



Bank of America Trusts Subject To Mass. Tax, Court Rules

By Brian Amaral

Law360, Boston (July 11, 2016, 6:58 PM EDT) -- The Massachusetts Supreme Judicial Court on Monday turned aside Bank of America's efforts to cut its living trust's state tax liabilities by millions of dollars, finding that the bank was indeed an "inhabitant" of the commonwealth.

Bank of America, N.A. had argued that Massachusetts' law on inter vivo trusts only taxed natural born person trustees, not corporation trustees. Failing that argument, the bank said that the Appellate Tax Board held the bank to too high of a standard in deciding whether it was an inhabitant of the commonwealth for the purpose of the income tax — which was paid by the trust, not Bank of America itself.

In a decision Monday, the justices of the commonwealth's highest court disagreed, but for slightly narrower reasons.

"Rather, the (tax) board considered the commonwealth-centered activities conducted by the bank in its capacity as corporate trustee, including activities that were centered on the subject trusts," the Supreme Judicial Court, in an opinion written by Justice Margot Botsford, said.

The Supreme Judicial Court's decision focused on the fact that the company spent at least 183 days in Massachusetts and also made many of its trustee decisions in Massachusetts itself, making it an inhabitant.

"The bank is pleased that the Court has narrowed the prior ruling, clarifying that this tax can be imposed on a trust only if a material amount of trust administration occurs in Massachusetts for the trust in question," spokesman William Halldin said.

The ruling avoids the possibility that Massachusetts could, for example, tax a Florida resident's Florida-administered trust just because the bank has 200 retail locations in Massachusetts, Bank of America said.

"We appreciate what the court did in narrowing the appellate tax board's decision to really focus on when the corporate bank trustee is acting in a material fashion in the state as a fiduciary," Phoebe Papageorgiou of the American Bankers Association, which filed an amicus brief in the case, said in an interview.

Bank of America, which is headquartered in Charlotte, North Carolina, had sought abatements from the 2007 tax year on 34 living trusts, totaling \$2.3 million. The 34 trusts, including the R.K. Elliot Trust, the Hovey Trust, the Gordon Trust, and the J.M. Elliot Trust, were created by Massachusetts residents.

The banks pointed to Massachusetts G.L. Chapter 62 Section 1, part of which defines whether someone is an “inhabitant” of Massachusetts and subject to Massachusetts fiduciary income taxes. The definition, Bank of America pointed out, includes only the term “natural person.”

But the Massachusetts appellate tax board pointed to a different statute that says corporations are to be treated the same for the purposes of trustee income as individual inhabitants who are acting in a similar capacity. The Supreme Judicial Court agreed, relying in part on deference to administrative decisions and the fact that when the Massachusetts legislature amended the statute with the definition of “natural person,” it did not touch the statute that said corporations are to be treated the same way.

Even if it granted that corporations could be taxed as “inhabitant” trustees of living trusts, Bank of America further argued that it was not clear that it was actually an inhabitant. Its headquarters are not in Massachusetts, it argued, and many of the decisions about administering the trusts happen outside of the commonwealth.

Labeling Bank of America as an inhabitant would also contradict the very statute that Massachusetts relied on to say that corporations could be taxed as trustees, the bank argued: If the law says that corporations and individuals are to be treated the same way under that law, it should cut both ways. Individuals have to have a “substantial personal nexus” to Massachusetts, where corporations do not, meaning that the two classes were not in fact being treated the same way, the bank said.

The bank said that the tax board should instead look at whether there is a predominant corporate presence in Massachusetts to decide if its trusts must pay the fiduciary income tax.

The Supreme Judicial Court again backed the Appellate Tax Board. The board took more into account than just whether the bank had a presence in Massachusetts via its 200 branches for at least 183 days a year, the Supreme Judicial Court said.

“Rather, we understand the board to have evaluated the specific, agreed-upon facts presented and to have reached its conclusion that the bank qualified as an inhabitant of the Commonwealth based on those facts — facts that included that, in terms of Massachusetts-based activities, the bank both conducted general banking transactions, maintaining over 200 branch offices staffed by bank employees, and performed work as a corporate trustee of the particular trusts at issue here,” the Supreme Judicial Court said.

The Supreme Judicial Court also said that Bank of America had waived its challenge under the dormant commerce clause by not bringing it up before the tax appeal board.

The case is Bank of America, N.A., trustee vs. Commissioner of Revenue, case number SJC-11995 at the Massachusetts Supreme Judicial Court.