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C H A P T E R 2

State and Local Taxation

GEORGE T. SHAW

The 1972 SURVEY year was not one of significant events in Massachusetts in the field of state and local taxation. Of the several decisions rendered in this area, some clarified the law or resolved statutory ambiguities while others added confusion or at least uncertainty. Legislation relating to tax matters was sparse and generally technical in nature. This chapter discusses the more important decisions and legislation.

A. PROPERTY TAXES

§2.1. Definition of real estate. The case of *Board of Assessors v. Lynn Sand and Stone Co.*[1] revolved around the interplay of two statutes relating to the taxation of certain property of domestic manufacturing corporations. General Laws, Chapter 59, Section 2 imposes a tax on "real estate" which in Section 3 is defined, for the purpose of taxation, to "include all land . . . and all buildings and other things erected thereon or affixed thereto." On the other hand, Section 5, Clause Sixteenth (3) of that Chapter exempts from taxation all property owned by a domestic manufacturing corporation *"other than . . . real estate,* poles and underground conduits, wires and pipes" (emphasis added). The property in question consisted of several items of very large equipment, such as rock crushing and concrete mixing equipment, used in taxpayer's business of manufacturing and selling ready mixed concrete, crushed stone and asphalt filler.

The assessors claimed that the items of property affixed to or erected on taxpayer's land or buildings were within the Section 3 definition of real estate and were subject to taxation as real estate under Section 2. The taxpayer, on the other hand, asserted that the equipment was "machinery" owned by a domestic manufacturing corporation and was therefore exempted under clause sixteenth of Section 5.

The Court concluded that "all machinery of a domestic manufacturing corporation, at least so far as reasonably related to and used in manufacturing operations, must be treated as exempt from local taxation by virtue of G.L. c. 59, §5, Sixteenth (3). . . ."[2] Construing the legislative

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§2.1. [1] 1971 Mass. Adv. Sh. 1771, 277 N.E.2d 97.
[2] Id. at 1773, 277 N.E.2d at 99.

history of the exemption to indicate a legislative intent to exempt *all* machinery of domestic manufacturing corporations, the Court determined that the relevant inquiry was whether the equipment was machinery.[3] Finding that it was, the Court then held that the equipment was exempt from tax, notwithstanding its size and degree of attachment to the land and notwithstanding that it may have become real estate as a matter of property law.

It is interesting to compare this decision with that of the *Board of Assessors v. B. A. Simeone, Inc.*[4] The *Simeone* case as well as the instant case which was then pending before the Court were discussed in the 1971 SURVEY.[5] In *Simeone,* a semiportable asphalt plant 55 feet high and weighing in excess of 100 tons was held not to be "erected or affixed" on real estate and hence was not subject to real property taxation. The rescript opinion in that case specifically left open the question of the domestic manufacturing corporation exemption. The facts in *Simeone* and *Lynn Sand and Stone* are so similar that it is difficult to understand why the two cases were not decided on the same basis: either that the equipment in question was not real estate at all or that it was machinery which was exempt. Taken together, the two decisions are unsatisfactory at best.

In this writer's opinion, the relevant statutes mandate an analysis of whether a given item of property is real estate within the Section 3 definition. If it is, then it is taxable as real estate under Section 2; the Section 5 exemption is then irrelevant because it specifically does not exempt real estate as defined in Section 3. As the assessors correctly stated, in order for the taxpayer's (and the Court's) position to be sustained, the Section 3 definition would have required language to the effect that "except that real estate for the purpose of taxation of manufacturing corporations shall not include machinery, whether or not erected upon or affixed to the land."[6] Apparently the Court's decision in *Lynn Sand and Stone* now supplies that proviso.

§2.2. Agreements to grant exemptions. In *Mahony v. Board of Assessors,*[1] the taxpayer granted an easement over his land to the town for off-street parking purposes. The deed stated as a condition that the easement would continue only for so long as the land was exempt from the

[3] "There is no indication in the legislative or decisional history of c. 59, §5, Sixteenth, of any intention to draw refined distinctions between (a) easily removable machinery and (b) more ponderous, bulky machinery items, which may have become real estate as a matter of property law, but which in a practical sense retain their characteristics as machinery. The machinery exemption adopted in 1936 (c. 362) exempted machinery of domestic manufacturing corporations and in very broad and general terms. The exemption has not been construed technically or narrowly." Id. at 1774, 277 N.E.2d at 99.

[4] 1971 Mass. Adv. Sh. 904, 269 N.E.2d 663.

[5] 1971 Ann. Surv. Mass. Law, §3.13.

[6] Brief of the Board of Assessors, p. 9.

§2.2. [1] 1972 Mass. Adv. Sh. 1291, 285 N.E.2d 403.

assessment and collection of municipal taxes. The deed and the acceptance thereof, signed by the selectmen, were recorded and the land was in fact used for parking purposes. However, the taxpayer was assessed on the land by the assessors. He then brought a bill for declaratory judgment to determine the validity and enforceability of the tax exemption provision of the deed.

The Court held the provision invalid. It found that none of the statutory tax exemptions were applicable. Furthermore, the assessors never assented to the condition in the deed, and the selectmen did not have authority to bind the town to any agreement purporting to grant a tax exemption: "A taxpayer is not entitled to an exemption unless he shows that he comes within either the express words or necessary implication of some statute conferring this privilege upon him."[2]

Presumably the taxpayer was free to terminate the easement because of the town's noncompliance with one of the conditions of the grant, the granting of the tax exemption. The Court, however, did not feel compelled to resolve that question because the plaintiff had not attempted to terminate the easement.

§2.3. Timely appeals to Appellate Tax Board. The Court again this year emphasized the need for meticulous care in filing appeals with the Appellate Tax Board from refusals of local assessors to abate local property taxes. In *Berkshire Gas Co. v. Board of Assessors,*[1] the taxpayer received notice on October 6 that the assessors had refused to abate a disputed property tax; on January 7 it filed an appeal with the Appellate Tax Board. By law, the appeal had to be filed "within three months after receiving the notice" of the refusal.[2] The Court concluded, based on earlier decisions, that the three months expired at midnight on January 6. Accordingly, the appeal filed on January 7 was not timely, and the Court affirmed dismissal of the taxpayer's appeal.

§2.4. Separate assessment of restricted land. Chapter 719 of the Acts of 1972[1] requires assessors to assess as a separate parcel land permanently restricted under the scenic and recreational rivers act,[2] the coastal or inland wetlands acts,[3] and the conservation and historical restriction act.[4] How this new requirement will be applied by assessors is problematical. In theory, land restricted as to use and permissible development in accordance with any of these acts is worth less than the same land unrestricted. However, proving to the satisfaction of skeptical assessors

[2] Id. at 1294, 285 N.E.2d at 406-07, quoting Animal Rescue League v. Assessors of Bourne, 310 Mass. 330, 332, 37 N.E.2d 1019, 1021 (1941).

§2.3. [1] 1972 Mass. Adv. Sh. 778 281 N.E.2d 602.
[2] G.L., c. 59, §§64-65.

§2.4. [1] Amending G.L., c. 59, §11.
[2] G.L., c. 21, §17B.
[3] G.L., c. 130, §105 and c. 131, §40A.
[4] G.L., c. 184, §31.

that the restriction has in fact reduced the value of the land and demonstrating the amount of that reduction will be difficult and expensive because undoubtedly appraisals will be required.

In certain cases, however, a request for separate assessment of restricted land may backfire or at least be neutralized. This result typically might occur when only a part of the owner's land is restricted. While he may claim successfully that the restricted land is reduced in value by the restriction, the assessors may claim with equal success that the landowner's adjacent unrestricted land is benefited by the restriction. The amount of the benefit may equal or even exceed the amount of the reduction in value. In any event, using this theory, assessors may be able to prevent this new statute from having the impact intended.

§2.5. Tax incentives for property used to control air pollution. Chapter 707 of the Acts of 1972[1] operates to equalize the tax treatment of property used to control air pollution with that of property used to combat water pollution. Previously both types of property had been exempt from taxation but under separate statutory provisions.[2] Under Section 2 of Chapter 707, the exemption of property used to control air pollution is now subject to the same terms, conditions, and definitions as the exemption pertaining to property used to control water pollution.[3] Thus, property used to prevent pollution of the atmosphere must now be certified by the director of the state agency responsible for control of air pollution.

Section 3 permits an elective deduction from net income for expenses incurred in controlling air pollution. Previously such deductions were available only for expenses incurred in connection with water pollution control. Again, the deductions relating to air pollution control are subject to the same terms, conditions and definitions as are the deductions relating to water pollution control. The deductions are available only for property depreciable under Section 167 of the Internal Revenue Code and only if the property is certified by the director of the appropriate state agency. Also, for air pollution control property the "construction, reconstruction, erection or improvement" must have been initiated on or after January 1, 1972, and the expenditures must be "paid or incurred" prior to January 1, 1980. The corresponding dates for expenditures made in connection with water pollution control property are January 1, 1966 and January 1, 1980. The latter date represents a six year extension over the previous deadline. Section 3 applies to all taxable years ending on and after December 31, 1972.

§2.5. [1] Amending G.L., c. 59, §5 and G.L., c. 63, §38D.

[2] G.L., c. 59, §5 (thirty-ninth and forty-fourth clauses).

[3] For example, "The term 'industrial waste' *and the term 'industrial air pollution,'* as used in this section, shall mean any liquid, gaseous, solid or waste substance, or a combination thereof, resulting from any process of industry, manufacture, trade or business or from the development or recovery of any natural resources, which may cause or might reasonably be expected to cause pollution of the waters *or the atmosphere* of the Commonwealth." (Emphasis added.)

B. Corporate Excise Taxes

§2.6. Manufacturing corporation. In *Franki Foundation Co. v. State Tax Commission,*[1] the Court was called upon to decide whether the taxpayer corporation, engaged in the business of making specialized foundation footings for buildings and other structures, was a "manufacturing" corporation for Massachusetts tax purposes. The importance of qualifying as a manufacturing corporation is that the machinery of a manufacturing corporation is exempt from local property taxes. Instead, it is taxed under the corporate excise tax at a much lower rate.[2]

The Court found no statutory definition of "manufacturing" but noted general language from its earlier decisions indicating that manufacturing normally implies " 'the process of transforming raw or finished materials by hand or machinery, and through human skill and knowledge, into something possessing a new nature and name and adapted to a new use.' "[3] This definition, taken literally, would have supported taxpayer's claim that the production of foundation footings was a manufacturing process. By reasoning not altogether clear or convincing, the Court rejected this claim and concluded that the taxpayer was not involved in manufacturing but rather in an integral part of the construction process.[4] The Court found no legislative intent that the manufacturing exemption should apply within the construction industry.[5]

The *Franki* decision has not clarified the definition of a manufacturing corporation, but it does establish that a corporation engaged in the construction industry is not a manufacturing corporation. Because of the importance of "manufacturing" for the Massachusetts corporate and property tax system, it would have been desirable for the Court to use the *Franki* case to formulate an affirmative definition thereof, or at least to list the criteria to be considered in resolving some of the difficult problems associated with that concept. From this point of view, the Court's decision in *Franki* is unsatisfactory, even though the result is probably correct.

§2.7. Security corporations: Chatham Corp. v. State Tax Commis-

§2.6. [1] 1972 Mass. Adv. Sh. 807, 281 N.E.2d 865.

[2] 4 Barrett and Bailey, Massachusetts Practice—Taxation, §822.

[3] 1972 Mass. Adv. Sh. 807, 811, 281 N.E.2d 865, 868, quoting Commissioner of Corp. and Taxation v. Assessors of Boston, 321 Mass. 90, 94, 71 N.E.2d 874, 817 (1947).

[4] "While it may be difficult in some cases to decide where the manufacturing process ends and the construction process begins, this is not such a case. . . . We see no difference between the footings which Franki puts underground at the construction site and the remainder of the building which another contractor completes above ground on those footings." 1972 Mass. Adv. Sh. 807, 812, 281 N.E.2d 865, 869.

[5] Id. at 810-11, 281 N.E.2d at 869. The legislative history, as contained in 1936 House Doc. No. 143, evinces primarily a concern for "manufacturing" as relating to the activities of "mills and factories."

sion.[1] The Beacon Company, Inc. was a domestic manufacturing corporation engaged in producing household cleaning goods. On June 15, 1965, Beacon entered into a purchase and sale agreement relating to the sale of substantially all of its assets. The agreement provided that the acquisition would become effective on July 7, 1965 and that until that date Beacon would "conduct [its] operations according to [its] ordinary and usual course of business."[2] Beacon did in fact conduct its normal manufacturing operations through July 7. Its fiscal year ended June 30, and there were three business days of manufacturing operations in its next fiscal year, the tax year in question. On July 9, Beacon changed its name to Chatham Corporation and thereafter engaged solely in the business of buying, selling and holding securities for its own account.

The issue in *Chatham* was whether the corporation was entitled to be taxed as a so-called "securities corporation" pursuant to Section 38B of Chapter 63. Under that section, the tax rates are substantially lower than the business corporation tax rates under Section 32. Section 38B applies to corporations "engaged *exclusively* in buying, selling, dealing in, or holding securities in its own behalf and not as a broker" (emphasis added). The Court agreed with the State Tax Commission that Chatham was not exclusively a securities corporation during the year in question because of the few days of manufacturing operations conducted during the first days of the year pursuant to the requirement of the purchase and sale agreement.

The Court's opinion does not mention one theory put forth by Chatham in its brief.[3] Chatham argued that the manufacturing operations for the days immediately prior to the effective date of the sale were not conducted as Beacon's normal business but were in the nature of preserving the going concern value of the business as required by the purchase and sale agreement. The proposition put forward with some force was that the process of liquidation is not a business, and it should not suddenly disqualify the company from the tax advantages which it should enjoy as a securities corporation, even during liquidation.

In its brief, Chatham relied on two earlier decisions of the Appellate Tax Board involving the same statutory provision and similar fact situations. *A & S Incorporated v. State Tax Commission*[4] and *Arcade Malleable Iron Company v. State Tax Commission*[5] both involved sales of substantially all corporate assets but retention of some of those assets into the year in which taxation as a security corporation was sought. In each case, the Appellate Tax Board found as fact that the corporation was not engaged in a business of selling assets during the pertinent years but

§2.7. [1] 1972 Mass. Adv. Sh. 1297, 285 N.E.2d 420.

[2] Id. at 1297-98, 285 N.E.2d at 421.

[3] Brief for Chatham Corporation, pp. 5-9.

[4] Appellate Tax Board, February 7, 1963, annotated in CCH Mass. Tax Reporter ¶10-430.202.

[5] CCH Mass. Tax Reporter, ¶200-274 (1968).

rather was holding and selling the assets solely to accomplish its liquidation. Accordingly, they were taxed as security corporations. In neither case did it appear that the corporation continued its former business operations into the tax year other than for purposes of selling its assets. The issue was whether it was in the "business" of selling assets, thereby precluding it from engaging exclusively in the securities business under Section 38B.

The *Chatham* case is distinguishable because the manufacturing, distribution and sale of household products continued into the tax year. Had those activities ceased prior to July 1, 1965 and had Beacon continued only to hold its assets until the bulk sale on July 7, then the facts would be indistinguishable from those in *A & S* and *Arcade*. Because the Court in *Chatham* did not mention those cases, it is not clear whether they remain good law on their facts, or whether they were overruled sub silentio. The briefs on both parties argued extensively over their applicability and it is unfortunate that the Court did not deal with these cases.

From another view, however, the decision can be questioned. Realistically, Chatham and Beacon were different corporations engaged in different businesses. One could argue that Chatham commenced its corporate existence after the sale and that its tax return covered only the short fiscal year beginning on July 8. During that period, Chatham engaged in the securities business exclusively. This result could have been accomplished by using other forms of corporate reorganization. The Court's analysis should have recognized the economic and business reality of the situation.

§2.8. **Consolidated returns.** *State Tax Commission v. La Touraine Coffee Co.*[1] focused on the use of consolidated returns by certain corporate families and the treatment of intercompany dividends between corporations within a family.

On April 25, 1964, La Touraine sold all of the stock of Kennedy, its wholly-owned subsidiary. Earlier in 1964, Kennedy had paid La Touraine a dividend in excess of $275,000. For that taxable year, La Touraine and its subsidiaries filed consolidated Federal and Massachusetts corporate tax returns. The returns included the income of Kennedy up to the date of the sale but excluded from income the intercompany dividend paid by Kennedy to La Touraine. The Commission argued that La Touraine and its subsidiaries were not entitled to file a consolidated return or to exclude the intercompany dividend. The Appellate Tax Board rejected both contentions.

General Laws, Chapter 63, Section 32(a)(2) provides that two or more domestic corporations filing a consolidated Federal return can elect to have the net income portion of the corporate excise tax assessed upon their "combined net income." The Court concluded that La Tou-

§2.8. [1] 1972 Mass. Adv. Sh. 977, 282 N.E.2d 643.

raine and its subsidiaries had complied with the only requirement of that Section when they filed a consolidated Federal return. Thus they were entitled to combine their net income for purposes of the state corporate excise tax.[2]

On the dividend exclusion issue, the Court took a realistic view of corporate finance and accounting. The purpose of consolidating returns is to allow a related group of corporations to be taxed as a single entity. On the basis of this analysis, the Court concluded that the transfer of funds between Kennedy and La Touraine had no tax consequence for purposes of a consolidated return. Accordingly, the Appellate Tax Board's decision abating the tax was affirmed.

C. Personal Income Taxes

§2.9. Low income credit. *Roberts v. State Tax Commission*[1] raised the question of the availability of the low-income tax credit[2] for a woman who was separated in fact from her husband and therefore unable to file a joint return, but who still provided a home for their children. The credit is not available to "a married individual" unless a joint return is filed.

The taxpayer had been separated from her husband since 1957 but had never filed any probate court petition seeking support or other relief on the ground that she was living apart for justifiable cause. She was the mother of eight children, and if she had been able to file a joint return, she would have been entitled to a credit of $68.

Taxpayer sought a ruling that, because of her long separation from her husband and the lack of any support from him, she was not "a married individual" within the meaning of Section 6B. She buttressed her position by reference to another statute[3] providing that "an individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married" for purposes of Chapter 62. The court rejected her argument and held that the taxpayer was a married individual and, since she was in fact unable to file a joint return, she was not entitled to the credit.

The Court also rejected her contention that if the statute were construed to include her in the category of married persons, it would deny her equal protection by favoring (a) married individuals able and willing to file joint returns and (b) married couples legally separated or divorced.

[2] The commission unsuccessfully tried to rely on G.L., c. 63, §38, Clause 6, repealed by Acts of 1966, c. 698, §58. This provision conditioned the filing of a consolidated tax return upon obtaining permission from the state tax commission. The Court found that this provision only applied when consolidated returns were not filed at the federal level.

§2.9. [1] 1972 Mass. Adv. Sh. 25, 277 N.E.2d 499.

[2] G.L., c. 62, §6B which now appears as G.L., c. 62, §6(b).

[3] G.L., c. 62, §61(d), now G.L., c. 62, §1(h).

The Court found that tax statutes are not constitutionally required to "insure absolute equality of economic impact on all persons," and that Mrs. Roberts had not sustained the "very heavy burden of proving that the classification cannot be supported on any conceivable basis."[4]

A similar question arises under the Internal Revenue Code. The favorable tax rate for heads of households is available for certain unmarried taxpayers.[5] The Code contains an analogous provision[6] deeming as unmarried for purposes of the head of household tax individuals living apart from a spouse under a divorce or separate maintenance decree. Like the Court in *Roberts,* the federal courts have construed these statutes literally. In *Wesemann v. Commissioner,*[7] for example, the Second Circuit held that a taxpayer was still married for purposes of the head of household test even though a state court had dismissed a divorce action brought by taxpayer's spouse on the ground that the taxpayer was justified in living apart from his spouse.

Unlike the Massachusetts legislation, however, the Internal Revenue Code provides some relief for a person in the situation of the taxpayer in *Roberts.* Under the Code, a person legally married and filing a separate return is not considered to be married for purposes of the head of household test if that person maintains a home as a household for certain dependents, furnishes over one-half of the cost of such household, and "during the entire taxable year such individual's spouse is not a member of such household."[8] The fact situation in the *Roberts* case is not an unusual one, especially for certain low-income families in the Commonwealth, and it appears that the taxpayer would have qualified as a head of household for federal tax purposes even though she was still legally married. The low-income tax credit of Section 6B was presumably designed to assist families in certain *economic* situations. The Internal Revenue Code extends the advantageous tax status to those families with economic need, without regard for whether there has been a judicial sanction of the husband and wife living apart. The Massachusetts statute should be amended to provide similar tax relief to those in the situation of the taxpayer in *Roberts.*

D. Sales and Use Taxes

§2.10. Exemptions. The statutes which the Court was called upon to interpret in *Rowe Contracting Co. v. State Tax Commission*[1] were those providing exemptions from sales and use taxes for the acquisition

[4] 1972 Mass. Adv. Sh. 25, 28-30, 277 N.E.2d 499, 502-03.
[5] I.R.C., §2(b).
[6] I.R.C., §2(b)(2)(B).
[7] 298 F.2d 527 (2d Cir. 1962).
[8] I.R.C., §§2(c) and 143(b).

§2.10. [1] 1972 Mass. Adv. Sh. 287, 279 N.E.2d 675.

and use of certain property for the purpose of producing tangible personal property to be sold. Exempted by the statute were:

> (r) Sales of materials, tools and fuel . . . which become an ingredient or component part of tangible personal property to be sold or which are consumed and used directly . . . in an industrial plant in the process of the manufacture of tangible personal property to be sold. . . .
>
> (s) Sales of machinery, or replacement parts thereof, used directly . . . in an industrial plant in the manufacture, conversion or processing of tangible personal property to be sold. . . .[2]

The taxpayer was engaged primarily in producing for sale crushed stone, manufactured gravel and treated stone. In dispute was the applicability of these statutes to purchases and use of machinery, machinery parts and supplies used in the various steps of breaking rock away from its rock formation in the ground and changing it into the finished product which the taxpayer then sold.

The issue was whether the property in question was used "in the process of the manufacture" or "in the manufacture, conversion or processing" of the finished product which taxpayer sold. The Court first concluded that the terms "in the process of the manufacture" appearing in (r) and "in the manufacture, conversion or processing" appearing in (s) were essentially interchangeable and that the issue was the same under both (r) and (s). Having made that initial determination, the Court determined that the taxpayer's quarry operation was reasonably integrated, commencing with the initial separation of rock from the rock formation and continuing through various stages until the final product was stockpiled for sale and delivery to taxpayer's customers. Each of the pieces of machinery and equipment in dispute, other than front-end loaders used primarily to load customers' trucks and to mix the stockpiles, was used to assist in various stages of this overall process and thus was not subject to the tax.

The Court referred to the 1971 amendments to the sales tax statute[3] which were apparently intended to clarify the exemptions in question. The exemptions were basically rewritten in 1971 and fairly elaborate definitions of certain terms were added. In light of these amendments, it is questionable whether a court, facing the same facts as presented in *Rowe* but under the amended statute, would have been able to reach the same result. Furthermore, the retention by the legislature in the 1971 amendments of the distinction between "manufacture" and "manufacture, conversion or processing" appearing in the 1966 statute which was before the Court in *Rowe* suggests that the legislature intended that (r) and (s) raise different issues. Accordingly, the holding of the Court

[2] G.L., c. 64H, §§6(r) and (s), made applicable to use taxes by G.L., c. 64I, §7(b).

[3] Acts of 1971, c. 555, §45, amending G.L., c. 64H, §6. These amendments were not applicable in the instant case which arose prior to their enactment.

in *Rowe* that the quoted phrases were interchangeable may have been substantially if not totally undermined by the 1971 legislation.

E. Inheritance Taxes

§2.11. Exemption for legacies to out-of-state charities. In *Angevine v. Commissioner of Corp. and Taxation*,[1] decedent's will left $10,000 legacies to a hospital and a church in Florida. A charitable deduction was allowed for each legacy for Federal estate tax purposes. The Inheritance Tax Bureau, however, refused to exempt these legacies from the Massachusetts inheritance tax.

The inheritance tax statute[2] provided in substance that these legacies would be exempt from the Massachusetts inheritance tax if Florida "exempt[ed] from similar taxation" legacies from Floridians to Massachusetts charitable organizations. Florida has no inheritance tax, but it does have an estate tax equal to the Federal state death tax credit. The issue before the Court was whether in view of the Florida tax structure Florida and Massachusetts had reciprocal exemptions for charitable legacies.

The Inheritance Tax Bureau's policy was to permit the exemption where legacies were made to charitable organizations in states which expressly exempted from their inheritance or estate taxation statutes legacies to out-of-state charities. However, it was the Bureau's policy not to allow an exemption with respect to states which had no inheritance tax.[3]

The Court in *Angevine* had little difficulty in affirming a decree of probate court abating inheritance taxes with respect to the legacies to Florida charities. Clearly, a state that imposes no inheritance tax at all accomplishes the same end result as a state expressly granting reciprocal exemptions from inheritance tax. Similarly with respect to the Florida estate tax, since the legacies here were deductible and thus did not enter into the calculation of the Federal tax, they also did not enter into the determination of the Florida estate tax. Thus, a Florida resident making these legacies to Massachusetts charities would not have had to pay any death tax in Florida. The Court correctly determined that such a result is all that is needed to qualify for the Massachusetts exemption.

§2.12. Filing procedures in federal estate tax cases. For yet another year, the statutes and administrative policies of the Inheritance Tax Bureau relative to filing inheritance tax returns and paying the tax have been revised. Chapter 712 of the Acts of 1972[1] appears to make a substantial procedural change for estates where it is necessary to file a

§2.11. [1] 1972 Mass. Adv. Sh. 803, 281 N.E.2d at 583.
[2] G.L., c. 65, §1.
[3] 4A Barrett and Bailey, Massachusetts Practice—Taxation, §1105.

§2.12. [1] Amending G.L., c. 65, §22.

Federal estate tax return. However, under the Bureau's interpretation of the revised statute,[2] the amount of change is much less than would be apparent from an analysis of the relevant statute.

Under the new procedure for Federal estate tax cases, there are three important dates with respect to the inheritance tax. The first is the "due date of the tax" which is nine months after the decedent's death. On or before that date, the decedent's estate must file with the Bureau a letter stating that the estate is filing a Federal estate tax return and must pay the full amount of the inheritance tax due, based on the information contained in the Federal estate tax return as filed with the Internal Revenue Service. A preliminary L-19X computation sheet should be completed and filed at the same time. Nothing else need be filed at that time. The second important date is 60 days after receipt of the Federal estate tax closing letter. On or before that date, if adjustments such as changes in valuations or disallowance of deductions made in the Federal return after audit result in an increase in the Federal tax, the estate must file with the Bureau an amended L-19X recomputing the inheritance tax to reflect those final adjustments and must pay any balance of the inheritance tax due as shown by the amended L-19X. Nothing need be filed at that time if no additional tax is due. The third important date is 30 days later or 90 days after receipt of the closing letter. On or before that date, the inheritance tax return must be filed. As before, the return consists of the various "L-" forms, a copy of the will, a copy of the Federal estate tax return, line adjustments and closing letter, etc. As a practical matter, most practitioners will probably find it easier to file the return within the 60-day period if it is necessary to file a second L-19X.

This procedure applies only in cases where it is necessary to file a Federal estate tax return. In other cases, the full return and payment of the tax are due within nine months of the decedent's death.

It is important to note that no interest or penalty can be assessed when there is a timely filing of the "nine month letter" and payment in full of the tax then shown to be due and when the balance of the tax as determined from final Federal figures is paid within 60 days after receipt of the closing letter. Formerly, if the amount initially paid was not at least 80% of the final tax, the extension was void and the return was subject to late filing penalties.

In addition, provision is made in the new statute for requesting extensions to file the return. Although available in all cases, an extension will most frequently be requested when an extension is received for filing the Federal return, and the permissible extension period is tied to the

2 See memorandum of Thomas B. McDavitt, Chief of the Inheritance Tax Bureau, dated July 24, 1972. Copies of this memorandum may be obtained from the Bureau.

Federal extension period.[3] Any request for extension must be made on or before the due date of the tax and the tax reasonably estimated to be due must be paid. The old 80% test continues in force in extension cases so that the amount initially paid must be at least 80% of the final tax if penalties and interest are to be avoided.

[3] Acts of 1972, c. 712, §2, amending G.L., c. 65, §22.