

NO. CV 06 4010562S

: SUPERIOR COURT

J.C. PENNEY CORPORATION, INC.

: JUDICIAL DISTRICT OF
: NEW BRITAIN

v.

TOWN OF MANCHESTER

: NOVEMBER 13, 2007

MEMORANDUM OF DECISION

The plaintiff, J.C. Penney Corporation, Inc. (J.C. Penney), filed this tax appeal challenging the assessor's valuation of personal property located at its warehouse in the town of Manchester (town), as of the revaluation date of October 1, 2005.

J.C. Penney brings this action in two counts. Count one is brought under General Statutes § 12-117a dealing with valuation. Under count one, J.C. Penney claims that the assessor improperly used a mass appraisal process to determine the value of its personal property rather than the market value, as required by statute. Count two is brought under General Statutes § 12-119 dealing with an illegal action by the assessor.

The subject personal property was located at J.C. Penney's catalog distribution center warehouse at 1339 Tolland Turnpike on October 1, 2005. The distribution center spans 2,000,000 square feet and includes a central warehouse with receiving, sorting, packaging and product storage areas, executive and general offices, a cafeteria, a machine shop and repair facility and an in-house information technology center.

The distribution center contains two major areas, the largest of which consists of racking and shelving, forklifts, office furniture and machines, conveyor systems, repair and maintenance equipment, commercial printing, computer and information technology equipment and related assets. The assets in the secondary area, known as the Store Support Center, are separately assessed in a separate personal property account, the value of which is not at issue in this appeal.

J. C. Penney claims that the final value of the subject personal property at its distribution center was \$1,219,000, as of October 1, 2005. See plaintiff's post-trial brief, dated July 19, 2007, p. 13, referring to plaintiff's Exhibit 2. In contrast, the assessor's valuation of the subject personal property was \$21,114,786, as of October 1, 2005.

The plaintiff's appraiser, Kenneth P. Katz (Katz), concluded that the subject personal property had two different values. In his opinion, "the current aggregate Fair Market Value in Continued Use of the assets as described in the accompanying equipment listing would be approximately \$10,778,000.00 (rounded to the nearest 1,000). . . . [T]he current aggregate gross Fair Market Value (removed) of the assets as described in the accompanying equipment listing would be approximately \$1,854,000.00 (rounded to the nearest 1,000)." (Emphasis omitted.) (Plaintiff's Exhibit 2, p. 6.) Katz arrived at his final value of \$1,219,000 by deducting the amount of \$635,000 attributed to various costs, including removing and disposing of assets, marketing and sales commissions, from his determination of the "current aggregate gross Fair Market Value (removed) of the assets" in the amount of \$1,854,000. (Plaintiff's Exhibit 2, p. 6.) As the defendant

correctly points out, General Statutes § 12-63 (a) specifically prohibits the use of property value based upon a forced or auction sale, a process similarly described by Katz in disposing of J.C. Penney's assets.¹

General Statutes § 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” Furthermore, General Statutes § 12-40² et seq., provides that all persons in a town “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 this way, the legislature has established a process, under a self-reporting system, in order for the assessors to receive information on taxpayers' personal property assets.

1

The town engaged as a witness Steven Kosofsky, the assessor for the town of Windsor with over 27 years experience as a municipal assessor, to support its valuation of the subject personal property, as of October 1, 2005. The Manchester assessor had requested that Mr. Kosofsky check his techniques. After reviewing the use of the modified cost approach in the mass appraisal report, Mr. Kosofsky concluded that the subject personal property had a fair market value of \$21,114,768, as of October 1, 2005, which equaled the Manchester assessor's valuation.

2

General Statutes § 12-40 provides, in relevant part, that “[t]he assessors in each town . . . shall, on or before the fifteenth day of October annually, [provide] . . . 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.”

As the court noted in Paul Dinto Electrical Contractors, Inc. v. Waterbury, 266 Conn. 706, 718-19, 835 A.2d 33 (2003), “the primary foundation for the taxation of personal property is the declaration filed by the taxpayer. . . . Section 12-41 (c) describes what the annual declaration shall include. Section 12-42³ provides for an extension of the time for the filing of the declaration. . . . Section 12-58 provides special rules for the filing of the personal property declaration of property of trading, manufacturing or mechanical business. . . . Section 12-59 provides for declarations by corporations, and provides that their property shall be liable to taxation in the same manner as the property of individuals.” (Internal quotation marks omitted.)

J.C. Penney had been filing personal property declarations for its catalog distribution center since 1982. On November 1, 2005, J.C. Penney filed a declaration listing all of its personal property assets with a grand total of \$17,095,039 at market value. See defendant’s Exhibit B, “Asset Value Summary (as of October 1, 2005)”, dated 10/27/05.

3

General Statutes § 12-42 provides, in relevant part, that “[t]he assessors may grant an extension of not more than forty-five days to file the declaration required pursuant to section 12-41 upon determination that there is good cause. If no declaration is filed, the assessors shall 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.”

In defendant's Exhibit B, Richard Wright, J.C. Penney's senior property tax manager, wrote the town's assessor the following: "We are having some difficulty with final preparation of the 2005 Declaration of Personal Property for our Catalog Facility. I would like to request a 30 day extension to allow time for additional review of historical cost. I know this is allowable but it seems that somewhere I noted that the extension was to be filed no later than October 15. Can you please clarify."

The assessor responded to Mr. Wright as follows: "We don't give extensions, so you will need to file a declaration by 11/1, but I can allow you an extended time period in which to file an amended declaration without penalty. Since you are in final preparation, this should work out nicely for you."

On December 5, 2005, the town received an amended declaration of personal property from J.C. Penney accompanied by the following letter: "Please find enclosed our amended 2005 Declaration of Personal Property. We have not made any changes to the declared costs but ask that you refer to our Statement of Position on the last page of this amended declaration."

J.C. Penney's "Statement of Position" provides as follows:

"JCPenney's 2005 amended declaration of its personal property at 1339 Tolland Turnpike in Manchester is believed by JCPenney to include many assets which are no longer located in this facility and may have not been located there for several years. They have been included in this declaration in good faith because JCPenney lacks adequate records to be able to eliminate nonexistent assets without conducting a physical inventory. JCPenney expects to conduct such an inventory with the next 60-90 days. If this inventory confirms the foregoing, JCPenney reserves the right to

appeal to the Manchester Board of Assessment Appeals and to pursue all available rights.⁴

“Similarly, JCPenney believes that many assets which are located in this facility are worth far less, if anything at all, than the values which result from the Assessor’s depreciation schedules. At this time, however, JCPenney lacks sufficient information to be able to assert lower values but also reserves the right to do so as set forth above after consulting with valuation experts.”

For over twenty years, J.C. Penney annually filed with the town’s assessor a personal property declaration for its catalog distribution center in Manchester. On the Grand List of October 1, 2005, J.C. Penney filed its annual declaration on November 1, 2005 listing all of its personal property assets for a total valuation of \$17,095,039, in compliance with the taxing statutes. Three days before J.C. Penney filed its declaration of personal property, Mr. Wright notified the assessor that J.C. Penney would request an extension to file an amended declaration for “additional review of historical cost,” to which the assessor responded an amended declaration could be filed without penalty.⁵

4

The assessor noted a serious deficiency in J.C. Penney’s filing of the declaration and the amended declaration, namely, that there was no disposal report which would have shown assets appearing on prior lists that were no longer in J.C. Penney’s possession. The furnishing of this information was J.C. Penney’s obligation as owner, not the assessor’s obligation. Therefore, it is inappropriate for J.C. Penney to complain that the assessor based his valuation, in part, on assets that J.C. Penney previously disposed.

5

General Statutes § 12-41 (d) provides as follows: “**Penalty.** (1) Any person who fails to file a declaration of personal property on or before the first day of November, or on or before the extended filing date as granted by the assessor pursuant to section 12-42 shall be subject to a penalty equal to twenty-five per cent of the assessment of such property; (2) any person who files a declaration of personal property in a timely manner, but has omitted property, as defined in section 12-53, shall be subject to a penalty equal to twenty-five per cent of the

Subsequently, on December 1, 2005, J.C. Penney filed an amended declaration reporting that it was unsure about what personal property was present at the warehouse; that it lacked adequate records; that many of the assets at the warehouse would be worth far less than reported; that it was intending to conduct an inventory in the next two to three months and that it was reserving all of its rights for appealing the assessor's decision.

J.C. Penney received Katz's inventory report on June 30, 2006, which was approximately eight months after the November 1, 2005 deadline. As discussed above, Katz reported the value of the personal property assets at the distribution center at \$1,219,000, as of October 1, 2005.

Although the plaintiff had a statutory obligation to advise the town, by November 1, 2005, of the taxable personal property in its possession and the factual information upon which the assessor could determine the value of such property for tax purposes, the plaintiff led the assessor "down the garden path" by asking for a short extension of time of 60 to 90 days to clarify the accuracy of its filing, after admitting to its inaccuracy, and then delaying the reply for almost eight months. This is nothing short of "chutzpa."⁶

assessment of such omitted property. The penalty shall be added to the grand list by the assessor of the town in which such property is taxable."

6

"Chutzpa is a Yiddish word that means unmitigated effrontery or impudence. Webster's Encyclopedic Unabridged Dictionary of the English Language 265 (1989). It has also been defined to mean gall, brazen nerve, effrontery, incredible guts; presumption-plus-arrogance such as no other word, and no other language, can do justice to. L. Rosten, *The Joys of Yiddish* 92 (1968). Chutzpa is that quality enshrined in man who, having killed his mother

The town had a statutory obligation to complete the Grand List of October 1, 2005 containing the assessed value of all taxable property for the town by January 31, 2006. See General Statutes § 12-55 (a).⁷ If the assessor had accepted J.C. Penney's amended declaration, it would have caused the assessor to be in violation of his obligation under the tax statutes.

As recited in § 12-55, the assessor had an obligation to complete his or her duties as an assessor so that the valuation for assessment purposes of all property in the town could be finalized. The town relies on these assessment values for the purpose of setting a tax rate that will cover town expenditures in the coming year. As noted in Moore v. Stamford, 134 Conn. 65, 67, 54 A.2d 588 (1947), "[t]he grand list of a town is made up in accordance with the directions contained in [the] General Statutes . . . as amended. When completed, it covers all of the property subject to taxation by the town. A tax is laid 'on such list' sufficient to cover the expenditures as estimated for the ensuing year."

Furthermore, "[r]egardless of the basis of a property's valuation or the time when it is updated, each property must appear on a town's Grand List - the annual account or

and father, throws himself on the mercy of the court because he is an orphan." (Internal quotation marks omitted.) State v. Merino, 81 Haw. 198, 212 n.10, 915 P.2d 672 (1996).

⁷

General Statutes § 12-55 (a) provides, in relevant part, as follows: "On or before the thirty-first day of January of each year . . . the assessors or board of assessors shall publish the grand list for their respective towns. Each such grand list shall contain the assessed values of all property in the town The assessor or board of assessors shall lodge the grand list for public inspection, in the office of the assessor on or before the thirty-first day of January, or on or before the day otherwise specifically provided by law for the completion of such grand list."

record of all taxable and tax-exempt property. (See § 12-55 and § 12-109.)

Generally, each Grand List must be completed and filed in the office of the town clerk or that of the assessor by the last day of January each year. Assessors attest to the completeness and accuracy of Grand Lists when they are filed. Section 1-25, as amended by Public Act 02-71, contains the form of the required statement: ‘I, . . . , assessor of the town of . . . , do solemnly swear or solemnly and sincerely affirm, as the case may be, that I believe that all the lists, and the abstract of said town for the year 20.., are made up and perfected according to law; so help me God or upon penalty of perjury.’” (Defendant’s Exhibit G, p. 1-6, Handbook For Connecticut Assessors (2006 Ed.) (hereinafter referred to as the assessors’ handbook.))

“It is the duty of each taxpayer, as a personal obligation, to file with the assessors a list of [its] taxable property and *furnish the facts upon which valuations may be based* If [the taxpayer] fails to do so, the assessors are only required to act upon the best information [they] can obtain . . . and the taxpayer cannot justly complain if the assessors, acting in good faith, make an error in judgment in listing and valuing [its] property.”

(Emphasis in original; internal quotation marks omitted.) Xerox Corp. v. Board of Tax Review, 240 Conn. 192, 205, 690 A.2d 389 (1997).

J.C. Penney, having failed to comply with the tax statutes pertaining to the annual valuation of personal property located in Connecticut, as well as acting contrary to the understanding it had with the assessor regarding the filing of the declaration and the amended declaration, was in no position to contest the valuation placed on its personal

property for the Grand List of October 1, 2005. For these reasons, the plaintiff's appeal is denied.

The plaintiff raises an additional argument that the use of the mass appraisal process by the assessor did not comply with General Statutes § 12-63 (a) which provides, in relevant part, that "[t]he present true and actual value of all other property shall be deemed by all assessors and boards of assessment appeals to be the fair market value thereof and not its value at a forced or auction sale."

When considering the assessment value of property for the purpose of revaluation, the assessors' handbook states that "[t]he assessment of personal property must be based on its fair market value." (Defendant's Exhibit G, p. 10-6.)

The assessors' handbook further notes as follows:

"Standard appraisal practice recognizes three (3) methods of valuation: the cost approach, the market (or sales comparison) approach and the income approach. Theoretically, the assessor should utilize each of these valuation methods and correlate the results in order to arrive at a market value estimate. In reality, the method of valuation the assessor uses will be determined by the availability of reliable data.

"In the mass appraisal of personal property, the assessor rarely has the time or resources necessary to process and analyze the three approaches to value for the multitude of personal property items that must be declared and assessed. Therefore, a strong reliance is place on the modified cost approach. This approach . . . has the benefit of being easy to administer with the resulting market value estimates being verifiable via the audit process. By incorporating a fixed depreciation schedule into the Connecticut General Statutes, the 1990 General Assembly explicitly endorsed the modified cost approach with regard to the valuation of manufacturing machinery and equipment."

(Defendant's Exhibit G, p. 10-7.)

The modified cost approach is explained in the assessors' handbook as follows:
“[T]he acquisition cost of personal property items is adjusted to reflect accrued depreciation. . . . [T]his adjustment is accomplished via use of depreciation schedules.”
(Defendant's Exhibit G, p. 10-8.)

J.C. Penney objects to the assessor's valuation, which was calculated under the modified cost approach under the mass appraisal process, because J.C. Penney claims that this valuation was not based on market value as required by § 12-63 (a). However, J.C. Penney's own appraiser, Katz, acknowledged that in doing his research for comparables for each of J.C. Penney's assets, that if no comparables were available, he used the cost approach. Katz further related that comparables that he did use were based on the opinions of dealers in the stock and that these dealers were relying on what they were offered for the item, not what the stock actually sold for in the market.

There is nothing improper in the use of a mass appraisal process where the appraisal is based on one or all of the three recognized methods of valuation, i.e., cost, comparable sales and income. In Nolan v. City of Milford, 92 Conn. App. 607, 886 A.2d 493 (2005), the plaintiff property owner objected to the assessor's reliance on the mass appraisal for valuing property for assessment purposes claiming that the mass appraisal process was unreliable. In rejecting this argument, the court noted that the admission of an appraisal report implicates the trial court's discretion to admit evidence and determine what weight to give to such evidence. See *id.*, 610-11.

In the present case, the assessor used the modified cost approach taking into consideration the actual cost of the assets and the depreciation value. This process implicates the cost approach which is universally accepted as a reliable method of valuation. See Abington, LLC v. Avon, 101 Conn. App. 709, 711-12 n.4, 922 A.2d 1148 (2007).

J.C. Penney's failure to file a declaration with sufficient facts upon which the assessor could base his determination of value requires the assessor to act upon the best information available to him, and under these circumstances, the plaintiff cannot complain. See Xerox Corp. v. Board of Tax Review, supra, 240 Conn. 205.

Accordingly, judgment may enter in favor of the defendant, dismissing this appeal, without costs to either party.

Arnold W. Aronson
Judge Trial Referee