NO. CV98 054 8863S	: SUPERIOR COURT
SYSTEM FREIGHT, INC.	: JUDICIAL DISTRICT OF NEW LONDON
	: AT NEW LONDON
v.	
TOWN OF MONTVILLE	: MARCH 29, 2004

MEMORANDUM OF DECISION

The key issue in this case is whether a town may assess a tax on motor vehicles used by an interstate transportation business based upon the average number of vehicles from its fleet that come into and go out of this state on a regular basis but never stay long enough to establish situs.

This action is an appeal by the plaintiff, System Freight, Inc. (System Freight), from a decision of the board of assessment appeals (Board) of the defendant town of Montville. System Freight brought a three count complaint pursuant to General Statutes § 12-117a (first count), General Statutes § 12-119 (second count) and General Statutes

§§ 12-53 and 12-55 (third count), challenging the assessments and penalties levied against it by Montville's assessor on the grand list of October 1, 1997. System Freight claims that the property assessed, which consisted of tractors and semi-trailers, was not taxable in Montville and if it was, the assessment was excessive. System Freight appealed to the Board, which denied the appeal. The plaintiff has subsequently amended its complaint to add ten counts, covering the assessment years of 1998, 1999 and 2000. The thirteen counts all raise the same basic issue that the vehicles used by System Freight were not taxable in Connecticut.

System Freight is an interstate trucking business, licensed by the Interstate Commerce Commission as a common carrier. System Freight, a New Jersey corporation, specializes in the transportation of finished paper goods throughout the northeast corridor. System Freight delivers approximately 600 trailer loads daily, transporting merchandise from its clients' paper manufacturing plants to the customers of its clients.

System Freight utilizes a network of approximately 170 tractors and 1,376 semi-trailers. Under a typical arrangement, System Freight provides a sufficient number of trailers to its clients so that they may continually load them with cargo, which a System Freight tractor driver then transports to a customer facility. Upon arriving at a customer facility, the tractor will either wait for the trailer to be unloaded, or it will drop the loaded trailer and pick up an empty trailer to be driven to the next closest client. A tractor never finishes a day attached to the same trailer it began the day with, and on a typical day a tractor may pull from five to ten different trailers. The tractors never stop at any one location for any length of time since they are continually transporting goods throughout the northeast corridor. Because of the random nature in which System Freight's tractors and semi-trailers are used, they do not most frequently leave from and return to one or more points in this state.

In September of 1997, System Freight began providing trucking services to Rand Whitney and Stone Container, two companies located in Montville. In anticipation of this service, System Freight dispatched a number of tractors and trailers to Montville. In September of 1997, System Freight also permanently stationed an office trailer and two "shunts" in Montville.[1] Beginning with the October 1998 tax year, System Freight declared only the office trailer and two tractor shunts with the Montville tax assessor.

The office trailer stationed in Montville was used by employees of System Freight, whose primary responsibility was to record the fleet number of all the vehicles in the yard at approximately the same time every morning, every day of the year. This information would then be sent to System Freight's principal office in New Jersey where it would be reconciled and compiled into a database. Including both the Rand Whitney and Stone Container plants, System Freight would have between thirty-five and forty trailers in Montville at any point in time. During each tax year in question, no one trailer appeared on System Freight's daily inventory at Rand Whitney for more than twenty days and at Stone Container for more than eighteen days.

Montville claims that fifty of System Freight's semi-trailers and eleven of its tractors are subject to personal property tax as unregistered motor vehicles. Although none of the plaintiff's tractors and semi-trailers were registered in Connecticut, they were registered in other states. The assessor for Montville assessed System Freight $769,510 on the list of October 1, 1997 for eleven tractors and fifty semi-trailers and added a penalty of $192,380. System Freight did not receive this assessment notice, dated February 23, 1998, until July 22, 1998 when it received a personal property tax bill.

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[1]According to System Freight's brief, "'shunts' are tractors without suspension, which are used only at the plants to move semi-trailers to and from the loading docks." (Plaintiff's Post Trial Brief, dated February 27, 2003, p. 4.)

With respect to the assessment years in question, the assessor did not identify any specific tractor or semi-trailer owned by System Freight but rather assessed an average number of vehicles located in Montville based, in part, on information obtained from an employee of Stone Container and, in part, on an average number of semi-trailers that the assessor had estimated from his visual observations of the yard. The assessor arbitrarily assessed eleven tractors and fifty semi-trailers without specifically identifying the tractors or semi-trailers being assessed.[2]

The assessor determined the value of the tractors and semi-trailers by using a pricing guide that priced a new tractor at $110,000, and then depreciated that price over an unspecified number of years. The same process was used to determine the value of the semi-trailers for the same assessment year. The assessor valued the tractors on the list of October 1, 1997 at $224,300 (11 tractors at $20,390 each) and fifty semi-trailers at $875,000 (50 semi-trailers at $17,500 each). The defendant notes in its post trial brief that the plaintiff does not seriously contest these valuations.

System Freight filed personal property declarations for the October 1, 1998, 1999 and 2000 tax assessment years, declaring two shunts and one office trailer. System Freight did not include any vehicles from its fleet on these personal property declarations because it concluded that its tractors and semi-trailers moved in and out of Connecticut with such frequency that they did not establish a situs in Connecticut for personal property taxes.

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[2]We agree with the plaintiff that tractors and trailers are motor vehicles since a motor vehicle is defined by General Statutes § 14-1 (47) as "any vehicle propelled or drawn by any nonmuscular power. . . ." and General Statutes § 14-1 (83) defines "trailer" as "any rubber-tired vehicle without motive power drawn or propelled by a motor vehicle." General Statutes § 14-1 (81) defines "tractor"or "truck tractor" as "a motor vehicle designed and used for drawing a semitrailer."

Montville has filed six special defenses to the plaintiff's thirteen count complaint. Collectively, these special defenses contend that the actions brought under the various thirteen counts are time barred because they were not brought within the time frame provided for under §§ 12-117a and 12-119. The special defenses also contend that this court lacks jurisdiction to hear this case because §§ 12-117a and 12-119 do not provide for the amendment of an application to add subsequent tax years in challenging an assessment of personal property. Finally, the special defenses contend that the plaintiff failed to provide the assessor with a sworn list as referred to in General Statutes § 12-114 and therefore this court lacks jurisdiction of the subject matter.[3]

A fair reading of the plaintiff's thirteen count complaint discloses that this appeal essentially contests the right of the assessor to impose a motor vehicle property tax on trucks and trailers used by the plaintiff coming into and going out of Connecticut without establishing a basis for situs. In this regard, § 12-119 is the appropriate remedy to challenge the assessor's authority to impose the assessments. "[Section] 12-119 allows a taxpayer one year to bring a claim that the tax was imposed by a town that had no authority to tax the subject property . . . . § 12-119 requires an allegation that something more than mere valuation is at issue." Second Stone Ridge Cooperative Corporation v. Bridgeport, 220 Conn. 335, 339-40, 597 A.2d 326 (1991). Although the plaintiff has brought this action under § 12-117a as well as § 12-119, § 12-117a, dealing with valuation, is not pertinent to the resolution of the issue in this case. See Northeast Datacom, Inc. v. Wallingford, 212 Conn. 639, 649-50, 563 A.2d 688 (1989). The

[3]General Statutes § 12-114 deals with such actions as the board of assessment appeals may take in adjusting assessments of personal property. It imposes no obligation on the taxpayer that would raise a jurisdictional issue. Since the defendant has failed to brief this issue, we consider it abandoned. See Willow Springs Condominium Association, Inc. v. Seventh BRT Development Corp., 245 Conn. 1, 38, 717 A.2d 77 (1998).

plaintiff commenced this action under § 12-119 within the one year time limitation provided for in this statute. This action was brought on November 25, 1998, well within the period of one year from the time that the assessor added the motor vehicles to the tax rolls. The assessor's personal property assessment notice to the plaintiff, adding the motor vehicles to the tax rolls, was dated February 23, 1998.[4]

The only remaining procedural issue as to § 12-119 is the defendant's claim that the plaintiff was not allowed to amend its complaint in order to include subsequent tax years to this appeal. Section 12-119 does not have a provision similar to that contained in § 12-117a, which allows appeals to be amended to include subsequent assessment years. Our courts have routinely held that there is a significant difference between § 12-117a and § 12-119. See Second Stone Ridge Cooperative Corporation v. Bridgeport, supra, 220 Conn. 339; Northeast Datacom, Inc. v. Wallingford, supra, 212 Conn. 649-50. Section 12-117a deals only with the issue of valuation of the property, whereas § 12-119 deals only with the situation where the assessor acted illegally or disregarded "the provisions of the statutes for determining the valuation of such property. . . ." Id. Section 12-117a permits amendments to appeals to include subsequent tax years, because as a prerequisite to taking an appeal under that section, the taxpayer must first appeal the valuation placed upon the property by the assessor to the board of assessment appeals. To contest valuations under § 12-117a in subsequent tax years, a taxpayer would

[4]See General Statutes § 12-53 (b) which recites in part, "the assessor or board of assessors of each town shall add to the declaration of each taxpayer any taxable property which they have reason to believe is owned by such taxpayer and has been omitted from such declaration." Section 12-53 (d) requires the assessor to notify the taxpayer of the addition of the omitted property and § 12-53 (e) permits "[a]ny person claiming to be aggrieved by the action of the assessor or board of assessors under this section [to] appeal the doings of the assessor or board of assessors to the board of assessment appeals and the Superior Court as otherwise provided in this chapter . . . ."

ordinarily have to appear before the board of assessment appeals in each of those tax years in which the appeal was pending. To eliminate this time consuming step process, § 12-117a allows a taxpayer to bypass appearing before the board of assessment appeals during the pendency of the initial action.

As the court noted in Second Stone Ridge Cooperative Corporation v. Bridgeport, supra, 220 Conn. 343, the application of § 12-119 involves the "absolute nontaxability of the property. . . ." If, as the plaintiff claims, the assessor had acted contrary to our tax laws in adding omitted motor vehicles to the plaintiff's declaration, we see no reason why, for subsequent tax years, the same claim of nontaxability on the same facts cannot be incorporated into the present action. It would not serve judicial economy to require the plaintiff to bring multiple lawsuits for what is essentially one action. Furthermore, once an action of the assessor is declared illegal, it would be inappropriate to continue that illegal practice in subsequent tax years and give judicial sanction to such action by denying the plaintiff the right to incorporate those subsequent years into its appeal. "Absolute nontaxability," as recited in Second Stone, means not taxable now or in the future.

Turning to the key issue in this case, our courts have long held that "[m]unicipalities have no powers of taxation except those expressly given to them by the legislature." Security Mills, Inc. v. Norwich, 145 Conn. 375, 377, 143 A.2d 451 (1958). The decision of the assessor that triggers this appeal is not the valuation placed upon the motor vehicles, but rather the decision of the assessor, without statutory authority, to include in the plaintiff's declaration of personal property, motor vehicles that the plaintiff claims should not be placed on the assessor's rolls. As we have previously noted, § 12-119 is the process that allows the taxpayer, who claims that the assessor acted illegally, to challenge that decision by bringing an action directly to the Superior Court "within one

year from the date as of which the property was last evaluated for purposes of taxation. . . ."

In Security Mills, Inc. v. Norwich, supra, 145 Conn. 375, as in the present case, the town sought to tax property temporarily in Connecticut. In Security Mills, the plaintiff, a Maine manufacturer of woolen textiles, with its principal place of business in Newton, Massachusetts, shipped wools and yarn to Yantic Woolen Mills, Inc., a Connecticut corporation, for processing. The wool and yarn never remained in Connecticut for a period of more than seven months. Norwich made a list of personal property of the plaintiff, for tax purposes, consisting of the average amount of goods kept on hand during the tax year while in the custody of Yantic Woolen Mills, Inc. The court in Security Mills held that Norwich could not tax textiles of Security Mills temporarily in Connecticut.

In the assessment process, General Statutes § 12-43 requires any non-resident owner of tangible personal property located in any town, for at least three months, to file a declaration of such personal property with the assessor of the town where the personal property is located on the assessment date.[5] The key words of this statute are "tangible personal property located in any town, for three months . . . ." Our Supreme Court has had an occasion to construe § 12-43 in Paul Dinto Electrical Contractors, Inc. v. Waterbury, 266 Conn. 706, 835 A.2d 33 (2003). In that case, the court determined that

[5] General Statutes § 12-43 states: "Property of nonresidents. Each owner of tangible personal property located in any town for three months or more during the assessment year immediately preceding any assessment day, who is a nonresident of such town, shall file a declaration of such personal property with the assessors of the town in which the same is located on such assessment day, if located in such town for three months or more in such year, otherwise in the town in which such property is located for the three months or more in such year nearest to such assessment day, under the same provisions as apply to residents, and such personal property shall not be liable to taxation in any other town in this state."

the foundation for the taxation of personal property was the declaration of personal property by the owner in the "town where his or her property is located." Id., 718-19. In particular, that court held that motor vehicles owned by corporations are taxed in the town of "their corporate owner's principal place of business." Id., 720. In this case, the plaintiff's principal place of business was New Jersey.

General Statutes § 12-71b (g) provides that a motor vehicle not registered in the state of Connecticut is subject to a property tax "if such motor vehicle in the normal course of operation most frequently leaves from and returns to or remains in one or more points within this state . . . ." This statute, as to motor vehicles, is qualified by § 12-43, which requires that personal property must be located within this state for at least three months. We find no provision in § 12-43, nor have the parties cited any statute, authorizing the assessor, as he has done here, to average such personal property that moves in and out of this state without establishing a situs. See Security Mills, Inc. v. Norwich, supra, 145 Conn. 377, "[i]t is a rule of general application that personal property can be taxed only . . . at a place where the property has acquired a situs." To follow the defendant's logic, a New York corporation located in New York City with a fleet of tractors and semi-trailers registered in New York and operating between New York City and Boston, Massachusetts could be subject to the payment of a property tax to a municipality in Connecticut if the New York corporation's drivers were to regularly stop at a certain truck rest stop located in that municipality based upon the average number of tractors and semi-trailers stopping at the truck stop. Without specific statutory authorization, we cannot agree with the defendant's position that averaging the stay of motor vehicles in Connecticut subjects the property owner to personal property taxes.[6] A

[6]Such action is allowed under other circumstances. General Statutes § 12-58 provides that in the case of a trading, mercantile, manufacturing or mechanical business, "[t]he amount of goods on hand for consumption in any such business, including finished and

municipality's power "of taxation can be lawfully exercised only in strict conformity to the terms by which they were given." Security Mills, Inc. v. Norwich, supra, 145 Conn. 377.

Since we conclude that the assessor cannot average the number of plaintiff's tractors and semi-trailers coming into and going out of Connecticut contrary to the requirements of § 12-43 and § 12-71b (g), we must sustain the plaintiff's appeal.

Accordingly, judgment may enter in favor of the plaintiff without costs to either party.

Arnold W. Aronson
Judge Trial Referee

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partly finished goods and raw materials and supplies, so assessed shall be the monthly average quantity of goods or supplies on hand during the year ending on the first day of October if such owner or owners has or have owned such business during the whole of such year . . . ." However, the legislature has not provided for taxation on this basis as to motor vehicles.