

STATE OF RHODE ISLAND
KENT COUNTY

SUPERIOR COURT

Girard Bouchard, in his capacity as
President of the Board of Directors
of the Central Coventry Fire District
Plaintiff

vs.

Central Coventry Fire District
Defendant

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No. KB-12-1150

***SPECIAL MASTER’S OBJECTION TO
PETITION FOR PAYMENT OF CLAIMS FILED BY
CERTAIN COMMERCIAL TAXPAYERS¹***

Among the myriad of claims filed against the Central Coventry Fire District (the “District”) are claims filed by certain commercial taxpayers (the “Claimants”) “seeking to recover an illegal tax that has been assessed” against them under a two-tiered tax structure imposed by the District for District tax years 2009 - 2013.

However, because none of the Claimants has complied with the statutory requirements to appeal a tax levied – even an illegal tax² – the Claimants’ Petition (and the claims themselves) fails to state a claim upon which relief may be granted, and it must be denied with prejudice.³

¹ This Objection to the commercial taxpayers’ Petition should also be deemed an objection to the claims themselves.

² Although the Special Master has stated his position that the two-tiered tax rate previously employed by the District may, in fact, have been illegal, there has been no such finding in this Court in these proceedings and the Special Master reserves his rights with respect thereto.

³ The Claimants have requested certification as a class, among other relief. By agreement between counsel for the Claimants and the Special Master, this issue (as well as all others) is being deferred pending a resolution of the Petition.

The Tax Bills in Question

Attached to the Petition are eleven Proofs of Claim (the “Claims”). Although the cover page of each Claim indicates that the Claim is being filed for tax years 2009-2012, the only documentation of each such Claim is as follows:

	<u>Claimant</u>	<u>Tax Bill(s) Provided</u>	<u>1st Payment Due Date</u>
1.	Venus Pizza, Inc.	2012	November 15, 2012 ⁴
2.	Evangelia P. Raptakis Trust	2012	November 15, 2012 ⁵
3.	Peter D. Raptakis Trust	2012	November 15, 2012 ⁶
4.	BNR, Inc.	2010	November 15, 2010 ⁷
		2011	Unclear ⁸
		2012	November 15, 2012
5.	Tom’s Fruit & Deli, Inc.	2012	November 15, 2012 ⁹
6.	Ruzzo Properties, LLC	2012	November 15, 2012 ¹⁰
7.	John Colauca	None	
8.	P.W. St. Jean Trust	2012	November 15, 2012 ¹¹
9.	Bamford Lakeside Prop., LLC	None	
10.	Baird Properties, LLC	2011	Unclear ¹²
		2012	November 15, 2012 ¹³
11.	J.C.B. Excavation	None	

For purposes of this Objection, but without waiving the Claimants’ obligations to provide sufficient evidence of their Claims, including payment, the Special Master will assume that each of the Claimants paid taxes for years 2009-2012 on a tiered tax basis.¹⁴

⁴ A second claim by Venus Pizza, Inc., in the amount of \$176.71, is attached to the Petition, but the documentation is identical to that attached to Claim No. 1.

⁵ Attached to Claim No. 2 are additional tax bills to the Peter D. Raptakis Trust and Venus Pizza, Inc.

⁶ Attached to Claim No. 3 are additional tax bills to the Evangelia Raptakis Trust and Venus Pizza, Inc.

⁷ The tax bills attached to Claim No. 4 are issued to “Boston Neck Realty Corp.,” BNR, Inc.’s former name.

⁸ No 1st Quarter payment coupon was provided. The *second* payment for 2011 was due on February 15, 2012.

⁹ No 1st Quarter payment coupon was provided. The Court should take judicial notice of the fact that on all of the other 2012 tax bills, the first payment was due on November 15, 2012.

¹⁰ See Note 9.

¹¹ See Note 9.

¹² According to the bills attached to Claim No. 10, payment in full was due by December 15, 2011.

¹³ See Note 9.

¹⁴ If the Court determines that the Claims are viable and enforceable against the District, each Claimant should be required to prove the amount of such Claimant’s claim.

A. The Claimants' appeal to this Court of their 2009, 2010 and 2011 taxes is time-barred.

According to Rhode Island law, there are two ways to appeal an assessment of taxes to the Superior Court.¹⁵ No Claimant has complied with either one. In fact, no Claimant even alleges statutory compliance.

1. Appeals pursuant to § 44-5-26

The first method is prescribed by R.I. GEN. LAWS § 44-5-26 ("Section 26"):

§ 44-5-26 Petition in superior court for relief from assessment. – (a) Any person aggrieved on any ground whatsoever by any assessment of taxes against him or her in any city or town, or any tenant or group of tenants, of real estate paying rent therefrom, and under obligation to pay more than one-half of the taxes thereon, may *within ninety (90) days from the date the first tax payment is due*, file an appeal in the local office of tax assessment; provided, if the person to whom a tax on real estate is assessed chooses to file an appeal, the appeal filed by a tenant or group of tenants will be void. For the purposes of this section, the tenant(s) has the burden of proving financial responsibility to pay more than one-half (1/2) of the taxes. The assessor has forty-five (45) days to review the appeal, render a decision and notify the taxpayer of the decision. The taxpayer, if still aggrieved, may appeal the decision of the tax assessor to the local tax board of review, or in the event that the assessor does not render a decision, the taxpayer may appeal to the local tax board of review at the expiration of the forty-five (45) day period. Appeals to the local tax board of review are to be filed not more than thirty (30) days after the assessor renders a decision and notifies the taxpayer, or if the assessor does not render a decision within forty-five (45) days of the filing of the appeal, not more than ninety (90) days after the expiration of the forty-five (45) day period. The local tax board of review shall, within ninety (90) days of the filing of the appeal, hear the appeal and render a decision within thirty (30) days of the date that the hearing was held. Provided, that a city or town may request and receive an extension from the director of the Rhode Island department of revenue.

R.I. GEN. LAWS § 44-5-26 (emphasis added).

Thus, in order to successfully appeal *any* tax assessed *in any* city or town under Section 26, a taxpayer must commence an appeal within 90 days of the date the first tax payment is due

¹⁵ Appealing a tax rate is the functional equivalent of appealing a tax assessment. *Programmed Land, Inc. v. O'Connor*, 633 N.W.2d 517, 524 (Minn. 2001). The Special Master recognizes that the Claimants were required, under this Court's Order dated November 13, 2012, to file Proofs of Claim with the Special Master as the exclusive means of pursuing any claims against the District. However, as set forth in more detail in the body of this Objection, the Claimants' Claims themselves are not viable.

by filing an appeal of the assessment to the local assessor. If the taxpayer is still aggrieved following the assessor's review, the taxpayer must then appeal to the local Board of Tax Assessment Review. If *still* aggrieved after the Board's review, the taxpayer then, *and only then*, can and must file a petition in the Superior Court in order to obtain relief from the assessment. R.I. GEN. LAWS § 44-5-26(a). This detailed appeal process is very time specific, with the deadline for any activity in the appellate process being triggered by the occurrence of the prior activity. Upon receiving a timely appeal, the assessor has 45 days to act on it. The temporal requirements provide certainty to both the taxpayer and the taxing authority and allow for the efficient administration of governmental functions.

The remedy provided by Section 26 is *exclusive* if the taxpayer owns *any* ratable property in the municipality. R.I. GEN. LAWS § 44-5-27 (emphasis added). *Nunes v. Marino*, 707 A.2d 1239, 1244 (R.I. 1998) ("We have consistently determined that except for cases brought in equity, the only avenue of appeal from an assessment of taxes upon a ratable estate is to file an appeal pursuant to § 44-5-26.") (emphasis added) (*citing Wickes Asset Mgmt, Inc. v. Dupuis*, 679 A.2d 314, 322 (R.I. 1996)).

Based on the Claims attached to the Petition, the *latest* date by which a first payment was due for tax year 2011 was *prior* to February 15, 2012. *See Claim No. 4* (*second* payment for 2011 was due on February 15, 2012). Thus, by statute, in order to pursue a challenge to the taxes assessed, the Claimants were required to initiate their appeals of the 2011 tax year on or before May 15, 2012.¹⁶ It is axiomatic that the filing deadlines for appeals of the 2009 and 2010 tax bills were well before May 15, 2012. The Petition – filed March 13, 2013 – fails to allege that

¹⁶ Again, this date is likely earlier, given that this date is 90 days from the date the *second* payment was due. In all likelihood, the first payment for fiscal year 2011-2012 was due November 15, 2011 (as in other years), making the Claimants' appeal deadline 90 days thereafter, or February 13, 2012.

any Claimant appealed any assessment. Moreover, neither the Special Master nor the District is aware of any appeals having been filed.¹⁷

Having failed to properly preserve their appeal rights, the Claimants possess no claims upon which relief from any assessment may be granted pursuant to R.I. GEN. LAWS § 44-5-26. Accordingly, the Petition and each of the Claims must be denied.

2. Appeals pursuant to § 44-5-27

Without recourse under Section 26, the Claimants only other possible alternative arises under R.I. GEN. LAWS § 44-5-27 (“Section 27”).¹⁸ However, like Section 26, Section 27 is extremely limited in its scope and timing.

§ 44-5-27 Exclusiveness of remedy by petition. – The remedy provided in § 44-5-26 is exclusive if the taxpayer owned or possessed any ratable estate at all, except that, in a proper case, the taxpayer may invoke the equity jurisdiction of the superior court; *provided, that the complaint is filed within three (3) months after the last day appointed for the payment, without penalty, of the tax, or the first installment of the tax, if it is payable in installments.* A taxpayer alleging an illegal or void tax assessment against him or her is confined to the remedies provided by § 44-5-26, except that the taxpayer is not required to file an appeal with the local assessor.

Although the remedy provided by Section 26 is exclusive if the taxpayer owns *any* ratable property in the municipality, in “the proper case” a taxpayer may invoke the equity jurisdiction of the Superior Court under Section 27. R.I. GEN. LAWS § 44-5-27.

a. Any claim under Section 27 is time-barred.

In order to proceed under the Court’s equitable jurisdiction, the taxpayer must file its appeal to this Court within three months after the last day appointed for the payment of the tax without penalty, or, if the tax is payable in installments, within three months from the day

¹⁷ The Special Master is not aware of any formal appeal taken by a commercial taxpayer alleging an “illegal” tax.

¹⁸ Claimants have asserted their claims under Section 27, not Section 26.

appointed for the payment of the first installment of the tax, without penalty. R.I. GEN. LAWS § 44-5-27.

The District's taxes are indeed payable in installments. *See Exhibits to Petition.* For the same reasons that the Claimants' challenge to the taxes is late under Section 26, it is likewise late under Section 27 because the deadline is measured by the same "90 days from the date the first payment was due." R.I. GEN. LAWS § 44-5-27. In order for the Claimants to have proceeded directly to this Court under Section 27, the Claimants needed to initiate their appeals of the 2011 tax bills on or before May 15, 2012.¹⁹ As set forth above, the latest appeal date for the prior tax years was certainly before May 15, 2012.

The claims are dated March 13, 2013, and no record or even averment exists demonstrating or alleging any prior appeal by any Claimants.

Therefore, the Claimants' attempts to invoke this Court's equity jurisdiction for tax years 2009 through 2011 are nonsustainable in light of the failure to meet the very specific filing deadline under Section 27. The institution of an equitable proceeding in the nature of the Special Mastership does not, and cannot, serve to resurrect dead claims.

b. An alleged "illegal tax" is not a "proper case" for the Court's equity jurisdiction.

Section 27 provides direct entry to the Superior Court in "a proper case." This direct route, however, is not available to taxpayers who wish to challenge a purportedly "illegal" tax:

A taxpayer alleging an illegal or void tax assessment against him or her is confined to the remedies provided by § 44-5-26, except that the taxpayer is not required to file an appeal with the local assessor.

R.I. GEN. LAWS § 44-5-27 (emphasis added).

¹⁹ Again, this date is likely earlier, given that this date is 90 days from the date the *second* payment was due. In all likelihood, the first payment was due November 15, 2011 (as in other years), making the Claimants' appeal deadline 90 days thereafter, or February 13, 2012.

The very section that provides an equitable entry into the courthouse (and the specific statute upon which the Claimants' petition is filed (*Petition*, ¶ 5; ¶ 17; ¶ 22)) includes a concise limitation advising the Claimants that they were compelled to comply with Section 26, excluding the first step of appealing to the Tax Assessor. This certainly suggests – and the Supreme Court has confirmed – that the claim of an illegal assessment is specifically *excluded* from consideration as a “proper case” contemplated by Section 27 which otherwise allows for a direct appeal to the Superior Court. *S.S. Kresge Co. v. Bouchard*, 306 A.2d 179, 181 (R.I. 1973) (“the relief which the legislature provided for in § 44-5-26 is the exclusive remedy available for relief from an alleged illegal assessment of taxes”).

This Court should not exercise its equity jurisdiction in contravention of the statutory mandates.

c. The Claimants have not properly appealed their “illegal tax” pursuant to Sections 26 and 27.

Significantly, the Claimants urge the Court to give certain statutes their “plain meaning reading.” *Petitioners’ Memorandum*, April 23, 2013, at 2-3. The Special Master agrees. *Cummings v. Shorey*, 761 A.2d 680, 684 (R.I. 2000) (giving Sections 26 and 27 their plain meaning reading).

Pursuant to the plain meaning of Section 27, a party alleging an illegal tax is relieved only from filing an appeal with the local assessor, but is not relieved from timely filing an appeal with the appropriate board (in this case the District’s Board), which the Claimants failed to do. *Cummings v. Shorey*, 761 A.2d 680, 682 (R.I. 2000) (“plaintiff initially sought relief from the Middletown Board of Tax Appeals for what she alleged was an illegal assessment of her properties”); *Cummings*, 761 A.2d at 685 (describing the appeal of an illegal assessment

pursuant to Section 26 as a “two-step process”).²⁰ No statute, certainly not Section 26 or Section 27, relieves a taxpayer alleging an illegal tax from *timely* filing any appeal.

Because the Claimants have not complied with the statutory requirements for appealing an illegal tax, and particularly because the Claimants failed to timely file *any* appeal whatsoever, the Petition must be dismissed and the Claims denied. The existence of this Special Mastership does not afford the Claimants with an alternative remedy or proverbial second bite at the apple.

B. The Claimants’ appeal of 2012 taxes is premature (and improper).

The Court can take judicial notice of the fact that the 2012 tax bills upon which the Claimants are seeking relief are merely informal and do not constitute final tax bills. In fact, each 2012 tax bill attached to the Petition is prominently labeled “PRELIMINARY INVOICE” in the top right-hand corner.

As this Court knows, and as is contained in the public record, the District’s final tax bills for 2012 will be based upon a single-tier tax rate and not the two-tiered system about which the Claimants complain. Any payments already made towards the 2012 taxes under the prior invoices will be credited to the final amount actually due.²¹

Thus, any claim based on 2012 taxes is not yet properly before the Court. Moreover, once the District issues the final 2012 tax bills, the Claimants’ efforts to seek judicial recourse will be moot.

²⁰ *Cf. Narragansett Elec. Corp. v. Minardi*, 21 A.3d 274, 278 (R.I. 2011) (referring to a “direct appeal to the Superior Court”). The only “direct appeal” to the Superior Court authorized by the General Laws, however, is through equity “in a proper case.” For the reasons previously stated, though, claims of illegal taxation do not constitute “proper cases.” R.I. GEN. LAWS § 44-5-27

²¹ The Special Master recognizes that this Court ordered the first three quarterly tax payments to be made. However, even if a commercial taxpayer paid all three quarterly installments, such taxpayer will still have a balance due under a single tier.

C. *The Claimants are not entitled to equitable treatment at all costs.*

The Claimants appear to invoke this Court's powers to do equity. However, as set forth above, the Supreme Court has determined that an appeal of an illegal tax is not a "proper case" to invoke the Court's equitable jurisdiction under Section 27. *S.S. Kresge Co. v. Bouchard*, 306 A.2d 179, 181 (R.I. 1973) ("the relief which the legislature provided for in § 44-5-26 is the exclusive remedy available for relief from an alleged illegal assessment of taxes").

The Claimants posit that because the District would be entitled to a priority claim for uncollected taxes,²² equity requires that the taxpayers receive equal treatment, because "equity requires that like situations be treated alike."

The Claimants' suggestion that legal rights simply can be turned on their ear for the purposes of reciprocity is beyond preposterous. *See, e.g., Burton v. Commonwealth*, 300 S.W.2d 126, 149 (Ky. 2009) (Minton, J., concurring in part and dissenting in part) ("The facile old maxim, 'what's good for the goose is good for the gander,' is not a proper basis for determining the admissibility of expert testimony."); *Warehime v. Dell*, 720 A.2d 1196, 1206 (Md. App. 1998) (rejecting appellants' "good for the goose-good for the gander" argument as applied to discovery sanctions).

²² In fact, the District is entitled to enforce a lien on property for unpaid taxes.

D. Conclusion.

The Claimants suggest that this Court has to “assiduously protect” them from the District’s “abuse.” *Petitioners’ Memorandum*, at 9. While this Court should protect the valid rights of the parties, it should not engage in the mental gymnastics advocated by the Claimants. The Claimants failed to satisfy the clear statutory mandates contained in Sections 26 and 27. There is simply no legal basis upon which the Claimants may reasonably rely to justify this Court’s validation of the Petition or the Claims. For all of the foregoing reasons, the Petition must be denied and the Claims denied and dismissed with prejudice.²³

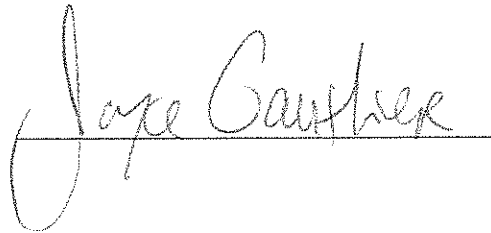


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Dated: June 21, 2013

CERTIFICATION

I hereby certify that I provided a copy of the within objection on the 21st day of June, 2013, via email or regular mail, where indicated, to the parties set forth on Schedule A, annexed hereto.



²³ In the event the Court allows the Claimants’ claims to proceed, the Special Master reserves his rights to object to the Claimants’ requests for attorneys’ fees, a declaration that the tax was illegal, for damages in the amounts alleged, for class certification, for the imposition of a constructive trust, for affirmative payment and for affirmative payment ahead of other creditors (both secured and unsecured), among other issues, and to present evidence, argument and defenses as may later be asserted.

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