust property is the donor's basis where the gift in trust is incomplete. Detailed rules are set out gov-

§16.7. 1 G.L., c. 62, §7.
Section 16.8

Deductions and exemptions. Individual income tax return computations are considerably simplified by the Acts of 1956, c. 517. The amendment in effect treats all individuals as though they were on an accrual basis with respect to the deduction for federal income tax. The deduction is changed to tax due on account of income received or accrued within the year. Hitherto, the deduction has been for federal income tax actually paid during the tax year. The federal pay-as-you-go system had complicated the deduction since the individual's tax payments during the year via withholding from wages and payments on the declaration of estimated tax are not the actual tax liability as shown on his return. The last estimated tax payment on January 15 of the following year and the payment made with the return on April 15 (or refund or credit claimed) had to be carried over as a part of the deduction on the next year's return. This alone was an annoyance and a possible source of failure to take one's full deductions. More complicating, however, was the effect of this on the limitation of the deduction to that portion of the federal tax attributable to business income. In order to determine the deductible portion of the federal tax where the taxpayer has both business and non-business income, the federal tax payment is multiplied by a fraction of which the numerator is the business income and the denominator is the federal return “adjusted gross income.” One such allocation fraction, based on the prior year's business income and the prior year's adjusted gross income, had to be applied to the year's payments on account of the prior year's tax (January 15 and April 15 balance paid with return), and a different fraction, based on the current year's business income and the
current year's adjusted gross income, had to be applied to the year's payments for the current year.

By basing the deduction on the amount of federal income tax due on account of business income received in the taxable year, the deduction becomes the tax as shown on the federal return for those with only business income and a portion of this figure for those with both business and non-business income. The federal tax return due April 15 must be completed before the Massachusetts tax return also due on that day in order to have the tax figure for use in the Massachusetts return.

The new law applies to taxable years beginning after December 31, 1955. Apparently the deduction is lost for that part of the 1955 federal tax paid on January 15 and April 15, 1956.

The deduction is increased by the amount of any deficiency in federal tax for a prior year actually paid within the year and decreased by any refund received during the year, to the extent that such deficiency or refund was attributable to business income. Since the basic deduction is now for the actual federal tax liability as shown on the return, the prior years' refunds or deficiencies taken into account are only those resulting from a change made or agreed to by the Internal Revenue Service in the liability shown on the original federal return, not those that merely correct the amounts paid on the estimated tax.

The Acts of 1956, c. 607 adds to the law a long-needed capital loss carry-over. Any excess of capital losses over gains from the sale (or other transaction) of stock or other intangibles will be carried forward for three years to reduce net capital gains from such transactions. The carry-over works in the same manner as the federal carry-over. The net loss is carried forward, until absorbed, to each of the succeeding three years in the order of succession, to reduce any excess of capital gains over losses from intangibles in those years. The first net capital losses available for the carry-over will be those arising in taxable years beginning after December 31, 1955.

Owners of ships and vessels "engaged in interstate or foreign carrying trade or engaged exclusively in fishing and documented and carrying 'papers' under the laws of the United States" are subject to local excise tax in a special manner under G.L., c. 59, §8. The owners of such ships and vessels have hitherto not been entitled to the deductions for depreciation under Section 6(b) for such ships and vessels and under Section 6(g) of Chapter 62 for 5 percent of their assessed value less mortgages. The Acts of 1956, c. 460 amends these sections so as to remove the exceptions and allow these deductions with respect to the owners of such vessels in the same manner as they are allowed to the owners of other business property. The change applies to taxable years beginning after December 31, 1956.

The Acts of 1956, c. 443 provides an additional exemption of $2,000 against earned income (from professions, employment, trade, or busi-
ness) for a taxpayer who is totally blind. A $2,000 exemption may also be taken against earned income on a joint return for a totally blind spouse whether or not the spouse has earned income. No part of this exemption, however, may be applied against other income (from annuities, interest, or dividends).

§16.9. Declaratory relief. Despite the exclusive remedy in the Appellate Tax Board provided by G.L., c. 62, §48, the Supreme Judicial Court, in Madden v. State Tax Commission\(^1\) entertained a bill for a declaratory judgment on the question of whether a stockholder realized a taxable gain as the result of the merger of his corporation into another. The more recent declaratory judgment law of Chapter 231A was stated to have been superimposed on the prior statute law, hence not limited by the exclusive remedy provision. In pointing out that it had been influenced by the novelty of the merger question and the large number of persons interested in the solution, the Court stated that it was not likely to permit the by-passing of the Appellate Tax Board in other cases. It remains to be seen where declaratory tax relief will be afforded. This would appear to indicate a development under the Massachusetts tax law not unlike that under the prohibition against injunctive relief in Section 7421(a) of the Internal Revenue Code. Despite the plain language of the statute, the United States Supreme Court has indicated that injunctive relief will not be denied if irreparable damage to the taxpayer would otherwise result, but the cases provide little guidance as to where such relief will lie.

§16.10. Administrative provisions. The antiquated requirement that the Commissioner post annual notices in every city and town of the requirement to file income tax returns was repealed by Acts of 1956, c. 128.

So long as the income tax was payable in two installments on March 1 and October 1, there was good sense in the requirement that the Commissioner give notice to each taxpayer of the amount of tax due. Such a notice makes no sense today when the entire tax is required to be paid at the time of filing the return. Acts of 1956, c. 300 therefore clarifies G.L., c. 62, §39 so as to require the sending of a notice only where there is an unpaid balance of tax due.

In order to have the period within which the Commissioner may make additional assessments coincide with the period within which the taxpayer may file an application for abatement, Acts of 1956, c. 510 changed the deadline for additional assessments to “three years from the last day for filing the return,” instead of “three years after September first of the year in which such return was due.”

Pursuant to the Commissioner’s Ruling 13,\(^1\) every person required to file Form 1, who claims non-business income exemption (Schedule B), tax reduction (Schedule D), or interest deduction (Schedule G), must report his income from all sources in Schedule B.

\(^1\) Issued December 1, 1955.

§16.11 STATE AND LOCAL TAXATION

The State Tax Commission is authorized by Acts of 1956, c. 380 to adopt the whole-dollar method in any regulations prescribed under Chapters 62 or 63. The provision substantially follows Section 6102 of the Internal Revenue Code of 1954. The regulations may allow the rounding off of items on the return form to the nearest dollar. No rounding off may be done as to items on subsidiary schedules, but the regulations may permit the rounding off on the return of the final amount carried to the return from the schedule.

The "temporary taxes" were again extended for a further year by Acts of 1956, c. 354. These included the additional 1 percent on earned income taxed under G.L., c. 62, §5(b) (for 1956 income), the additional 3 percent on gains from sale of intangibles taxed under G.L., c. 62, §5(c) (for 1956 income), and the 20 percent surtax on the basic Chapter 62 taxes as well as on aforementioned "temporary taxes" (on all taxes assessed in or on account of the calendar year 1957). The Acts of 1956, c. 523 extended the corresponding "temporary taxes" on income earned in Massachusetts by nonresidents and taxed under G.L., c. 62, §5(a).

C. TAXATION OF CORPORATIONS*

§16.11. The corporate excess defined. While the promulgation of regulations under the corporation excise tax will await completion of the personal income tax regulations in 1957, there was a most important change made administratively by the State Tax Commission as a part of the extensive revision of the tax return forms for filing on April 10, 1956.

The "fair value of the capital stock," the principal item in computing the corporate excess part of the return, is not defined in the statute. The Commissioner has for some time had two basic methods, the net worth method and the formula method, and has applied whichever method resulted in the higher value, but there was no publication of these criteria. Consequently, there was a custom of reviewing returns in advance with the Commissioner's office to adopt a method of arriving at the fair value of the capital stock that would meet with the Commissioner's approval. Informal agreements were made as to the method to be utilized by the corporation. The return forms\(^1\) for filing on April 10, 1956, and again for April 10, 1957, contain for the first time approved methods of valuing the capital stock. Now that methods are set out in the forms, conferences are no longer granted in advance to arrive at the acceptable valuation. In addition to the two methods on the forms, the instructions recognize that there are several methods of evaluating the capital stock. Hence

\* For a discussion of the taxation of corporations in Massachusetts, see Stuetzer, Massachusetts Taxation of Corporations (2d ed. 1957).

\(\text{§16.11. } 1 \text{ Form 355A for Domestic Business or Manufacturing Corporations and Form 355B for Foreign Business or Manufacturing Corporations.}\)
a space is provided on the return for an additional value derived in a manner different from the designated double method. If the corporation feels that the methods on the form do not reflect the fair value of the corporation's stock, the value believed to be correct may be placed on the return and a schedule attached stating the basis of arriving at the value.

It was announced that the Department of Corporations and Taxation would study the various methods submitted on returns and give each taxpayer an opportunity to be heard if it did not agree with the method utilized. The Commissioner had not completed the study and taken action at the end of the 1956 Survey year. He too may find that his own methods set out in the return forms result in less than a fair value and require a different method. This would appear to be a possibility in the case of an actively traded listed stock whose stock market price is considerably higher than the value derived by the methods on the return.

Stock value under the net worth method is the actual value of the assets diminished by the liabilities from the closing balance sheet of the corporation's taxable year. Under the formula method, the average of the net incomes per the books after federal taxes for the taxable year and the previous four years is multiplied by 10, i.e., capitalized at 10 percent. To this is added twice the value of the capital stock as determined by the net worth method and the aggregate is divided by three. The capital stock value is the larger of the values derived by the formula or net worth methods. Contrary to the prior practice, security income may not be eliminated from average net income. A further modification from the earlier unpublished formula method is the elimination of weighting of the net incomes before averaging, the more recent years having been given more weight under the former practice.

Another innovation accompanying the publication of the formula method applies to closely held corporations. Where the officers of the corporation directly or indirectly own 50 percent or more of the corporation's voting stock, average compensation of the officers for the tax year and the previous four years is added back to the average net income for the same five years. The average net income is then reduced by the smallest of the following, but not less than $5,000: (a) 50 percent of the five-year average net income as increased by the five-year average officers' salaries; (b) number of officers devoting full time to the business times $10,000; (c) average officers' compensation for the five years. This fixed limitation is an attempt to prevent the payment of dividends as salary, the motivation of which arises from the deductibility of compensation and non-deductibility of dividends as well as from the lower Massachusetts personal income tax rate on salary as against dividend income. In many instances, however, the limitations will prove arbitrary and it is well that the corporation may present a different method for computing the fair value of its capital stock.
§16.12. Taxable year and due dates for returns. Acts of 1956, c. 550 changes the due date for the filing of corporate excise tax returns of domestic and foreign businesses and manufacturing corporations to the fifteenth day of the third month following the close of their taxable year. The statute also changes the definition of "taxable year" to "any fiscal year or calendar year or period for which the corporation is required to make a return to the federal government." The new law applies to returns for taxable years ending after December 31, 1956. Since returns remain due on April 10, 1957, for years ending prior to January 31, 1957, the year of transition will see all corporations filing two returns in less than a twelve-month period, the corporation with the least spread between filing dates being the fiscal January 31 taxpayer, which files on April 10, 1957 for its 1956 year and on April 15, 1957 for its 1957 year.

Prior to the change, "taxable year" had been defined as "the fiscal or calendar year for which the corporation was required to make its last return to the federal government due prior to April first of the year in which the tax is to be assessed, or, if such return was for a fractional period, a full year, including and ending with such fractional period." This definition had resulted in either a tax avoidance or a double tax for a corporation which changed its accounting period. The anomalous situation that existed prior to the legislation was succinctly described as follows: There was a tax saving or avoidance where the change of accounting period was "such that both the federal return for the last full year under the old period and the federal return for the short period are due to be filed in the same twelve months extending from April 1 of one year to March 31 of the next year. But a duplication of the Massachusetts tax will result if the change is such that the federal return for the last full year under the old period is due to be filed prior to April 1 of a year, and the federal return for the short period is due to be filed after the same April 1." Under the new law where a short period federal return is filed as the result of the change in accounting period, a short period Massachusetts return is likewise filed and there is neither tax saving nor duplication of the tax on income. There is, however, a full year's tax on the corporate excess for the short period. There should be additional legislation providing for proration of the tax on the corporation excess measure for the short period.

The new law removes a hardship with respect to new corporations organized during the first three months of a year. In the past, such corporations have been required to file a return on April 10 of the year of their inception, almost immediately after their formation, and to

§16.12. 1 In addition to the Commissioner's Technical Discussion of 1956 Corporation Excise Tax Legislation, the change is set out in his Corporation Excise Tax Ruling No. 1, August 27, 1956, which also provided a schedule of return due dates.


3 G.L., c. 63, §30(6).

pay a tax either on the corporate excess or the tangible property measure. This early return is eliminated beginning with corporations formed in the first three months of 1958.\(^5\)

The method of designating the year of the return has been changed administratively to conform with the federal method. Thus, whereas the return was formerly designated by the year in which it was due, the return due on April 10, 1955, being called the 1955 return, the form for filing April 10, 1957, is called the 1956 return. There was no designation of year on the return for April 10, 1956, the transition year.

\section*{Administrative provisions.} Acts of 1956, c. 379 makes the entire tax payable in one installment on or before the due date of the return. As was done for the similar situation on the individual income tax, it also makes it clear that no notice is required from the Commissioner as to the amount of tax due, except where there is an unpaid balance. A second section of Chapter 379 likewise makes payable with the return the entire tax of corporations dealing exclusively in securities.

By Acts of 1956, c. 555, the additional Massachusetts tax resulting from a change made by the Internal Revenue Service in the federal net income of certain utility corporations was made self-assessing and payable at the time of filing the report of change. This made the change for utility corporations that the Acts of 1955, c. 613 had made for other corporations.

The whole-dollar method as provided for by Acts of 1956, c. 380 with respect to individual income tax returns was likewise by the same act made applicable in the same manner to corporate excise tax returns. That is, figures may be rounded off to the nearest dollar for items appearing on the returns.

The "temporary taxes" were again extended for a single year by the Acts of 1956, c. 354. These were: the additional 3 percent on net income of domestic and foreign business and manufacturing corporations taxable under G.L., c. 63, §§30-51 (except corporations dealing in securities taxable under Section 38B) on taxes levied in or on account of the calendar year 1957; the 20 percent surtax thereon and on all taxes levied under G.L., c. 63, §§30-60 on all taxes assessed in or on account of the calendar year 1957; the 20 percent surtax on all taxes levied under G.L., c. 63A (on organizations engaged in sale of alcoholic beverages) on taxes assessed in or on account of calendar year 1957; the maximum tax on national banks and trust companies increased from 6 to 8 percent on taxes assessed in calendar year 1957; and the additional 1 percent on gross premiums of certain domestic insurance companies on certain premiums and assessments made during 1956.

The Acts of 1956, c. 463 exempts from tax investments of savings bank deposits and of trust company savings departments in "bonds, notes, and certificates of indebtedness of any religious, charitable or

§16.14. Miscellaneous provisions. No significant legislation was enacted in the inheritance tax field during 1956. The Special Tax Commission introduced a bill which would replace the existing inheritance tax by a federal type estate tax, but the bill was withdrawn when changes made in it reduced the anticipated revenue yield appreciably below that presently realized from the inheritance tax.

The "temporary" 20 percent surtax was extended for a further year on all legacy and succession taxes imposed by G.L., c. 65 with respect to property or interests therein passing or accruing upon the death of persons who died during calendar year 1957.1

When the Acts of 1954, c. 595 introduced into the law for the first time an expiration period for the lien for unpaid inheritance taxes on the property of the decedent, they provided that July 1, 1956, would be the expiration date for liens which would have expired under the terms of the act prior to the effective date of the act, i.e. September 8, 1954. The expiration date was extended to July 1, 1958, by the Acts of 1956, c. 488.

A procedural manual on the inheritance tax has been under preparation during the year by the Department of Corporations and Taxation.2

E. PROPERTY TAXES

§16.15. Administrative provisions. Acts of 1956, c. 311 permits a person whose betterment assessment had previously been apportioned over a period of years to pay forthwith the entire amount or any portion thereof.

Acts of 1956, c. 397 adds the requirement that when an assessment is made on a person other than the owner of record, the name of the owner of record must be included in the assessment so as to identify the property for a tax lien.

§16.16. Exemptions. The Acts of 1956, c. 690 provides for taxation of United States real estate to the private lessee thereof where permission to tax is granted by Congress. This amends G.L., c. 59 so as to take advantage of federal statutes giving up immunity.1

Pursuant to Acts of 1956, c. 381, where the portion of the real estate owned and occupied by the qualified veteran as his residence is less

2 See §16.1 supra.

§16.16. 1 In Squantum Gardens, Inc. v. Nickerson, Mass. Superior Court, Suffolk County, May 7, 1956, it had been held that there was no provision in Massachusetts law under which the lessee of United States land could be assessed where it had subleased the property to others and, hence, was not the occupant.
than $2000 in value, the remainder of the exemption applies against the portion not occupied by him. It further requires evidence of a war-service-connected disability of not less than 10 percent as determined by the Veterans Administration or a branch of the armed forces.

Chapter 287 extended for one year, to October 1, 1956, the time within which qualified members of the armed forces or their families may claim exemption with respect to the 1955 tax.

Land provided by colleges and universities for trailers to house students was exempted from the law regulating trailer coach parks.2

F. Excise Taxes

§16.17. Cigarettes. Statutory compensation to dealers for collecting the cigarette tax was provided by Acts of 1956, c. 720. Beginning with taxes collected after January 1, 1957, the ratio of compensation was set at 2 percent for wholesalers, 1 percent for vending machine operators and 1/2 of 1 percent for chain stores. Compensation had theretofore been provided administratively, and the act provided that compensation for the years 1954 through 1956 be at the administratively established rates which were the same as the new statutory rates, except that wholesalers received 1 1/2 percent. To guarantee payment of the taxes collected, cigarette taxpayers were permitted by the Acts of 1956, c. 522 to deposit negotiable obligations of the United States or of the Commonwealth instead of a surety company bond. The "temporary" additional tax of 1/2 mill on each cigarette sold was extended for the further year beginning September 1, 1956.1 Cigarette retailers' licenses were made to run for two years instead of one, and the license fee was changed to two dollars instead of one dollar.2

§16.18. Gasoline. Effective July 1, 1957, the gasoline tax was increased by a half cent to a total of 5 1/2 cents per gallon.1 As an aid to the enforcement of the tax on special fuels such as diesel oil, the Acts of 1956, c. 619 permits collection of the tax from two additional parties, the wholesaler who supplies the filling station owner, and the ultimate consumer who has no storage facilities of his own. Hitherto, the tax could only be collected from the filling station operator or the consumer who purchased from a distributor and stored the oil in his own storage tanks for use in his vehicles. This act separates into three integrated chapters, (1) the taxation of special fuels such as diesel oil, G.L., c. 64E, (2) the taxation of gasoline and special fuels acquired outside Massachusetts and used by interstate motor carriers, G.L., c. 64F, and (3) the taxation of gasoline, G.L., c. 64A. Acts of 1956, c. 559 was enacted to remove a competitive disadvantage of the Massachusetts gasoline industry on sales for export to other states. It follows other states in permitting the tax-free sale of gasoline

§16.18 STATE AND LOCAL TAXATION

Beginning with 1956 purchases, Section 6420 of the Internal Revenue Code provides for refund of the federal gasoline tax paid on gasoline used on a farm for farming purposes. The Acts of 1956, c. 552, by affording corresponding relief from the Massachusetts tax to any farmer receiving such a refund of the federal gasoline tax, will, it is anticipated, avoid the difficulties faced by farmers in securing the benefit of G.L., c. 64A, §7, which provided for reimbursement of the gasoline tax to anyone using gasoline other than in the operation of motor vehicles on or over highways. The decision of the Supreme Judicial Court in Brady v. Long\(^2\) had held that a refund could not be based on estimates of non-highway use and apparently would find justification for refund only where the entire purchase was used other than on highways.