NO. CV 06 4014350S	:	SUPERIOR COURT
JOSEPH R. KREVIS	:	JUDICIAL DISTRICT OF FAIRFIELD AT BRIDGEPORT
v.		
CITY OF BRIDGEPORT, ET AL.	:	JULY 17, 2007

MEMORANDUM OF DECISION

The plaintiff filed this two-count complaint seeking a declaratory judgment and a mandamus.[1] The plaintiff's basic claim is that the motor vehicles that he presently owns or previously owned have a tax situs in the town of Trumbull and should be subject to property tax there, not in the city of Bridgeport. The plaintiff, therefore, contends that the city's assessor improperly levied property taxes on the motor vehicles.

Bridgeport filed four special defenses as to both counts. In its first and second special defenses, Bridgeport claims that the plaintiff is precluded from bringing this action pursuant to General Statutes § 12-119[2] and because he failed to exhaust his

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In count two, the plaintiff sought a mandamus in order to have the court direct the city's assessor to issue a certificate of error and remove the motor vehicles from Bridgeport's tax rolls. However, as discussed below, the parties filed a stipulation, dated July 12, 2007, resolving the mandamus issue.

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General Statutes § 12-119 provides, in relevant part, as follows: "When it is claimed that a tax has been laid on property not taxable in the town or city in whose tax list such property was set, or that a tax laid on property was computed on an assessment which, under all the circumstances, was manifestly excessive and could not have been arrived at except by

administrative remedies by taking an appeal to the Board of Assessment Appeals pursuant to General Statutes § 12-111. In its third and fourth special defenses, Bridgeport claims that the court has no subject matter jurisdiction because the plaintiff failed to take a timely appeal and failed to exhaust his administrative remedies.

The facts in this case are not in dispute. The plaintiff owns and resides in a house with an address known as 110 Duane Place. The plaintiff's house is located in the city of Bridgeport but the land containing the house straddles the town line of Bridgeport and Trumbull, so that a portion of land is located in the town of Trumbull. The plaintiff also owns an adjoining lot at 114 Duane Place that also lies partly in Bridgeport and partly in Trumbull.

There is a fifty-foot right-of-way owned by the town of Trumbull known as Duane Place, ending just short of the Bridgeport/Trumbull town line. The right-of-way is an unimproved "paper street" that abuts and is adjacent to the entire frontage of 110 Duane Place.

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disregarding the provisions of the statutes for determining the valuation of such property, the owner thereof . . . prior to the payment of such tax, may, in addition to the other remedies provided by law, make application for relief to the superior court for the judicial district in which such town or city is situated. Such application may be made within one year from the date as of which the property was last evaluated for purposes of taxation and shall be served and returned in the same manner as is required in the case of a summons in a civil action, and the pendency of such application shall not suspend action upon the tax against the applicant. In all such actions, the Superior Court shall have power to grant such relief upon such terms and in such manner and form as to justice and equity appertains, and costs may be taxed at the discretion of the court. If such assessment is reduced by said court, the applicant shall be reimbursed by the town or city for any overpayment of taxes in accordance with the judgment of said court.

Since 1981, the plaintiff, instead of using the two-car garage contained within his residence at 110 Duane Place, parked his motor vehicles within the right-of-way located in Trumbull. The plaintiff claims that he consistently drives the motor vehicles from the parking space located within the right-of-way and returns the vehicles to the same location. For purposes of property taxation, the plaintiff claims that the motor vehicles are sited in Trumbull and should not be taxed by Bridgeport.

The plaintiff claims that this action is not a tax appeal, but a civil action for a declaratory judgment. See plaintiff's brief dated March 30, 2007, p. 7. In this declaratory action, the plaintiff seeks to have the city's assessment of his motor vehicles declared illegal.

Bridgeport argues that a declaratory action is not appropriate to address an illegal assessment because § 12-119 is available to challenge the assessor's action. The plaintiff acknowledges the existence of an appeal pursuant to § 12-119, but contends that this is not an exclusive method and that the plaintiff may pursue nonstatutory causes of action to obtain relief.

An appeal pursuant to § 12-119 requires that a party take an appeal to the superior court "within one year from the date as of which the property was last evaluated for purposes of taxation". In its third special defense, Bridgeport raises the timeliness issue that "[t]his Court has no subject matter jurisdiction because the bringing of this claim is beyond the statute of limitations pursuant to . . . [§] 12-119." As alleged in his complaint,

the plaintiff's challenge to the assessments levied by Bridgeport run from the Grand Lists of October 1, 1999 to 2003, more than one year prior to the commencement of this action.

The plaintiff argues that an appeal under § 12-119 is not the only avenue open to a taxpayer because § 12-119 provides that an owner "may, in addition to the other remedies provided by law, make application for relief to the superior court . . . ."

The statute that forms the basis of the plaintiff's appeal is set forth in General Statutes § 52-29 (a) that "[t]he Superior Court in any action or proceeding may declare rights and other legal relations on request for such a declaration, whether or not further relief is or could be claimed. The declaration shall have the force of a final judgment."

This appeal, in the nature of a declaratory action challenging the action of the assessor, is not a novel approach. See Interlude, Inc. v. Skurat, 253 Conn. 531, 754 A.2d 153 (2000); Wilson v. Kelley, 224 Conn. 110, 617 A.2d 433 (1992).

In Interlude, Inc. v. Skurat, 253 Conn. 531, the plaintiff brought a declaratory action claiming that the assessor levied an assessment on its property when it was exempt from taxation. The issue in Interlude involved whether the statute of limitations in § 12-119 was applicable. The Interlude court noted that "[t]he purpose of a declaratory judgment action, as authorized by General Statutes § 52-29 and Practice Book § [17-55], is to secure an adjudication of rights where there is a substantial question in dispute or a substantial uncertainty of legal relations between the parties. . . . " (Internal quotation marks omitted.) Id., 536.

Wilson v. Kelley, 224 Conn. 110, was another declaratory action interpreting § 12-119 and noted that "General Statutes § 52-29 (a) requires that a declaratory judgment declare *rights* and other *legal relations*. Similarly, Practice Book § [17-55] requires that the plaintiff be in danger of a loss or uncertainty as to his *rights* or *other jural relations* and that there be a bona fide *issue in dispute* or substantial uncertainty of *legal relations*. Thus, [d]eclaratory relief is a mere procedural device by which various types of substantive claims may be vindicated." (Emphasis in original; internal quotation marks omitted.) Id., 115-116, quoting Luckenbach Steamship Co. v. United States, 312 F.2d 545, 548 (2d Cir. 1963).

The plaintiff's attempt to avoid the one-year statute of limitations in a § 12-119 appeal by bringing a declaratory action is unavailing. The plaintiff's argument, that this action is an equitable action for a declaratory judgment, not a tax appeal, is made to circumvent § 12-119. First, a declaratory judgment action is a "special statutory proceeding, not one in equity." Connecticut Savings Bank v. First National Bank, 133 Conn. 403, 409, 51 A.2d 907 (1947). Second, "a trial court should not entertain an action for a declaratory judgment when an ordinary action affords a remedy as effective, convenient and complete[.]" Id., 410.

The only issue in this case is whether the plaintiff's motor vehicles were sited in Trumbull or Bridgeport for the purpose of assessment of taxes. There is no claim here that there is a "substantial uncertainty of legal relations" between the parties. There is only a dispute as to whether the plaintiff pays a higher tax to Bridgeport or a lower tax to

Trumbull on his motor vehicles. The plaintiff in this case has a remedy under § 12-119 that would be effective, convenient and complete.

It is the plaintiff's position that in this declaratory judgment action, being equitable in nature, the only time limitation factor is laches, which the defendant did not plead and is now barred from raising as a defense. However, as this court has noted above, a declaratory judgment action created by § 52-29 is not an equitable action. See Connecticut Savings Bank v. First National Bank, 133 Conn. 409. In dealing with a declaratory judgment action, it should be noted that this kind of action does not create something that did not previously exist, but rather "a declaratory judgment must rest on some cause of action that would be cognizable in a nondeclaratory suit . . . ." Milford Power Co., LLC v. Alstom Power, Inc., 263 Conn. 616, 625, 822 A.2d 196 (2003), quoting Wilson v. Kelley, supra, 224 Conn. 116.

The nondeclaratory action in this case is a § 12-119 appeal. With regard to property tax assessments under the common law, prior to the enactment of § 12-119, a taxpayer could resort to relief in equity in the absence of statutory authority. See Stepney Pond Estates, Ltd. v. Monroe, 260 Conn. 406, 421, 797 A.2d 494 (2002) ("[i]t is well settled that § 12-119 codified the then existing common-law right and remedy of assumpsit that allowed a taxpayer to challenge an illegally assessed tax"). (Internal quotation marks omitted.)

"[I]n analyzing whether a declaratory judgment action is barred by a particular statutory period of limitations, a court must examine the underlying claim or right on

which the declaratory action is based. . . . It necessarily follows that if a statute of limitations would have barred a claim asserted in an action for relief other than a declaratory judgment, then the same limitation period will bar the same claim asserted in a declaratory judgment action." (Internal quotation marks omitted.) Interlude, Inc. v. Skurat, 253 Conn. 536-37, quoting Wilson v. Kelley, 224 Conn. 115-16. Recognizing that § 12-119 is an appropriate statutory right to relief where the taxpayer claims that "a tax has been laid on property not taxable in the town or city in whose tax list such property was set", the underlying cause in the present declaratory action is a § 12-119 appeal and therefore, the one-year statute of limitations contained therein comes into play. In Wilson v. Kelley, 224 Conn. 111, the dispositive issue was "whether the plaintiffs' declaratory judgment action challenging the manner in which their taxable real property had been assessed was barred by the one year statute of limitations provision of General Statutes § 12-119." The Wilson court held that the statute of limitations in § 12-119 barred the plaintiff's declaratory action. See id., 123.

Although this proceeding is a declaratory judgment action, the failure to bring this action within the limitation period of one year, as provided in § 12-119, renders this action untimely. See Wilson v. Kelley, 224 Conn. 122-23.

Turning from the issue of an appeal pursuant to § 12-119, the plaintiff further argues that General Statutes § 12-71 (f) is key to the outcome of this case and recites subparagraph (1) therein providing that the situs for taxation of motor vehicles registered in this state shall be in the town where the motor vehicle "most frequently leaves from

and returns to or remains." The plaintiff claims that by parking his motor vehicles on land located in Trumbull, he meets the conditions in § 12-71 (f) (1) because his motor vehicles most frequently leave from and return to the place he parks in Trumbull.

The defendant counters that the intent of § 12-71 (f) is to have the situs of a motor vehicle determined by where the owner of the motor vehicle resides, not just where the vehicle leaves most frequently from and returns to most frequently. In support of this contention, the defendant points to § 12-71 (f) (2) providing that "[i]t shall be presumed that any such motor vehicle . . . most frequently leaves from and returns to or remains in the town in which the owner of such vehicle resides, unless a provision of this subsection otherwise expressly provides. As used in this subsection, 'the town in which the owner of such vehicle resides' means, the town in this state where (A) the owner, if an individual, has established a legal residence consisting of a true, fixed and permanent home to which such individual intends to return after any absence . . . ."

The plaintiff's central argument in his interpretation of § 12-71 (f) is that the presumption in § 12-71 (f) (2) can be distinguished when defining residence. The plaintiff defines residence in terms of homestead. The plaintiff's distinction between residence and homestead is that residence is defined as domicile whereas homestead is defined in Webster's Dictionary of Law as "the home and adjoining land with any buildings that is occupied usually by a family as its principal residence." In this sense, the plaintiff argues that residence in § 12-71 (f) (2) means homestead so that when the plaintiff's motor

vehicles are parked on the Trumbull side of 110 Duane Place, they are parked at the plaintiff's residence.

In the plaintiff's efforts to stretch the meaning of residence in § 12-71 (f) (2) to include the definition of homestead, he ignores the statutory definition of residence therein reciting that the legal residence of an individual motor vehicle owner is the "true, fixed and permanent home to which such individual intends to return after any absence . . . ." Clearly, the legislature referred to home, not homestead, in describing the term "residence".

The plaintiff correctly points out that the presumption in § 12-71 (f) (2) is not an irrebuttable or conclusive presumption. However, the presumption ties together "town" and "residence" so that the town in which a motor vehicle owner resides is presumed to be the situs for property taxation. In this case, one could argue that if the plaintiff constructed a two-car garage on the Trumbull side of his property at 110 Duane Place and his motor vehicles most frequently left from and returned to this garage, the presumption would be rebutted and the situs of the motor vehicles would indeed be in Trumbull. However, factually, that is not the case here because the plaintiff resides in Bridgeport yet parks his motor vehicles on property that is a right-of-way owned by Trumbull.

The road map in reading § 12-71, which imposes a tax on personal property, starts with a general proposition in subsection (a) 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* . . . ." (Emphasis

added.) Section 12-71 continues with subsections (b), dealing with the classification and exemption of certain property; (c) dealing with personal property used in construction; (d) excluding personal property used as computer software; (e) exempting aircraft from the personal property tax and (f) dealing with motor vehicles and snowmobiles. For the most part, the provisions of § 12-71 refer to personal property where individual owners or lessees reside.[3]

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[3] A review of the various provisions of § 12-71, in which the terms "resides" or "residence" is used, shows the relationship between personal property and the residence of the motor vehicle owner as follows:

> "(a) All 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* . . . .
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> "(f) (2) It shall be presumed that any such motor vehicle . . . most frequently leaves from and returns to or remains in the town in which the owner of such vehicle *resides*, unless a provision of this subsection otherwise expressly provides. As used in this subsection, 'the town in which the owner of such vehicle *resides*' means the town in this state where (A) the owner, if an individual, has established a legal residence consisting of a true, fixed and permanent home . . . or (B) . . . [i]n the event . . . an entity *resides* in more than one town in this state, it shall be subject to taxation by each such town with respect to any . . . motor vehicle . . . that most frequently leaves from and returns to or remains in such town.
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> "(4) Notwithstanding any provision of subdivision (2) of this subsection: (A) Any registered motor vehicle that is assigned to an employee of the owner of such vehicle for the exclusive use of such employee and which, in the normal course of operation most frequently leaves from and returns to or remains in such employee's town of *residence*, shall be set in the list of the town where

Clearly, the legislature had it in mind that municipal property taxation of motor vehicles would be imposed on motor vehicles kept at an owner's place of residence, unless the owner can overcome the presumption that the motor vehicles are kept at some location other than at the owner's place of residence.

The evidence in this case shows that the plaintiff neither parks his motor vehicles at his residence on the Bridgeport side of the town line nor on his property located on the Trumbull side. The issue boils down to whether a property owner can use public property as a situs for tax purposes.

In Paul Dinto Electrical Contractors, Inc. v. Waterbury, 266 Conn. 706, 720, 835 A.2d 33 (2003), the court noted that "[u]nder § 14-12 (a), Connecticut residents are required to register their motor vehicles with the commissioner of motor vehicles. Pursuant to § 14-163, however, the commissioner of motor vehicles is required to furnish

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> such employee *resides*; (B) any registered motor vehicle that is being operated, pursuant to a lease, by a person other than the owner of such vehicle, or such owner's employee, shall be set in the list of the town where the person who is operating such vehicle pursuant to said lease *resides*; (C) . . . If such a vehicle is not used in this state in its normal course of operation for camping, travel or recreational purposes, such vehicle shall be set in the list of the town in this state in which the owner of such vehicles *resides* . . . .
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> "(5) The owner of a motor vehicle subject to taxation in accordance with the provisions of subdivision (4) of this subsection in a town other than the town in which such owner *resides* may register such vehicle in the town in which such vehicle is subject to taxation."

(Emphasis added.)

to the tax assessors in each town a list containing the names and addresses of the owners of motor vehicles and snowmobiles *residing* in their respective towns, as they appear by the records of the Department of Motor Vehicles, with a description of such vehicles. . . . This language strongly suggests, therefore, that motor vehicles are taxed in the town of their owners' residence . . . ." (Citations omitted; emphasis in original; internal quotation marks omitted.) According to the court in Paul Dinto, "[m]otor vehicles are, unlike much other taxable personal property, inherently mobile and, as the present case discloses, subject to being parked or garaged in various places. Requiring that their taxation be determined by where their registration indicates their owners reside, irrespective of where they may be garaged from time to time, lends a degree of certainty that is fully consistent with the twin purposes of the taxation system. Furthermore, by having the motor vehicle registration process automatically trigger the place of taxation, any potential for either manipulation of the taxation process or fraud on the part of the taxpayer is minimized." Id., 721.

The plaintiff has offered no credible reason for parking his motor vehicles in Trumbull's right-of-way on Duane Place or for claiming that the situs for taxation of his motor vehicles is in Trumbull, not at his Bridgeport residence, other than that Trumbull's tax rate is lower than Bridgeport's tax rate. The plaintiff's allegation in paragraph four of count one, that his motor vehicles were parked "on a portion of 110 Duane Place . . . situated within . . . Trumbull", is not accurate. The motor vehicles were parked on Duane Place, a Trumbull right-of-way, not on plaintiff's property, as alleged. The plaintiff's

allegation in paragraph five of count one, that he registered and insured his motor vehicles at the 110 Duane Place address in Trumbull, is misleading because his motor vehicles were not parked at this address. This type of manipulation, as described above in Paul Dinto, cannot overcome the presumption in § 12-71 (f) (2) that the situs for taxation purposes of an individual owner's motor vehicles is his or her place of residence.

Accordingly, because the court finds that the one-year statute of limitations in § 12-119 is applicable to the facts in this case, barring this action, and because the court finds that the plaintiff has not overcome the statutory presumption that the plaintiff's motor vehicles are sited for tax purposes at the plaintiff's residence in Bridgeport, judgment may enter in favor of Bridgeport on the issue of the location of the situs of the motor vehicles being in Bridgeport for the Grand List of October 1, 2003.

Turning to the plaintiff's claim in count one, that the city's assessor had previously agreed to Trumbull assessing the plaintiff's motor vehicles on the Grand Lists prior to October 1, 2003 and, based upon subsequent events, voided the agreement, the parties have entered into a stipulation, with regard to the mandamus issue, as follows:

> "[The parties] hereby stipulate that the Defendants no longer claim, and hereby affirmatively waive their claim, that the Plaintiff owes any personal property taxes, interest, penalties and lien fees with respect to the Plaintiff's 1989 Mazda B2600X pickup truck, bearing Connecticut marker plate number 512 CLL . . . and his 2000 Honda Accord, bearing Connecticut marker plate number 503 PNL . . . on the grand lists of October 1, 1999, 2000, 2001 and 2002. The Defendants hereby agree to issue, and the Defendant Tax Assessor shall issue on or before July 31, 2007, a certificate of error and shall remove the taxes on the Mazda and the Honda from the rate book with respect to those tax years, under the provisions of C.G.S. Section 12-126."

(Stipulation dated July 12, 2007.)

In conclusion, the plaintiff's claim for a declaratory judgment in count one is denied and judgment shall enter in favor of the defendant, without costs to either party. As to count two, judgment may enter in accordance with the terms of the stipulation of the parties, without costs to either party.

Arnold W. Aronson
Judge Trial Referee