Annual Survey of Massachusetts Law

Volume 1962  Article 20

1-1-1962

Chapter 17: State and Local Taxation

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CHAPTER 17

State and Local Taxation

OLIVER OLDMAN

A. SUMMARY

§17.1. Local tax developments. The most significant event in local taxation during the 1962 Survey year was the Bettigole case, which prevented the city of Springfield from assessing different classes of real property at different ratios of assessed value to true value. The case is briefly discussed below along with other 1962 property tax developments.

§17.2. State tax developments. The most significant state tax legislation to be adopted during the 1962 Survey year was the repeal of the corporate excess portion of the corporation excise tax. A perhaps more significant event was the 5-to-1 defeat of the proposed constitutional amendment to permit a graduated personal income tax. The 1962 legislation is summarized at pages 9983 through 9990 of 2 CCH Massachusetts State Tax Reporter. A technical discussion of 1962 legislation, prepared and made available by the Department of Corporations and Taxation, is reprinted at pages 10,412 through 10,418 of 2 CCH Massachusetts State Tax Reporter.

Among the several cases decided by the Massachusetts Supreme Judicial Court during the 1962 Survey year the Wheatland case has been singled out for extensive analysis in this chapter this year. The case deals with the application of the personal income tax to income from out-of-state property. Other important cases are briefly summarized.

B. PROPERTY TAX

§17.3. Legislation. There were about a dozen minor bills enacted during the 1962 Survey year, many of them relating to refinements on exemptions granted in the past. Each enactment is summarized briefly at page 9985 of 2 CCH Massachusetts State Tax Reporter. Worthy of note is the apparent increasing interest in exemptions for elderly persons. In such other states as Florida and New Jersey the exemption has caused a number of administrative difficulties without...

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The author wishes to acknowledge the assistance of John J. Sheehy and Peter Wells of the Board of Student Editors of the Survey.
evidence that the benefits are channeled to those among the elderly who need them. Relevant to this type of exemption is the constitutional issue discussed below under the heading "Homestead exemption." 1

§17.4. Inequality in assessment. In the headline-making 1 decision in the Bettigole 2 case, the city of Springfield's deliberate practice of assessing, for example, industrial property at 85 percent of fair cash value, while assessing one-family residences at 50 percent of fair cash value, was held to violate both the constitutional requirement for uniformity or proportionality in taxation 3 and the statutory requirement for assessing all property at fair cash value. 4 A detailed analysis of this case and similar ones in other states appears in Note, 75 Harvard Law Review 1374 (May, 1962). See also The Springfield Tax Decision: An Analysis of the Decision and Its Possible Effects, a pamphlet published by the Massachusetts Federation of Taxpayers Associations.

§17.5. Homestead exemption. In an advisory opinion a bill providing for a homestead exemption from property tax was held to violate the same constitutional requirement for uniformity that was involved in the Bettigole case above. 1 The bill would have granted to a legal resident of the state an exemption from property tax of up to $5000 worth of real property occupied by him. The resultant discrimination against those who rent rather than own homes was an important facet of the Court's reasoning.

§17.6. Minor's exemption. The exemption of $2000 worth of real property owned and occupied by a minor whose father is deceased and whose entire estate is less than $8000 was construed to be allowed only once for each parcel of real property. A parcel owned by three qualified minors as tenants in common was therefore entitled only to a $2000, not a $6000, exemption. 1

§17.7. Appellate Tax Board jurisdiction. When the taxpayer, having elected to follow the informal procedure provided for under G.L., c. 58A, §7A, waives appeal to the Supreme Judicial Court except on questions of law, the implied finding by the Appellate Tax Board that no application for abatement had been filed will not be reviewed by the Court. Since the taxpayer must file an application for abatement of property tax with the assessors in order for the Appellate Tax

§17.8. 1 See §17.5 infra.

§17.9. 1 See front page of any Boston newspaper for November 21, 1961, and immediately succeeding days.


3 Mass. Const., Part 2, c. 1, §1, Art. IV.

4 G.L., c. 59, §38.


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Board to have jurisdiction over the taxpayer's appeal from the assessors' refusal to abate tax, it is proper for the board to dismiss the appeal.1

§17.8. Nonavailability of declaratory relief. In 1953 and thereafter, as a result of Acts of 1953, c. 231, the taxpayer church was entitled to a $10,000 rather than a $5000 exemption on its parsonage. The increased exemption was neither claimed by the taxpayer nor proffered by the assessors for four years after 1953. When in 1960 the taxpayer filed a bill for declaratory relief under G.L., c. 231A, because it was too late to begin either a proceeding in abatement under G.L., c. 59, §§59-74, or an action to recover back taxes under G.L., c. 60, §98, the bill was dismissed and recovery of taxes paid denied.1

§17.9. Sale of tax title by town. The mailing of a demand for payment of past due taxes to the wrong address does not invalidate a town's tax title, since an additional two years passed before the town could perfect its title during which time the owners must have known that taxes were to be paid. Also, the Supreme Judicial Court rejected an attempt to redeem based upon the objection that the Commissioner of Corporations and Taxation had incorrectly or unreasonably determined that the land was of low value, when all the requisite procedures for the use of the administrative method of selling low value land had been followed by the town.1

C. CORPORATION EXCISE TAX

§17.10. Repeal of corporate excess measure and modification of tangible property measure. Chapter 756 of the Acts of 1962 swept away the long troublesome corporate excess measure of the corporation excise tax. The revenue lost thereby is to be made up by an increase in the rate of and other modifications of the tangible property measure of the tax and by increases in the minimum amount of tax due. However, a gradual rollback of the increase to the 1962 rate is provided for in the event that corporation excise tax revenues increase by more than $3,000,000 for each year after 1962. The first year for which the rollback might occur is the calendar year 1964, and for that there must by then have been an increase in revenues in excess of $6,000,000. The 1962 base revenue figure from which computations will be made is $101,303,902.1

The act also provides for a five-year exemption from the tangible property measure for new and expanded investment in machinery and equipment having a useful life of eight years or more. Corporations

having small amounts of tangible property are classified as "intangible property" corporations and are taxed on a book value net worth basis instead of the tangible property basis. An official summary of the act (and other legislative changes in the corporation excise tax) appears at ¶200-149 of 2 CCH Massachusetts State Tax Reporter. Also, the act was discussed by Owen L. Clarke, Chief of the Bureau of Corporations, in a speech delivered before the November 17, 1962, Institute of Taxation of Northeastern University, reprinted at ¶200-153 of 2 CCH Massachusetts State Tax Reporter. Recent background studies leading to the adoption of the act are the two Special Reports of the State Tax Commission Relative to the Advisability of a More Simplified and Equitable Corporation Income Tax.²

It is too soon to provide a critical analysis of this new legislation. As various technical problems arise, the State Tax Commission has let it be known that its response will be both prompt and clear. Those who observed the passage of this legislation through the General Court must have marveled at the lack of opposition and the generally smooth course the legislation took, considering its importance and the number of years during which repeal of the corporate excess measure has been sought. Lack of opposition is no doubt largely to be accounted for by the very modest increase in the rate applicable to tangible property (from $6.15 to $7.65 per $1000), the tantalizing promise of the rollback to the $6.15 rate, and possibly to the new property exemption feature. It is the latter feature that requires comment. As a realistic matter, the exemption is unlikely to be the cause of new investment. The financial benefit, compared with the cost of the investment, is too small to be of consequence. (A saving of $7.65 per $1000 for five years means 3.825 percent of cost at the most. But this must be reduced by depreciation after the first year and also by the effect on the amount of federal tax due. The net benefit can hardly be expected to exceed 1.5 to 2 percent of the original cost, and even this benefit is not to be received by the investor at the outset, but only in five annual, tiny instalments.) While some may view the advantage of the exemption as arising from its favorable effect on the "atmosphere" for investment or on the business climate,³ others quite properly may regard this kind of penny-ante tinkering as having just the opposite effect. For these reasons, plus the likely-to-arise technical problems of operating under the exemption (which, having been adopted prior to the Federal Revenue Act of 1962, could not be technically coordinated with its investment incentive provisions), one might hope for the repeal of the exemption. The revenue regained could hasten the day when the property measure returns to $6.15 or

³ It has also been suggested by some that those who increase their investment because of the new federal investment credit still have to decide in which state to locate the new investment. While there may be an occasional instance where the tiny Massachusetts concession might influence a location decision, it is hard to believe that the revenue lost by the concession in general will be worth the investment gain achieved by such an occasional instance.
lower and thereby benefit all business firms rather than only a few.

§17.11. Corporate excess (former law): Allocation of intangibles of foreign corporation. The use by the Commissioner of the net income allocation formula to determine the 1955 Massachusetts' allocation of a foreign corporation's intangibles for the purpose of the corporate excess measure was upheld as fair and appropriate for a taxpayer engaged in the sales financing business in twenty-six states. This result has been authorized by statute since Acts of 1960, c. 548, §3.1

§17.12. Corporate excess (former law): Valuation of capital stock. The Commissioner may determine the fair value of the capital stock of a corporation for purposes of computing corporate excess by any method the Commissioner regards as appropriate and need not follow the valuation method set forth in its tax forms and instruction sheets. Therefore, the Commissioner may use the market value of the taxpayer's stock as an element in establishing the fair value of that stock. Also, the Appellate Tax Board may likewise determine fair value of capital stock according to a reasonable method and need not follow the Commissioner's method even if that is reasonable too. The reasonable method followed by the board will be upheld by the Supreme Judicial Court against a challenge by the commission based on the reasonableness of its own method, since the board is the final step in the administrative process.1

§17.13. Allocation of income. An extensive discussion of current problems in the allocation of income to Massachusetts under the income measure of the corporation excise tax was provided by Owen L. Clarke, Chief of the Bureau of Corporations, in a speech before the November 18, 1961, Institute of Taxation of Northeastern University. The speech was reprinted at ¶200-143 of 2 CCH Massachusetts State Tax Reporter.

D. PERSONAL INCOME TAX

§17.14. Legislation. The November, 1962, defeat of the proposed constitutional amendment for a graduated income tax has already been mentioned. Several months prior to the referendum it was held that expenditures made by a corporation to bring about the defeat of the proposed amendment were neither ultra vires acts nor a violation of G.L., c. 55, §7, which prevents use of corporate funds to influence voters in certain cases.1 New legislation affecting the personal income tax included measures (1) to conform to the federal statute the tax treatment of recipients of General Motors stock from duPont pur-


suant to the anti-trust decree, and (2) to grant exemption from income tax with respect to income received by retired United States Government employees from Government retirement funds to which they contributed. These measures are described in the department's Technical Discussion of 1962 Personal Income Tax Legislation, which is reprinted at ¶200-148 of 2 CCH Massachusetts State Tax Reporter.

§17.15. Dividend from realty trust. Income received in 1951 as a dividend by a shareholder in a realty trust was held exempt because it was derived entirely from profits made by the trust on sales of real estate. It should be noted that the exemption for real estate income which appears in G.L., c. 62, §22(a), was more general in 1951 than it now is. Acts of 1954, c. 611, §2, amended the wording so as largely to limit the exemption to income derived from rentals of real estate.

§17.16. Deduction of federal income tax paid. The taxpayer's payment in 1956 of the balance of federal income tax owing on 1955 income was held not to be the payment of a deficiency and therefore could not be deducted from 1956 Massachusetts income under G.L., c. 62, §6(c), as amended by Acts of 1956, c. 517. It was in 1956 that the deduction for federal income tax was changed from the federal tax payments made during the year to the federal tax due with respect to income earned during the year, plus federal deficiency payments made during the year on account of prior years, less similar refunds. The term "deficiency" was held to have the same meaning for purposes of Section 6(c) as it does under Section 6211 of the federal Internal Revenue Code of 1954, a meaning which excludes a mere unpaid balance of tax due.

E. THE WHEATLAND CASE

§17.17. Taxation of income from out-of-state property. In State Tax Commission v. Wheatland, the taxpayer was a co-owner of undivided interests in forest lands located in Maine. He and many of the other co-owners each gave powers of attorney to an agent in Maine for the purpose of handling timber operations on the lands. During the calendar years 1953 through 1956 the taxpayer received payments through the agent from the loggers who had contracted to cut and pay for timber pursuant to a detailed "Memorandum of an Agreement and Conditional License." The payments were net, since the agent had deducted all expenses. In 1955 the taxpayer also received payments resulting from the sale by him, not the agent, of part of the


2 A very important case, Wheatland, which also deals with real estate income, is discussed at length in §17.17 infra.


2 Record, p. 25.
taxpayer's interests in the forest lands. The Commissioner of Corporations and Taxation sought to tax under the "business income" category the income from timber operations and the gain from the sale of taxpayer's interests in land. The Supreme Judicial Court held that neither the timber income nor the land gain was subject to Massachusetts income tax.

The taxpayer's brief was devoted largely to arguing that it was unconstitutional for Massachusetts to tax out-of-state tangible or real property. The taxpayer sought to establish (1) that according to Massachusetts law the income tax was a property tax, (2) that the characterization by Massachusetts would be binding on the United States Supreme Court, and (3) that that Court has consistently held it a violation of the Federal Constitution for a state to apply a property tax to out-of-state tangible or real property. This line of argument was designed to defeat the income tax on both items — the timber income and the land gain. The taxpayer also advanced separate arguments against each of the two items. The additional arguments to defeat the tax on the timber income were that he was not carrying on a trade or business and that unconstitutional discrimination would result from taxing income from Maine forest land at a rate different from that applied to Massachusetts forest land, which is taxed under Chapter 61 of the General Laws rather than Chapter 62. The additional argument against the land gain was that the isolated nature of the sale prevented it from constituting business income.

The Commissioner's brief argued (1) that income from the sale of out-of-state tangible personal property (timber) was included under the statute, (2) that gain from the sale of out-of-state real estate was included under the statute, and (3) that both the timber income and the land gain could constitutionally be taxed.

The Appellate Tax Board agreed with the Commissioner with respect to the timber income and noted that the taxpayer received the income in Massachusetts, thus giving the income (which was property) a Massachusetts and therefore taxable situs. The board agreed with the taxpayer with respect to the land gain, but on the ground that the legislature did not intend the statute applicable during 1955 to reach isolated sales.

The Supreme Judicial Court devoted most of its opinion to an analysis of the possible constitutional bar against applying the tax to out-of-state property. Concluding that the Federal Constitution might well bar the tax, the Court went to some trouble to interpret the statute so as not to apply to the timber income. The constitutional issue was thereby avoided, but provided the excuse for the interpretation with respect to the timber income. The interpretation was not founded on argument advanced in the taxpayer's brief. As for

3 This rationale is similar to the "remittance" basis of taxation, which is used on occasion in several countries of the world. See, e.g., Harvard Law School International Program in Taxation, Taxation in Brazil §11/2.2 (Gumpel and de Sousa, 1957); Taxation in the United Kingdom §11/2.8 (Brudno and Bower, 1957).
the land gain, which is discussed at some length toward the end of this analysis, the Court agreed with the board and found it unnecessary to lean on the Constitution for support.

It is difficult to interpret the statutory language in such a manner that it should exempt the out-of-state timber income. The Court did so by analogizing timber income to real estate rental income, which is specifically exempt from taxation. The analogy, of course, is applicable whether the timber is within or without Massachusetts, and the Court so stated. But the Court went on to hold only as follows: "... we are of the opinion that these provisions [§§5(b) and 6 of G.L., c. 62], in order to avoid constitutional doubts, should be construed as not taxing the proceeds of the sale of timber located in Maine." There is no indication in the opinion or in the briefs as to what policy motive might have induced the legislature to exempt the out-of-state timber income. Indeed, the opposite would seem to be the case. A Massachusetts inhabitant has for many years had to pay income tax on his farm income, which is much more analogous to timber income than real estate income is, and in any event is entitled to credit against his Massachusetts income tax for the income tax he might have to pay to the state where the timber is located. Moreover, if the Court's

4 The statutes applicable for 1958 were G.L., c. 62, §§5 (as amended by Acts of 1959, c. 486, §1) and 6:

§5. "Income of the following classes received by any inhabitant of the commonwealth during the preceding calendar year shall be taxed as follows: ...

"(b) The excess over two thousand dollars of the income, as defined in section six, derived from ... trade or business shall be taxed at the rate of one and one half per cent per annum ..."

§6. "Income taxable under subsection (b) of section five shall be the gross income from the ... trade or business, ... not including income exempt from taxation under this chapter or taxable hereunder otherwise than under said subsection (b), but including gains from the sale of capital assets, other than intangible personal property, employed therein; less the following deductions: ..."

The statutes applicable for 1954-1956 were G.L., c. 62:

§5 (as amended by Acts of 1954, c. 679, §4). "Income of the following classes received by any inhabitant of the commonwealth during the preceding calendar year shall be taxed as follows: ...

"(b) The excess of the income derived from ... trade or business as defined in section six ... shall be taxed at the rate of one and one half per cent per annum ..."

§6 (as amended by Acts of 1954, c. 611, §1). "Income taxable under subsection (b) of section five shall be the net income from the ... trade or business in the year for which the income is computed. Income from, payments for the use of, or gains from sales or exchanges of any personal tangible or intangible property and gains from sales or exchanges of real estate, except income, payment or gains, which are specifically taxed or exempted under a section or subsection of this chapter other than subsection (b) of section five shall constitute income from the trade or business of the taxpayer. The net income from the ... trade or business shall be the gross income derived therefrom less the following deductions: ..."


interpretation stands, difficult problems of limiting its effect will arise. Will the exemption apply only to out-of-state property, as the above-quoted statement from the opinion might indicate, or will the exemption extend to similar kinds of property within Massachusetts, as one commentator believes? Consider also the problem of deciding to which kinds of property the exemption will apply. For example, will income from the sale of the following be exempt: sweet corn from a New Hampshire farm owned by a Massachusetts inhabitant or oranges from a similarly owned Florida grove; new automobiles sold and delivered in Rhode Island by a Boston dealer; groceries sold by a Massachusetts inhabitant in the store he operates summers in Maine; or, to get to some more serious matters, oil and other minerals located in other states, but owned in whole or in part by Massachusetts inhabitants?

On the question under the Federal Constitution, perhaps the Supreme Judicial Court was misled by the following statement in the taxpayer's brief concerning the limited role of the United States Supreme Court in characterizing or designating a tax as an income tax or a property tax: "When a federal constitutional question is involved, such as the extra-territorial issue in these cases, the designation by the highest court of the state is controlling as to the operation and incidence of the state tax in question. See *Spector Motor Service, Inc. v. O'Connor*, 340 U.S. 602, 606 (1951)." The Commissioner's brief did not allude to this point at all, although it may have been discussed at the oral argument. There have been many cases in which the United States Supreme Court has stated it would not follow state characterization and will itself look past labels at the practical operation of a tax. The *Spector* case, the single case relied upon in taxpayer's brief on the question of characterization as a property tax, did not involve a property tax versus income tax controversy but rather a reaffirmation of the Supreme Court's long-time constitutional ban on state taxes of any kind on the privilege of doing interstate business within a state. The privilege cases have a history of their own and cannot safely be regarded as a reliable guide to cases such as *Wheatland*.

If the United States Supreme Court had had an opportunity to look past the labels in the *Wheatland* case, it would have discovered that the Massachusetts tax sought to be applied to the timber income and the land gain operated in accord with common conceptions of an income tax. Deductions for expenses, depletion, cost, etc., were all

9 Taxpayer's brief, p. 9.
allowed in computing income subject to tax. Nothing turned on whether the taxpayer owned the income-producing property on tax-listing day for property tax purposes. Many of the differences between a property tax and an income tax were discussed in *New York ex rel. Cohn v. Graves*, which upheld the application of New York's income tax to rental income from real estate located outside New York State and which upon its facts and reasoning lends solid constitutional support to the Massachusetts income tax.

The United States Supreme Court might also have traced back the Massachusetts Court's decisions holding the Massachusetts income tax to be a property tax, in order to see for what purposes such a characterization might have been relevant. The Massachusetts opinion most frequently quoted from was handed down on April 12, 1915, about seven months prior to voter ratification of the Forty-fourth Amendment to the Massachusetts Constitution, the amendment authorizing the income tax. This opinion advised the legislature that proposed legislation to tax income from intangible personal property instead of the fair cash value of that property would violate the Massachusetts Constitution's requirement for proportionality or uniformity of taxation. A 1921 case, also frequently cited, held that a taxpayer who moved into the state in January, 1918, could not be required to pay income tax based upon 1917 income. In so holding the Massachusetts Court found it helpful to identify the tax as a property tax, rather than an excise tax, in order to assert that liability for the tax arose when the property (the income) passed into the hands of the person entitled to it. The fact that the recipient did not have to pay over the tax to the state until required to file a return of income in the following year was a matter of administrative convenience. In 1926 another case refined this timing concept still further and construed the income tax statute not to apply to income unless earned while and after a taxpayer became a Massachusetts inhabitant. In 1931 the property tax label was used in connection with the taxation of a trust with transferable shares. The trust owned improved real estate and had filed with the Commissioner the agreement under G.L., c. 62, §1(1)(d) and (e), in order to relieve shareholders of any tax liability on the ground that the trust would pay any tax due. The Commissioner attempted to apply the income tax to the trust's real estate rental income, though he had not done so from 1916 to 1930, and the Court held that the real estate income exemption in G.L., c. 62, §22, applied to the income of the trust. None of these cases, all of which identify the Massachusetts income tax as a property tax for one pur-

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12 300 U.S. 308, 57 Sup. Ct. 466, 81 L. Ed. 666 (1937).
pose or another, provide a basis for the concern of the Massachusetts Court in *Wheatland* over the possibility that the United States Supreme Court would declare the Massachusetts income tax unconstitutional as applied to income from property in Maine.

While we are dealing with constitutional matters, we might examine the constitutional aspect of the other income item in the *Wheatland* case, the land gain resulting from the taxpayer's sale of a portion of his interest in Maine forest lands which he received by inheritance or gift. The Massachusetts Court stated in effect in the next to the last paragraph of its *Wheatland* opinion that it need not decide whether the concern the Court showed over the constitutionality of applying the Massachusetts income tax to the timber income should also be shown with respect to the land gain. Citing *Willcuts v. Bunn*,17 the Court said that different considerations might conceivably apply to the land gain situation. Apparently the Court had in mind the possibility, not raised in the briefs, that the gain on the land sale was analogous to the gain on the sale of municipal bonds involved in the *Willcuts* case. There, though the bond interest income (presumably analogous to timber income) was immune from federal income taxation, it was held that the gain on the sale of the bond was taxable. The Massachusetts Court, thus leaving open the possibility that Massachusetts might constitutionally tax the land gain but not the timber income, goes on to interpret the statute in the light of its legislative history in a manner to preclude the statute's application to isolated gains.

The construction adopted seems an unlikely one had there been no recommendation of the State Tax Commission to cite as a reason for the enactment of the 1954 amendment.18 The amended statute states that "... gains from sales or exchanges of real estate ... shall constitute income from the trade or business of the taxpayer."19 The recommendation, which followed the decision in the *Gardiner* case,20 asked that a loophole be plugged with respect to taxing income of those engaged in developing real estate for purpose of sale to the public and those engaged in buying and selling real estate for profit. The recommendation provided for an exclusion for income from sale of principal dwelling units. Taken as a whole, the recommendation and the amendment itself seem to indicate an intention to tax all gains from the sale of real estate except those resulting from the sale of taxpayer's principal residence. Such an intention is the more logical to impute since it avoids difficult determinations of taxpayer intentions with respect to real property which he holds and later sells.

18 See 1954 House Doc. No. 89, Recommendation 18 (reproduced on the next to the last page of the Appellate Tax Board's opinion in the Wheatland case, 1 CCH Mass. Tax Cas. ¶200-122 (1960)). For the 1954 amendment to the income tax statute, see Acts of 1954, c. 611.
over, from the earliest days of the Massachusetts income tax it has been held that the concept of income was intended to be broad.\textsuperscript{21}

While the Court did interpret the statute as amended in 1954 to exclude taxation of isolated gains, the Court specifically refrained from expressing any view of the taxability of such gains under the statute as amended in 1957,\textsuperscript{22} which reads in part as follows, the significant new words being italicized: "The \textit{business} income taxable under . . . shall be the net income from the profession, employment, trade or business and from \textit{transactions entered into for profit} . . ." This new language would seem not to exempt casual and isolated sales in general, since such transactions might well have been originally entered into for profit. However, the narrower question presented by the \textit{Wheatland} facts is whether the sale of inherited property falls within the new statutory language.\textsuperscript{23} On this question the length of time during which the inherited property is held and the use to which it is put would both be relevant at least to any gain accruing subsequent to the acquisition. Some guidance as to the interpretation of the "transactions entered into for profit" phrase may also be found in federal income tax law, where the provision relating to losses deductible by individuals has for many years contained the identical words.\textsuperscript{24}

In the federal situation it has been in the taxpayer's interest to have a finding that the transaction has been entered into for profit, since the loss deduction would then be allowed. The taxpayer has generally been successful in obtaining the loss deduction with respect to property received by inheritance or gift.\textsuperscript{25}

The combination of the 1957 change in the statute, the use to which the property has been put, and the federal interpretations of the new Massachusetts language all make it almost certain that Mr. Wheatland will have the Commissioner asking for tax when he next sells any of his interest in inherited Maine land; also the Massachusetts Court may well find that the statute no longer excludes the land gain. Thus the constitutional issue on the land gain will have to be faced, unless once again the Court uses it to force an exclusionary interpretation of the statute.

The \textit{Wheatland} case has raised some very important questions for Massachusetts income tax law. It has not, however, resolved all of

\textsuperscript{21} Tax Commissioner v. Putnam, 227 Mass. 522, 116 N.E. 904 (1917). The opinion in this case is careful to remind us of the circumstances under which the Massachusetts income tax amendment was adopted in 1915, especially the fact that the United States income tax of 1913 was already in effect with its broad and inclusive concept of income.

\textsuperscript{22} Acts of 1957, c. 677, §5.

\textsuperscript{23} There is an unresolved question of fact in the Wheatland record on this point, since some of the taxpayer's interests in the Maine land may have been acquired other than by inheritance or gift. The stipulated facts say only that the interests were acquired "principally by gift and inheritance." Record, p. 10.

\textsuperscript{24} Int. Rev. Code of 1954, §165(c)(2). Note that here the word "transaction" is in the singular.

\textsuperscript{25} The question is discussed and many of the cases cited in Bittker, Federal Income, Estate and Gift Taxation 207-208 (2d ed. 1958).
them by any means. New litigation may be expected with respect to all types of out-of-state income which have any relation to property. Some one of these is likely to find the Massachusetts Court supporting taxability. In such a case the taxpayer, buttressed by years of Massachusetts Court characterization of the Massachusetts income tax as a property tax, may decide to bring the matter before the United States Supreme Court and get a decision on constitutional grounds on facts similar to the timber income issue in *Wheatland*. 