

STATE OF MAINE  
KENNEBEC, SS.

STATE BOARD OF PROPERTY TAX REVIEW  
DOCKET NO: 96-049

Babcock-Ultrapower West Enfield )  
Petitioner )

v. )

Town of Enfield )  
Respondent )

DECISION

This matter came before the State Board of Property Tax Review (hereinafter, the "Board") on the appeal by Babcock-Ultrapower West Enfield (the "Petitioner") from the denial by the Town of Enfield (the "Town") of the Petitioner's property tax abatement application for the 1995 tax year. The subject of this appeal is the real and personal property comprising an electrical generation facility located in West Enfield.

Hearing on the Town's Motion to Dismiss commenced on December 10, 1997 before Board members Robert Littlefield, James Born, Malachi Anderson, and Caspar Cowan, Chair. Robert Crawford, Esq. represented Petitioner. Charles Gilbert, Esq. represented the Town. The issue before the Board is whether Petitioner is estopped from asserting on appeal a lesser value than that asserted in its so-called section 706 response.

The Town's position rests on two arguments. First, that pursuant to § 706 and Dead River Company v. Assessors of Houlton, 149 Me. 349, 103 A. 2d 123 (1954) the tax payer is estopped from asserting on appeal a lesser value than that asserted in its 706 response. Alternatively, should the Board find that the value stated on the original section 706 response was, as Petitioner asserts, the original cost without depreciation and that therefore the Town could not have reasonably relied on same, then the Town asserts that the Petitioner did subsequently supply the Town with a depreciated figure of \$40,969,315. See Respondent's Exhibit #19. Therefore, the Town asserts, the Petitioner is at the very least estopped from asserting a lesser value than \$40,969,315.

Roland Shorui, Selectmen and Assessor, testified in support of the Town's first argument that he relied upon the Petitioner's original section 706 response in valuing the

property and that the assessment was completed in April after the 706 response was forwarded to the Town. He testified that each year he relies on the section 706 response in setting a value and in 1995 he did the same. Mr. Shorui admitted that he was not a certified assessor and had not attended seminars in a long time. He further indicated that an assessor's assistant establishes new valuations. He did not know if the assistant was a certified appraiser. The witness conceded that the 706 request did not ask for values to the property. Finally the witness could not explain why the numbers on the commitment do not match the numbers on the response to the § 706 request that he testified he had relied upon. See Petitioner's Exhibit No. 1.

Michael Pearson, Chairman of the Board of Selectmen and Assessors, testified that in 1994 he became Chairman of the Board of Selectmen and therefore was involved in the 1995 assessment. Mr. Pearson testified that he made an assumption that the request for a true and perfect list was just that, true and perfect and that he made the assessment based on the information provided in the list as had been done in previous years. Mr. Pearson asserted that implicit in the request for a true and perfect list is the request for value. He had no indication that the list was not true and perfect and therefore he committed taxes based on the list. Mr. Pearson admitted that he does not refer to the Bureau of Taxation's Assessor's Manual and has never attended an assessment seminar. He understands that the Assessor is to place a "fair value" on the property and, although he agreed that just value is fair market value ("FMV") and that original cost equals purchase price, he understood acquired value to be the value set up or down since acquisition. He re-iterated that he relied on the list and did not ask follow-up questions to the best of his recollection because he relied on the original list.

John Weisend of Babcock and Wilcox Co., is responsible for maintaining accounting records for Babcock in Enfield. Babcock and Wilcox Co. is part owner of the Petitioner. Mr. Weisend testified that he prepared the section 706 response to the Town using the format that the company had used in the past and therefore supplied the original cost information as of April 1, 1995 as is clearly indicated. He also attached supporting accounting sheets which match acquired value as original cost<sup>1</sup>. See Town's Ex. #2. Thus the witness asserts that clearly, acquired cost was supplied and not FMV.

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<sup>1</sup>For example see page four of accounting sheets, 1/4 of the way down is the figure \$52,727,995 under acquired value which matches the figure supplied to the Town.

Thomas Sutton is employed by ESI Energy, one of three partners of the Babcock facility. Mr. Sutton testified that he has been a business manager for his company since 1993 and acts as an assistant manager for individual power facilities including the Petitioner. Mr. Sutton first learned of the 1995 assessment following payment of the tax bill at which time he began considering an abatement request. Mr. Sutton testified that he was not approached for additional information by the Town until after the abatement request was filed, however he did submit, at the Town's request, book value figures rather than FMV figures after the abatement request. See Town's Ex. No. 19. He never received a request for net income. A comparison of Town Ex. No. 8 with the 1995 tax bills indicated that the 1995 values appear to be 96% of the 1994 values.

The Board notes that pursuant to Dead River Company v. Assessors of Houlton, 149 Me. 349, 103 A. 2d 123 (1954), the Court ruled as follows:

Where one files a list or otherwise gives information to assessors upon inquiry, at least in the absence of fraud, accident or mistake, the tax payer is estopped to deny ownership or such other basic and essential facts upon which the assessors relied on making their assessment.

Thus to prove estoppel the Town must first show that it reasonably relied on the information provided by the tax payer to make its assessment. Should the Board find as a matter of fact that the Town did not reasonably rely on the information provided by the Petitioner then the Motion must be denied. However should the Board find that the Town reasonably relied on the information supplied by the tax payer then the Town would have to prove that the information was not the product of fraud or produced by accident or mistake. If the Board were so convinced then the Motion should be allowed.

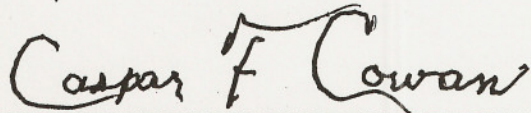
The Board finds that the assessors, due in part to their failure to attend seminars or use the Assessor's Manual, were confused with the concept of FMV. This confusion is evidenced by their willingness to equate FMV with original cost and their reliance on the Petitioner's section 706 response which clearly states that the figures supplied were based on original cost. Further, any reliance on information supplied after the abatement request was clearly based on book value and not FMV. Book value clearly does not equal FMV. Therefore the record reflects that reliance on the response to the section 706 request was not reasonable and in fact was in error. Further, reliance on the information of book value

subsequently supplied was also not reasonable and in fact erroneous. The Board finds that the Town's reliance on the information supplied by the taxpayer pursuant to a section 706 request and thereafter was unreasonable and in fact in error.

Due to the foregoing the Board votes 3-1 to dismiss the Town's Motion to Dismiss.

Any party wishing to appeal this Decision must file a Petition for Review in the Superior Court within (30) days of the date of receipt of this Decision, pursuant to 5 M.R.S.A. §§ 11001-11008 (1990). If this Decision is not appealed, it shall become binding on the parties at the end of said 30-day period.

DATED: 5 MARCH 1997



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Caspar Cowan, Chair, Panel C,  
State Board of Property Tax Review