

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

CRAIG H. AND NATALIA I. WELCH v. COMMISSIONER OF REVENUE

Docket No. C339531

Promulgated:  
November 29, 2023

This is an appeal filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 62C, § 39 from the refusal of the Commissioner of Revenue ("Commissioner" or "appellee") to abate personal income tax, interest, and penalties assessed to Craig H. Welch ("Mr. Welch") and Natalia I. Welch (Mr. Welch and Natalia I. Welch, collectively, "appellants") for the tax year ending December 31, 2015 ("tax year at issue").

This matter proceeded without oral argument pursuant to 831 CMR 1.31. Chairman DeFrancisco and Commissioners Good, Elliott, and Metzger joined in a decision for the appellee.

These findings of fact and report are made pursuant to requests by both the appellants and appellee under G.L. c. 58A, § 13 and 831 CMR 1.32.

*Eric P. Rothenberg, Esq., and Richard M. Stone, Esq.,* for the appellants.

*Celine E. de la Foscade-Condon, Esq., and Julie A. Flynn, Esq.,* for the appellee.

## FINDINGS OF FACT AND REPORT

This matter concerns whether gain realized by Mr. Welch - a nonresident at the time he sold at a gain his shares of common stock in AcadiaSoft, Inc., a Delaware corporation that develops and markets derivatives and collateral management solutions for institutional investors - was subject to personal income tax in Massachusetts pursuant to G.L. c. 62, § 5A. The statute states in relevant part that the gross income of nonresidents includes "income derived from or effectively connected with . . . any trade or business, including any employment carried on by the taxpayer in the commonwealth, whether or not the nonresident is actively engaged in a trade or business or employment in the commonwealth in the year in which the income is received." G.L. c. 62, § 5A.

On the basis of a Statement of Agreed Facts, the exhibits thereto, including deposition testimony of Mr. Welch and Attorney Mark Stein ("Mr. Stein"), and briefs submitted by the parties, the Appellate Tax Board ("Board") made the following findings of fact.

On April 16, 2016, the appellants timely filed their 2015 Form 1 - Massachusetts Nonresident/Part-Year Resident Tax Return ("2015 Form 1"), which indicated April 30, 2015, as the appellants' last date of Massachusetts residency.<sup>1</sup> The appellants filed a joint

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<sup>1</sup> The Commissioner does not contest that the appellants changed their domicile to New Hampshire on April 30, 2015.

Interest and Dividend Tax Return as residents of New Hampshire for the period April 30, 2015 to December 31, 2015, reporting all interest and dividend income earned for this eight-month period (but not the gain on the sale of Mr. Welch's AcadiaSoft stock) to New Hampshire, and paying \$190 in New Hampshire taxes.

The Commissioner issued a Notice of Intent to Assess to the appellants for the tax year at issue on January 18, 2019, followed by a Revised Notice of Intent to Assess on February 26, 2019. The Commissioner issued a Notice of Assessment to the appellants for the tax year at issue on March 5, 2019, assessing \$244,182 in tax, \$48,836 in interest, and \$42,950.62 in penalties, for a total of \$335,968.62, based upon the gain realized by Mr. Welch on his shares of common stock.

The appellants filed a Form ABT - Application for Abatement ("abatement application") for the tax year at issue on or about April 25, 2019. By letter dated October 23, 2019, the appellants informed the Commissioner that they were withdrawing their consent for the Commissioner to act upon their abatement application after six months from the date of filing. Pursuant to G.L. c. 58A, § 6, the abatement application was deemed denied on October 25, 2019, and the appellants timely filed a petition with the Board on November 7, 2019. Based upon this information, the Board found and ruled that it had jurisdiction over this matter.

The predecessor of AcadiaSoft, Inc. originated on November 17, 2003, when a corporation by the same name was formed by Mr. Welch and first organized in Massachusetts, with Mr. Welch holding the titles of President, Treasurer, Clerk, and sole Director. At the time, he was also the sole stockholder.

The original corporation was voluntarily dissolved on February 24, 2004, and a corporation with the same name was organized in Massachusetts on February 11, 2005, with Mr. Welch holding the titles of Treasurer and CEO, and Danny J. Moyse ("Mr. Moyse"), a software engineer, holding the titles of President, Secretary, and Chief Technology Officer. Mr. Welch and Mr. Moyse each held a 50 percent interest in AcadiaSoft common stock as of February 11, 2005 and were then the sole Directors. Mr. Welch and Mr. Moyse were both considered the founders of this company, which subsequently merged into a Delaware corporation of the same name, and their stock was considered to be founder's stock. The original AcadiaSoft, Inc., its successor Massachusetts corporation, and the Delaware corporation into which the successor Massachusetts corporation merged are herein collectively referred to as "AcadiaSoft."<sup>2</sup>

A self-proclaimed "chief evangelist" for AcadiaSoft, Mr. Welch also referred to himself as "chief cook and bottle washer"

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<sup>2</sup> The successor Massachusetts corporation elected S corporation status for federal income tax purposes; the Delaware entity was a C corporation.

in the early years of the company. His main focus was sales. He testified that he "went out, created the desire for the product with the potential customers" and he "designed what the product needed to do" and "sold it" and "financed it." He stated that Mr. Moyse's "fingers were the ones on the access database making the code, but we developed it together." By the end of 2009, AcadiaSoft had four individuals working for the company - Mr. Welch, Mr. Moyse, and two programmers.

From 2003 through 2015, Mr. Welch worked exclusively for AcadiaSoft. He considered AcadiaSoft his creation and wanted to make it successful - "I was the product and the product was me." Until December 2009, he worked fourteen-hour days, five days per week, and five to six hours on Saturdays and Sundays. From December 2009 until October 2014, he generally worked from 4:00 a.m. to 5:00 p.m. Monday through Friday, as well as some weekends. AcadiaSoft "was [his] baby" and he "was going to make it work." Despite the long hours, Mr. Welch reported \$0 in wage income for 2003 through 2005. As the years passed, he reported increasing wages - \$5,533.77 in wage income for 2006; \$7,235.42 for 2007; \$80,415 for 2008; \$185,274 for 2009; \$192,708 for 2010; \$185,000 for 2011; \$279,692 for 2012; \$245,600 for 2013; \$339,664 for 2014; and \$556,916 for 2015.<sup>3</sup> He expressed that he was "happy" with his

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<sup>3</sup> The 2015 wage income included forgiveness of loans that AcadiaSoft had granted to Mr. Welch. Mr. Welch paid income tax on the full amount of this compensation.

salary,<sup>4</sup> but that he was “frustrated” that he wasn’t the highest paid person in the company and that “there wouldn’t be a company there if it wasn’t for me.” He was looking forward to the payout from his hard work “[w]hensoever that came, at some point in time.”

From its inception through 2015, AcadiaSoft’s headquarters were located in Massachusetts. Mr. Welch and Mr. Moyse initially ran AcadiaSoft out of their respective homes and then out of rented office space in Pembroke, Massachusetts. In 2009, as the company grew, AcadiaSoft rented office space in Norwell, Massachusetts. By 2014, AcadiaSoft had twenty-four employees.

Mr. Welch claimed to travel extensively for company business, but he provided no documentation to substantiate his estimates. Further, for years 2003 through 2014, the appellants filed Massachusetts resident income tax returns. They neither claimed any credits for taxes paid to other jurisdictions nor filed income tax returns in any other jurisdictions - and for all relevant time periods, AcadiaSoft filed Massachusetts corporate excise returns apportioning 100 percent of its income to Massachusetts.

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Mr. Welch never repaid the loans monetarily but instead AcadiaSoft took 2 percent of his ownership interest.

<sup>4</sup> When the Delaware corporation was formed in 2009, institutional investors acquired a controlling interest. See note 5, *infra*. Mr. Welch explained that “the way most salaries are determined on Wall Street for senior people is you have no insight into it. Whatever layer is above you, goes off in a room, decides what they are going to pay you, and they come back and tell you this is what you have . . . And my bosses were all managing directors or higher on Wall Street. That’s how I found out what my salary was too.”

Mr. Welch claimed to have invested more than \$800,000 in cash in AcadiaSoft between 2003 and 2009, but this also was not substantiated by any documentation. Mr. Welch expected in the future that AcadiaSoft would be worth a lot more than it was when he started it. Because they "were starting a company on shoestrings and our own wallets," Mr. Welch and Mr. Moyse early on realized the monetary needs of the company. From 2006 to 2007, AcadiaSoft raised funding from a group of angel investors ("Angel Investors") who became the holders of 28.2 percent of AcadiaSoft common stock. The Angel Investors did not work for AcadiaSoft and were "just investors" according to Mr. Welch, and he committed to them that he would do his best to get them "their money back" and "a handsome return." The common stock of Mr. Welch was diluted to a 35.9 percent share due to the recapitalization to admit the Angel Investors.

In 2009, the company was "on the one hand ready to take off, but on the other hand we were discussing shutting it down because we couldn't possibly go anymore without any more money," according to Mr. Welch. Mr. Welch "kept trying to sell the giant banks to make an investment" and he believed at that time it would be worth it to keep trying because the return would be worth it.

AcadiaSoft, the Massachusetts corporation, merged into AcadiaSoft, the Delaware corporation, on December 18, 2009. Subsequently, on December 24, 2009, AcadiaSoft entered into its

first round of funding with four financial institutions who acquired convertible preferred stock ("Series B Transaction"). The four financial institutions<sup>5</sup> were financial services firms that were interested in the product created by AcadiaSoft and were each using the product as customers of AcadiaSoft. After the Series B Transaction, Mr. Welch's ownership interest diluted to approximately 13 percent. The number of Directors increased to nine, as indicated in AcadiaSoft's 2010 annual report, and the number of Directors eventually increased to eighteen, as indicated in AcadiaSoft's 2015 annual report.

Mr. Welch also became bound by certain terms of a Right of First Refusal and Co-Sale Agreement dated December 24, 2009, which identified him as a "Key Holder"<sup>6</sup> of stock and provided that if at any time effective within eighteen months after the date of the Agreement, he (as a Key Holder) voluntarily resigned from full-time employment with the company (except a resignation for "good reason") or was terminated by the company for "cause," the company would have an option, exercisable by written notice within thirty days after the effective date of such resignation or termination, to purchase all of the shares of capital stock then held by him

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<sup>5</sup> The initial institutional investors were LabMorgan Investment Corporation; Credit Suisse NEXT Investors, L.P.; HSBC Bank plc; and ICAP Latin America Holdings B.V. They were joined by other institutional investors the following year and in the subsequent round of financing.

<sup>6</sup> Mr. Welch and Mr. Moyse were the only individuals named in an exhibit to the Agreement as Key Holders.



for a cash purchase price equal to \$0.01 per share, "appropriately adjusted for stock splits, recapitalizations and similar transactions occurring after the date hereof."

On July 30, 2013, AcadiaSoft entered into its second round of funding with institutional investors ("Series C Transaction"). The Series C Transaction further diluted Mr. Welch's ownership interest to 11.86 percent. In sum, his ownership interest decreased from 50 percent, to 35.9 percent, to 13 percent, and ultimately to 11.86 percent, where it remained until his parting with AcadiaSoft in 2015.

In addition to being a Director at AcadiaSoft, through his resignation in 2015, Mr. Welch was considered an "employee of AcadiaSoft" holding numerous responsibilities and positions at times, including CEO, President, Vice President, and Treasurer. He focused on operations and management, as well as sales.<sup>7</sup> These positions carried duties and responsibilities such as presiding at all meetings of stockholders, the authority to remove agents and employees and to prescribe their powers and duties, custody of corporate funds and securities of the corporation, and disbursement of the funds of the corporation as ordered by the Board. Until the end of 2014, all personnel answered to Mr. Welch - product development, operations, human resources, legal,

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<sup>7</sup> On December 24, 2009, Mr. Moyse became CEO and President but he subsequently became incapacitated by illness and Mr. Welch took over as CEO in 2010.

compliance, finance, strategy, partnerships, and sales. AcadiaSoft's Board of Directors generally met ten times a year, and Mr. Welch attended every meeting in person from 2009 through May 2015. Mr. Welch provided reports and/or briefings to the Board of Directors, including executive reports and strategic plans. He was involved in hiring personnel, briefing on legal claims, presenting business plans, seeking equity financing, providing updates on the company's marketing and strategic partnership efforts, reporting on the status of key sales prospects, press releases, and providing reports on the results of operations and cash flow.

In 2014, Mr. Welch felt something was amiss while attending a Board of Directors meeting, and by September 2014, he understood that one of the Board members - appointed by one of the bank stockholders - was trying to undermine the value of AcadiaSoft common stock by developing a product competitive with AcadiaSoft's product that would reduce AcadiaSoft's value to pennies on the dollar. "Those were my assets," he testified, acknowledging that he thought his sweat equity in AcadiaSoft was in jeopardy. In subsequent actions where he "was dealing with basically the survival of the common [stock]," he recognized that he "had just declared war on a number of my shareholders and my Board members."

By the end of 2014, several Board members noted to Mr. Welch that if there were to be an investment/recapitalization of

AcadiaSoft ("Series D Transaction") with institutional investors, a requirement from a number of bank stockholders would be that he separate from AcadiaSoft entirely. Mr. Welch indicated he was fine with that outcome and felt that his health had suffered from "all of the politics, backstabbing and nasty dealings with the Board." By December 2014, Mr. Welch was asked to shift his CEO responsibilities to the COO, Chris Walsh, and Mr. Welch was to focus on big sales for the company, where his personal reputation, network, and access would be helpful to the company. Mr. Welch testified that he was "forced to voluntarily resign." AcadiaSoft wanted Mr. Welch to retain the title of CEO until his resignation because he was so high profile in the industry and associated with AcadiaSoft. By January 2015 he was CEO in name only.

Mr. Stein, who was retained as outside counsel for AcadiaSoft in 2009 by Mr. Welch and Mr. Moyse, confirmed that Mr. Welch did "not much" in 2015 for AcadiaSoft, that Mr. Welch was responsible for "maybe a small handful of key sales targets" and "did not have any operational role in the company at that time." He noted that Mr. Welch contributed to the value of AcadiaSoft and that his contributions were particularly crucial during the early growth stage of the business.

On June 19, 2015, AcadiaSoft issued a contingent offer to repurchase all common stock at a per-share repurchase price of \$48.7472. Mr. Welch was formally notified of this offer on June

22, 2015. As part of the Series D Transaction, both Mr. Welch and Mr. Moyses elected to participate in the repurchase offering and sell all of their shares back to the company. On June 25, 2015, Mr. Welch elected to participate in the offering. On June 26, 2015, he signed a letter resigning as an Officer and Director of AcadiaSoft, effective the later of June 26, 2015 or the date of the repurchase of his stock. Mr. Welch tied his resignation with the sale of his stock to maintain some leverage in case AcadiaSoft decided not to repurchase his stock. Mr. Welch - as well as Mr. Moyses - held a founders' veto on AcadiaSoft until his resignation, and he indicated in an April 2015 email to his attorney that Mr. Stein had "encouraged me to ask you to work on my exit plan, while I still hold the founders' veto."

On June 29, 2015, AcadiaSoft entered into its third round of funding with the Series D Transaction. Mr. Welch and the other common stock shareholders were bought out by AcadiaSoft with part of the proceeds of the Series D Transaction. AcadiaSoft issued Mr. Welch a 2015 Form 1099-B indicating the sale of 97,334 shares of AcadiaSoft's common stock disposed of on June 29, 2015, with proceeds reported as \$4,744,759.96. The Form 1099-B reported no cost or other basis. Mr. Welch reported the sale of AcadiaSoft stock on Schedule D of the appellants' 2015 Form 1, but excluded the \$4,774,759.96 of gain from the sale of his AcadiaSoft shares as income not sourced to Massachusetts.

Based upon these facts, and as discussed further in the Opinion, the Board ruled that the gain on the sale of Mr. Welch's AcadiaSoft common stock - stock that he received as a founder of AcadiaSoft, with no indication in the record that he ever monetarily paid for the shares - was Massachusetts source income subject to taxation under G.L. c. 62, § 5A on the basis that the income was derived from or effectively connected with the trade or business of employment carried on by Mr. Welch in the Commonwealth.

The Board's ruling was based on numerous facts, in particular, that until late 2014, Mr. Welch was actively engaged in the affairs of AcadiaSoft, a company that - for all relevant time periods - was headquartered in Massachusetts and filed Massachusetts corporate excise returns apportioning 100 percent of its income to Massachusetts. Further, during this same time period the appellants were residents of Massachusetts and sought no credit for taxes paid to other jurisdictions when filing their tax returns for 2003 through 2014. It was not until late 2014 through June 2015 - inclusive of the time period when he moved to New Hampshire - that Mr. Welch's contributions to the company diminished.

Even after the infusion of institutional capital, Mr. Welch remained the company's "chief evangelist" and considered himself synonymous with the product, and his dedication and commitment to AcadiaSoft were steadfast because he believed the return would be worth his efforts. In later years he was not the highest paid

individual at AcadiaSoft, which frustrated him, and he expected a payout for his years of sweat equity, which came in the form of a stock gain, a compensatory amount under the unique circumstances presented in this matter - a remuneration that derived from and was effectively connected with his AcadiaSoft employment. Unlike the Angel Investors, Mr. Welch was not a passive investor in AcadiaSoft, but a founder whose continued employment with the company - in prominent, powerful, and crucial roles - contributed to its value to the degree that the company wanted him to retain the title of CEO until his resignation because of his status in the industry. Following the first round of institutional funding, his status as a Key Holder of stock was directly tied to his continued employment with the company, and he held a founders' veto until his resignation. Mr. Welch even correlated the timing of his resignation with his payout, further supporting the connection between his employment and the income from stock gain.

Accordingly, the Board found and ruled for the appellee in this appeal.

#### **OPINION**

"No method of determining tax liability is valid unless authorized by statute and assessed in conformity to its terms." **VAS Holdings & Investments LLC v. Commissioner of Revenue**, 489 Mass. 669, 685-86 (2022) (citing **Gillette Co. v. Commissioner of**

**Revenue**, 425 Mass. 670, 675 (1997)). The issue in this matter is whether G.L. c. 62, § 5A authorizes taxation of the gain from the sale of Mr. Welch's AcadiaSoft stock on June 29, 2015, when he was no longer a resident of Massachusetts. See **Gersh v. Commissioner of Revenue**, Mass. ATB Findings of Fact and Reports 1997-502, 527 ("If the income received by Gersh . . . is taxable to Gersh, a non-resident, it must be taxable under the provisions of § 5A.").

General Laws c. 62, § 5A was amended by St. 2003, c. 4, § 7 for tax years beginning on or after January 1, 2003, to expand the meaning of taxable Massachusetts source income for nonresidents.

As amended, the statute provides that

[i]tems of gross income from sources within the commonwealth are items of gross income derived from or effectively connected with: (1) any trade or business, including any employment carried on by the taxpayer in the commonwealth, whether or not the nonresident is actively engaged in a trade or business or employment in the commonwealth in the year in which the income is received.

G.L. c. 62, § 5A (amended by St. 2003, c. 4, § 7); see also 830 CMR 62.5A.1(1)(a). While the amendment did not overturn the body of case law holding that a taxpayer personally must carry on the trade or business in Massachusetts that results in the income at issue, see, e.g., **Commissioner of Revenue v. Dupee**, 423 Mass. 617, 619 (1996),<sup>8</sup> the carrying on of the trade or business is no longer

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<sup>8</sup> In **Dupee**, the Supreme Judicial Court held that "[w]e construe the relevant portion of the statute to mean that 'items of gross income from sources within the commonwealth are items of gross income derived from or effectively connected

limited to the year of the taxable event, thus broadening the timeframe during which the Board analyzes the connection between a taxpayer's trade or business and the income at issue. See **VAS Holdings & Investments LLC**, 489 Mass. at 688 n.23 ("As amended [in 2003], the statute now permits a tax on a nonresident who did business in the Commonwealth regardless of whether the business was conducted in that particular year."); see also 830 CMR 62.5A.1(3)(a)2. ("All items of income that derive from the conduct of a trade or business or employment in Massachusetts, as those terms are defined in 830 CMR 62.5A.1(3)(a)1., are Massachusetts source income, even if the taxpayer has not been present in Massachusetts during the year of receipt."); **McTygue v. Commissioner of Revenue**, Mass. ATB Findings of Fact and Reports 2010-329, 344 ("[A]mended § 5A removes the requirement, developed through case law, that a nonresident individual be actively engaged in a trade or business in Massachusetts in a year in which income is received for that income to be derived from or effectively connected with a trade or business."), *aff'd*, 80 Mass. App. Ct. 1102 (2011) (decision under Rule 1:28).

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with (1) any trade or business . . . carried on by the taxpayer in the commonwealth.'" 423 Mass. at 619. See also **VAS Holdings & Investments LLC**, 489 Mass. at 688-89 ("As we held in **Commissioner of Revenue v. Dupee** . . . , the [statute] precludes the Commonwealth from taxing the capital gain realized by a nonresident shareholder on the sale of his or her interest in a Massachusetts entity where the shareholder himself or herself did not actively participate in the activities of the entity.").



The statute also was amended by St. 2003, c. 4, § 7, broadly to define the phrase "gross income derived from or effectively connected with any trade or business" as follows:

For purposes of this section, gross income derived from or effectively connected with any trade or business, including any employment, carried on by the taxpayer in the commonwealth shall mean the income that results from, is earned by, is credited to, accumulated for or otherwise attributable to either the taxpayer's trade or business in the commonwealth in any year or part thereof, regardless of the year in which that income is actually received by the taxpayer and regardless of the taxpayer's residence or domicile in the year it is received. It shall include, but not be limited to, gain from the sale of a business or of an interest in a business . . . .

G.L. c. 62, § 5A (amended by St. 2003, c. 4, § 7). As the Board stated in *McTygue*, Mass. ATB Findings of Fact and Reports at 2010-344-345:

[U]nlike the prior version of § 5A, which did not define 'derived from or effectively connected with any trade or business,' the amended statute incorporates an exceedingly broad definition of the phrase. This definition includes income 'that results from, is earned by, is credited to, accumulated for or otherwise attributable to' a trade or business in the Commonwealth and specifically enumerates sources of taxable income including 'gain from the sale of a business or of an interest in a business.

The amended language is patently inclusive in its reach. Of importance is not the tax character and timing of the income but rather whether Massachusetts has a right to tax it based on the income's provenance.

Consistent with the statute's expansive language, the Commissioner's regulation stresses that "[a]ll types of income, including investment income, derived from or effectively connected with the carrying on of a trade or business within Massachusetts are Massachusetts source income" (830 CMR 62.5A.1(1)(a)) and that "[i]ncome from a trade or business may include income that results from the sale of a business or an interest in a business" (830 CMR 62.5A.1(3)(c)8.). While the regulation states that this rule "generally does not apply . . . to the sale of shares of stock in a C or S corporation, to the extent that the income from such gain is characterized for federal income tax purposes as capital gains," it makes clear that "[s]uch gain may . . . give rise to Massachusetts source income if, for example, the gain is otherwise connected with the taxpayer's conduct of a trade or business, including employment (as in a case where the stock is related to the taxpayer's compensation for services)." 830 CMR 62.5A.1(3)(c)8.

In **McTygue**, Mass. ATB Findings of Fact and Reports at 2010-346, the Board construed 830 CMR 62.5A.1 as intending "to exclude from Massachusetts source income those items of income which were essentially passive in nature and unrelated to an individual's employment by or active participation in the entity that was the

source of the income.”<sup>9</sup> As the Board found in **Gersh**, a determination of whether a taxpayer engages in a trade or business requires an examination of the facts of each case, involvement by the taxpayer in an activity with continuity and regularity, and engagement in the activity for purpose of income or profit. Mass. ATB Findings of Fact and Reports at 1997-522 (citing **Commissioner v. Groetzinger**, 480 U.S. 23 (1987)); see also Directive 03-12: Taxation of Income Earned by Non-Residents After St. 2003, c. 4, § 7 (Directive 2) (“The term ‘employment’ includes personal services performed for compensation in Massachusetts, regardless of where or when paid.”).

Turning to the matter at hand, Mr. Welch carried on the trade or business of employment in the Commonwealth. See G.L. c. 62, § 5A; 830 CMR 62.5A.1(3)(a)1.a.iii. (“All activities that are considered a ‘trade or business,’ including employment . . . are subject to taxation under [G.L. c. 62, § 5A.”). Mr. Welch shouldered myriad responsibilities as an employee of AcadiaSoft, from its inception until his resignation, and he considered himself the company’s “chief evangelist,” synonymous with the product. See

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<sup>9</sup> The Board construed the statute by way of citation to an example in the regulation, which “depicts a hypothetical investor who is an employee of ‘NationalCorp,’ a C corporation that does business in Massachusetts. The investor, who works in the corporation’s Massachusetts offices, purchased stock of the corporation ‘as an ordinary investment unrelated in any way to his compensation.’ The example concludes that the gain on the investor’s sale of stock is not Massachusetts source income.” **McTygue**, Mass. ATB Findings of Fact and Reports at 2010-346 (citing to Example (3)(c)(8.4) of 830 CMR 62.5A.1(3)(c)8.).

**VAS Holdings & Investments LLC**, 489 Mass. at 689 (where the LLC, as the holder of a 50 percent membership interest in a Massachusetts limited liability company, did not carry on a trade or business in Massachusetts); **Dupee**, 423 Mass. at 618 (where "Dupee . . . 'did not actively, regularly, or continuously participate in any capacity in the activities constituting the regular operations of [BCI]'").

Mr. Welch carried on his employment in Massachusetts with AcadiaSoft, a company that - for all relevant time periods - was headquartered in Massachusetts and filed Massachusetts corporate excise returns apportioning 100 percent of its income to Massachusetts. The appellants were residents of Massachusetts from the inception of AcadiaSoft in 2003 through April 30, 2015, and sought no credit for taxes paid to other jurisdictions when filing their tax returns for 2003 through 2014. It was not until late 2014 through June 2015 - inclusive of the time period after he moved to New Hampshire - that Mr. Welch's contributions to the company diminished.

Mr. Welch engaged in his AcadiaSoft employment with continuity and regularity, working long hours even when his shares were diluted due to numerous recapitalizations and even though he was not the highest paid individual at the company. He was a founder of AcadiaSoft and dedicated himself to its success, and he expected all his hard work would culminate with a payout at some

point in the future. This was not a passive venture for Mr. Welch, but one to which he exclusively devoted his life for more than a decade and to which he made crucial contributions that added to, and were critical to, the company's value. His payout - the stock gain - was of a compensatory nature that "result[ed] from, [was] earned by, [was] credited to . . . or otherwise attributable to" his employment and thus the gain here derived from and was effectively connected with the trade or business of employment carried on by Mr. Welch in the Commonwealth and taxable under G.L. c. 62, § 5A.

On the basis of the foregoing, the Board found and ruled for the appellee.

**THE APPELLATE TAX BOARD**

By: /s/ Mark J. DeFrancisco  
Mark J. DeFrancisco, Chairman

A true copy,

Attest: /s/ William J. Doherty  
Clerk of the Board