STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(Filed: October 5, 2012)

NATIONAL GRID	:	
	:	
vs.	:	**C.A. No. PC 09-0502**
	:	**(Consolidated with**
SALVATORE SACCOCCI, IN HIS	:	**PC 10-2226; PC 11-2075;**
CAPACITY AS TAX ASSESSOR OF	:	**PC 12-0917)**
THE CITY OF CRANSTON	:	

DECISION

RUBINE, J. This matter is an appeal from the Tax Assessor's determination of the assessed value of certain personal property owned by Plaintiff ("National Grid" or the "Taxpayer") located in the City of Cranston. The property which is the subject of taxation is personal property used in the transmission and delivery of natural gas, such as pipes, gas line valves, meters, regulators (hereinafter referred to as "gas assets" or "gas infrastructure").[1] This dispute concerns the tax assessment for gas infrastructure for tax year 2008. The parties have agreed, and the Court has ordered consolidation of other pending tax appeals, concerning the City's assessment of the identical items of personal property for tax years 2009 through 2012 (PC 10-2226; PC 11-2075 and PC 12-0917)).

The Court has requested, and received, pre-trial memoranda with respect to the proper standard to be applied in valuing such assets for purposes of taxation.

There is no dispute that the items of gas infrastructure are considered personal property for municipal tax purposes. Accordingly, municipal taxation of such property is governed by the provisions of G.L. § 44-5-12.1. Prior to enactment of § 44-5-12.1 in 1966, personal property was

[1] It is undisputed that both parties consider the relevant property to be tangible personal property.

assessed for local tax purposes in a manner similar to real property, that is, at its full and fair cash value. See G.L. §44-5-12.1. In 1966, the General Assembly changed the method for assessment of personal property. The applicable statute now provides:

> "All tangible personal property subject to taxation shall be assessed for taxation based on the original purchase price (new or used) including all costs such as freight and installation." G.L.44-5-12.1.

The statute provides for depreciation in accordance with a schedule established for each class of property. The parties agree that category, with respect to the gas assets which are the subject of the appeal, is the class entitled "gas distribution." Assets under that description are considered Class III assets. The parties further agree that the relevant statutory depreciation schedule is that for "Class III Long Life" assets 13+ years. The depreciation table requires depreciation of such assets at scheduled rates, depending upon the age of the assets.

During the Court's consideration of pre-trial motions, it became evident that the taxpayer did not have complete information with respect to acquisition costs of these assets. Much of the gas infrastructure was placed in service many years ago, thus creating difficulty in obtaining direct evidence of purchase price. It seems to the Court that any difficulty in producing accurate, direct evidence of cost can be addressed by the use of other relevant and competent evidence of fact or expert opinion to compile accurate data with respect to the original purchase price.

The absence of easily available acquisition cost data does not justify judicial abandonment of the legislatively determined methodology for assessing the value of personal property assets, for purposes of taxation.[2] In particular, such difficulty does not justify the Court making its own judgment as to an acceptable methodology or returning to a test of "full and fair

[2] The judiciary cannot vary the clear legislative intent as expressed in clear, unambiguous, statutory language. Gott v. Norberg, 417 A.2d 1352, 1356 (R.I. 1980).

cash value," as the standard that existed prior to 1966. All of the tax assessments in question in these consolidated cases are for tax years post-dating the 2006 enactment of § 44-5-12.1.

The parties have suggested in their pre-trial memoranda various ways of overcoming the absence of direct evidence of acquisition cost data. For instance, the City suggests that it is appropriate to consider valuation data submitted in earlier tax years by the predecessor in interest to National Grid, to wit, Providence Gas. Although it may be possible for the City to demonstrate at trial that the earlier valuation data submitted by Providence Gas was in fact reflective of acquisition cost, if the earlier returns, however, reflect values based upon full and fair cash value as was the standard prior to the legislative change in 1966, they would not be relevant to the actual cost standard. The Taxpayer suggests that the City is obligated to accept the Taxpayer's inventory of its personal property ("gas assets"), because the original cost was that reflected on the books of Southern Union Company (d/b/a New England Gas Company, Providence Gas, Tiverton Gas), the company that owned the gas assets prior to National Grid. If in fact the Taxpayer can establish as fact that the book entries on the books of Southern Union are indeed reflective of the "original price (new or used) including all costs such as freight and installation," and that those book entries reflect depreciation in accordance with the depreciation schedules set forth in 44-5-12.1, such proof would be considered by the Court in its determination of whether the City erred in its assessment of the gas assets. The Taxpayer alleges that its manner of reporting and recoding assets at the time a utility company's assets are sold were computed using standard utility accounting procedure in accordance with the provisions of the National Gas Account 18 C.F.R. Part 201. This recital of generally accepted utility accounting is not binding on the City, unless in fact it is proven by competent evidence that federal method of accounting reaches the same standard of value as set forth in state law for the

taxation of these assets. Simply stating in essence, that we reported on the asset inventory presented to the City values of assets determined in accordance with federal standards for utility accounting, is alone insufficient to prove that its reported values were in fact identical to the acquisition costs as required for the valuation under § 44-5-12.1.

The City accurately sets forth the burden of production and burden of proof with respect to tax appeals.

> "In any tax assessment challenge, the assessor must first present his or her evaluation to the . . . values and the procedure used to arrive at such value. If the taxpayer challenges either the legality of the assessment or claims that the assessor used an inappropriate . . . value of the subject property, the burden will be on the taxpayer to present evidence of . . . value."

Nos Limited Partnership v. Booth, 654 A.2d 308, 310 (R.I. 1995).

The assessor is "entitled to a presumption that they have performed their accounting property until the contrary is proven." Harvard Pilgrim Health Care of New England v. Rossi, 847 A.2d 286, 292 (R.I. 2003).

In these consolidated appeals, the Court will consider all evidence presented at trial and weigh that evidence consistent with the burden shifting analysis set forth in Nos and Harvard Pilgrim Health Care. Under this analysis, the burden will be on the City to describe its determination of assessed value. Thereafter, the Taxpayer must prove there was an inappropriate assessment and thereafter provide competent evidence that the assessment exceeded the legal standard for assessed value, in other words that assessment in question exceeded the original purchase price (new or used), including all costs such as freight and installation, less depreciation computed in accordance with the statutory schedule. This Court cannot accept, until proven by competent evidence, that application of federal regulations with respect to the book value of gas

infrastructure will yield a valuation as required under § 44-5-12.1 with respect to the original cost of acquisition. The City is not obligated to accept the Taxpayer's statement of values as reported on the Taxpayer's return. It must be proven that the values stated on the return filed with the City is derived consistent with the procedures set forth in §44-5-12.1. Only then can the Court can consider such evidence in reaching its decision on these tax appeals. Likewise, the Court must consider the City's evidence of value and the method by which such value was determined, and consider whether the assessor's values reflect cost of acquisition standard as defined in the statute.