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State Tax Library
Journal of Multistate Taxation and Incentives (WG&L)
Journal of Multistate Taxation and Incentives
2021
Volume 30, Number 09, January 2021
Columns
U.S. Supreme Court Update, Journal of Multistate Taxation and Incentives, Jan 2021

U.S. SUPREME COURT UPDATE

U.S. Supreme Court Update

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New Hampshire Files Bill of Complaint Against Massachusetts and Five New SALT Petitions Filed with The Court

On October 29, 2020, the State of New Hampshire brought an action before the Court against the Commonwealth of Massachusetts seeking to enjoin Massachusetts from enforcing its new telecommuting regulation against New Hampshire residents, in *New Hampshire v. Commonwealth of Massachusetts.* Under this regulation, income earned for work performed within New Hampshire is taxed by Massachusetts as Massachusetts source income. New Hampshire requests the Court to rule that the regulation violates the Commerce Clause and the Due Process Clause of the U.S. Constitution, and for the Court to enjoin Massachusetts from enforcing the regulation, enter an injunction requiring Massachusetts to refund all funds collected from nonresidents under the regulation, and award costs and reasonable attorney fees, as well as grant any other relief available at law or equity.

Also, before the Court are five new petitions for writ of certiorari. Four of the petitions involve real property tax matters, with two specifically addressing due process related to tax sales: *Harris County v. PRSI Trading, LLC* (Docket No. 20-563)[1] where the Court is being asked to review a decision by the Texas Supreme Court that found that inventory located in a foreign trade zone for export out of the United States was entitled to a local ad valorem property tax exemption; *Pisztora et al v. City of Pittsburgh,* (Docket No. 20-359)[2] , where the Court is asked to review a decision of the Commonwealth Court of Pennsylvania in which the lower court refused to void a treasurer's sale based on lack of notice to the appellants; *Barnette v. HBI, LLC et al* (Docket No. 20-321)[3] , where the lower court found that the purchaser complied with the statutory notice requirements for obtaining a tax deed and such requirements did not violate due process; and, *Pappas et al, v. A.F. Moore & Associates, Inc.,* (Docket No. 20-316)[4] , where the Court is asked to review a decision by the Seventh Circuit of the U.S. Court of Appeals that found that neither the Tax Injunction Act nor comity bars the taxpayers' equal protection clause federal lawsuit over the alleged disparate valuation of their properties. The fifth petition for writ of certiorari, *Shaffer v. Commonwealth of Massachusetts* (Docket No. 20-501)[5] , involves a constitutional due process challenge to the decision by the Supreme Judicial Court of Massachusetts that upheld the assessment of Massachusetts estate tax on the value of intangible assets in a qualified terminable interest property (QTIP) trust of a decedent domiciled in Massachusetts at the time of death, which QTIP trust was created by the decedent's predeceasing spouse in New York.

The Court also denied two petitions for certiorari discussed in last month's article. Finally, we continue to await the issuance of the Special Master's Reports in the MoneyGram cases: *Delaware v. Pennsylvania,* 220145 and *Arkansas et al. v. Delaware,* 220146. These cases involve a dispute between Delaware and several other states concerning which states have priority rights to claim abandoned, uncashed MoneyGram official checks.

New Hampshire v. Massachusetts: Extraterritorial Taxation of Telecommuters?

On April 21, 2020, Massachusetts adopted a temporary emergency regulation declaring: “For the duration of the Massachusetts COVID-19 state of emergency, all compensation received for personal services performed by a nonresident who, immediately prior to the Massachusetts COVID-19 state of emergency, was an employee engaged in performing services in Massachusetts, and who during such emergency, is performing services from a location outside Massachusetts due solely to the Massachusetts COVID-19 state of emergency, will continue to be treated as Massachusetts source income subject to personal income tax under M.G.L. c 62 and personal income tax withholding." The temporary emergency regulation applied retroactively to March 10, 2020. On July 21, 2020, a second temporary emergency regulation was adopted that imposed similar requirements, and ultimately, on October 16, 2020, a final formal administrative rule (the "Tax Regulation") was approved, which provides:

> "Under M.G.L. c. 62 § 5A(a), income of a nonresident derived from a trade or business, including any employment, carried on in the Commonwealth is sourced to Massachusetts. Pursuant to this rule, all compensation received for services performed by a non-resident who, immediately prior to the Massachusetts COVID-19 state of emergency was an employee engaged in performing such services in Massachusetts, and who is performing services from a location outside Massachusetts due to a Pandemic Related Circumstance will continue to be treated as Massachusetts source income subject to personal income tax under M.G.L. c. 62 and personal income tax withholding pursuant to M.G.L. c. 62B, §2."

The Tax Regulation took effect immediately and applied retroactively to March 10, 2020, with a stated term of the earlier of December 31, 2020, or 90 days after the date on which the Governor of the Commonwealth gives notice that the Massachusetts COVID-19 state of emergency is no longer in effect.

A Pandemic Related Circumstance is defined generally to include the following situations: 1) a government order issued in response to the COVID-19 pandemic; 2) a remote work policy adopted by an employer in compliance with federal or state government guidance or public health recommendations relating to the COVID-19 pandemic; 3) the worker's compliance with quarantine, isolation directions relating to a COVID-19 diagnosis or suspected diagnosis, or advice of a physician relating to COVID-19 exposure; or 4) any other work arrangement in which an employee who performed services at a location in Massachusetts prior to the Massachusetts COVID-19 state of emergency performs such services for the employer from a location outside Massachusetts during a period in which the Tax Regulation is in effect. See 830 CMR 62.5A.3.

Massachusetts' prior tax policy (pre-Tax Regulation).

As set forth in New Hampshire's Motion for Leave to File Bill of Complaint, "[u]ntil recently, Massachusetts regulations made clear that nonresidents owed taxes only for the work they performed while physically within Massachusetts":

> "Under the prior regime, 'when a non-resident employee is able to establish the exact amount of pay received for services performed in Massachusetts, that amount is the amount of Massachusetts source income.' 830 CMR 62.5A.1(5)(a) (2008). When a precise determination was not possible, Massachusetts regulations required allocation of income between taxable Massachusetts sources and non-taxable out-of-state sources by using a fraction, 'the numerator is the number of days spent working in Massachusetts and the denominator of which is total working days.'"

According to New Hampshire, this prior tax policy "respected New Hampshire's rights, as a coequal sovereign . . , to enact its *own* tax policies upon which its residents may rely."

The New Hampshire Advantage

New Hampshire makes clear in its Motion for Leave to File Bill of Complaint, that it "has made the deliberate policy choice to reject a broad-based personal earned income tax or a general sales tax." Furthermore, it maintains that this policy choice, "has resulted in, on average, higher per capita income, lower unemployment, and a competitive edge in attracting new business and residents," which it deems the "New Hampshire Advantage." New Hampshire argues that "Massachusetts has taken deliberate aim at the New Hampshire Advantage by purporting to impose *Massachusetts* income tax on New Hampshire residents for income earned while working within New Hampshire." Thus, New Hampshire brings this suit to "rectify Massachusetts' unconstitutional, extraterritorial conduct, which ignores deliberate unique policy choices that are solely New Hampshire's to make."

Moreover, New Hampshire argues that the Tax Regulation "undermines an incentive for businesses to locate capital and jobs in New Hampshire, a motivation for families to relocate to New Hampshire's communities, and the State's ability to pay for public services by reducing economic growth." It also argues that the new tax policy "weakens efforts to recruit individuals to work for the state government.... endangers public health in New Hampshire by penalizing workers for following public health guidance and working from home rather than from their offices.... [a]nd it undermines New Hampshire's sovereign duty to protect the economic and commercial interests of its citizens."

The Court's original jurisdiction.

New Hampshire brought the action to the Supreme Court which under federal law, has "exclusive jurisdiction" over "all controversies between two or more States." 28 U.S.C. § 1251 (a)28 U.S.C. § 1251(a). As explained in New Hampshire's Brief In Support of Motion for Leave to File Bill of Complaint, the Court examines two factors when deciding whether to exercise its original jurisdiction: 1) “the nature of the interest of the complaining State, focusing on the seriousness and dignity of the claim”[6] , and 2) “the availability of an alternative forum in which the issue tendered can be resolved.”[7] New Hampshire argues that it has a strong interest in eliminating the Tax Regulation and stresses the seriousness and dignity of its claims, including its sovereign right to control its own tax and economic policies and the potential dangers to its public health as a result of the Tax Regulation, to warrant the exercise of the Court's original jurisdiction. Moreover, New Hampshire maintains that the Tax Regulations violates the Commerce Clause and Due Process Clauses of the U.S. Constitution.

Finally, New Hampshire argues that the Court must grant its original jurisdiction because no other forum exists in which the issue can be resolved.

Commerce Clause cause of action.

The Commerce Clause gives Congress the power to “regulate Commerce... among the several States.” U.S. Const., Art. I, § 8, cl. 3. 86. The Clause has been read as “contain[ing] a further, negative command, known as the dormant Commerce Clause, prohibiting certain state taxation even when Congress has failed to legislate on the subject.”[8]

Citing to the test in *Complete Auto Transit, Inc. v. Brady,* New Hampshire recites in its Complaint that “[a] State's taxation of nonresidents will survive scrutiny under the Commerce Clause” only if it meets four requirements. The State's tax must be (1) “applied to an activity with a substantial nexus with the taxing State”; (2) “fairly apportioned”; (3) nondiscriminatory— *i.e.*, it must not “discriminate against interstate commerce”; and (4) “fairly related to the services provided by the State.”[9]

New Hampshire asserts that the Tax Regulation “fails all four prongs.” It “fails the first prong because when a New Hampshire resident is performing work entirely within New Hampshire, Massachusetts lacks the requisite minimum connection with either the worker or her activity.” It fails the second prong, per New Hampshire, because “[t]hrough the Tax [Regulation], Massachusetts imposes a tax on activity that is occurring in New Hampshire. New Hampshire has the authority and prerogative to tax that income.” The fact that “New Hampshire has decided not to exercise this authority over its own citizens is not a license for Massachusetts to do so; the mere possibility of double taxation is forbidden under the Commerce Clause.”

The Tax Regulation also fails the third prong that prohibits discrimination against interstate commerce, as maintained by New Hampshire, by “fail[ing] the internal consistency” test, a test recently used by the Court. Specifically, as set out in the Complaint, “the taxpayer who ventured across state lines to earn her income would pay a double tax on such income, one to her State of residence and another to the State in which she earned the income.” As a result, New Hampshire concludes that “interstate commerce would be taxed at a higher rate than intrastate commerce...” and “[i]f every state imposed a regime like the Tax Rule, a taxpayer who confined her activity to one State would pay a single tax on her income to the State where she was a resident and in which she earned the income. By contrast, the taxpayer who ventured across state lines to earn her income would pay a double tax on such income, one to her State of residence and another to the State in which she earned the income. As a result, ‘interstate commerce would be taxed at a higher rate than intrastate commerce.'” Also, if “every State passed a rule similar to the Tax Rule, the free movement of workers, goods, and services across state borders would suffer, as individuals would be less inclined to move between States or accept flexible working assignments.”

Lastly, New Hampshire contends that the Tax Regulation fails *Complete Auto*'s fourth prong, which requires the state tax to be “fairly related to the services provided by the State,” because under the Tax Regulation, “New Hampshire residents are taxed as though they are travelling to and working in Massachusetts—even if they never set foot in the State.” Consequently, New Hampshire argues that “[t]he Tax Rule thus is not in ‘proper proportion’ to New Hampshire residents' activities within [Massachusetts] and therefore, to their consequent enjoyment of the opportunities and protections which the State has afforded in connection with those activities.”

Due Process Clause cause of action.

The Due Process Clause “centrally concerns the fundamental fairness of governmental activity.”[10] According to New Hampshire, the “Tax Rule violates these fundamental requirements of due process. It requires no connection between Massachusetts and the nonresidents on whom it imposes Massachusetts income tax other than the address of the nonresident's employer.” However, “New Hampshire residents earning a living from home offices in New Hampshire are not protected by Massachusetts police, fire, and rescue services, do not seek education or housing opportunities provided by Massachusetts, and do not enjoy the benefits of Massachusetts roads, public transportation, or utilities.”

Five New Petitions for Certiorari Filed

In *PRSI Trading, LLC v. Harris County, Tex. S. Ct.*, Docket. No. 18-0664[11] , the Supreme Court of Texas held that a "foreign trade zone," specifically a subzone named 84-N, remained activated, notwithstanding that the operator of the sub-zone changed its corporate status, as a result a corporate merger, "until [the U.S. Custom and Border Patrol] reached a final decision on whether a new operator was required," and "only after deactivation was approved by Customs and all inventory was removed [from the subzone]." Thus, the Supreme Court of Texas found that the operator's state ad valorem tax exempt status did not terminate until the sub-zone was deactivated.

As explained in the petition for writ of certiorari, this case concerns "the application of Customs and Border Patrol's interpretation of its own regulations in two Headquarters Letter Rulings regarding the status of a foreign trade subzone to determine whether certain property in that subzone—specifically, tens of millions of dollars' worth of crude oil and refined products at a refinery and tank farm—is exempt from state and local ad valorem taxation under 19 U.S.C. § 81o(e)19 U.S.C. § 81o(e), a provision of the Foreign Trade Zones Act of 1934."

Respondent, the owner of the inventory, claimed that the inventory is exempt from local property tax under 19 U.S.C. § 81o(e)19 U.S.C. § 81o(e). However, the Petitioner, Harris County, argues that the "CBP, which is responsible for supervising foreign trade zones and subzones, ruled in two Headquarters Ruling Letters (HRLs) that the subzone was not 'activated' pursuant to CBP regulations during the tax years at issue." And, "[u]nder CBP and Foreign Trade Zone Board regulations, a zone or subzone must be 'activated' for goods therein to be exempt from state and local ad valorem taxation."

Question presented.

The question presented to this Court is: "Whether the Texas Supreme Court erred in failing to follow the findings of CBP in its Headquarters Ruling Letters in holding that the foreign trade subzone in question was 'activated.'"

Petition to Void City of Pittsburgh Treasurer's Sale of Private Street and Alleyway

In *City of Pittsburgh v. Pisztora et al,* Pa. Commw. *Ct.* Docket No. 897[12] , the Commonwealth Court of Pennsylvania affirmed the trial court's order that Appellants' Petition to set aside a tax sale was untimely. The Pennsylvania Supreme Court denied the Appellants subsequent Petition for Allowance of Appeal from the Order of the Commonwealth Court.

The Commonwealth Court expressly states in its opinion that “it need not, and do not, decide whether the Appellants had an ownership interest in the Subject Property, thereby making them ‘interested parties,’ or whether the Appellants' easement by implication is an interest ‘of record,’ thereby making Appellants ‘interested parties’. Even assuming, *arguendo*, that Appellants were entitled to notice, we agree with the City that, under the circumstances here, Appellants did not timely appeal and they did not seek to file their appeal *nunc pro tunc* with trial court.” In this case, as observed by the court, the Appellants did not file their Petition until over a year after learning of the sale. Per the Commonwealth Court, “Appellants cannot rely on their claims of lack of proper notice to allow them to wait for an extended period of time to bring those claims once they have actual knowledge.” Moreover, “as the trial court found, Appellants never established that they had an ‘interest in record’ that would have made them ‘interested parties’ entitled to notice.”

The Petitioners seek redress from the Court, in particular a “declar[ation] that the Pennsylvania Second Class City Treasurer's Sale and Collection Act (53 P.S. § 27101 *et. seq.*) is unconstitutional because it deprives the citizens of the Commonwealth of Pennsylvania their real property without due process of the law under the 14th Amendment of the United States' Constitution.” Or, stated differently, the Petitioners argue that “[t]he Act on its face is unconstitutional as it allows a forfeiture of property without written notice to anyone, including the Petitioners.”

Constitutional Challenge to Nebraska's Tax Sales Notice Requirements

In *HBI, LLC et al v. Barnette*,[13] the Supreme Court of Nebraska upheld a quiet title action by a private investor who obtained a tax deed. The court held that the investor's original election of judicial foreclosure did not bar the tax deed process, the investor complied with the statutory notice requirements for obtaining the tax deed, an error in the notice of intent to apply for the tax deed did not render the notice defective, the statutory notice requirements for obtaining the tax deed did not violate due process, and there was no procedural due process in a failed attempt of sending notice via certified mail to the taxpayer's actual residence.

The property owner argued that Nebraska's statutory scheme for tax sales is unconstitutional on due process grounds. In particular, the property owner argued that he did not receive sufficient notice of the tax sale because the investor published its notice of intent to apply for a treasurer's deed for the property in a newspaper published in the county in which the property is located, rather than in the county in which the property owner resides (knowing the property owner resides in this county). As explained by the Supreme Court of Nebraska, the law “permitted the purchaser or his or her assignee to publish the notice ‘in some newspaper published in the county and having a general circulation in the county or, if no newspaper is printed in the county, then in a newspaper published in this state nearest to the county in which the real property is situated.’” Thus, the court rejected the appellant's argument.

Furthermore, the appellant argued that the investor's notice that was sent by certified mail was defective because it was returned as unclaimed. The Supreme Court of Nebraska rejected this argument finding that the purchaser followed the law when it sent the notice by certified mail, return receipt requested, to the address where the property tax statement was mailed. Moreover, the Supreme Court of Nebraska explained that “notice by publication . . . is limited to circumstances, such as those presented here, where the record owner resides at the address where the property tax statement is mailed, but he or she is unable to be served there.”

The court relied on a U.S. Supreme Court case, *Jones v. Flowers*, to rule against the appellant, finding that “the failure of notice in a specific case does not establish the inadequacy of the attempted notice.” The court also noted that the property owner “has the burden of establishing that his due process rights were violated . . . and [the property owner here] has presented no evidence demonstrating that his property was anything more than vacant land,” unlike the property in *Jones*, which involved an occupied house. The Supreme Court of Nebraska explained that “[t]he fact that *Jones* involved an occupied house was information that must be considered when determining whether the notice was adequate.”

Questions presented.

(1) Did the Nebraska Supreme Court err in holding that the due process requirements announced in *Jones* apply only to land containing homes?

(2) Does due process require a court to consider the potential windfall incentive of the party providing notice, and the magnitude of the owner's deprivation, when balancing “all the circumstances” to determine if attempts at notice are reasonable and what ‘one desirous of actually informing the absentee’ would use?

Tax Injunction Act, Comity and Equal Protection Clause Challenge to Illinois Property Tax Valuation

In *A.F. Moore & Associates, Inc., et al. v. Pappas, et al.*,[14] the Seventh Circuit of the U.S. Court of Appeals found that neither the Tax Injunction Act nor Comity precluded the taxpayers' equal protection clause federal lawsuit over the alleged disparate valuation of their properties.

As explained by the Seventh Circuit, Petitioners assert that the tax assessor for Cook County violated the Equal Protection Clause of the U.S. Constitution, which they claim "entities owners of similarly situated property to roughly equal tax treatment"[15] , by "assessing their properties at the rates mandated by local ordinance while cutting a break tax to other owners of similarly situated property." The Petitioners brought a refund claim suit in Illinois state court, which litigation has been ongoing for over ten years. "Frustrated, they turned to federal court for relief, arguing that Illinois' procedural rules for challenging property taxes prevents them from proving their federal constitutional claims."

The federal district court disagreed and held that the Tax Injunction Act ("TIA"), 28 U.S. § 1341, barred their federal suit. As our readers know, the TIA provides that federal district courts may not "enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." 28 U.S. § 1341.

The Seventh Circuit reversed the district court finding that Illinois law, particularly section 23-15 of the Property Tax Code, 35 ILCS 200/23-15 ("Section 23-15"), "provides no forum for the taxpayers to raise their constitutional claims," inasmuch as "section 23-15 limits taxpayers to challenging only the correctness of the valuation under Illinois law" and "prevents the taxpayers from probing into the Assessor's methodology or intent, they will not be able to prove that his tax assessment violated the Equal Protection Clause." The Circuit Court based its decision on the fact that the defendants agreed with the taxpayers that the section 23-15 procedures provide no forum for the taxpayers to raise their constitutional claims, and thus concluded that the "taxpayers have no 'remedy' at all for their claims-never mind a 'plain, speedy and efficient' one – and the Tax Injunction Act does not bar their suit."

The Court of Appeals also determined that principles of comity do not bar federal jurisdiction in this case. As explained by the Court of Appeals, under U.S. Supreme Court precedence[16] , "comity requires taxpayers seeking damages to pursue relief in state courts, assuming that state-court remedies are 'plain, adequate and complete.'" Also, the Supreme Court has found that the "'plain, adequate and complete'" requirement in the comity analysis is identical to the 'plain, speedy and efficient under the Tax Injunction Act,'" therefore, since the TIA does not bar the district court from exercising jurisdiction over this case, neither does the principle of comity.

Questions presented.

The U.S. Supreme Court has now been asked to review the decision of the Seventh Circuit. According to the Petitioners, "the decision of the Seventh Circuit below conflicts with... multiple decisions from this Court and several circuits." Moreover "[w]ith regard to real estate tax litigation throughout the nation," Petitioner asserts that the decision below has created uncertainty on two questions:

(1) if a State elects to base real estate tax refund claims on the assessment itself and not assessment methodology, does the Equal Protection Clause mandate discovery on methodology?

(2) can an equal protection claim alleging lack of uniformity in assessment practices be vindicated for purposes of the TIA through a state's constitutional requirement for uniform assessments?

Challenge to Massachusetts Estate Tax on QTIP Assets

In Shaffer v. Comm'r of Revenue, Mass. S. Ct., Docket No. SJC-12812 (07/10/2020), the Supreme Judicial Court of Massachusetts was tasked with determining whether intangible assets held in a qualified terminable interest property (QTIP) trust (allowing for a Federal estate tax deferral) created by a predeceasing spouse in New York, are subject to the Massachusetts estate tax when the surviving spouse died while domiciled in Massachusetts. The Supreme Judicial Court affirmed the board's decision below, which held that there was no "constitutional or a statutory barrier to the assessment of Massachusetts estate tax, on the value of the QTIP assets."

With respect to the constitutionality of the Massachusetts estate tax imposed, the court concluded that a transfer of estate assets in this case "occurred upon the death of the decedent," and therefore created sufficient nexus for purposes of satisfying the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution and article 10 of the Massachusetts Declaration of Rights. In supporting its determination, the court commented that the Massachusetts estate tax is imposed upon "the transfer of the estate of each person dying on or after January 1, 1997 who, at the time of death, was a resident of the commonwealth." G. L. c. 65C, § 2A. The court also found that the concept of a "transfer" was expanded on in *Fernandez v. Wiener*, in which the United States Supreme Court determined that an estate tax is not limited to literal transfers at death, but also “extends to the creation, exercise, acquisition, or relinquishment of any power or legal privilege which is incident to the ownership of property.”[17]

Looking to analogous case law in Connecticut which addressed the taxability of QTIP assets, the Supreme Judicial Court of Massachusetts cited *Estate of Brooks v. Commissioner of Revenue Servs.*[18] which determined that “a second transfer of the QTIP assets occurred upon the death of the surviving spouse.” In reaching this conclusion, the Connecticut court stated that “a sovereign may tax the transmutation of legal rights in property occasioned by death...” and that the *Fernandez* Court's practical approach “looked not to whether death was the generating source of ‘rights,’ but rather whether death was the generating source of ‘changes in the legal and economic relationships to the property taxed.’”[19]

Persuaded by the court's reasoning, and combined with the “fictional transfer” applicable under the Federal QTIP rules, the Massachusetts Supreme Judicial Court determined that the “decedent's death created a change in the legal relationship among the QTIP assets, the decedent, and the beneficiaries.” This change in legal relationship occurred upon the death of the decedent, and “constitutes a transfer for estate tax purposes and brings the QTIP assets within the Massachusetts taxable estate.”[20]

Reviewing the statutory framework, the court concluded that the Massachusetts estate tax is imposed on “all assets that the estate reported in the Federal gross estate.” *citing* G. L. c. 65C, § 2A. While the term “Massachusetts gross estate,” is not used in G. L. c. 65C, § 2A, the court noted that, “§ 2A provides for an estate tax equal to the State tax credit ‘that would have been allowable to a decedent's estate as computed under Code section 2011, as in effect on December 31, 2000.'” Although the term is used in General Laws c. 65C, § 3A (which covers the Massachusetts QTIP election by the predeceasing spouse), the court determined that it was not at issue. Indeed, according to the court, “[w]hile § 3A provides requirements for the predeceasing spouse to make a QTIP election, § 1 (f), in turn, provides that when the surviving spouse who had a qualifying income interest for life, as described in § 3A (c), dies, then only property for which the predeceasing spouse was allowed a Massachusetts deduction will be included in the taxable estate of the surviving spouse.” In other words, “the definition of ‘Massachusetts gross estate' in § 1 (f) applies only where the predeceasing spouse makes a Massachusetts QTIP election for property that is included in the Massachusetts gross estate of the predeceasing spouse under § 3A.” Because taxpayer's predeceasing spouse's estate did not make a Massachusetts QTIP election, and because there was no Massachusetts QTIP property as defined in G. L. c. 65C, § 3A, “G. L.

c. 65C, §§ 1 (f) and 3A, do not bear upon the estate's Massachusetts estate tax obligation under G. L. c. 65C, § 2A." Accordingly, the Supreme Judicial Court of Massachusetts held that all assets that the estate reported in the Federal gross estate, including the QTIP assets, were includable in the estate for purposes of the Massachusetts estate tax.

Denied Petitions

Great Lakes Minerals, LLC v. Ohio, et. al. (Docket No, 20-24), cert. denied, 10/5/2020. The Court was asked to review the Kentucky Supreme Court's denial of Great Lakes Minerals, LLC's request for declaratory judgement that it was not subject to Ohio's Commercial Activity Tax, request for monetary relief pursuant to 42 U.S.C.A. § 1983 for the forced collection of taxes not owed in violation of the Ohio and the U.S. Constitutions, and request under Kentucky's rules of civil procedure for a determination that it would be inequitable to require Great Lakes to defend an action in a foreign state.

Rogers County Bd. of Tax Roll Corrections v. Video Gaming Technologies, Inc. (Docket No. 19-1298), cert. denied, 10/19/2020. The U.S. Supreme Court has declined to review an Oklahoma Supreme Court case which as readers may recall, asserted that the imposition of the local ad valorem tax on its gaming equipment is preempted by the Indian Gaming Regulatory Act (25 U.S.C. § § 2701-2721 (2018)) and Indian Trader Statutes, and federal case law. Justice Thomas dissented from the denial, stating that "[b]y enjoining a tax on ownership of property, the Oklahoma Supreme Court has disrupted funding for schools, health departments, and law enforcement." Justice Thomas adds that although the case "concerns only electronic gambling equipment, it injects uncertainty about whether state and local governments can tax the ownership of many other kinds of property located on millions of acres of now-tribal land." Justice Thomas also noted that "[t]his case... presents an opportunity to clear up tension among courts about how to apply pre-emption principles at the intersection of federal law, state law, and tribal land..." and the "opportunity to clarify the court's 'flexible' test for evaluating whether federal law implicitly preempts state taxation of non-Indians on tribal land."

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[1] *Harris County v. PRSI Trading, LLC* (Docket No. 20-563), Tex. S. Ct., Docket No. 18-0664 (2/28/2020).

[2] *Pisztora et al v. City of Pittsburgh,* (Docket No. 20-359), ruling at *Pa. Commw. Ct.,* Docket No. 897 C.D. 2017 (11/1/2019).

[3] *Barnette v. HBI, LLC et al* (Docket No. 20-321), ruling at Neb. S. Ct., Docket No. S-19-147 (04/10/2020).

[4] *Pappas et al, v. A.F. Moore & Associates, Inc.,* (Docket No. 20-316), ruling at U.S. Ct. App. 7th Cir. Docket. No. 19-1971 (1/29/2020).

[5] *Shaffer v. Commonwealth of Massachusetts* (Docket No. 20-501), ruling at SJC-12812 485 Mass 198 (7/10/2020).

[6] *Mississippi v. Louisiana*, 506 U.S. 73 77 (1992) (citations omitted).

[7] *Id.*

[8] *Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175 179 (1995).

[9] *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 279 (1977).

[10] *N.C. Dep't of Rev.*, 139 S. Ct. 2213 2219 (2019).

[11] *PRSI Trading, LLC v. Harris County, Tex. S. Ct.*, Docket. No. 18-0664, 599 SW3d 303 (2/28/2020).

[12] *City of Pittsburgh v. Pisztora et al,* Pa. Commw. *Ct.* Docket No. 897, C.D. 2017 (11/1/2019).

[13] *HBI, LLC et al v. Barnette,* Neb. S. Ct. Dkt. No. S-19-147 (04/10/2020).

[14] *A.F. Moore & Associates, Inc., et al. v. Pappas, et al.,* U.S. Ct. App. 7th Cir Docket. No. 19-1971 (1/29/2020).

[15] *Allegheny Pittsburgh Coal Co. v. City. Comm'n,* 488 U.S. 336 345-46 (1989).

[16] *Fair Assessment in Real Estate Ass'n v. McNary,* 454 U.S. 100 116 (1981).

[17] *Fernandez v. Wiener*, 326 U.S. 340 352 66 S.Ct. 178 90 L.Ed. 116 (1945).

[18] *Estate of Brooks v. Commissioner of Revenue Servs*., 325 Conn. 705 730-731 159 A.3d 1149 (2017) *cert. denied.,*

[19] *Id.*

[20] *citing Fernandez*, supra at 66 S.Ct. 178 ; *Estate of Brooks*, supra at 159 A.3d 1149 .

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