CHAPTER 17

State Taxation

DAVID FLOWER, JR.

A. ADMINISTRATION

§17.1. State Tax Commission. The anticipated promulgation of regulations on the corporate excise tax did not materialize during the year. The Commissioner of Corporations and Taxation expressed his recognition of the need for such regulations and attributed the failure of their issuance to lack of funds. He has endeavored to fill the need by encouraging participation of the Department in tax forums. While this is preferable to no public pronouncements, it is not an adequate substitute for published rulings and regulations. It is hoped that the issuance of such regulations will not be impeded by the fact that the State Tax Commission was directed by the General Court to make recommendations for legislative change in the basic corporate excise tax.

B. PERSONAL INCOME TAX

§17.2. Nontaxable income: Social security payments. The 1959 Survey noted the Supreme Judicial Court's decision, handed down in 1960, holding that federal old-age benefits paid under the Social Security Act to the insured individual are not subject to income tax.\(^1\) In holding these payments to be outside the "concept of business income in the nature of wages" and not within the term "retirement allowances" as not being paid directly or indirectly by the employer, the Court was influenced by the fact that other social security payments to relatives of the insured employee are clearly not taxable as retirement allowances. The Court also pointed to the fact that the Massachusetts taxing sections had not been substantially changed since

David Flower, Jr., is General Tax Counsel for Raytheon Company, Lexington, Massachusetts. He is a member of the Advisory Council of the Tax Institute, Inc., a National Director of the Tax Executives Institute, and past president of its New England Chapter. He is Chairman of the Tax Committee of the Electronic Industries Association and Chairman of the Subcommittee on Manufacturers and Retailers Excise Taxes of the Tax Section of the American Bar Association. He has lectured in taxation for the Practising Law Institute and was for many years a Lecturer in Federal Taxation at Northeastern University School of Law.

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1921 whereas the Social Security Act, creating the new form of payment, was first adopted in 1935. The almost annual introduction of bills from 1954 to 1960 to exempt such payment and their failure of passage were not indications of the legislative intent in 1920.

The Chairman of the State Tax Commission has advised that abatements on social security payments illegally taxed will be made automatically, but he recommends the filing of abatement forms for speedier refunds. A special commission was created to study the feasibility of legislation suspending the statute of limitations requirement that refund claims be filed within the later of three years after the last day for filing the return or one year of the date of overpayment or over-assessment.

§17.3. Nontaxable income: Pensions to surviving relatives. Pension plan payments to a widow or other surviving relative after the death of a retired employee are not taxable as business income, irrespective of whether or not the deceased employee contributed to the plan.1 The Commission's letter advice to this effect clarified a sentence in the Business Income Regulations, Section 2(c), which had been construable, because of context, as referring only to social security payments to surviving relatives.2 Nor are the payments to the surviving relative taxable as an annuity.3

§17.4. Taxable income: Patent and copyright royalties. Two statutory changes were made with respect to the tax on royalties from patents and copyrights. Where royalties based on earnings, sales, or use are paid to the inventor or author of a patent or copyright for the transfer of all substantial rights, or an (undivided) share of all such rights, in the patent or copyright, the resulting income will henceforth be taxed as business income instead of as capital gain from a sale or exchange.1 Presumably this also applies to royalties for an exclusive license to make, use, and sell for the remaining life of the patent. The desirability of this treatment in Massachusetts as opposed to the federal rule arises, of course, from our higher tax on capital gains than on business income.

Uncertainty has existed since 1957 as to the taxability of patent or copyright royalties received by nonprofessional inventors or authors or by others than the inventor or author.2 The General Court has clarified the definition of business income with the intention of making certain the taxability of all royalty income regardless of the recipient.3

§17.3. 1 Letter from Chairman of State Tax Commission to Commerce Clearing House, Inc., December 22, 1959.

§17.4. 1 Acts of 1960, c. 554, amending G.L., c. 62, §5(c), effective with respect to taxable years commencing after December 31, 1959.
2 The uncertainty was caused by Acts of 1957, c. 677, exempting from tax certain gains except on transactions entered into for profit or connected with the taxpayer's trade or business. See 1957 Ann. Surv. Mass. Law §27.3.
This was accomplished by including such income within the terms of "transactions entered into for profit" by limiting the exclusion of "transactions in intangible personal property" to "transactions in intangible personal property which are specifically taxed or exempted under a section or subsection of this chapter other than subsection (b) of section five or subsection (c) of section five A."

§17.5. Non-Massachusetts revocable trusts. In State Tax Commission v. Fitts, the Supreme Judicial Court held that the Massachusetts resident donor of a nonresident trust "received" trust income, actually retained by the nonresident trustees, when he reserved the power to amend, alter, or revoke with the consent of one of the trustees who was his brother and who had no substantial adverse interest. The decision was under G.L., c. 62, §11, providing for taxation to an inhabitant who "receives" income from a trustee who is not subject to taxation. The 1955 amendment which had added to "receives" the words "is entitled to, or to whom income is available" was ruled applicable prospectively only and, therefore, not pertinent to the case. The Court stated that the question was analogous to that of constructive receipt and relied upon the substance rather than the form of the transaction. The decision went far to strike down the use of nonresident trusts to avoid the Massachusetts taxation of corporate reorganizations that were tax-free under the Internal Revenue Code of 1954. The device is no longer needed for this purpose since enactment of the 1959 amendment which incorporated by reference the Internal Revenue Code provisions for tax-free reorganizations.

§17.6. Deductions and credits. Many taxpayers with nonbusiness as well as business income were relieved of undue annoyance in the preparation of their returns for 1960 by a legislative change. The deduction for Massachusetts income tax on business income (profession, employment, trade, or business) is no longer based upon taxes paid during the tax year. The General Court changed the deduction to base it upon the tax shown in the tax return for the last preceding taxable year. Thus, the deduction for the Massachusetts tax in the 1960 return is the tax on business income shown in the 1959 return. The need for this change was to be found in the arithmetical maze created by the interaction of the withholding and estimated tax payment system on the limited deductibility of the Massachusetts income tax. The problem was reflected in the examples set out in the 1959 Form 1 Instructions for computing what part of the estimated tax payments and withheld tax was deductible under the law then applicable. The deduction is increased or decreased, as formerly, for additional tax paid or abatement received during the tax year.

2 Acts of 1955, c. 592, §3.

§17.6. 1 Acts of 1960, c. 556, amending G.L., c. 62, §6(c), effective with respect to taxable years commencing after December 31, 1959.
year for a prior year with respect to amounts not taken into account in computing the tax return liability for the prior year. While the 1959 Massachusetts tax is thus made a deduction for both 1959 and 1960, this is simply the converse of the situation with respect to the deduction for federal tax when it was placed on the current "accrual" basis. The alternative treatment for the year of transition would have resulted in no deduction for Massachusetts tax for that year and an effectual permanent loss of such deduction.

§17.7. Declaration of estimated tax. Commencing in 1961, declarations of estimated tax are required of all persons expecting to receive Massachusetts taxable income in excess of $500 not subject to withholding, instead of $100. The change was made to relieve the reporting burden on taxpayers as well as the Commission's administrative burden.

§17.8. Nonresident income tax: Arrest for nonpayment. The Supreme Judicial Court upheld the Commissioner's authority to arrest a nonresident for nonpayment of income tax, payment not having been made within the statutory fourteen days after demand and the nonresident having refused to post bond or disclose sufficient goods subject to levy. The substantive merits of the tax controversy were not before the Court in this procedural case.

C. TAXATION OF CORPORATIONS

§17.9. Allocation of income: Gross receipts fraction. The following is quoted from the 1959 Annual Survey:

In order to determine what part of a multistate corporation's income is to be taxed here, the so-called Massachusetts three-fraction formula is applied to all net income except interest, dividends, and gains from the sale of capital assets, these items being directly allocated to Massachusetts. The formula fractions are Massachusetts tangible property over total tangible property, Massachusetts wages and salaries over total wages and salaries, Massachusetts gross receipts over total gross receipts. Inasmuch as Massachusetts interest, dividends, and gains from the sales of capital assets are directly allocated and taxed, they are not included in the numerator of the gross receipts fraction. Since these items are not included in the numerator, they are likewise not to be included in the denominator of the fraction. Both the numerator and the denominator include only sales, rents, and royalties. The Commission has so stated in a ruling published during the 1959 Survey year. The ruling applies both to domestic and foreign corporations. It is applicable to all open years, having been published without

§17.7. 1 Acts of 1960, c. 159, amending G.L., c. 62B, §13, effective with respect to taxable years commencing after December 31, 1960.


an effective date, for the reason that it states a rule which the State Tax Commission has always followed.

At the Commission's request, the General Court this year adopted language expressly spelling out this result in the statute.2

§17.10. Corporate excess: Allocations for foreign corporations. At the request of the State Tax Commission, the General Court has adopted into the General Laws the Commission's procedure with respect to the allocation of intangible assets of a foreign corporation. The corporate excess of such corporation employed in Massachusetts is determined by allocating the fair value of its capital stock on the basis of the value of its assets employed within the Commonwealth as compared with its total assets. For determining assets employed within Massachusetts the act requires the allocation of intangibles in the ratio of net income attributable to Massachusetts business to total allocable net income. That is to say, it requires the use of the statutory formula used in allocating the corporation's net income.1

Similarly, the statutory formula for allocating net income has been substituted for the former method in determining the alternative minimum excise of one twentieth of 1 percent of a proportion of the fair value of the capital stock of a foreign corporation. Whereas the former proportion of the capital stock value was allocated on the basis of the ratio of assets employed in Massachusetts to total assets, the new allocation of fair value of capital stock is on the basis of the statutory formula used for the allocation of the corporation's net income.2

§17.11. Corporate excess: Deductions. In 1958 the General Court closed a tax avoidance loophole wherein a corporation could purchase tax-exempt securities, such as United States bonds, just prior to the end of the year and sell them shortly thereafter and thereby secure the same deduction for the value of these bonds in computing the taxable corporate excess as if it had owned the bonds throughout the year. The technique utilized for closing the loophole was to make the deduction applicable to the average daily value of the securities held during the year, rather than the value of the securities owned on the last day of the year.1 Computation of the average daily value of the securities required an inordinate amount of work, involving the averaging of the daily values of each security for the entire year or the shorter period held. This annoyance has now been corrected by basing the deduction on the cost of the securities rather than average daily values.2


§17.10. 1 Acts of 1960, c. 548, §3, amending G.L., c. 63, §30, effective with respect to taxable years commencing after December 31, 1960.


The deduction for securities held for a part of the year is that part of
the cost that the number of days held bears to the number of days
in the year.

The General Court also adopted the Commission's recommendation
to change the allocation method used in arriving at the corporate ex-
cess deduction, allowed domestic business corporations, of the propor-
tion of the corporation's cash and accounts receivable attributable to
an office outside of Massachusetts. The deduction for cash and accounts
receivable attributable to an office outside the state will henceforth
be arrived at by allocating these assets on the basis of the statutory
formula used for the allocation of the corporation's net income.3
Thus, the deduction for cash and accounts receivable (excluding notes)
attributable to an office outside the Commonwealth will be computed
by multiplying the cash and accounts receivable by the inverse of the
statutory percentage for allocating net income to the state. If 80 per-
cent of the corporation's net income is allocable to Massachusetts, the
deduction will be 20 percent of the cash and accounts receivable. Prior
to this change, the deduction was based upon the ratio of real estate,
machinery, and merchandise situated outside Massachusetts to the
total of such assets everywhere.

§17.12. Corporate excess: Massachusetts tangibles. In Corporation
Excise Tax Ruling 1960-1 the Commission revised its position with
respect to leasehold improvements.1 It now rules that leasehold im-
provements on real estate located in Massachusetts are excluded from
the tangible property measure if the improvements are subject to local
tax either to the taxpayer or to the lessor.

§17.13. Consolidation of taxing sections. In addition to the sub-
stantive and procedural changes reported herein, the taxing sections
of Chapter 63 have been revised and consolidated. A new Section 32,
replacing former Sections 32, 32A, and 34, has been adopted relating
to the computation of the excise on domestic business corporations
and a new Section 39 replaces former Sections 39 and 39C for foreign
corporations.1 No substantive changes were intended in this revision,
other than those mentioned in other sections of this chapter.

§17.14. Miscellaneous provisions. The $25 minimum tax was
made no longer subject to the 3 percent temporary tax or to proration.
The $25 minimum tax is, however, subject to the 23 percent temporary
additional tax, with the result that the minimum tax on corporations is
actually $30.75.1 The Commissioner was authorized to refrain from

3 Acts of 1960, c. 548, § 2, amending G.L., c. 63, § 30, effective with respect to taxable
years commencing after December 31, 1960.

§17.12. 1 Promulgated May 20, 1960, revoking and superseding Corporation Ex-
cise Ruling 1958-3, effective with respect to taxable years ending on or after Decem-

§17.13. 1 Acts of 1960, c. 548, §§4-8, amending G.L., c. 63, §§32, 32A, 34, 39, 39C,
effective with respect to taxable years commencing after December 31, 1960.

assessing the minimum excise tax upon domestic corporations which are subject to dissolution for failure to file reports and upon defaulting foreign corporations.\textsuperscript{2}

\section*{D. Inheritance Taxation}

\textbf{§17.15. Tenancies by the entireties.} An exemption is provided from the imposition of inheritance tax on the transfer to the survivor of property held by the entireties, purchased or contributed to by the decedent, in the case of a single family residential property occupied by the husband and wife as a domicile. In the case of a multiple family residential property so occupied,\textsuperscript{1} the exemption is limited to a maximum of $25,000. The Supreme Judicial Court construed the $25,000 limitation on multiple residence property in which the surviving spouse and deceased spouse had their domicile as not being limited to the value of the portion of the building occupied by the husband and wife.\textsuperscript{2} The exemption is the lesser of $25,000 or the value of the entire multiple family residential property, although the spouses occupied only one of several apartments therein. In so deciding, the Supreme Court revoked the contrary Inheritance Tax Ruling No. 1.\textsuperscript{3}

\textbf{§17.16. Relationship to decedent.} The rate of the inheritance tax varies with the relationship of the beneficiary to the decedent. The statute sets out four classes of relationship. Among the beneficiaries of Class B are "wife or widow of a son; husband of a daughter." In a case of first impression in the Commonwealth, the Supreme Judicial Court held that the surviving husband, i.e., widower, of the testator's deceased daughter qualifies under Class B as "husband of a daughter."\textsuperscript{1} The Commissioner had included the daughter's widower in Class D, "all others." The Court found explanation for the absence of reference to "widower" in the statute in that the word "widower" never carried the same idea as the word "widow" as the technical way to describe a surviving spouse.

\textbf{§17.17. Procedure.} The Commissioner announced a new procedure speeding the final determination of the tax for estates which have been probated and are not subject to the federal estate tax.\textsuperscript{1} The Inheritance Tax Bureau will issue a final tax bill within three months of the filing of Form L-1 (Statement of Debts and Expenses) provided:

\textsuperscript{2} Acts of 1960, c. 548, §9, amending G.L., c. 63, §44, effective with respect to taxable years commencing after December 31, 1960.

\textsuperscript{1} G.L., c. 65, §1, as amended by Acts of 1949, c. 792.


\textsuperscript{3} This ruling was discussed in 1957 Ann. Surv. Mass. Law §27.15.


\textsuperscript{1} Procedural Memorandum 1960-1, adopted by State Tax Commission on July 6, 1960, applicable to estates of persons dying on and after October 1, 1960.
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(1) the inventory was filed with the Probate Court or the Commissioner within three months after the appointment of the executor or administrator, accompanied by Form L-16A (List of Collateral Assets); (2) the question of valuations has been finally determined; (3) Form L-1 is complete and final; and (4) it is accompanied by a computation of the tax due and payable on all present interests and payment thereof. The memorandum further states that the Commissioner will assure final determinations of values within six months after the filing of the inventory and Form L-16A unless he is unable to do so because of failure to furnish requested information or because appeal has been claimed.