NO. CV07 4020814S	:	SUPERIOR COURT
COLLEEN A. WIELE	:	JUDICIAL DISTRICT OF
	:	FAIRFIELD AT BRIDGEPORT
v.		
CITY OF BRIDGEPORT	:	DECEMBER 2, 2008

MEMORANDUM OF DECISION

This is a personal property tax appeal brought by the plaintiff, Colleen A. Wiele, claiming that the assessor for the city of Bridgeport (city) improperly levied a property tax against a vehicle owned by the plaintiff and her husband[1] (the Wieles) that was located in North Carolina on the city's assessment date of October 1, 1992. Almost thirteen years later, the city's assessor issued a tax warrant in the amount of $1,668.65 against the Wieles' bank account to satisfy the city's tax claim.

Prior to the city's assessment date of October 1, 1992, the Wieles resided at 90 Duane Place in Bridgeport. However, on July 31, 1992, the Wieles sold their property and purchased a new residence at 2 Roberson Creek Road in Pittsboro, North Carolina. The Wieles became North Carolina residents as of August 1, 1992.

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[1] Although not raised by the pleadings, the city contends, in its post-trial brief, that this action must fail because the plaintiff's husband was a joint owner of the subject truck and as such, should have been made a party to this appeal. A nonjoinder or misjoinder of parties is properly addressed by a motion to strike, not by raising it as an issue in a post-trial memorandum. See Practice Book § 11-3.

While living in Bridgeport, and prior to their move to North Carolina, the Wieles owned a 1990 Nissan KC truck that was registered with the Connecticut department of motor vehicles (CT DMV). When the Wieles sold their Bridgeport residence and moved to North Carolina, they moved all of their belongings, including the truck. The Wieles then registered the truck with the North Carolina department of motor vehicles.[2] Although the Wieles moved out of Connecticut and took residence in North Carolina as of August 1, 1992, Bridgeport's assessor assessed their truck, for tax purposes, on the Grand List of October 1, 1992.

After their move to North Carolina, on September 25, 1992, the plaintiff mailed the truck's registered plates back to the CT DMV and received a receipt for the returned plates. The plaintiff mailed the receipt to the Bridgeport assessor's office, along with a letter from her insurance carrier showing a cancellation of coverage for the truck, to inform the assessor that the truck was no longer registered in Connecticut.

The Wieles moved back to Connecticut on July 4, 1999 and have since resided in Stratford.

For the first time, on January 27, 2006, the Wieles received a notice of a delinquent motor vehicle tax bill from the Bridgeport assessor for the truck regarding the Grand List

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[2] See plaintiff's Exhibit 5, letter from North Carolina's department of transportation, dated March 30, 2007, confirming that the Wieles' truck was registered to Arthur J. Wiele, without any lien, in North Carolina on September 25, 1992.

of October 1, 1992.[3] When the plaintiff telephoned the city's assessor on November 6, 2006 that the tax bill was in error, she was told to bring a copy of the Wieles' 1992 W-2 statement in order to prove their North Carolina residency. When the plaintiff presented the W-2 statement to the assessor's office, she was told that the document did not prove residency. The plaintiff was then advised by a clerk in the city's assessor's office to take an appeal to the Board of Assessment Appeals (BAA), which the plaintiff did. On April 11, 2007, the BAA denied the plaintiff's appeal.

On May 18, 2007, the plaintiff commenced the present action, as a pro se litigant, pursuant to General Statutes § 12-117a in order to appeal the BAA's decision denying her claim for the return of $1,668.65 which she claims was illegally removed from the Wieles' bank account as a result of the tax warrant. At trial, now represented by counsel, the court allowed the plaintiff to amend her original complaint in order to add a second count appealing the assessor's action pursuant to General Statutes § 12-119.[4]

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[3] See plaintiff's reply to special defense stating that "3. . . . Thirteen years later, Plaintiff received a delinquent Motor Vehicle Tax Bill for the Grand List of October 1992 for said vehicle. This was the first and only indication plaintiff received from the City of Bridgeport regarding delinquent motor vehicle taxes."

[4] The plaintiff's original complaint was a claim that the assessor collected an illegal tax that was not authorized by statute and did not involve the truck's valuation. See e.g., Northeast Datacom, Inc. v. Wallingford, 212 Conn. 639, 649-50, 563 A.2d 688 (1989), where the court stated that "[t]he remedy given by [§ 12-119] . . . is not [an] alternative to an appeal to the board of tax review and from it to the courts." See also Fenwick v. Old Saybrook, 133 Conn. 22, 24, 47 A.2d 849 (1946) ("a judgment under [§ 12-119] is not directed to bringing about a change in the assessment list, but that the statute is intended to afford relief against the collection of an illegal tax").

The city filed a special defense that the plaintiff is precluded from maintaining this action beyond the relevant limitation period.

Recognizing that the plaintiff's appeal does not challenge the assessor's valuation of the Wieles' truck, but challenges the legality of the assessment of the truck on the Grand List of October 1, 1992, a § 12-119 appeal, rather than a § 12-117a appeal, is germane to this action.

It should be noted that the enactment of § 12-119 in its original form in 1921 was not the creation of a new statutory right, but rather a restatement of the common law rule that a property owner had a right "to have a judicial determination of the question as to whether certain of its property was taxable." Connecticut Light & Power Co. v. Oxford, 101 Conn. 383, 390-91, 126 A. 1 (1924). In discussing the genesis of § 12-119, the CL&P court noted that "the remedy by appeal from the action of a board of relief is not exclusive, and that the tax may be paid and an action brought to recover it as money illegally received and retained, and that in extreme cases an injunction may be granted restraining the collection of the tax. . . . To these recognized remedies the statute of 1921 [§ 12-119] merely added one more, and this added remedy was, properly speaking, merely declaratory of existing legal and equitable rights; for can it be doubted that relief outside of that obtainable by appeal, would have been afforded as respects the two categories mentioned in the recent statute, that is, the absolute nontaxability of the property in the municipality where situated, and a manifest and flagrant disregard of statutory provisions." Id., 391-92.

The city contends that the assessor's action arose when the assessor listed the Wieles' truck on the city's tax rolls as of October 1, 1992, and therefore, the plaintiff's § 12-119 appeal must be brought within one year of that assessment date.

In regard to the statute of limitations issue that the city raises, it should be noted that the purpose of the statute of limitations is to protect parties from having to defend against stale claims. See Dimmock v. Lawrence & Memorial Hospital, Inc., 286 Conn. 789, 819, 945 A.2d 955 (2008). As shown by the facts in this case, the taxation issue did not arise until the assessor notified the taxpayer in 2006 regarding a delinquent 1992 tax bill. In this case, the statute of limitations defense would deprive the taxpayer of a right to the return of a tax illegally assessed against the taxpayer and would protect the city in its levy of an illegal tax.

Crystal Lake Clean Water Preservation Assn. v. Ellington, 53 Conn. App. 142, 150, 728 A.2d 1145 (1999) is instructive here because the court acknowledged the holding in CL&P where the underlying common law action of assumpsit is included in the term "other remedies" under § 12-119 and the alternative procedure of General Statutes § 12-111. However, the Crystal Lake court also noted that our Supreme Court has held that "where a statute has established a procedure to redress a particular wrong a person must follow the specified remedy and may not institute a proceeding that might have been permissible in the absence of such a statutory procedure. . . ." Id., 151.[5]

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[5] Specifically, the Crystal Lake court stated: "In the present case, however, the plaintiff is precluded from bringing an action under the common-law writ of assumpsit. In [Norwich v.

The issues in this case are (1) whether the plaintiff is entitled to recoup the amount of money removed from her bank account as a result of the tax warrant based on an illegal assessment and (2) whether the one-year statute of limitations contained in § 12-119 precludes the plaintiff from maintaining this action.

When the plaintiff moved from Bridgeport to a new residence in North Carolina as of August 1, 1992, she took the appropriate action to notify the CT DMV that she was terminating the truck's Connecticut registration and returning the license plates. Upon arriving in North Carolina, the plaintiff registered the truck with the North Carolina department of motor vehicles.

The plaintiff mailed to the city's assessor's office a receipt from the CT DMV that the truck's registration was cancelled and a notice of cancellation dated prior to October 1, 1992. Despite all this information being available to the city prior to October 1, 1992, the city failed to remove the truck from its October 1, 1992 tax rolls.[6]

Because the plaintiff assumed that the city's assessor's office received the documents she sent prior to the 1992 assessment date, she considered the taxation of her truck to be a closed issue. At this point in time, there was no reason for the plaintiff to

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Lebanon, 200 Conn. 697, 711, 513 A.2d 77 (1986)], our Supreme Court held that a taxpayer may not bring an action of assumpsit in an attempt to circumvent the time restraints of § 12-119 if it would undermine the purpose of the statute." Id., 150.

[6] See Levin-Townsend Computer Corporation v. Hartford, 166 Conn. 405, 407, 349 A.2d 553 (1974) ("[p]ersonal property can be taxed only at the residence of the owner or at a place where the property has acquired a situs").

take an appeal from the assessor's failure to remove the truck from the tax rolls for the 1992 Grand List. Even when the Wieles moved back to Connecticut in 1999, they were not aware of any outstanding tax claim for 1992.

Following the receipt of the notice of a delinquent tax bill, which caused the plaintiff to challenge the determination of the city's assessor, the assessor told the plaintiff to bring in her 1992 W-2 statement to prove her North Carolina residency. However, after the plaintiff presented her W-2, she was told that the W-2 was insufficient and the city issued a tax warrant withdrawing funds from the Wieles' bank account.

The plaintiff brought the present action on May 18, 2007, fourteen years beyond the one-year period provided by § 12-119 to contest the assessor's determination to list her truck on the 1992 tax rolls. Given the meritorious position of the plaintiff in this case, the question is whether the court can fashion a remedy, as provided in § 12-119, "to grant such relief upon such terms . . . as shall to justice and equity appertain." Meade v. Greenwich, 131 Conn. 273, 276, 38 A.2d 795 (1944).

While the 1999 case of Crystal Lake, supra, resolved the issue that since § 12-119 is a statutory codification of the common law of assumpsit, a taxpayer may not bring an action of assumpsit as a separate course of action in seeking relief from the misfeasance or nonfeasance of the assessor, the Supreme Court's decision in L. G. DeFelice & Son, Inc. v. Wethersfield, 167 Conn. 509, 513, 356 A.2d 144 (1975) provides an alternative route to resolve this case. In DeFelice, the court recognized that, although the common law right of assumpsit has been codified in § 12-119, the limitation therein was

"procedural and personal rather than substantive or jurisdictional and is thus subject to waiver." Id.

The facts in this case clearly establish that the assessor's actions, first in imposing an assessment on a vehicle not located in Connecticut on October 1, 1992 and second, in delaying action over a thirteen-year period, constituted a waiver of the statute of limitations in § 12-119. The city has not sustained its burden of proving that the statute of limitations in § 12-119 precluded the plaintiff's action. The court finds that the plaintiff's testimony was credible regarding the circumstances giving rise to the assessor improperly placing the truck on the city's tax rolls as of October 1, 1992.

This court's conclusion is that the plaintiff is entitled to a refund of an illegally collected tax. Accordingly, judgment may enter in favor of the plaintiff, sustaining her appeal, with the defendant reimbursing the plaintiff in the amount of $1,668.65 for funds withdrawn pursuant to the tax warrant as well as court costs.

Arnold W. Aronson
Judge Trial Referee