NO. CV 07 4013444S	:	SUPERIOR COURT
ROBERT P. SULLIVAN, ET AL.	:	JUDICIAL DISTRICT OF NEW BRITAIN
v.		
TAX ASSESSOR, CITY OF BRIDGEPORT	:	AUGUST 2, 2007

MEMORANDUM OF DECISION

This is a personal property tax appeal brought by the plaintiffs Robert P. Sullivan and Michael D. Sullivan, pursuant to General Statutes § 12-119, claiming that the assessor for the city of Bridgeport (city) disregarded the relevant tax statutes for determining the value of certain items of personal property located at 111 Lansing Street, Bridgeport, the three-family house the plaintiffs own and lease to various tenants.

On March 26, 2007, the plaintiffs filed this five-count complaint claiming that for the Grand Lists of October 1, 2002 through October 1, 2006, the city's assessor improperly assessed their personal property, identified as three electric stoves, three refrigerators and furniture fixtures and equipment, because such property was exempt from taxation as household furniture, pursuant to General Statutes § 12-81 (31).[1]

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[1] General Statutes § 12-81 recites, in relevant part: "**Exemptions.** The following-described property shall be exempt from taxation: . . . (31) **Household furniture.** Household furniture, used by or held in storage for and belonging to any family[.]"

Each of the apartments at 111 Lansing Street contain an electric stove and refrigerator. Furthermore, the plaintiffs acknowledged that they did not file any personal property declarations, as required by General Statutes § 12-40[2], for the Grand Lists of October 1, 2002, 2003, 2004 and 2005. See plaintiffs' post-trial brief, dated June 14, 2007 (hereinafter plaintiffs' 6/14/07 brief), pp. 2-3.

The plaintiffs recite in their post-trial brief that they provide the "Household Furniture items to [their] tenants without any additional charge whatsoever. The Plaintiff[s] [are] not in the commercial business of separately renting personal property. Whenever a tenant has their own refrigerator and/or stove which they wish to use, the Plaintiff[s] merely [have] the tenant move the [Plaintiffs'] items into the cellar without any reduction in the monthly rent charged [to] the tenant for the apartment rental. The [Plaintiffs'] 111 Lansing Street property is a 3-family house previously converted from a single family house. It is not considered a commercial rental property for either insurance

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[2] General Statutes § 12-40 provides as follows: "**Notice requiring declaration of personal property.** The assessors in each town, except as otherwise specially provided by law, shall, on or before the fifteenth day of October annually, post on the signposts therein, if any, or at some other exterior place near the office of the town clerk, or publish in a newspaper published in such town or, if no newspaper is published in such town, then in any newspaper published in the state having a general circulation in such town, a notice requiring all persons therein liable to pay taxes to bring in a declaration of the taxable personal property belonging to them on the first day of October in that year in accordance with section 12-42 and the taxable personal property for which a *declaration* is required in accordance with section 12-43." (Emphasis added.)

or mortgage purposes." (Plaintiffs' 6/14/07 brief, p. 3.)

The plaintiffs point out that "[o]n 5/22/06, the Defendant faxed Plaintiff[s] a Personal Property Valuation Summary which Defendant had unilaterally prepared without any input from the Plaintiff[s]. This Personal Property Declaration for the assessment years 10/1/02, 10/1/03, 10/1/04 and 10/1/05, was dated 11/21/05 (See Exhibit 8), and valued, without any specific detail, 'Furniture, Fixtures and Office Equipment' in the amount of $45,000.00. The Defendant further added a 25% late filing penalty of $11,250.00, which resulted in a Grand Total Taxable Assessment in the amount of $56,250.00." (Plaintiffs' 6/14/07 brief, p. 7.)

On or about April 28, 2006, the board of assessment appeals (BAA), pursuant to an appeal by the plaintiffs, reduced the personal property assessments to the following amounts: October 1, 2002 - $3,900; October 1, 2003 - $4,400; October 1, 2004 - $4,900. See plaintiffs' 6/14/07 brief, p. 6. Less than a month later, on or about May 19, 2006, the BAA sent the plaintiffs a corrected assessment change showing that the 2002 assessment changed to $4,900.00 and the 2004 assessment changed to $3,900.00. See plaintiffs' 6/14/07 brief, p. 7. By March 30, 2007, the BAA also reduced the October 1, 2006 assessment from $56,250 to $2,774.80.

The plaintiffs claim they did not take an appeal to the BAA for the Grand List of October 1, 2005 until February 20, 2007 because they had not received any required notice of the tax assessment. See plaintiffs' 6/14/07 brief, p. 10. The BAA made no

change to the 2005 assessment but as noted above, for 2006, it reduced the assessment to $2,774.80. See plaintiffs' 6/14/07 brief, p. 11.

The city raises two special defenses. As to counts one through four, covering the Grand Lists of October 1, 2002, 2003, 2004 and 2005, the city argues that the plaintiffs' claims are barred by the statute of limitations, pursuant to General Statutes §§ 12-117a and 12-119. As to count five, for the Grand List of October 1, 2006, the city argues that the court has no subject matter jurisdiction to hear the matter because the BAA has not acted upon the plaintiff's appeal.

Turning to the statute of limitations issue, § 12-119 requires a taxpayer to appeal an illegal assessment to the Superior Court "within one year from the date as of which the property was last evaluated for purposes of taxation . . . ." The statute does not require a prior appeal to the BAA, as required in § 12-117a.

The plaintiffs argue that they "timely appealed, under the one (1) year Connecticut General Statutes (hereafter referred to as 'C.G.S.') Section 12-119 statute of limitations, and has proved that the Defendant improperly laid a personal property tax on non-taxable exempt personal property under C.G.S Section 12-81 (31) or, in the alternative, has proved that the Defendant laid a tax on property that was computed on an assessment which, under all the circumstances, was manifestly excessive and could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of such property." (Plaintiffs' 6/14/07 brief, p. 1.)

The plaintiffs acknowledge that they were "for each of the five (5) Appealed Grand List Personal Property Tax Assessment years, those being 10/1/02, 10/1/03, 10/1/04, 10/1/05 and 10/1/06[,] . . . the owner of certain Personal Property in the City of Bridgeport . . . ." (Plaintiffs' 6/14/07 brief, pp. 1-2.)

The plaintiffs further acknowledge that "[o]n 2/17/06, [they] filed a Personal Property Tax Assessment Appeal (See Exhibit 3) with the Bridgeport Board of Assessment Appeals for only the same three (3) years 2002-2004 for which Bridgeport had provided the required Statutory Notice (See Exhibit 2). The Plaintiff[s] clearly testified that [they] had no idea what Personal Property Taxed items [they were] appealing when [they] filed [their] 2002, 2003 and 2004 Tax Appeal with the Board of Assessment Appeals." (Plaintiffs' 6/14/07 brief, pp. 5-6.)

General Statutes § 12-71 (a) requires that "[a]ll goods, chattels and effects or any interest therein . . . belonging to any person who is a resident in this state, shall be listed for purposes of property tax in the town where such person resides . . . ." However, pursuant to § 12-81 (31), household furniture, "used by or held in storage for and belonging to any family[,]" is exempt from taxation.

While the plaintiffs acknowledge the existence of three tenant leases at 111 Lansing Street, it is their position that the three stoves and three refrigerators located there were "not 'Business' Personal Property." (Plaintiffs' 6/14/07 brief, p. 6.) Frankly, it is difficult to understand the plaintiffs' argument that the stoves and refrigerators, which are

located in apartments their tenants rent from them, qualify as household furniture belonging to the Sullivan family.

The appliances the plaintiffs provided to their tenants were clearly for the benefit of the tenants and their use value was presumably encompassed within the tenants' rental payments. Indeed, it is quite a stretch for the plaintiffs to claim that the three stoves and three refrigerators in the apartments were the plaintiffs' own personal family furniture, especially when the plaintiffs, on their federal tax return, took a depreciation deduction for these same appliances.

Although the plaintiffs placed the burden on the assessor to notify them what personal property he intended to tax, in reality, it was the plaintiffs' burden to comply with § 12-40, requiring all persons to file a declaration of all taxable property belonging to that person with the municipality's assessor.

The importance that the legislature places on the declaration requirement is further demonstrated by the enactment of § 12-41 (d), imposing a "penalty equal to twenty-five per cent of the assessment of such property." Section 12-42 directs the assessor, when a declaration has not been filed, to "fill out a declaration including all property which the assessors have reason to believe is owned by the person for whom such declaration is prepared, liable to taxation, at the percentage of its actual valuation, as determined by the assessors in accordance with the provisions of sections 12-63 and 12-71, from the best information they can obtain, and add thereto twenty-five per cent of such assessment."

Because the plaintiffs did not file declarations for the years 2002 through 2005, the city's assessor, pursuant to his authority in § 12-42, filed a declaration for these assessment years on behalf of the plaintiffs, based upon the best information available to him. See Plaintiffs' 6/14/07 brief, p. 7; plaintiffs' Exhibit 8. Where the plaintiffs have failed to comply with the statute requiring the filing of a declaration of personal property, they are not in the best position to complain about the assessor's action. See Northeast Datacom, Inc. v. Wallingford, 212 Conn. 639, 648-49, 563 A.2d 688 (1989).

The plaintiffs complain that the city's assessor, in preparing the November 21, 2005 declaration pursuant to § 12-53 (d)[3], included the 2005 tax year and failed to properly provide notice to the plaintiffs. See Plaintiffs' 6/14/07 brief, p. 8. More specifically, the plaintiffs acknowledged that they did receive such a notice for the 2002, 2003 and 2004 assessment years by letter dated November 29, 2005, but were not notified of the assessment for the Grand List of October 1, 2005. Shortly after receiving the notice dated November 29, 2005, the plaintiffs met with the deputy assessor to discuss their personal property assessments. The plaintiffs filed a declaration of personal property for the 2006 Grand List, but claimed again that the three stoves and three refrigerators were not taxable.

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[3] General Statutes § 12-53 (d) recites, in relevant part, as follows: "If the assessor or board of assessors of any town . . . makes out a declaration for any person not filing a declaration . . . they shall, within thirty days of the completion of an audit . . . give such person notice in writing by mailing the same, postage prepaid, to such person's last-known address . . . ."

The BAA considered the appeal taken by the plaintiffs in 2006 for the years 2002 through 2005. Although the BAA rendered a decision on the appeal taken by the plaintiffs in 2006, the present action was not taken from the action of the BAA pursuant to § 12-117a. Instead, this appeal is from the assessor's action denying the plaintiffs' claim for household furniture exemption pursuant to § 12-119.

Section 12-119 requires an appeal taken within one year from the date the property was last evaluated. In this case, the subject properties were last evaluated on October 1, 2002 through October 1, 2004. This action in 2006 is obviously untimely as to counts one, two and three pursuant to § 12-119.

The fundamental issue in this case is whether the plaintiffs' personal property located in the three apartments at 111 Lansing Street are exempt from tax. The simple answer is that the subject appliances are not exempt under § 12-81 (31) because they were used in a commercial context, as part of leases to various tenants, not as the personal property of the plaintiffs.

It appears to the court that the BAA substantially reduced the plaintiffs' personal property assessments, as noted above, and considering the court's finding that the subject personal property was taxable, the plaintiffs have failed to show, under the allegations in counts four and five, that they are aggrieved parties for the purpose of this tax appeal.

Accordingly, judgment may enter in favor of the defendant, dismissing all counts of the plaintiffs' appeal, without costs to any parties.

Arnold W. Aronson
Judge Trial Referee