

NO. CV 03 0566126S : SUPERIOR COURT  
DOMINION NUCLEAR, ET AL. : JUDICIAL DISTRICT OF  
: NEW LONDON  
: AT NEW LONDON  
v.  
TOWN OF WATERFORD : APRIL 7, 2006

MEMORANDUM OF DECISION ON MOTION TO OPEN  
AND PARTIALLY VACATE JUDGMENT

The plaintiff, Dominion Nuclear Connecticut, Inc. (Dominion), moves to open and partially vacate this court's judgment of May 27, 2005 on the issue of the exemption from taxation (hereinafter the subject exemption), for the Grand List of October 1, 2002 and the subsequent tax years of 2003 and 2004, claimed by Dominion for air pollution control structures and equipment certified as such by the department of environmental protection.

In its memorandum of decision dated May 27, 2005 (hereinafter the 5/27/05 decision), this court denied Dominion's claim that it was entitled to the subject exemption previously awarded to Dominion's predecessor, Northeast Utilities (NU). The crux of the 5/27/05 decision was that General Statutes § 12-81 (52) grants an exemption, for tax purposes only, to the purchaser of air pollution control structures and equipment, and

because Dominion was not the original purchaser, the statute made no provision for the assignment of the exemption to subsequent purchasers of the structures and equipment.

Approximately two months after the issuance of the 5/27/05 decision, the legislature enacted Public Act 05-1 (P.A. 05-1), An Act Concerning Energy Independence, in an emergency session.<sup>1</sup>

Section 38 of P.A. 05-1 (hereinafter § 38) amends § 12-81 (52) and provides as follows (with deletions in brackets and additions underlined):

“Subdivision (52) of section 12-81 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

“(52) (a) Structures and equipment acquired by purchase or lease after July 1, 1967, for the primary purpose of reducing, controlling or eliminating air pollution, certified as approved for such purpose by the Commissioner of Environmental Protection. Said commissioner may certify to a portion of structures and equipment so acquired to the extent that such portion shall have as its primary purpose the reduction, control or elimination of air pollution;

“(b) Any [person claiming] owner or lessee of such structures or equipment who wishes to claim the exemption provided under this subdivision for any assessment year shall, on or before the first day of November in such assessment year, file an application for such exemption with the assessor or board of assessors in the town in which such structures and equipment are located, in the form and manner said assessor or assessors shall prescribe together with such certification by the Commissioner of Environmental Protection, as required under subparagraph (a) of this subdivision. [with the assessor or board of assessors in the town in which such structures and equipment are located.]

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Emergency Certification is “a procedure by which the speaker and president pro tempore jointly propose a bill and send it directly to the House or Senate floor for action without any committee referrals or public hearings.” See the General Assembly website at [www.cga.ct.gov/html/Terms.htm](http://www.cga.ct.gov/html/Terms.htm).

Failure to file such certification within the time limitation prescribed herein shall constitute a waiver of the right to such exemption for such assessment year. Such certification shall not be required for any assessment year following that for which initial certification is filed, provided if such structures and equipment are altered in any manner, such alteration shall be deemed a waiver of the right to such exemption until such certification, applicable with respect to the altered structures and equipment, is filed and the right to such exemption is established as required initially;

“(c) In the event there is a change in the name of the owner or lessee of any structure or equipment for which an exemption is granted pursuant to this subdivision, the new owner or lessee of such structure or equipment shall be required to file a revised application with the assessor or board of assessors on or before the first day of November immediately following the end of the assessment year during which such change occurs, except that for the assessment year commencing October 1, 2005, a revised application may be filed when there has been a change in the name of the owner or lessee of such structure or equipment during any assessment year and the exemption under this subdivision continued to be granted for each assessment year following such change. If such structures or equipment have not been altered in any manner, such new owner or lessee shall be entitled to a continuation of the exemption under this subdivision and shall not be required to obtain or provide a certification of approval from the Commissioner of Environmental Protection.”

Dominion argues that the legislature overruled the 5/27/05 decision by enacting § 38 because the amendment clarifies the legislature’s original intent that the subject exemption “has always followed the equipment.” (Plaintiff’s motion dated September 23, 2005 (hereinafter Plaintiff’s 9/23/05 motion), p. 2.) Dominion maintains that “the exemption may be (and always could be) claimed by a subsequent owner of the certified equipment” without re-certification by the commissioner of environmental protection (commissioner). (Plaintiff’s 9/23/05 motion, p. 2.) As the purchaser of NU’s structures and equipment on March 31, 2001, Dominion claims that it owns the subject exemption

and that the effect of § 38 is to carry back the exemption for each assessment year in which Dominion was the owner of the structures and equipment.

The town of Waterford (town), on the other hand, opposes Dominion's claim that it is entitled to the subject exemption. Instead, the town argues that § 38 does not apply retroactively and, therefore, Dominion is not entitled to the subject exemption for the assessment years of 2002, 2003 and 2004.

The town further argues that subparagraph (c), newly added to 12-81 (52) by § 38, does not create automatic transferability of the subject exemption. The town maintains that it is only subparagraph (c) that defines the conditions that must be met before a subsequent owner of the structures and equipment may claim the previously granted exemption. The court agrees.

In enacting § 38, there is little question that it was the legislature's intent to not only allow the previously granted exemption to pass to a subsequent purchaser, but also allow an owner or lessee of air pollution control structures and equipment to retroactively claim the previous owner's exemption.<sup>2</sup>

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The court notes the following discussion, as stated in the House Session Transcript of June 23, 2005:

“Rep. Ritter: (38<sup>th</sup>)

“Mr. Speaker, Sections 38 and 39 of this Bill address specifically water and air pollution structures eligible for a property tax exemption for the owner who installed them and the extension of those exemptions to new owners.

“As I understand these sections, it allows the new owner to be the beneficiary of these exemptions without obtaining a certificate of approval from the DEP.

“My question concerns a new owner who is in such a position who has not been the beneficiary of these exemptions and how this affects that owner after October 1<sup>st</sup> of 2005.

“Speaker Amann:

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“Representative Fontana.

“Rep. Fontana: (87<sup>th</sup>)

“Through you, Mr. Speaker. If I could, I’d like to refer this question to Representative Staples, please.

“Speaker Amann:

“Representative Staples.

“Rep. Staples: (9<sup>th</sup>)

“Thank you, Mr. Speaker. Through you, Mr. Speaker, in response to the question that was asked. If a company changes its ownership under the provisions of this Bill, it is permitted for the assessment year commencing October 1, 2005, to submit a revised application for any assessment year if that exemption under the subdivision continued to be granted for each assessment year following the change in ownership.

“So the provisions here would apply when a company had been continuing to receive the exemption already since the date of the change of their ownership and can document that and effectively grandfathers those companies that had been expecting and had been receiving the exemption over the past number of years since the change of ownership.

“But it does not appear that it would apply in the event that a company had an ownership change and did not have continuous exemptions afforded to them from the date of that ownership change through the beginning of the assessment year of October 1, 2005.

“Speaker Amann:

“Representative Ritter.

“Rep. Ritter: (38<sup>th</sup>)

“Thank you, Mr. Speaker. Mr. Speaker, if you would indulge me quickly to perhaps put this into more common language, I would like to ask Representative Staples, through you, if this does in fact mean that a company in the position I described cannot to his knowledge reach back to prior assessment years to obtain these exemptions. Thank you, Mr. Speaker.

“Speaker Amann:

“Representative Staples.

“Rep. Staples: (96<sup>th</sup>)

“Thank you, Mr. Speaker. If you don’t mind, Representative Ritter, I might just explain a little bit about what this section is intended to do so that I can fully answer that question.

“What these sections do is they provide for exemptions for air pollution and water pollution control equipment for companies that undergo an ownership change during the course of continually using that equipment.

“It was the, I believe the intention of these statutes when they were drafted almost 40 years ago that they would provide exemptions on an annual basis as long as that equipment that was certified by the DEP continued to

Dominion argues that it is subparagraph (b) of § 12-81 (52), as amended by § 38, and not subparagraph (c), that applies to its claim of exemption as to Unit 3 from October 1, 2002 through October 1, 2004. In making this argument, Dominion focuses on the legislature's change of the language in subparagraph (b) from "[a]ny person claiming" to "[a]ny owner or lessee of such structures or equipment" as exhibiting an intent "to clarify that subsequent owners of certified equipment have always been entitled to claim the exemption, thus specifically overruling this Court's decision as to Dominion." (Plaintiff's 9/23/05 motion, p. 5.)

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be used for those purposes.

"What we're doing today is ensuring that in the case of an ownership change, as long as the equipment is not altered, and that's the present law but we're restating it for new owners as well, that they can continue to qualify for the exemption.

"And the primary thrust of this is for assessment years going forward. There is a section that relates to any assessment year, and that would include prior assessment years, but it is only limited to a situation where they have been receiving that exemption for each assessment year following the name change or the ownership change.

"So in the circumstance that I believe you described or alluded to, if there were not continuous exemptions granted following the change of ownership, then they would not be able to reach back to prior assessment years under the way that I read the section of the statute that pertains to that reach-back provision."

The court notes the following discussion, as stated in the Senate Session Transcript of June 28, 2005:

"Sen. Fonfara:

"Mr. President, at this time I'd like to read into the record some, for legislative intent, if I could, some language regarding this bill and the underlying bill and also some later provisions in Sections 37 and 38.

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"Mr. President, with respect to Sections 37 and 38 of the Emergency Certified Bill, for purposes of legislative intent, Sections 37 and 38 clarify the existing statute granting a tax exemption for water and air pollution control structures and make it clear the exemption has always been intended to follow the equipment and not intended to be limited to the original owner.

"By way of this section, this legislation clarifies the exemption always intended to benefit the original and subsequent purchaser of water or air pollution control structures and equipment so long as the requirements for the exemption had originally been met and the structures or equipment have not been altered."

The court recognizes that the legislators, in enacting § 38, discussed the original intent behind the enactment of the air pollution exemption in 1967.<sup>3</sup> However, “[c]ourts may not by construction supply omissions . . . or add exceptions merely because it appears that good reasons exist for adding them. . . . The intent of the legislature . . . is to be found not in what the legislature meant to say, but in the meaning of what it did say. . . . It is axiomatic that the court itself cannot rewrite a statute to accomplish a particular result. That is a function of the legislature.” (Internal quotation marks omitted.) Greco v. United Technologies Corp., 277 Conn. 337, 350, 890 A.2d 1289 (2006).

The components of § 12-81 (52), as amended by § 38, are:

- (a) Providing an exemption for the purchase or lease of structures and/or equipment, in whole or in part, for the purpose of air pollution control.
- (b) Filing an application for an exemption with the town’s assessor or board of assessors (assessor) in the form and manner the assessor prescribes together with the commissioner of environmental protection’s certification.
- (c) Requiring a subsequent owner or lessee to file a revised application for a continuation of the exemption with the assessor. If the structures or equipment described in (a) have not been altered in any manner, the new owner or lessee shall be entitled to a continuation of the exemption and shall not be required to obtain or provide the commissioner’s certification. Subparagraph (c) contains a grandfather clause permitting an owner or lessee that acquired structures and equipment to claim the exemption, provided that the exemption continued to be granted *for each assessment year following the change in the name of the owner or lessee.*

While the change in ownership between NU and Dominion occurred on March 31, 2001, “[f]or the tax year commencing October 1, 2001, Dominion neither sought nor was granted a tax exemption for air or water pollution control equipment at either

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See footnote two.

Millstone Units 2 or 3.” (Plaintiff’s brief dated December 21, 2005 (hereinafter Plaintiff’s 12/21/05 brief), Letter from Michael Bekech, Tab 7, p. 2.)<sup>4</sup> Without a showing of the continuous use of the exemption from the time of ownership on March 31, 2001, Dominion does not come within the conditions set out in the grandfather clause in subparagraph (c).

The legislature made a significant change in subparagraph (b). Under the old version, the holder of the exemption was only required to file the commissioner’s certification with the assessor in order to be entitled to the exemption. However, revised subparagraph (b) requires the holder of the exemption to file an application for the exemption with the assessor “in the form and manner said assessor . . . shall prescribe together with such certification by the Commissioner of Environmental Protection, as required under subparagraph (a) of this subdivision.”<sup>5</sup>

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There is no plain statement in Dominion’s filings that Dominion is entitled to the subject exemption for the Grand List of October 1, 2001. It is Dominion’s claim that “[s]ince [it] met the requirements of Conn. Gen. Stat. § 12-81 (52), as clarified by Public Act 05-1, as of October 1, 2002, when it applied for the exemption in its own name on October 31, 2002 (and again for the 2003 Grand List and 2004 Grand List), the exemption should have been granted as of that date.” (Emphasis in original.) (Plaintiff’s 12/21/05 brief, p. 16.) Dominion noted that “[f]or the years, 2000 and 2001, the Town and Dominion entered into a Stipulation for Judgment dated June 20, 2001 . . . which stipulated to the value of Millstone for those years.” (Plaintiff’s 12/21/05 brief, p. 16 n.12.) Dominion further noted that “[a]fter the expiration of the Stipulation of Judgment, Dominion submitted its own application to claim the APCE exemption for the October 1, 2002, October 1, 2003 and October 1, 2004 Grand Lists.” (Plaintiff’s 12/21/05 brief, p. 16 n.13.)

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Although not expressed at the legislative hearing, Dominion and the town were at odds with the issue of whether an applicant for the exemption must comply with the requirement of subparagraph (b) that the structure and equipment not be “altered in any manner” at the time of the application. However, § 12-81 (52) does not define this particular language. The assessor, as directed by subparagraph (b), will presumably prescribe a process that is

Revised subparagraph (b) also changes “person” to “owner or lessee.” Since the old version of subparagraph (b) referred to “[a]ny person claiming the exemption,” the difference in describing the purchaser as “owner or lessee” rather than “person” appears to be descriptive in nature. It is unnecessary to infer, as Dominion does, that the legislative change from any “person” to any “owner or lessee” exhibited an intent to make a substantive change in order to allow Dominion’s retroactive claim for an exemption. The legislature specifically dealt with this particular issue by adding subparagraph (c) to § 12-81 (52).

There is certainly enough discussion by the legislators, as recited in footnote two, that they interpreted § 12-81 (52) to mean that the exemption followed the structures and equipment and therefore, Dominion should have been entitled to the exemption. However, this is not how the original statute reads. As this court stated in the 5/27/05 decision and as noted by the plaintiff, “this Court reasoned that, because there was no language in the statute allowing anyone other than the original owner or lessee to enjoy the benefit of the exemption, the exemption could not be claimed by a subsequent purchaser of the equipment. (Mem. of Dec. at 10-12).” (Plaintiff’s memorandum dated September 23, 2005, p. 4.)

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consistent with legislative intent to deal with this issue

With this in mind, the court recognizes that “General Statutes § 1-2z<sup>6</sup> directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . .” (Internal quotation marks omitted.) Kinsey v. Pacific Employers Ins. Co., 277 Conn. 398, 405, 891 A.2d 959 (2006).

Although certain legislators made comments regarding the passage of § 38, namely, that the exemption in § 12-81 (52) was always intended to follow the property from one owner to another, the amendment targets this lack of clarity and corrects the intention of the legislature by adding subparagraph (c). Instead of confirming that any owner or lessee would be entitled to the subject exemption, regardless of when the change of ownership occurred, subparagraph (c) contains a provision that limits the carry back of the exemption *only to subsequent owners who continuously maintained the exemption from the time of the change of ownership*. As discussed above, “[t]he intent of the legislature . . . is to be found not in what the legislature meant to say, but in the meaning of what it did say.” Greco v. United Technologies Corp., supra, 277 Conn. 350.

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General Statutes § 1-2z provides: “The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.”

Accordingly, because Dominion's claim of exemption was not continuous from the time it acquired NU's structures and equipment in 2001, and because Dominion failed to claim the exemption for October 1, 2001, Dominion's motion to vacate the 5/27/05 decision is denied.

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Arnold W. Aronson  
Judge Trial Referee