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RCN BecoCom LLC v. Commissioner of Revenue

Appeals Court of Massachusetts, Suffolk - April 1, 2022 - N.E.3d - 100 Mass.App.Ct. 802 - 2022 WL 982654

Telephone company appealed decision of Appellate Tax Board upholding valuation certified by the Commissioner of Revenue as to the value of company's personal property, and Commissioner cross-appealed Board's ruling that it had jurisdiction.

The Appeals Court held that:

- Appellate Tax Board had jurisdiction to hear company's appeal of Commissioner's valuations;
- Company failed to meet its burden to demonstrate that Commissioner substantially overvalued property lying in each municipality;
- Company failed to substantiate that property had become so dated that reproduction costs ceased to be a useful measure of its value;
- Board was within its discretion in declining to credit opinion testimony of company's chief financial officer; and
- Board was not required to disqualify expert due to expert's work on case prior to disclosure of potential conflict of interest.

Telephone company's alleged deficiencies in tax form concerning values of certain personal property owned by telephone company did not deprive Appellate Tax Board of jurisdiction to hear company's appeal of valuations set by Commissioner of Revenue, although form did not include attestation from company's treasurer, as required, and deficiencies could have been viewed as material omissions or affirmative misstatements; at Commissioner's urging, company largely cured any deficiencies in its initial submittals, Commissioner did not suggest any reason to question accuracy of data that company eventually supplied, and Commissioner used information to make valuations without apparent prejudice from company's tardiness.

Telephone company, in focusing on the aggregate value of certain taxable personal property in 18 municipalities as a whole, failed to meet its burden to demonstrate that Commissioner of Revenue substantially overvalued property lying in each municipality in company's appeal to Appellate Tax Board contesting Commissioner's valuation of personal property for use by municipalities in assessing taxes against the property, although company's failure to take a municipality-b--municipality approach was not per se fatal to its appeal to Board; company made minimal efforts to apportion the aggregate value to individual municipalities, and value of physical equipment could not be determined from the overall sale of company's stock when company was taken private, as company argued.

Telephone company failed to substantiate that certain personal property had become so dated that reproduction costs ceased to be a useful measure of its value, as required to show that valuation based upon reproduction cost instead of replacement cost led to substantial overvaluation of the property in telephone company's appeal to Appellate Tax Board of valuation by Commissioner of Revenue of certain personal property pursuant to statute; there was evidence that telephone

company portrayed its system as “state of the art,” and company did not provide proof of how its suggested replacement cost adjustment in fact would have affected the value of the property in each municipality.

Machinery, poles, wires, and underground conduits and wires and pipes owned by telephone companies, the value of which is assessed by Commissioner of Revenue pursuant to statute, is a highly specialized species of property that does not lend itself to being valued in usual manner.

Appellate Tax Board was within its discretion in declining to credit opinion testimony of chief financial officer of telephone company as to the market value of company’s machinery, poles, wires, and underground conduits and wires and pipes, in determining whether the Commissioner of Revenue’s valuation of the property was substantially too high in company’s appeal to Appellate Tax Board of valuations; Board determined officer’s opinion of value was unsupported by a recognized valuation methodology, and did not provide evidence of value.

Appellate Tax Board was not required to disqualify Commissioner of Revenue’s expert due to expert’s work on case prior to his disclosure of a potential conflict of interest in telephone company’s appeal to Board of Commissioner’s valuation pursuant to statute of certain personal property owned by company; after company raised issue of expert’s potential conflict of interest, arising from expert’s separate work with various municipalities on valuation issues, expert formally apprised Commissioner of Revenue and State Ethics Commission of potential conflict, and Commissioner then expressly approved expert’s continuing work on case.

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