

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

BANK OF AMERICA, N.A., v. COMMISSIONER OF REVENUE
AS TRUSTEE FOR
CERTAIN TRUSTS

Docket Nos.:
C314596 thru C314598 &
C314606 thru C314636

Promulgated:
June 10, 2015

These are appeals filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 62C, § 39(c) from the refusal of the appellee, the Commissioner of Revenue ("Commissioner"), to abate income tax paid by Bank of America, N.A. ("appellant") as trustee for certain trusts for the tax year ended December 31, 2007 ("tax year at issue").

Commissioner Scharaffa heard these appeals and was joined in the decisions for the appellee by Chairman Hammond and Commissioners Rose, Chmielinski and Good.

These Findings of Fact and Report are made at the requests of the appellant and the appellee pursuant to G.L. c. 58A, § 13 and 831 CMR 1.32.

William E. Halmkin, Esq., and Judith G. Edington, Esq.
for the appellant.

Jeffrey S. Ogilvie, Esq., and Daniel A. Shapiro, Esq.
for the appellee.

FINDINGS OF FACT AND REPORT

Introduction

These appeals were presented at a hearing before the Appellate Tax Board ("Board") through a Statement of Agreed Facts accompanied by sixty-four exhibits, briefs, and reply briefs submitted by the appellant and the Commissioner. No expert or fact witness testimony was presented, as the parties agreed that the issue presented for consideration by the Board was purely a legal issue.¹

The appellant, in its capacity as sole or joint trustee, filed 2,987 Applications for Abatement with the Commissioner for the tax year at issue on behalf of each of the trusts identified therein.² As discussed in greater detail below, pursuant to G.L. c. 58A, §6, the appellant withdrew its consent to extend the time for the

¹ Given this stipulation, the Board exercised its authority under §§ 1.22 and 1.31 of its Rules of Practice and Procedure to hear and decide cases in which there is no genuine issue of material fact and a party is entitled to judgement as a matter of law. See 831 C.M.R. §§ 1.22 and 1.31.

² The appellant, as trustee, also filed approximately 2,400 abatement applications for the tax year ended December 31, 2008, and 1,555 abatement applications for the tax year ended December 31, 2009.

Commissioner to act beyond six months with respect to thirty-four of the 2,987 abatement applications, thereby resulting in those applications' deemed denial, and subsequently filed a Petition Under Formal Procedure with the Board for each of those thirty-four matters, which together involved abatement requests totaling \$2,287,707 and comprise the appeals herein at issue ("Appeals"). The remaining 2,953 abatement applications are still pending before the Department of Revenue.

To avoid a separate proceeding for each of the Appeals, the parties chose four trusts ("Trusts") to serve as "representative appellants." The parties agreed and the Board ruled that the same question of law presented in the appeals relating to the Trusts applied to the remaining thirty trusts and that the facts relevant to disposition of the Trusts' appeals were sufficient for the Board to issue decisions with respect to all thirty-four of the Appeals.

Jurisdictional Facts and Procedural History

The appellant was the surviving entity in a merger with United States Trust Company National Association ("US Trust"), which was completed on February 22, 2008. The appellant and US Trust ("Trustees") were in the process of combining their trust operations during the tax year at issue, at which time US Trust served as trustee or co-

trustee of eleven of the thirty-four trusts relating to these Appeals, and the appellant, twenty-three. As the surviving bank after the merger, the appellant became the successor trustee or co-trustee to US Trust for US Trust's eleven trusts and filed their fiduciary income tax returns for the tax year at issue and the returns for the twenty-three trusts for which the appellant served as trustee or co-trustee.

Jurisdictional facts relating to the four Trusts are as follows. Roy K. Elliot established an Indenture of Trust dated April 21, 1960 ("R.K. Elliot Trust"). The appellant filed a Fiduciary Income Tax Return ("Form 2") for the tax year at issue for the R.K. Elliot Trust on March 29, 2008, and paid the tax. Later, in the belief that the R.K. Elliot Trust was not a resident *inter vivos* trust³ subject to tax under G.L. c. 62, § 10, the appellant filed an Application For Abatement ("Form CA-6") with the Commissioner on April 4, 2011, requesting an abatement of tax and a refund of all tax paid. The Commissioner did not act on the appellant's Form CA-6 within six months of its filing and on November

³ 830 CMR 62.10.1, which discusses income tax as it applies to trusts and estates, defines *inter vivos* or "living trusts," and distinguishes resident from non-resident *inter vivos* trusts. 830 CMR 62.10.1(b). Resident *inter vivos* trusts, within the meaning of 830 CMR 62.10.1, are trusts that meet certain requirements discussed elsewhere in these Findings of Fact and Report, and are subject to the fiduciary income tax under G.L. c. 62.

10, 2011, the appellant withdrew its consent under G.L. c. 58A, § 6. On November 14, 2011, the appellant, as trustee of the R.K. Elliot Trust, filed its petition with the Board appealing the deemed denial of its abatement application.

A. Heywood Hovey, as donor, established an Indenture of Trust dated December 22, 1983, as amended and restated on March 20, 1986 ("Hovey Trust"). The appellant filed Form 2 for the tax year at issue for the Hovey Trust on March 29, 2008, and paid the tax. Later, believing that the Hovey Trust was not a resident *inter vivos* trust subject to tax under G.L. c. 62, § 10, the appellant filed Form CA-6 with the Commissioner on April 4, 2011, requesting an abatement of tax and a refund of all tax paid. The Commissioner did not act on the appellant's Form CA-6 within six months of its filing and on November 10, 2011, the appellant withdrew its consent under G.L. c. 58A, § 6. On November 14, 2011, the appellant, as trustee of the Hovey Trust, filed its petition with the Board appealing the deemed denial of its abatement application.

Louise Ayer Gordon established a Trust Agreement dated July 11, 1922 ("Gordon Trust"). The appellant filed Form 2 for the tax year at issue for the Gordon Trust on March 29, 2008, and paid the tax. Later, believing that the Gordon

Trust was not a resident *inter vivos* trust subject to tax under G.L. c. 62, § 10(c), the appellant filed Form CA-6 with the Commissioner on March 4, 2011, requesting an abatement of tax and a refund of all tax paid. The Commissioner did not act on the appellant's Form CA-6 within six months of its filing and on November 1, 2011, the appellant withdrew its consent under G.L. c. 58A, § 6. On November 2, 2011, the appellant, as trustee of the Gordon Trust, filed its petition with the Board appealing the deemed denial of its abatement application.

John Morse Elliot established an Agreement and Declaration of Trust dated December 26, 1934 ("J.M. Elliot Trust"). The appellant filed Form 2 for the tax year at issue for the J.M. Elliot Trust on March 29, 2008, and paid the tax. Later, believing that the J.M. Elliot Trust was not a resident *inter vivos* trust subject to tax under G.L. c. 62, § 10, the appellant filed Form CA-6 with the Commissioner on April 4, 2011, requesting an abatement of tax and a refund of all tax paid. The Commissioner did not act on the appellant's Form CA-6 within six months of its filing and on November 10, 2011, the appellant withdrew its consent under G.L. c. 58A, § 6. On November 14, 2011, the appellant, as trustee of the J.M. Elliot Trust, filed its

petition with the Board appealing the deemed denial of its abatement application.

On the basis of the relevant facts and conclusions stated above, the Board found and ruled that it had jurisdiction to decide these Appeals.

Properties of the Trusts and Trustee Status

Each of the Trusts was an *inter vivos* trust created by an individual who was an inhabitant of the Commonwealth at the time of its creation, and each became irrevocable prior to the tax year at issue, whether upon the death of the settlor (R.K. Elliot Trust and Hovey Trust) or because the trust was irrevocable at the time it was created (Gordon Trust and J.M. Elliot Trust).

During the tax year at issue, the appellant was the sole trustee of the R.K. Elliot Trust and was a co-trustee of the Hovey Trust with James Slimmon, Jr., who was not an "inhabitant" of the Commonwealth within the meaning of relevant sections of chapter 62 ("inhabitant"). US Trust was the sole trustee of the Gordon Trust and was a co-trustee of the J.M. Elliot Trust with Frank Lavalley, who was not an inhabitant of the Commonwealth.

None of the Trusts had any Massachusetts source income taxable pursuant to G.L. c. 62, § 5A during the tax year at issue and no beneficiary to whom income was payable during

the tax year at issue was an inhabitant of the Commonwealth.

Activities and Attributes of the Appellant and US Trust

As stipulated by the parties, throughout the tax year at issue, the Trustees conducted business both within and outside the Commonwealth and engaged in the following activities in the Commonwealth:

a. sought out, developed, and entered into banking and other commercial relationships with individual residents of the Commonwealth and with entities that conducted business in the Commonwealth, including making loans secured by tangible personal property or real property located within the Commonwealth;

b. the appellant conducted business in more than 200 branch offices in the Commonwealth and US Trust in two offices, all of which were staffed by the Trustees' employees;

c. employed residents of the Commonwealth and independent contractors doing business within the Commonwealth;

d. exhibited, promoted, and made known their presence in the Commonwealth by means of advertising;

e. were financial institutions engaged in business within the Commonwealth within the meaning of G.L. c. 63, §§ 1, 2, and 2A;

f. operated and staffed offices, for the purpose of fulfilling some of the their obligations as trustees of the Trusts;

g. maintained relationships with the beneficiaries of the Trusts and, with respect to the appellant, decided when to make distributions

of trust assets to beneficiaries in accordance with the terms of the documents establishing certain of the Trusts;

h. administered the assets of the Trusts, created and retained certain records regarding the administration of the assets of the Trusts;

i. consulted with clients and prospective clients about available trust services;

j. discussed accounts with grantors and/or beneficiaries of existing trusts;

k. reviewed with clients and their representatives proposed trust instruments;

l. provided a place for persons to execute trusts which named one of the Trustees as fiduciary; and

m. researched issues involving the Trusts in certain instances and discussed such issues with grantors, beneficiaries and/or their representatives.

With respect to activities identified in g. through m., functions relating to the management of the Trusts were also performed by personnel located outside the Commonwealth, and policy and procedures related to administrative and investment components of trusts generally were formulated by personnel located outside the Commonwealth.

During the tax year at issue, the Trustees were corporations and also were national banking associations organized and existing under federal law, 12 U.S.C. *et seq.*

The federal Comptroller of the Currency authorized the Trustees to act as fiduciaries, pursuant to 12 U.S.C. § 92a, and this authority was in force during the tax year at issue.

The appellant's Articles of Association listed the location of its main office as the City of Charlotte in the State of North Carolina, and its commercial domicile, within the meaning of G.L. c. 63, § 1 and 830 CMR 63.38.1(2), was North Carolina. U.S. Trust's Articles of Organization listed the location of its main office as the City of New York in the State of New York, and its commercial domicile was New York. The appellant's board of directors meetings were held in North Carolina and its board minutes and corporate charter were retained in North Carolina. U.S. Trust's board meetings were held in New York, and its board minutes and corporate charter were retained in New York.

As financial institutions engaged in business in the Commonwealth during the tax year at issue, the Trustees were each subject to the Financial Institution Excise Tax under G.L. c. 63 and filed a Form 63 Financial Excise Return for periods including the tax year at issue.

Conclusion

Based on the foregoing, and for the reasons discussed below, the Board found and ruled that the Trustees were inhabitants of the Commonwealth within the meaning of G.L. c. 62, §§ 1(f) and 10(c) during the tax year at issue and that the Trusts were resident *inter vivos* trusts subject to the fiduciary income tax under G.L. c. 62, § 10. Accordingly, the Board issued decisions for the appellee with respect to these thirty-four Appeals.

OPINION

General Laws chapter 62, §§ 10(a) and 10(c) ("§ 10(a)" and "§ 10(c)," respectively) impose a fiduciary income tax on income received by a trust estate under specified conditions, which include inhabitancy requirements for those who create the trusts, beneficiaries and trustees. Section 10(a) provides:

The income received by trustees or other fiduciaries described in subsection (c) of this section shall be subject to the taxes imposed by this chapter to the extent that the persons to whom the same is payable, or for whose benefit it is accumulated, are inhabitants of the commonwealth; provided, however, if the income received by such trustees or other fiduciaries would be subject to taxation under section five A if received by a nonresident, such income shall be taxable regardless of whether the persons to whom the income from the trust is payable or for whose

benefit it is accumulated are residents or nonresidents of the commonwealth. Income received by trustees or other fiduciaries described in subsection (c) of this section which is accumulated for unborn or unascertained persons, or persons with uncertain interests shall be taxed as if accumulated for the benefit of a known inhabitant of the commonwealth.

Section 10(c) further describes inhabitancy criteria as follows:

The provisions of subsections (a) and (b) of this section shall apply to . . . trustees under a trust created by a person or persons, any one of whom was an inhabitant of the commonwealth at the time of the creation of the trust or at any time during the year for which the income is computed, or who died an inhabitant of the commonwealth, any one of which trustees or other fiduciaries is an inhabitant of the commonwealth

The parties agreed that the Trusts were created by individuals who were inhabitants of the Commonwealth for purposes of the statute and that none of the income at issue was Massachusetts source income taxable under G.L. c. 62, § 5A. While none of the Trusts' beneficiaries to whom income was payable during the tax year at issue were inhabitants of the Commonwealth, there is no dispute that income received by the Trustees was "accumulated for unborn or unascertained persons or persons with uncertain interests," and was therefore taxable "as if accumulated for the benefit of a known inhabitant of the commonwealth." G.L. c. 62, § 10(a). Thus, inhabitancy requirements for

beneficiaries of the Trusts, as well as for individuals who created the Trusts, have been satisfied. Imposition of the fiduciary income tax with respect to the Appeals therefore depends on whether the Trustees, as trustees of the Trusts, were inhabitants of the Commonwealth in the tax year at issue within the meaning of § 10(c).

General Laws chapter 62 contains the following definition of inhabitant:

Section 1. When used in this chapter the following words or terms shall, unless the context indicates otherwise, have the following meanings:-

(f) "Resident" or "inhabitant", (1) any natural person domiciled in the commonwealth, or (2) any natural person who is not domiciled in the commonwealth but who maintains a permanent place of abode in the commonwealth and spends in the aggregate more than one hundred eighty-three days of the taxable year in the commonwealth, including days spent partially in and partially out of the commonwealth⁴

G.L. c. 62, § 1(f) ("§ 1(f)").

General Laws chapter 62, section 10, which as noted above imposes the fiduciary income tax, does not distinguish between trustees who are individuals or natural

⁴ Clause (2) of § 1(f) was added to the definition of "resident" or "inhabitant" in 1995 by St. 1995, c. 38, § 65. Prior to enactment of the amendment, the definition of "resident" or "inhabitant" had been limited to "any natural person domiciled in the commonwealth." G.L. c. 62, 1(f).

persons⁵ and corporate trustees. In fact, G.L. c. 62, § 14 mandates equal application of the phrase "inhabitant of the commonwealth" to individuals and corporations:

Corporations acting as trustee or in any other fiduciary capacity shall, with respect to the income received by them in that capacity, be subject to this chapter in the same manner and under the same conditions as individual inhabitants of the commonwealth acting in similar capacities

G.L. c. 62, § 14 ("§ (14)").

Section 14 employs the phrase "in the same manner and under the same conditions as individual inhabitants of the commonwealth acting in similar capacities" to effect a clear intent to apply the same definition of inhabitant to corporations and individuals. Further, the Supreme Judicial Court, in *Springall v. Commissioner*, 391 Mass. 23 (1984), observed that "the Legislature did not intend to treat a trust differently for the purposes of G.L. c. 62, § 9, depending on whether a fiduciary was a natural person or a corporation." *Id.* at 25. While the court specifically addressed G.L. c. 62, § 9 in its opinion, there is no indication that its reasoning should not extend to chapter 62 in its entirety. In sum, the definition of inhabitant

⁵ Context indicates and there is no dispute that the words "individual" and "natural person" are synonymous as used in G.L. c. 62, §§ 1(f), 10, and 14.

relevant to these Appeals is contained in § 1(f), which, by its own terms, applies to all of chapter 62.

Given the interplay of §§ 1(f), 10 and 14, and having concluded that the definition of inhabitant provided by § 1(f) applies equally to corporate and individual trustees, the Board considered the definitional elements of § 1(f) as they relate to the Trustees. The Commissioner did not argue and the Board found no support for the proposition that the Trustees were domiciled in the Commonwealth as contemplated by § 1(f)(1). In contrast, the Commissioner asserted, and the Board found, that the Trustees, by virtue of their presence and activities in Massachusetts, were inhabitants of the Commonwealth within the meaning of §1(f)(2), the second test for residence or inhabitancy set forth in § 1(f).

Under § 1(f)(2), an individual who is not domiciled in the Commonwealth will qualify as an inhabitant if he or she "maintains a permanent place of abode in the commonwealth" and spends "more than one hundred eighty-three days of the taxable year in the commonwealth." G.L. c. 62, § 1(f). Lacking a statutory definition of the phrase "permanent place of abode," the Commissioner provided a limited definition in *Technical Information Release 95-7*. (January 10, 1996) ("**TIR 95-7**") as "a dwelling place continually

maintained by a person, whether or not owned by such person" *Id.* TIR 95-7, did not, however, define a permanent place of abode as it applies to a corporation, which, by its nature, does not occupy a dwelling as does a person. Absent such guidance, and "[b]ecause the statute itself did not define the term, the Board must consider 'the natural import of words according to the ordinary and approved usage of the language when applied to the subject matter of the act,' as reflective of the Legislature's intent." *Duracell, Inc. v. Commissioner of Revenue*, Mass. ATB Findings of Fact and Reports 2007-903, 913 (quoting *Boston & Me. R.R. v. Billerica*, 262 Mass. 439, 444 (1928)). Further, "[t]he words of a statute must be construed in association with the general statutory plan." *Commissioner of Revenue v. Wells Yachts South, Inc.*, 406 Mass. 661, 664 (1990)(citing *Polaroid Corp. v. Commissioner of Revenue*, 393 Mass. 490, 497 (1984)).

With the cited precedent in mind, the Board may "'look to dictionary definitions and accepted meanings in other legal contexts [provided] their interpretations . . . remain faithful to the purpose and construction of the statute as a whole.'" *American Honda Motor Co. v. Bernardi's, Inc.*, 432 Mass. 425, 430 (2000), (quoting

Heritage Jeep-Eagle, Inc. v. Chrysler Corp., 39 Mass. App. Ct. 254, 258 (1995)).

A place of abode is a place where one "abides." *Merriam-Webster Dictionary and Thesaurus, Merriam-Webster.com*. Abide, in its relevant context, means "to be or remain stable in some state or constant in some relationship," "to continue to be," "to stay or dwell," and "to continue in a place; have one's abode." *Webster's Third New International Dictionary; Merriam-Webster Dictionary and Thesaurus, Merriam-Webster.com.; Black's Law Dictionary, Ninth Edition (2009)*.

Construing the phrase "permanent place of abode" with these definitions in mind, a corporation will qualify as an inhabitant of the Commonwealth within the meaning of §§ 1(f) and 10(c) if it maintains a permanent place in the Commonwealth at which it abides, *i.e.*, where it continues to be and is stable in some state or constant in some relationship for the requisite number of days of a taxable year. The presence and activities of the Trustees in the Commonwealth throughout the tax year at issue clearly satisfy these criteria.

The Trustees' presence and activities in the Commonwealth, generally, included: developing and entering into banking and other commercial relationships, including

making loans; with respect to the appellant, conducting business in more than 200 branch offices and with respect to US Trust, in two offices, all of which were staffed by the Trustees' employees; employing residents of the Commonwealth and independent contractors doing business within the Commonwealth; advertising; and operating as financial institutions engaged in business within the Commonwealth within the meaning of G.1. c. 63, §§ 1, 2, and 2A.

As their presence and activities in the Commonwealth related to the Trusts and trusts in general, the Trustees: operated and staffed offices to fulfill some of their obligations as trustees of the Trusts; maintained relationships with the beneficiaries of the Trusts and, with respect to the appellant, decided when to make distributions of trust assets to beneficiaries; administered the assets of the Trusts; consulted with clients and prospective clients about trust services; discussed accounts with grantors and/or beneficiaries of existing trusts; reviewed proposed trust instruments with clients and their representatives; provided places for execution of trusts which named one of the Trustees as fiduciary; and researched and discussed issues involving

the Trusts and discussed such issues with grantors, beneficiaries and/or their representatives.

These numerous and substantial activities and the Trustees' considerable and ongoing presence in the Commonwealth unequivocally reflect maintenance of a permanent place at which the Trustees abided, *i.e.*, "a permanent place of abode" in the Commonwealth. Further, given that the Trustees' presence and activities continued throughout the tax year at issue, there is no question that the Trustees "spen[t] in the aggregate more than one hundred eighty-three days of the taxable year in the commonwealth." G.L. c. 62, § 1(f). The Board therefore found and ruled that the Trustees were inhabitants of the Commonwealth within the meaning of G.L. c. 62, §§ 1(f) and 10(c). The Board further ruled that this conclusion was "faithful to the purpose and construction of the statute as a whole," *American Honda Motor Co.*, 432 Mass. at 430 (additional citation omitted), given the various provisions of and relationship among G.L. c. 62, §§ 10(a), 10(c) and 14, with particular focus on § 14's mandate of equal application of the phrase "inhabitant of the commonwealth" to individual and corporate trustees.

The appellant disagreed with the assertion that the Trustees were inhabitants of the Commonwealth and offered

several arguments in support of its conclusion that they were not. The appellant emphasized that during the tax year at issue, the Trustees, which were corporations and national banking associations organized under and authorized to act as fiduciaries pursuant to federal law, were corporate domiciliaries of North Carolina and New York, respectively.⁶ The appellant equated the Trustees' corporate domiciles - which the appellant stated were synonymous with their states of incorporation - with their inhabitancy as contemplated by relevant provisions of chapter 62, and therefore asserted that the Trustees were not inhabitants of the Commonwealth.

In presenting its arguments, the appellant first traced the history of §§ 10 and 14, establishing that since their genesis in a provision enacted in 1916, language relevant to the Appeals relating to inhabitance has not changed in a substantive manner. The appellant also noted the paucity of regulatory guidance regarding the meaning of inhabitance as it relates to a corporate trustee. Seeking then to define the term by employing principles of statutory construction similar to those discussed above,

⁶ Based on the record before it, the Board found no reason to conclude otherwise, and these Findings of Fact and Report therefore contain no further discussion of the issue.

the appellant looked to case law to support its assertion that the Trustees were not inhabitants of the Commonwealth.

In particular, the appellant cited **Ness v. Commissioner**, 279 Mass. 369 (1932), for the proposition that "inhabitation means the same thing and is interchangeable with domicile," thereby leading the appellant to conclude that "when an opinion cites the domicile of a corporation, it is citing its place of inhabitation as well." *Appellant's Brief*, pp. 16-17. **Ness**, however, involved an individual who unsuccessfully claimed to have changed his domicile from Massachusetts to Florida and consequently remained subject to the personal income tax as an "inhabitant of the Commonwealth" under G.L. c. 62, § 1. **Id.** at 370. The court engaged in a straightforward analysis leading to its holding that a domiciliary of the Commonwealth was also an inhabitant for purposes of the personal income tax, but that analysis did not address nor could it be viewed as illuminating the contours of inhabitation as it applies to a corporate trustee in the context of the fiduciary income tax. Moreover, **Ness** preceded § 1(f)'s 1995 amendment, which included two alternative definitions of "inhabitant," by more than sixty years.

The appellant also asserts that when the fiduciary income tax was enacted in 1916, "the settled meaning of the inhabitance of a corporation was its state of incorporation." *Appellant's Brief*, p. 21. Citing the principle that the Legislature must be presumed to have knowledge of existing law, see **Beacon So. Station Assoc. v. Assessors of Boston**, Mass. ATB Findings of Fact and Reports, 2013-209, 226 (citing **Selectmen of Topsfield v. State Racing Comm'n**, 324 Mass. 309, 313 (1949)), the appellant concluded that the Legislature would have understood, while crafting the fiduciary income tax, that a corporation was an inhabitant only of its state of incorporation, which, as noted, the appellant stated was also its state of commercial domicile. According to the appellant, this limited meaning, viewed together with the "static" nature of the relevant language of §§ 10 and 14, "must inform the application of G.L. c. 62, §§ 10(c) and 14 to the [Trustees]." *Appellant's Brief*, p. 22.

Assuming that the meaning of the inhabitance of a corporation in 1916 was its state of incorporation, and applying the presumption of the Legislature's knowledge of existing law, the appellant's inference that the Legislature in 1916 understood that a corporation was an inhabitant only of its state of incorporation was

reasonable. The appellant's extension of that meaning to the manner in which §§ 10(c) and 14 apply to the Trustees, however, was not. As discussed above, § 1(f) was amended in 1995 by adding clause (2), which incorporated a definition of inhabitant distinct from domiciliary. Neither §§ 10 and 14 nor any other part of chapter 62, however, was amended to indicate that the revised version of § 1(f) was not intended to apply to corporate trustees. Absent any such change, and applying the principle that the Legislature was presumed to have knowledge of existing law when it amended § 1(f), it is the amended version of § 1(f) that must be considered when applying § 14 to determine if a corporate trustee qualifies as an inhabitant of the Commonwealth. Indeed, the "static" nature of §§ 10 and 14, coupled with the operative language of these sections, support this result and undermine the appellant's argument.

Finally, the appellant argued that a bank serving as a corporate trustee should not be subject to the statutory residency test contained in § 1(f)(2). In support of this argument, the appellant observed that under the two tests for inhabitancy provided by §1(f), an individual trustee will likely qualify as an inhabitant in no more than two states, one by virtue of domicile under § 1(f)(1) and another pursuant to the criteria set forth in § 1(f)(2). In

contrast, a corporate trustee such as the appellant, which may maintain offices and operate in every state, may also qualify as an inhabitant in every state. According to the appellant, this difference raises the specter of impermissible multiple taxation, which would place a confiscatory burden on trust beneficiaries. The Board disagreed.

When § 1(f) operates in its entirety in the context of the fiduciary income tax, as the plain language of the statutory scheme indicates it should, the operative language of § 10(c) precludes the result predicted by the appellant. More specifically, § 10(c) explicitly provides that the tax imposed under § 10(a) will apply only to trustees under a trust that was created by a "person or persons, any one of whom was an inhabitant of the commonwealth at the time of the creation of the trust or at any time during the year for which the income is computed, or who died an inhabitant of the commonwealth. . . ." In view of this limiting language, even if the Massachusetts statutory scheme were in effect in every state, imposition of the confiscatory burden warned of by the appellant could not occur. Thus, contrary to the appellant's assertion, application of § 1(f)(2) will not result in impermissible multiple taxation. Moreover, if income retained by a

trustee were to be subject to tax in more than one state, G.L. c. 62, § 6(a) provides a statutory credit for taxes due to any other state, a credit expressly made applicable to trustees of *inter vivos* trusts as it is "allowed to estates of residents and trustees or other fiduciaries described in subsection (c) of section ten." *Id.*

Based on the foregoing, the Board found the appellant's arguments that the Trustees were not inhabitants of the Commonwealth within the meaning of §§ 1(f) and 10(c) unavailing.

Conclusion

For the reasons discussed above, the Board found and ruled that the Trustees were inhabitants of the Commonwealth within the meaning of G.L. c. 62, §§1(f) and 10(c) during the tax year at issue. These reasons include, most importantly: the interaction among §§1(f), 10(a), 10(c) and 14; § 14's requirement that the same definition of inhabitant apply to corporations and individuals; and the Trustees' qualification as inhabitants of the Commonwealth within the meaning of § 1(f).

Accordingly, the Board issued decisions for the appellee with respect to these thirty-four Appeals.

THE APPELLATE TAX BOARD

By: _____
Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: _____
Clerk of the Board