Chapter 17: State Taxation

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CHAPTER 17

State Taxation

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A. Administration

§17.1. State Tax Commission. The reorganization work of the State Tax Commission continued apace during the 1958 Survey year. Not only was there a substantial output of published rulings and regulations, but the Commission maintained its high batting average in recommending and securing the enactment of sound legislation. Stress was placed on the tax delinquency program. As a part of this drive, disclosure of corporate excise tax returns and inheritance tax returns to the United States Internal Revenue Service was made possible by legislation. The Service had been cooperating with the Commonwealth in supplying information, but prior legislation had limited reciprocity to personal income tax returns.

§17.2. Appeals procedure. The procedure on Appeals to the Appellate Tax Board from failure of the State Tax Commission to act on applications for abatement has been improved in three significant respects as the result of legislation recommended by the Commission. Prior to these changes, the State Tax Commission was given only three months from the date of filing to act on an application for abatement. If the Commission failed to act within that period, the application was deemed denied, and the taxpayer had to appeal to the Appellate Tax Board within a further three months or lose his rights. An exception was provided by which the taxpayer could give his written consent to the Commission's failure to act on his application within three months, but the statute made no mention of a right to withdraw the consent, thus leaving uncertainty as to the existence of such a right.

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§17.1. 1 Acts of 1958, cc. 305, 313, amending G.L., c. 63, §71A, and c. 65, §35, effective May 2 and 6, 1958, respectively.

§17.2. 1 Acts of 1958, c. 523, amending G.L., c. 58A, §6, applicable to tax returns required to be filed on and after January 1, 1958, to the records and written statements required with respect to such returns, and to the determination, abatements, refunds, and reimbursement of taxes attributable to such returns.
Since the right of appeal to the Appellate Tax Board rests on actual or constructive denial by the Commission of the application for abatement, there was a question of whether the filing of a written consent and failure of the Commission to act might not deprive the taxpayer of his right of appeal.

In the official "Technical Discussion" of this legislation, by Associate Commissioner John Dane, Jr., the Commission states that the increased volume of abatement applications made it impossible for the Commission to act on any substantial portion within the three-month limit, and that uncertainty as to right to withdraw consents was causing many to incur the expense of filing petitions to the Appellate Tax Board on cases that might have been settled administratively. The legislation extended from three to six months the time the Commission may hold the application before it is deemed denied. It specifically provided a right to withdraw the consent and provided that, where the consent is withdrawn after the six-month period, the application for abatement is deemed denied on the date of withdrawal. Finally, it extended from three to six months the time within which the taxpayer may appeal to the Appellate Tax Board from the date his application for abatement is deemed denied.

B. PERSONAL INCOME TAX

§17.3. Basis for determining gain or loss. The basis of property acquired by bequest, devise, or inheritance is its fair market value at the time of the decedent's death. In times of rising prices, inherited property thus receives the tax benefit of a stepped-up basis without tax cost. This same basis rule has now been applied to all property received in a manner which makes it subject to the inheritance tax, such as property transferred in a revocable trust created during the life of the grantor.1 The new rule also applies to property that would have been subject to inheritance tax if it had been in Massachusetts.

§17.4. Nontaxable income. Where life insurance is paid in a stated number of periodic instalments at the election of the beneficiary after the death of the insured, no part of the proceeds is taxable to the beneficiary as an interest element. In so holding in Allen v. State Tax Commission1 the Supreme Judicial Court followed the lead of the United States Court of Appeals for the Second Circuit 2 on the similar federal question, pointing out that it had required specific legislation in the Internal Revenue Code of 1954 to tax this actuarial interest element in the insurance instalment. The Commissioner acquiesced in the opinion in a published ruling,3 but has filed 1959 legislation to change the result.

§17.3. 1 Acts of 1958, c. 576, amending G.L., c. 62, §7, effective with respect to taxable years commencing after December 31, 1958.

2 Commissioner of Internal Revenue v. Pierce, 146 F.2d 388 (2d Cir. 1944).
3 Income Tax Ruling Number 21, Commissioner of Corporations and Taxation, July 11, 1958, no effective date given. It is understood that if a ruling has no
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When a regulated investment company retains net realized long term capital gains, each shareholder is required to include in his federal income tax return his pro-rata share of the gain. The shareholder is given a credit against his federal tax for the 25 percent tax paid on the gain by the company, and his basis in his investment company shares is increased by 75 percent of his pro-rata share of such capital gain. The Commissioner has ruled that the shareholder does not have any additional Massachusetts income by reason of this transaction even though the federal tax credit of 25 percent of the gain may exceed his federal tax liability from the gain. The ruling further provides that the shareholder’s basis in his investment company shares remains unchanged for Massachusetts income tax purposes.

The tax exemption for interest paid on savings bank deposits is extended to interest paid on deposits in credit unions.

§17.5. Tax-free exchanges. Regulations on sales and exchanges were promulgated in final form on July 8, 1958. They set out the very limited situations in which a tax-free reorganization exchange is recognized in Massachusetts. The basic requirement for nonrecognition of gain or loss is that the shares received pursuant to the exchange represent the same interest in the same assets as the shares surrendered. The requirement is met on the exchanges of stock in the following cases: (1) Merger of a subsidiary corporation into its parent where the parent has no other assets and the taxpayer exchanges minority shares in the subsidiary for proportionate shares in the parent; (2) Merger of a parent corporation into its wholly-owned subsidiary, whether or not the parent has other assets; (3) Merger of a parent corporation into its non-wholly-owned subsidiary where the parent has no other assets; (4) Transfer by a corporation of all of its assets to a new corporation in exchange for all of the new corporation’s stock, followed by distribution of the new stock to the parent’s stockholders upon surrender of their stock in the parent for cancellation and redemption. This transfer may be made to change to a new state of incorporation; (5) Transfer by a corporation of part of its assets (say 50 percent) to a new corporation in exchange for all of the new corporation’s stock followed by distribution of the subsidiary’s stock to the parent’s stockholders upon surrender of a proportionate amount of their shares in the parent (50 percent) for cancellation and redemption; (6) Recapitalization in which stockholders surrender one or more classes of stock for other

clause limiting it to time, it applies to all open years. The ruling covers several aspects of the taxation of life insurance proceeds, pointing out that payments based on the life expectancy of the payee are taxable in their entirety as an annuity.


5 Income Tax Ruling Number 19, Commissioner of Corporations and Taxation, February 20, 1958, no effective date given.

6 Acts of 1958, c. 554, amending G.L., c. 62, §1, effective with respect to taxable years commencing after December 31, 1957.

§17.5. 1 Adopted by the State Tax Commission pursuant to G.L., c. 62; Acts of 1954, c. 681; Acts of 1953, c. 654.
stock of the same corporation leaving them with the same proportionate interest in the corporation and its assets as before the exchange. In each of these six types of tax-free reorganization exchanges, the new stock received by the individual taxpayer takes on the basis he had in his old stock, thus resulting in a deferment of the tax until disposition of the new stock.

Unlike its backward situation with respect to corporate reorganizations, Massachusetts does have the usual federal type of tax-free exchanges of other types. Thus, the regulations state that no gain or loss is recognized where property is transferred to a newly organized corporation solely in exchange for stock in the corporation. The basis of the stock received by the transferor is the same as that of the transferred property while the basis of the property in the new corporation is the same as in the hands of the transferor.2

Again, no gain or loss is recognized when property held for productive use in trade or business or for investment (other than stock in trade, other property held primarily for sale, or intangible personal property) is exchanged solely for property of like kind. Likewise following the federal rule, gain but not loss is recognized where, in addition to the tax-free type of property, money or other property is received in the exchange. The gain is recognized only to the extent of the money or other property.

§17.6. Liquidation distributions of corporations and associations. The regulations on sales and exchanges promulgate rules for distributions of capital in complete and partial liquidations and otherwise.1 A distribution is in complete liquidation of a corporation or unincorporated association if all of the assets are eventually distributed to the shareholders in complete cancellation and redemption of their stock in pursuance of a plan of complete liquidation adopted prior to the distribution. Distributions in complete liquidation reduce the shareholder's basis in his stock.2 Distributions in excess of the basis are taxable gain when received. The shareholder has a loss in the year of final distribution where his basis exceeds the aggregate distributions. A distribution made as a step in complete liquidation must be applied against the shareholder's aggregate basis for all his shares even though he surrenders a part of his shares for cancellation and redemption upon receipt of the distribution. In order to claim a distribution in

2 Amendment Number 4 to Regulations for Determining Gain or Loss, Commissioner of Corporations and Taxation, July 8, 1958.

§17.6. 1 The regulations with respect to distributions in complete and partial liquidation apply only where the first distribution is made after November 2, 1955, the effective date of Chapter 635 of the Acts of 1955. Income Tax Ruling Number 20, Commissioner of Corporations and Taxation, issued on the same date as the Regulations, July 8, 1958, sets out the rules when part of the distributions are made before and after November 2, 1955. This ruling removes Income Tax Ruling Number 11.

2 Adjustments to basis resulting from complete and partial liquidations are set out in Amendment Number 4 to Regulations for Determining Gain or Loss, Commissioner of Corporations and Taxation, July 8, 1958.
complete liquidation, the shareholder must file a statement of all pertinent facts with his return for each year in which he receives a distribution. Distributions in partial liquidation are treated as having been received in full payment for the sale or exchange of the shares. To qualify as a partial liquidation, the distribution must be made in pursuance of a plan involving a cancellation and redemption of a portion of the outstanding stock and such stock must be eventually cancelled and redeemed in pursuance of the plan.

If a distribution is not a dividend or a distribution in partial or complete liquidation, it is referred to as a "capital distribution." A capital distribution received in a taxable year commencing after December 31, 1956, reduces the stockholder's basis by the amount of the distribution. Any excess over the basis is treated as gain recognized on the sale of the shares. For years commencing prior to January 1, 1957, no gain or loss is recognized until the sale of the shares.

§17.7. Deductions and credits. At the recommendation of the State Tax Commission the provisions with respect to the deductions for a spouse and dependents have been clarified and made the same, in most respects, as in the Internal Revenue Code. Under the prior law it was unclear whether the taxpayer and spouse had to be married throughout the year. The deduction for a spouse now requires that the parties be married, and not legally separated, as of the close of the year, or at the date of death of either. Also from the federal, there is no deduction if the spouse is the dependent of another taxpayer. Formerly the deduction for a child was ambiguous as to the child's becoming 19 during the year. It is now clear that the child may not have attained 19 at the close of the year. The requirement that the child be living with the taxpayer has been eliminated. The federal deduction for more distant relatives has not been adopted, but deduction is provided for an individual who lives with the taxpayer and is a member of his household. The Commission feels that the many federal rulings under this provision will also clarify its meaning and limitations for Massachusetts.

The double exemption and dependency deduction formerly permitted to a taxpayer who was a resident and a nonresident during different portions of the year has been eliminated. Only one $2000 business income exemption and one deduction for a spouse and each dependent may now be taken between the resident and nonresident return, divided between the returns in the manner the taxpayer elects.

3 Ibid.
4 The regulations also provide that a transfer of all substantial rights in a patent, or undivided interest therein, including an exclusive license, paid for by royalties for the remaining life is treated as the sale of an intangible. Payments received in excess of the transferor's basis are gain from the sale of an intangible.

§17.7. 1 Acts of 1958, c. 510, amending G.L., c. 62, §6, effective for taxable years commencing after December 31, 1957.
Further, such an individual must file a resident and nonresident return if his Massachusetts business income during his period of nonresidence together with his business income during the period he was a resident, exceeds $2000.

The credit for taxes paid to other states was formerly allowed only in the year the taxes were paid. This created an injustice when the income was such that there was no tax due to Massachusetts in the year the foreign tax was paid. The situation has been corrected by placing the credit on the accrual basis so that the credit may be taken in the same year as the income.\(^3\)

§17.8. Accounting methods: Instalment sales. On the recommendation of the State Tax Commission, the General Court has adopted for Massachusetts the instalment sales method of reporting income from Section 453 of the Internal Revenue Code of 1954.\(^1\) Instead of being required to report his entire gain in the year of sale, when he may have received only a small down payment, the taxpayer making an instalment sale is permitted to report and pay tax as the instalments are collected. He reports that proportion of instalment payments received in the year that the gross profit from the sale bears to the contract price. The instalment basis may be used by a taxpayer who regularly sells personal property on the instalment plan, or who makes a casual sale of personal property of a kind which would not be included in his inventory for a price in excess of $1000, or who makes a casual sale of real property. If any payments are received in the year of sale of real property or casual sales of personal property, they may not exceed 30 percent, exclusive of evidences of indebtedness of the purchaser. The State Tax Commission is given broad authority with respect to the regulations it will issue on the instalment method.

§17.9. Administrative provisions. Under the prior law the Commissioner was given three years from the due date for filing on income tax return to verify the return and assess any additional tax. If the return was filed late, this cut down the Commissioner's time. The period for verification and assessment has now been changed to run from the due date or the actual filing date, whichever is later.\(^1\) In addition, the federal procedure has been adopted of permitting the Commissioner and the taxpayer to agree to extend the period by the signing of a waiver of the statute of limitations.

The filing date for information returns with respect to wages, salaries, dividends, and interest was legislatively changed from March 1 to June 1.\(^2\)


\(^2\) Acts of 1958, c. 54, amending G.L., c. 62, §33, effective January 1, 1959. The Commissioner had changed the date administratively to June 16 for 1958 to June 1 for 1957.
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In order to aid the enforcement program, a penalty of $1 per return for failure to file information returns has been added to the General Laws. The penalty applies to returns, lists, or reports due to be filed after December 31, 1958.

C. Taxation of Trusts and Estates

§17.10. Jurisdiction and residency. Final regulations were promulgated during the 1958 Survey year on the income taxation of trusts and estates. Trust income is taxed in Massachusetts at the same rates and in the same manner as is the income of individuals. The trust is the taxable entity. Unlike the federal approach, the tax is paid by the trustee regardless of current distribution to beneficiaries. A further difference from the federal taxation of trust income arises from the absence of a graduated income tax. This removes much of the incentive to avoid tax through the creation of family trusts. Hence, the type of complication found in the taxation of trust income under the federal income tax is absent from the state law. The Commonwealth's taxation of trust income has its own complexities, however, arising out of jurisdictional and residency questions.

The regulations provide that the entire taxable income of a trust created under the will of a Massachusetts resident decedent is subject to tax here regardless of its source. On the other hand, the income of a testamentary trust created under the will of a nonresident decedent is subject to taxation in the Commonwealth only to the extent that it is derived from the carrying on of a profession, trade, or business within Massachusetts. This is so regardless of the residence of the trustee. The regulations classify trusts created by the grantor during his lifetime as "Resident Inter Vivos Trusts" and "Nonresident Inter Vivos Trusts." As in the case of the nonresident individual, the nonresident trust is subject to tax only on its income from the carrying on of a profession, trade, or business within Massachusetts. The resident inter vivos trust is taxable on its income from all sources except that income payable to or accumulated for nonresident beneficiaries is taxable to the trust only to the extent that it is derived from the carrying on of a profession, trade, or business in Massachusetts. A nonresident inter vivos trust is defined as any inter vivos trust other than a resident inter vivos trust. The requirements for a resident inter vivos trust are that it have at least one trustee resident in Massachusetts and that the grantor (or one of several grantors) must have been a Massachusetts resident at the time the trust was created, or during a part of the tax year, or when he died.

3 Acts of 1958, c. 298, amending G.L., c. 62, §55. The maximum penalty is limited to $1000.

§17.10. 1 Adopted by the State Tax Commission on May 26, 1958, pursuant to G.L., c. 62; Acts of 1954, c. 681; Acts of 1955, c. 654.

2 G.L., c. 62, §11. It should be pointed out, however, that a resident individual must include in his own return income received, available to him or to which he is entitled from a trust which is not subject to tax in Massachusetts.
The resident trust pays tax at the same rate and to the same extent as the beneficiary would have paid had he received the income directly. Income that would not be taxable to the beneficiary, such as United States Treasury bond interest, is not taxable to the trust. Subject to the limitation with respect to the tax on income payable to or accumulated for nonresident beneficiaries, the trust pays the tax on all income payable to or accumulated for the benefit of all beneficiaries, including unborn and unascertained persons and persons with uncertain interests.3

Likewise taxable to the trust is income being accumulated by a resident trust which is revocable by the grantor alone or with any person not having a substantial adverse interest. The income is so taxable to the trust to the extent that it is received while the grantor is a resident of Massachusetts. Actual payment to a public charity does not exempt such income from tax. The same rules apply where the grantor has reserved the right to alter, amend, or terminate.

§17.11. Deductions and exemption. The regulations provide that a beneficiary of a resident inter vivos trust or a taxable testamentary trust entitled to business income of the trust may require the trustee to claim his $2000 business income exemption and his family deductions to the extent not claimed elsewhere. Otherwise, the trust is not entitled to the $2000 exemption or family deductions unless all of its income is accumulated for unborn or unascertained persons or persons with uncertain interests. On the other hand, a nonresident inter vivos trust gets the $2000 business income exemption without regard to its beneficiaries; but such a trust may not take the $2000 exemption and family deductions of a nonresident beneficiary who is himself subject to the Massachusetts income tax.

While a trust may take all the other deductions against business income available to individuals, the credit for income tax paid to another state is available only to natural persons and, hence, not to trusts.

D. Taxation of Partnerships

§17.12. Jurisdiction. Final regulations on partnerships were promulgated during the 1958 Survey year.1 The approach to the taxation of partnership income under Massachusetts law is different from that under the federal income tax. Under the federal approach, the partnership is not treated as a taxable entity. Hence, no tax is im-

3 For taxable years which commenced prior to January 1, 1957, a loophole existed with respect to trust income accumulated for unborn and unascertained persons and persons with uncertain interests. At that time only the proportion of the income for such classes of beneficiaries was taxable to the trust, represented by the ratio of the number of trustees resident in Massachusetts to total trustees. See 1957 Ann. Surv. Mass. Law §27.9. The regulations recognize and state this as the law for the designated prior years.

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posed on the partnership itself, but rather the partners are required to include their distributive shares of the partnership taxable income in their own taxable income. Massachusetts law, on the other hand, imposes income tax on the partnership itself as a separate entity and exempts the partners from tax on their partnership income.

The regulations define a partnership as an association of persons to carry on as co-owners a business for profit, and by reference adopt the definition set out in the Uniform Partnership Act. They expressly negative the possibility of a husband-wife partnership. Where a partnership, association, or trust has transferable shares, it is not taxable as a partnership. However, clubs, unions, and charitable, fraternal or benevolent organizations are taxable as partnerships.

A partnership is subject to tax as a separate entity provided it has a usual place of business (office or other business quarters) within the Commonwealth and irrespective of the residence of its members. On the other hand, residence of one of the partners in Massachusetts is not sufficient to subject the partnership to tax in the absence of a finding that his home is a partnership office. Where the partnership has a usual place of business in the Commonwealth but a principal place of business elsewhere, the Commissioner is given discretion to permit the partners to follow the federal rule and include their distributive shares of partnership income in their individual returns. Again, during the period of its dissolution the partnership income or loss is reported in the returns of the partners, in the absence of a finding by the Commissioner that the dissolution is not bona fide and is a temporary expedient to enable the offsetting of partnership income or loss against the loss or income of the individual partners.

§17.13. Taxable income. The income of a partnership with a usual place of business in the Commonwealth is taxable at the same rates and to the same extent as the income of an individual resident, if all partners are Massachusetts residents. Where there are nonresident partners, the partnership is taxable on all income allocable to resident partners, but, with respect to income allocable to nonresident partners, it is not taxable on income attributable to activities of the partnership carried on outside Massachusetts. A Massachusetts resident reports in his individual return his distributive share of a foreign partnership, but he may not offset his share of a Massachusetts partnership’s loss against his individual gain of the same class. This results from the treatment of the Massachusetts partnership as a separate taxable entity.

§17.14. Deductions and exemption. While a partner’s salary or drawing account is not deductible, interest paid to a partner on a bona fide loan is deductible as is reasonable rent of property. A partner may elect to have the partnership claim his $2000 business income exemption and his deductions for spouse and dependents to the extent of his share of the net partnership business income. Any unused balance of the exemption and deductions may be claimed on the partner’s in-

2 G.L., c. 108A, §§6, 7.
individual return. The partnership may likewise deduct on its return the portion of each partner's federal income tax liability arising from partnership business income. If the partnership has a different partnership year from the partner, the deduction is for the partner's federal income tax liability for his most recently closed taxable year. The partnership may in similar manner take the medical expense deductions of the partners. Other taxes deductible by individuals and credits for taxes attributable to partners' shares of partnership business income may be taken by the partnership in the partnership year in which they are paid.

E. Taxation of Corporations

§17.15. §25 minimum tax. A further alternative minimum corporation excise tax of $25 has been enacted both for domestic corporations and foreign corporations doing business in the Commonwealth. This is in accord with the practice in a majority of the states that have corporate franchise or excise taxes.

§17.16. Gross income of corporations. In Corporation Excise Tax Ruling 1958-7 the Commission sets out the tax treatment of various items as inclusions in or exclusions from gross income and their treatment under the Federal Internal Revenue Code. Interest on bonds of states other than Massachusetts and their political subdivisions and of territories and possessions of the United States are included in Massachusetts gross income; such interest is excluded from federal gross income. Interest on United States bonds is included in Massachusetts gross income whether or not included in federal gross income. Excluded from Massachusetts gross income are recoveries of bad debts previously charged off and recoveries of taxes paid in prior years when the recoveries are excluded from gross income under the tax benefit rule of Section 111 of the Federal Internal Revenue Code because the taxpayer received no tax benefit from the prior deductions.

In the following circumstances gain or loss is not recognized under the Federal Internal Revenue Code. In each case the gain or loss resulting from the transaction is likewise not included in Massachusetts gross income: Distributions in complete liquidation of another corporation under Section 332(a) of the Internal Revenue Code of 1954; Distributions in partial or complete liquidation of another corporation under Section 336; Sale or exchange of its property by a corporation within twelve months from the date of adoption of a plan of liquidation where the liquidation is completed within the twelve-month period, under Section 337; Transfer of property to a corporation con-


§17.16. 1 Commissioner of Corporations and Taxation, August 12, 1958, applicable to taxable years ended December 31, 1956, and thereafter. The ruling revokes Corporation Excise Tax Ruling 1957-1, Commissioner of Corporations and Taxation, since its provisions are incorporated in this ruling.

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trolled by the transferors in exchange for stock or securities, under Section 351(a); Exchange of property for stock or securities in connection with reorganizations under Section 361(a); Exchanges in receivership and bankruptcy proceedings, under Section 371(a); Exchanges of property held for productive use or investment under Section 1031; Involuntary conversions under Section 1083; Exchanges of common stock for common stock or preferred stock for preferred stock in the same corporation under Section 355; and “spin-off” distributions under Section 355, wherein a shareholder receives from his corporation a distribution of stock or securities of a corporation controlled by the distributing corporation.

The Commission has ruled that a Massachusetts corporation, upon proper application attached to its return, may exclude from its income the dividends received from a wholly-owned subsidiary. Eligibility requires the subsidiary to have carried on no business outside Massachusetts during the taxable year and the two preceding years, if it is a Massachusetts corporation. If a foreign corporation, the subsidiary must have carried on no business outside Massachusetts, and received no interest or dividends allocated outside Massachusetts for the same period. If the subsidiary was in existence for less than the two preceding taxable years, it is sufficient if the requirements as to its income were met for its entire existence.

§17.17. Corporate excess: Deductions. In determining the amount of the corporate excess measure of the corporate excise tax, a deduction is allowed for the value of United States and Massachusetts bonds, the income from which would not be taxable to an individual. This deduction has created a tax avoidance loophole in the past in that it applied to such securities held at the end of the taxable year. Many corporations reduced their tax by a practice of purchasing United States and Massachusetts bonds just prior to the end of the year and selling them shortly thereafter. The loophole has been closed by making the deduction applicable to the average daily value of such securities held during the year, rather than to the value of the securities owned on the last day of the year.

Corporation Excise Tax Ruling 1958-3 elaborates on the reduction of the corporate excess for the value of the corporation’s interest as lessee in buildings owned by it and removable by it at the termination of the lease. The assessed value of the lessee’s interest in such buildings, located in Massachusetts and removable under the terms of the lease at its termination, may be deducted in computing the lessee’s corporate excess measure. The unamortized cost of other leasehold im-

2 Corporation Excise Ruling 1958-5, Commissioner of Corporations and Taxation, January 1, 1958, effective with respect to taxable years ending after December 31, 1957. The ruling was issued under the authority granted by G.L., c. 63, §38(6).


2 Commissioner of Corporations and Taxation, January 1, 1958, effective with respect to returns due on or after April 10, 1956.
leasehold improvements is included in the measure. No deduction is allowed for leasehold improvements other than buildings, leasehold improvements not removable by the lessee, or leasehold improvements or buildings located outside the Commonwealth whatever their nature. The leasehold interest in leasehold improvements or buildings located outside the Commonwealth is intangible property and no deduction is allowed either as real estate or as other tangible property, irrespective of the terms of the lease.

§17.18. Corporate excess: Liquidated corporations. A substantial administrative change was made in determining the corporate excess portion of the tax for corporations which are liquidated during the year. The value of the corporate excess, tangible property, or capital stock for this portion of the tax is the value on the last day of the taxable year.¹ Hitherto the Commission had ruled that "last day of the taxable year" meant "at the close of business on the last day of the taxable year."² The effect of this prior ruling had been that a corporation which liquidated during the year or on the last day of its taxable year paid no tax based on corporate excess, tangible property, or capital stock, there being no assets left at the close of business on the last day. For taxable years ending after December 31, 1957, this ruling has been supplanted by one which imposes tax under the same circumstances by valuing the corporate excess, tangible property, or capital stock "at the commencement of business on such day" in the case of a corporation which disposes of all its assets in liquidation on the last day of its annual accounting period.³ The ruling also imposes tax where the corporation completes its liquidation prior to the last day of its regular accounting period. In so doing, it follows federal Revenue Ruling 215⁴ under which the liquidation results in a short taxable year. Application of the federal rule is based upon the fact that the Massachusetts taxable year is now the federal taxable year.⁵ The ruling provides that final disposition of the assets terminates the taxable year and requires valuation of corporate excess, tangible property, or capital stock "at the commencement of business on such day." As in the case of other short taxable years, the tax is prorated in proportion that the number of months in the short year bears to 12. It has been suggested that, even under this ruling, the tax might be reduced by distributing a substantial part of the assets on a date prior to the final date of distribution.⁶

Where a corporation is liquidated into a parent corporation, this ruling results in taxation of the same values both to the subsidiary and

¹ G.L., c. 63, §32(a).
² Ruling of State Tax Commission, November 12, 1954.
⁵ G.L., c. 63, §32(c).
the parent. The ruling provides for relief from the resulting double taxation, but only in the narrow situation in which a wholly-owned Massachusetts subsidiary is liquidated into its Massachusetts parent on the last day of the parent’s taxable year. Under these limited circumstances the parent does not take into account the property so distributed by the subsidiary in arriving at the value of its own (the parent’s) corporate excess, tangible property, or capital stock.

§17.19. Abatements and refunds. The Commission’s rules on refunds and abatements were set out in Corporation Excise Tax Ruling 1958-2.1 By a timely filing of Form 382C, the taxpayer could secure a refund of the excess of the amount paid over the amount shown due on the final return where an estimated payment had been made in connection with an extension of time for filing the excise tax return. Subsequent legislation makes the return itself an application for abatement.2 It is understood that the new return forms will have a line to use as the claim for abatement. Even here, however, a waiver should be filed with the return to make the return effective as a claim for abatement if not acted upon within six months.3 No interest is payable on this type of refund or abatement, whether secured by the filing of Form 382C or by the return as a claim. On the other hand, where the excise tax return is filed and subsequent determination discloses a lesser tax liability, the corporation should file a timely claim for abatement on Form 355H. The same procedure applies where an additional tax is assessed and is subsequently determined to be erroneous. Interest is paid on such abatements made pursuant to the filing of Form 355H.

§17.20. Examination of returns. The availability of returns for examination by the filing corporation and its agents was liberalized by Chapter 305 of the Acts of 1958.1 Corporation Excise Tax Ruling 1958-6 rescinds Ruling 1958-1 and sets out these inspection rights.2 Both rulings provide for supplying a copy of the tax computation and related mathematical corrections. Both deny access to Bureau memorandum relating to the return.

§17.19. 1 Commissioner of Corporations and Taxation, January 1, 1958, with no statement of effective date.


3 This arises from the provision that a claim for abatement is deemed denied if the Commission fails to act thereon within six months, G.L., c. 58A, §6 as amended by Acts of 1958, c. 523. The “waiver” is a written consent by the taxpayer to the failure of the Commission to act within six months. It permits the Commission to act on the claim beyond the six-month period.

§17.20. 1 Amends G.L., c. 63, §71A, effective May 2, 1958.