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Chapter 21: State and Local Taxation

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C H A P T E R 21

State and Local Taxation

JOSEPH P. HEALEY

A. ADMINISTRATION

§21.1. **The new State Tax Commission.** The beginning of the survey year, October 1, 1953, marked the debut of the new State Tax Commission. A statutory reorganization of the Department of Corporations and Taxation had been authorized earlier in the year,¹ replacing the single Commissioner with a three-member Commission.

Under the reorganization plan full administrative authority is vested in the new Commissioner, who also serves as Chairman of the State Tax Commission. The two Associate Commissioners are administrative subordinates of the Commissioner and serve with him on the State Tax Commission. Under the new statute the Commissioner is given, among other things, responsibility for equalization and apportionment,² the valuation of telephone and telegraph properties,³ and the issuance of regulations.⁴

The Commission also acts as a quasi-judicial body. Once an assessment of a tax has been made by the Commissioner, the authority to grant abatements or refunds rests with the Commission. Claims for abatement or refund are handled through informal conference by the Commission at the present time. This procedure affords the taxpayer a full review on the administrative level before going to the Appellate Tax Board or the courts.

It is beyond the scope of this brief review to discuss in detail the work of the new Commission. Suffice it to say that the reorganization of the Department of Corporations and Taxation is being carried forward. Streamlined procedures and forms promise to make easier the job of the taxpayer or his representative in dealing with the Depart-

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§21.1. ¹ Acts of 1953, c. 654.

² *Id.* §8.

³ *Id.* §32.

⁴ *Id.* §4(1).

ment. Regulations, which are badly needed for taxpayer guidance, have not yet been issued, but they are expected in the near future.⁵

In the substantive areas the Commission found a marked degree of legislative acceptance of its proposals for changes in the tax laws. These statutory changes were greater in number and importance than in any recent year.

B. THE PERSONAL INCOME TAX

§21.2. Taxable income: Gains from rental and sale of real estate.

Since Massachusetts has a classified income tax,¹ we have no concepts comparable to "gross income" or "adjusted gross income" under the Federal Internal Revenue Code. The test is whether a particular type of income falls within any of the classes of income which the statute specifically makes taxable. The history of the Massachusetts income tax has always been important in this respect, because this tax was originally adopted as a replacement for the local property tax on intangible personal property. The income tax is not, and was not intended to be, a general income tax. In its original design the tax was not to be levied on income from property which was itself subject to the property tax. Thus rental income from real estate was not taxable.²

The former Commissioner, Henry F. Long, had steadily asserted, however, that gains from the sale of real estate were taxable as "business income" under General Laws, Chapter 62, Sections 5(b) and 6. It was pointed out that Chapter 62, Section 7 provides that the basis of property in determining gain or loss from the sale of capital assets shall be diminished by the amount of depreciation allowable to the taxpayer, and that it was only fair to permit the Commonwealth to recover the allowable depreciation through the capital gains tax. In *Commissioner of Corporations and Taxation v. Gardiner*³ the Court held that gains realized by a real estate trust from the sale of real estate used in the conduct of its business were not taxable under Sections 5(b) and 6. Primary reliance was placed by the Court on Section 22(a) of Chapter 62, which specifically exempted income derived from real estate from the return of income requirements.

Chapter 611 of the Acts of 1954 has amended Sections 6 and 22 of Chapter 62. Under Section 6, as amended, it is provided:

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.

⁵ Particular developments in this area, as when procedures are set up and various regulations are adopted, will be discussed in later issues of the ANNUAL SURVEY.

§21.2. ¹ G.L., c. 62.

² *DeBlois v. Commissioner*, 276 Mass. 437, 177 N.E. 566 (1931).

³ 329 Mass. 654, 110 N.E.2d 106 (1953).

The amendment of Section 22 of Chapter 62 limits the exemption from the reporting requirements of income from real estate to income "from rentals of real estate . . . or gains from the sale or exchange of real estate which is used as the principal residence of the taxpayer."

Thus, not only has the rule in the *Gardiner* case been changed by statute, but it would appear that gains on the sale of tangible property generally are now taxable as business income unless the property is used as the principal residence of the taxpayer. Since the tax has been extended from one on gains from the sale of "capital assets" to a tax on gains from the sale of tangible property, there will be difficult problems in determining the basis at which such property is held by the taxpayer. Also there will continue to be a rate differential with respect to such gains as compared with the rate to be applied to gains from the sale of intangible personal property. For income received in 1954 the effective rate of tax on gains from intangibles is 7.38 percent, while gains from tangible property are taxed at 3.075 percent.⁴

§21.3. Corporate dividends in liquidation. The taxability of corporate dividends in liquidation was involved in two separate developments — one decisional, the other statutory. *State Tax Commission v. Smith*¹ involved the question whether the transfer of all the assets of a Rhode Island corporation in exchange for all of the common stock of a Delaware corporation was taxable under General Laws, Chapter 62, Section 1(b) and (g). The taxpayer was the owner of fifty shares of common stock (\$100 par value) of the Rhode Island corporation, which he had acquired upon its formation. On December 30, 1949, there were accumulated profits per share of \$22.19½. On that date the holders of all the common stock of the Rhode Island corporation adopted a plan of reorganization pursuant to which all of the corporation's assets were transferred on the same day to the Delaware corporation, which bore the same name, in exchange for all of the common stock of the latter. The shares of the Delaware corporation were then exchanged share for share for the shares of the Rhode Island corporation. The Appellate Tax Board, in granting the taxpayer's application for abatement found that, after the reorganization "the capital stock of the Delaware corporation represented the same interest in the same assets as the stock of the Rhode Island corporation had represented prior thereto . . ." The Board held that the transaction was not taxable under General Laws, Chapter 62, Section 5(c), because it was a tax-free exchange.

The Supreme Judicial Court, however, construed the assessment as having been made by the Commissioner under General Laws, Chapter 62, Section 1(b) and (g), and felt that the substance of the transaction, rather than its form, should control. The Court regarded the trans-

⁴ Acts of 1954, c. 4, reducing by 25 percent the normal tax on income from professions, employment, trade or business, applies only to the tax due and payable in the calendar year 1954.

§21.3. ¹ 1954 Mass. Adv. Sh. 435, 119 N.E.2d 185 (1954).

action as merely an exchange of one piece of paper for another with no actual increment of wealth or assets.

Left open by the decision is the question whether a tax could have been properly assessed under General Laws, Chapter 62, Section 5(c). In the light of the broad language in the opinion with respect to the substance of the transaction as controlling, it is likely that the Court would agree with the Appellate Tax Board's view, if the issue were properly presented, that the exchange was tax free under the "same interest in the same assets" test.

While the *Smith* case opened a narrow pathway for the taxpayer seeking to effect a tax-free reorganization in Massachusetts, Chapter 545 of the Acts of 1954 closed a broad avenue of tax avoidance. Prior to the *Smith* case the rule was that amounts received by a shareholder in liquidation of a corporation were taxable as an ordinary dividend under General Laws, Chapter 62, Section 1(b), to the extent that the amounts received were in excess of the capital attributable to his stock.² This is still likely to be the Massachusetts rule in any case which is not on all fours with the *Smith* case.

The important comparison for the taxpayer, therefore, in determining taxability in Massachusetts, is the amount received in liquidation as against the capital attributable to the shares. The price paid for the stock by the taxpayer is immaterial for this purpose.

To avoid a tax on liquidation of a corporation it has become common practice for Massachusetts corporations to capitalize prior to liquidation any existing surplus by issuance of a stock dividend. It has been assumed that such a capitalization of surplus, however close in point of time to outright liquidation, renders any subsequent distribution in liquidation nontaxable.³ This technique has been used to avoid taxes in two types of situations.

The first of these covers the gamut of reorganizations, recapitalizations, mergers and consolidations which are tax free under the Federal Internal Revenue Code, but would be taxable under the less flexible provisions of the Massachusetts law. The second type is straight liquidation, where a corporation winds up its affairs and makes an outright distribution to its shareholders. In the latter situation, there is no reorganization, no intent to continue the enterprise in another form. There is every reason for the tax collector to call for an accounting from the taxpayer, but the tax is avoided by a corporate bookkeeping device. The inequity of this result led to the enactment of Chapter 545 of the Acts of 1954, which added a new sentence at the end of Section 1(g) of Chapter 62 of the General Laws, so that this subsection now reads as follows:

(g) No distribution of capital, whether in liquidation or otherwise, shall be taxable as income under this section; but accumu-

² Commissioner v. Fopiano, 324 Mass. 304, 85 N.E.2d 776 (1949).

³ Commissioner v. Filoon, 310 Mass. 374, 38 N.E.2d 693, (1941); Flint v. Commissioner, 312 Mass. 204, 43 N.E.2d 789, (1942).

lated profits shall not be regarded as capital under this provision. Any accumulated profits which have been transferred to capital, by stock dividend or otherwise, within two years prior to liquidation, in whole or in part, shall not be regarded as capital for the purposes of this subsection.

The amendment effectively prevents the use of surplus capitalizations within two years of liquidation for purposes of tax avoidance. The difficulty is, however, that the new law also discourages many other legitimate and desirable reorganizations, recapitalizations, mergers and consolidations which are tax free under federal law.

The Massachusetts law should encourage the rearrangements of business enterprises where there are valid business reasons behind the changes. The tax-free door is now closed to most of these transactions save for the narrow opening provided by the *Smith* case. Even in the case of straight liquidation the new law might work a real hardship where the taxpayer pays more for shares than he receives in liquidation, but the liquidation value is in excess of the capital attributable to the shares.

The very real problem involved in trying to close the loopholes on straight liquidations, while maintaining desirable flexibility and fairness to the taxpayer, points up anew the serious deficiencies of the Massachusetts income tax law. The Special Commission on Taxation in its study of the income tax recommended to the legislature an overall revision to conform in so far as possible with the federal law.⁴ Nowhere is this approach more necessary and desirable than in the area of corporate reorganization and distributions. The passage of the new Federal Internal Revenue Code presents an opportunity for a further basic approach to this problem. Piecemeal amendment, while perhaps desirable in the short run, is not the answer to an adequate Massachusetts tax law.

The capital gain provisions of the Massachusetts income tax law were changed by Chapter 599 of the Acts of 1954, relating to the basis of property acquired by gift. The old rule under General Laws, Chapter 62, Sections 5(c) and 7, was that the basis of such property for the determination of gain or loss should be its value on the date of acquisition by the donee. This permitted a donor to make an inter vivos gift and at the same time to pass on to the donee an increased basis for gain or loss without any tax on the increment. The only effective deterrent was the operation of the federal income and gift taxes.

Under Chapter 599 the basis of property acquired after June 30, 1954, by inter vivos gift "shall be the cost to the donor or the last preceding owner by whom it was not acquired by gift, or the fair market value at the date of the gift, whichever is lower . . ." This rule is apparently applicable to the determination of both gain and loss. With respect to determination of loss the amendment substantially adopts

⁴House No. 2279, Report of the Special Commission on Taxation, Pt. II, The Taxation of Personal Incomes (1951).

the federal rule.⁵ However, in the case of gains the donee's basis will be lower than the donor's basis under the new Massachusetts rule whenever the market value at the time of the gift was less than the donor's cost. This is contrary to the federal rule,⁶ and reaches an inequitable result, for in such a case there has been an actual economic loss which has not been recognized by the tax law. Use of the donor's basis without reference to market value in determining gain would have closed the big loophole in the old law without producing a new inequity. The new law applies only to gifts made after June 30, 1954. As to prior gifts the old rule is still in effect.

With respect to property acquired from a decedent by devise, bequest, or inheritance, Chapter 599 of the Acts of 1954 provides that the basis "shall be the fair market value of the property on the date when it was so acquired." This is substantially the language of the former law,⁷ under which the words "date when it was so acquired" are construed to mean date of the decedent's death. This is also the federal rule save for the alternative of the optional valuation date.⁸

§21.4. Exemptions and deductions. Prior to 1954 the Massachusetts law allowed only a limited form of exemption to taxpayers whose income was received in the form of dividends, interest, annuities, or capital gains. This was the so-called Schedule H exemption which applied to the income of any person whose total income from all sources did not exceed \$2000 or, in the case of a married couple, whose combined income did not exceed \$2500.¹ This was not an exemption in the usual sense because it was lost when the taxpayer's income exceeded the statutory limits.

Under Chapter 679 of the Acts of 1954 a further limited exemption is granted to a taxpayer receiving dividends, interest, and annuity income, and whose total income from all sources does not exceed \$5000, or, in the case of a married couple, whose combined income does not exceed \$7500. This is accomplished basically by providing for an exemption against annuity income, which in the case of a single person is the amount of the unused portion of his business income exemption (\$2000), or \$1000, whichever is smaller.² If the taxpayer attained sixty-five years of age prior to the close of the preceding taxable year the \$1000 is increased to \$1500.

In the case of a husband and wife filing a joint return,³ the business income exemption is \$2000 plus the amount of the business income of the spouse having the smaller such income, the total exemption not to exceed \$4000.⁴ The exemption against annuity income for a husband

⁵ Int. Rev. Code §1015(a).

⁶ *Ibid.*

⁷ G.L., c. 62, §§5 (c), 7.

⁸ Int. Rev. Code §1014.

§21.4. ¹ G.L., c. 62, §8.

² Acts of 1954, c. 679, §5.

³ This was permitted on an optional basis by Acts of 1954, c. 648.

⁴ Acts of 1954, c. 679, §4.

and wife filing a joint return thus becomes the unused portion of their combined business income exemption, or \$1000, whichever is smaller.⁵ If either spouse attained 65 years of age prior to the close of the preceding taxable year, the \$1000 is increased to \$1500. It should be noted that a married person can take advantage of the new exemption only if a joint return is filed.⁶

If there is any unused portion of the annuity exemption as thus determined, the balance may be applied against dividend and interest income, provided, of course, that the maximum total income limits of \$5000 and \$7500, respectively, are not exceeded.

Under Section 6 of Chapter 679 a trustee may claim, in behalf of a beneficiary who has not used up all of his available individual exemption, the unused portion of such exemption on the fiduciary return.

In actual practice the application of the rather complex provisions of Chapter 679 to given situations may cause some confusion among taxpayers in filling out their 1955 returns. It is understood that the State Tax Commission has prepared a detailed instruction booklet for taxpayer guidance.

§21.5. Family deductions. Family deduction provisions were also changed during the 1954 session. Chapter 251 of the Acts of 1954 corrected an oversight in Chapter 514 of the Acts of 1953, by extending the \$400 deduction against business income to stepchildren over 18 who are incapable of self support, effective with respect to 1953 income. Chapter 657 of the Acts of 1954 amended General Laws, Chapter 62, Section 6(h), by providing that the requirement of entire dependency to qualify for the \$400 deduction for a parent, child, stepchild, or foster child is satisfied if the taxpayer "furnishes the majority of the support of such dependent." While the statutory wording "entirely dependent" had never been literally construed in prior years, the change is more in line with taxpayer understanding and eliminates an area of unnecessary administrative discretion.

Chapter 657 also changes the requirements for eligibility for the \$500 deduction for the taxpayer's spouse. Formerly the requirement was that it be "for a husband or wife with whom the taxpayer lives." The new language is "for a husband or wife with whom the taxpayer was living during the preceding calendar year." Comparable wording has been added as a requirement of eligibility for dependency deduction for children, stepchildren, and foster children under the age of eighteen. No indication is yet available as to how these residence requirements will be interpreted. It was the apparent intention of the Department to eliminate the necessity of proration of these family deductions, but such a result is not clearly accomplished by the new statute.

§21.6. Exemption of property in charitable trusts. Another type of exemption was provided for in Chapter 443 of the Acts of 1954, which amended General Laws, Chapter 62, Section 8, to exempt income

⁵ *Id.* §5.

⁶ *Ibid.*

from property held in trust for charitable purposes. The status of the Massachusetts law with respect to such charitable trusts has been very unsatisfactory. The new law brings Massachusetts closer to the federal rule in another important area. It should be noted that the trustees must make timely application to obtain the exemption.

The new law amends General Laws, Chapter 62, Section 8, by adding a new subsection:

(k) All income from property held in trust which pursuant to the terms of the will, deed or other instrument creating the trust is currently payable or irrevocably set aside for public charitable purposes, or to or for the benefit of any organization or organizations established and operated exclusively for charitable purposes; provided the trustees shall, by the fifteenth day of the fourth month next succeeding the close of the calendar or fiscal year during which such income was received, have filed with the commissioner a return, in form prescribed by him, claiming such exemption.

The amendment will undoubtedly be construed by the State Tax Commission as if the word "public" modified the word "charitable" in each instance. Its omission in Chapter 443 (in line 5 of the extract above) was apparently an oversight.

§21.7. **Administrative provisions.** Changes in administrative provisions during 1954 went hand in hand with substantive changes, both in number and importance. Most significant were two temporary laws which were made permanent by amendment of Chapter 62 of the General Laws. The first was Chapter 69 of the Acts of 1954, which amended General Laws, Chapter 62, Section 37A, by providing that the entire tax is due and payable at the time when the tax return is required to be filed. The prior law, which had been suspended since 1950,¹ allowed the second half of the tax to be paid on October 1. Chapter 70 of the Acts of 1954 amended General Laws, Chapter 62, Section 24, by providing that the filing date for income tax returns should be April 15 instead of March 1. April 15 had been the due date on a temporary basis since 1951.²

The Commissioner was given two administrative assists which he had requested. Chapter 391 of the Acts of 1954 requires employers to file information returns with respect to employees who are paid \$600 or more. This accords with the federal rule, and changes the prior law which required information returns only when compensation exceeded \$2000. It is expected that no great hardship will be imposed on employers who must file comparable federal returns. The additional information will make it possible to check the returns in full of taxpayers who work for more than one employer and receive less than \$2000 from one or more of such employers.

The other assist relates to false or fraudulent returns and cases where no return is filed. Under General Laws, Chapter 62, Section 37, the

§21.7. ¹ Acts of 1950, c. 816.

² Acts of 1951, c. 750.

general assessment statute of limitations (three years from September 1 in the year when the tax was due) applied also to false or fraudulent returns and failure to file a return. Chapter 605 of the Acts of 1954 allows an assessment to be made at any time in such cases. It is doubtful that the new rule would, or could, be invoked retroactively.

Chapter 269 of the Acts of 1954 amends General Laws, Chapter 62, Section 43, and extends the time for filing an application for abatement to three years from the last day for filing the return or one year from the date of overpayment, whichever occurs later. Previously the taxpayer had to apply within one year from the due date of the return or six months after notice of assessment of a deficiency by the Commissioner.³

The language of the amendment, however, relates only to abatements of "overpayment of tax," and thus impliedly takes away the option on the part of the taxpayer under the prior law to contest an assessment before payment of the tax. This is unfortunate, particularly in view of the fact that the rate of interest on refunds by the State Tax Commission is reduced by Chapter 269 from 6 percent to 3 percent. The reasoning behind the reduction of the interest rate is hard to understand, since refunds after decision of the Appellate Tax Board carry an interest rate of 6 percent from the time of payment.⁴ The Commonwealth also will continue to charge the taxpayer 6 percent on overdue and unpaid taxes.⁵

Optional joint returns may be filed by husbands and wives who were married at the close of the preceding calendar year and not separated by a decree of divorce or separate maintenance.⁶ A joint return must be filed by a married taxpayer to obtain the new exemption against annuities, dividends, and interest. Since the Massachusetts tax is not graduated, there is no advantage in splitting income between husband and wife as there is under the steeply graduated federal rates. However, losses of one spouse may be aggregated on the joint return with gains of the other spouse to effect a tax reduction. Chapter 648 of the Acts of 1954 also inserts a new Section 29 in Chapter 62 of the General Laws, giving the Commissioner discretion to extend up to six months, for due cause, the time for filing the return, or to extend the time for paying the tax in hardship cases, with or without an abatement of interest on the overdue payment.

§21.8. Miscellaneous provisions. Early in 1954 the normal tax on business income, consisting of the so-called permanent tax of 1½ percent and the temporary tax of 1 percent, was reduced by 25 percent, making the effective normal tax rate 1.875 percent.¹ To this is added

³ G.L., c. 62, §43.

⁴ Id. §46.

⁵ Id. §41.

⁶ Acts of 1954, c. 648, §1.

§21.8. ¹ Acts of 1954, c. 4.

the 23-percent surtax.² This reduction was applicable only to taxes due and payable in the calendar year 1954, and has not yet been extended.

A purely technical change was made by Chapter 560 of the Acts of 1954 to eliminate the possibility of questioning the taxability of dividends from Massachusetts corporations, which have long been held to be taxable. Chapter 387 of the Acts of 1954 specifically excludes from eligibility for certain deductions given to trustees, "executors and administrators even though acting as trustees." These deductions are for amounts paid for safe deposit box rentals, premiums on surety bonds, and trustees' compensation, not exceeding 6 percent.³

C. TAXATION OF CORPORATIONS

§21.9. Administrative changes. The change in the corporation tax law which received the closest attention from conveyancers and others was Chapter 461 of the Acts of 1954.¹ This law amended General Laws, Chapter 63, Section 76, relating to the sale or transfer of the assets of business corporations other than in the regular and usual course of business. The prior law required a notice to the Commissioner five days before the sale or transfer, and the corporation excise became due and payable forthwith. Failure to notify made the sale or transfer "fraudulent and void" as against the Commonwealth. Chapter 461 requires essentially the same kind of notice to be given of such sales or transfers, but instead of declaring the sale or transfer void for failure to give notice, substitutes a three-year lien on all of the corporate assets in Massachusetts. The excise is due and payable at the time of the sale or transfer. Waiver of the lien may be given before the sale or transfer by the Commissioner, and after the sale or transfer by the State Tax Commission. The new law became effective as of September 1, 1954. Sales and transfers prior to January 1, 1950, are declared to be binding and valid against the Commonwealth. Sales and transfers between January 1, 1950, and September 1, 1954, are valid if the corporation excise has been paid in full. Provisions are made for conclusive reliance by third persons on any written waiver of the lien or the certificate of the Commissioner that all such taxes have been paid.

Of more general application is Chapter 270 of the Acts of 1954, relating to notification to the Commonwealth of changes made in the corporation's federal return. Under General Laws, Chapter 63, Section 30, net income for purposes of the Massachusetts corporation excise is fundamentally the same as net income under the Federal Internal Revenue Code. If there is a federal determination of net income different from that reported by the taxpayer, he is required to notify the Com-

² Acts of 1951, c. 386; Acts of 1953, c. 246, §6; Acts of 1941, c. 729; Acts of 1948, c. 503, §5.

³ G.L., c. 62, §10.

§21.9. ¹ For a more detailed discussion of Chapter 461, see Section 2.11 *supra*.

missioner within seventy days of the receipt by it of the final federal determination.² Under prior law the Commissioner assessed a deficiency, if such were warranted, and the additional tax was payable thirty days thereafter. Enforcement of the provisions of General Laws, Chapter 63, Section 36, was difficult because of the absence of specific penalties for failure to comply. Chapter 270 makes the tax due and payable at the time notice of the federal change is sent by the taxpayer, and specific penalties are provided for failure to comply.

False and fraudulent returns were the subject of legislation in the corporate field as well as in personal income taxation. Under General Laws, Chapter 63, Section 46, before amendment, in cases of corporations where no return, or a false or fraudulent return, was filed, the Commissioner, on information and belief, was permitted to determine the income of the corporation and assess double the amount of the tax so determined. No such provision related to corporate excess. Since a fraudulent return might be filed by a corporation which sustained a net loss during the taxable year, but which might nevertheless owe a tax measured by its corporate excess, it is evident that the penalty provided in Chapter 63, Section 46, would be ineffective. Chapter 193 of the Acts of 1954 provides for double assessment of both income and corporate excess in cases of failure to file or of filing false or fraudulent returns.

§21.10. **Stock transfer tax.** On the recommendation of the Special Commission on Taxation,¹ the stock transfer tax² was repealed outright by Chapter 353 of the Acts of 1954. Loss of brokerage and transfer business to other financial centers and declining revenues from the tax were the reasons for the repeal.

D. INHERITANCE TAXATION

§21.11. **Legislative developments.** Statutory changes in the inheritance tax during 1954 were not important. Chapter 572, Section 1, of the Acts of 1954 amended General Laws, Chapter 65, Section 25, to require that the notice by the Commissioner of his determination of value be sent by registered mail. The right of appeal to the Appellate Tax Board within three months after the determination of value was continued. Chapter 572, Section 2 amended General Laws, Chapter 65, Section 26, to provide for an intermediate appeal from a determination of value to the State Tax Commission. This appeal must be taken within one month. If the State Tax Commission rejects the appeal, or fails to act thereon within two months, which is deemed to be a rejection, the taxpayer has two months within which to appeal to the Appellate Tax Board.

Another change related to the lien on real estate to secure payment

² G.L., c. 63, §36.

§21.10. ¹ House No. 2469, Report of the Special Commission on Taxation, Pt. IX, Taxation of Stock Transfers (1954).

² G.L., c. 64.

of the inheritance tax. Under prior law, General Laws, Chapter 65, Section 9, no time limit was placed on this real estate lien. Chapter 595 of the Acts of 1954 amends this section to provide that the lien on real estate shall terminate thirty years after the death of the decedent or ten years after the approval by the Probate Court of the bond of the executor or administrator, provided the Commissioner is given written notice of the death or probate. In the case of future interests the lien terminates at the end of ten years after the right of possession or enjoyment accrues, provided written notice thereof is given to the Commissioner. Prior liens are made subject to the amendment.

§21.12. **Charitable bequests.** The only significant case on the inheritance tax decided during the survey year was *Old Colony Trust Co. v. Commissioner*.¹ Involved were legacies to three Masonic organizations, payable after the termination of a trust for the benefit of the widow of the testator. The testator died in 1932, his widow in 1949. The statute in effect in 1932 was applied by the Court, which followed Massachusetts precedents in holding that Masonic organizations are charitable societies or institutions under the tax laws. Two of the organizations were incorporated in Massachusetts and were therefore held qualified for property tax exemption in Massachusetts, and the legacies to them were held exempt under the statute. The other organization, a voluntary association, could not qualify under the property tax exemption clause, since it was not incorporated. Nor could it demonstrate that it was organized "for charitable purposes to be carried out within the Commonwealth," because a substantial part of its charitable purposes was actually carried on outside of Massachusetts. This legacy was held taxable under the then existing law. The present statute, of course, is very different.²

E. PROPERTY TAXES

§21.13. **"Machinery" exemption.** The broadening of exemptions accounted for a good part of the developments in the taxation of property. Most important was Chapter 435 of the Acts of 1954, which added a further limitation on the meaning of the words "machinery used in the conduct of the business" as used in General Laws, Chapter 59, Section 5, Clause Sixteenth.

In Massachusetts the machinery of manufacturing corporations has been exempt from local taxation since 1936,¹ although its value is included in the measure of the corporate excess for purposes of the corporation excise.² The machinery of business corporations (i.e., non-manufacturing corporations) is taxable locally if "used in the conduct of the business." Its value is deducted in the measure of the corporate

§21.12. ¹ 1954 Mass. Adv. Sh. 359, 119 N.E.2d 175.

² G.L., c. 65, §1.

§21.13. ¹ Acts of 1936, c. 362, §1.

² G.L., c. 63, §38C.

excess.³ Neither business nor manufacturing corporations pay a local property tax on stock in trade.

The concept of "machinery used in the conduct of the business" has been a difficult one to apply, and local assessments of particular types of property have varied from community to community. In *Assessors of Haverhill v. J. J. Newberry Co.*,⁴ one of the most talked-about decisions of the survey year, the Court in effect gave to local assessors a detailed list of interpretations with respect to the meaning of the word "machinery." The Court reiterated its previous holding in *Board of Assessors of City of Brockton v. Brockton Olympia Realty Co.*⁵ that machinery taxable to a business corporation should not be limited to the type used by manufacturing corporations. In the *Newberry* case the Court decided that the term "machinery" meant any "mechanical device which can fairly be said to be a machine." Devices which were held to be machines used in the conduct of the taxpayer's business — department store, including a lunch counter — were cash registers, typewriters, calculating machines, soda fountains, refrigerators, dish-washers, mixing machines, and other comparable equipment.

Local assessors, most of whom had not previously been assessing such property to business corporations, began doing so in 1954. Their efforts were frustrated, however, by Chapter 435 of the Acts of 1954, which provided, effective January 1, 1954, that the term "machinery used in the conduct of the business" should not be deemed to include "any personal property directly used in the refrigeration of goods or in the air conditioning of premises or in any purchasing, selling, accounting or administrative function."

The intent of the amendment was to roll back the law to accord with general assessment practices prior to the *Newberry* case. This objective was not fully realized, but it is safe to say that most of the effects of the decision have been dissipated.

§21.14. Exemption of goods "in transit." Another exemption from the personal property tax was granted by Chapter 459 of the Acts of 1954 for personal property of any person who neither is domiciled nor has a place of business in Massachusetts which is stored, as soon as it is shipped into the Commonwealth, in a licensed public storage warehouse in its original package. Such property is deemed to be "in transit." However, if any portion of the warehouse is owned or leased by a consignor or consignee, that portion will not qualify under the exemption.

§21.15. Real property: Miscellaneous exemptions. Real estate exemptions were broadened for certain veterans and their families under Chapters 245 and 683 of the Acts of 1954, amending General Laws, Chapter 59, Section 5, Clause Twenty-second. The exemptions were also broadened for widows, elderly persons, and minors whose fathers are dead. Chapter 351 of the Acts of 1954 amended General Laws,

³ Id. §30, cl. 3(a).

⁴ 330 Mass. 469, 115 N.E.2d 139 (1953).

⁵ 322 Mass. 351, 77 N.E.2d 391 (1948).