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SUPERIOR COURT

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DOCKET NO. CV-19-6022324-S
LSE CANIS MINOR, LLC

JUDICIAL DISTRICT OF
UTCHFIELD
STATE OF CONNECTICUT

SUPERIOR COURT
J. D. OF LITCHFIELD

v.
TOWN OF NEW HARTFORD

AT TORRINGTON
MAY 28, 2021

DOCKET NO CV-19-6022592-S
LSE CANIS MINOR, LLC

SUPERIOR COURT
J. D. OF LITCHFIELD

v.
TOWN OF BARKHAMSTED

AT TORRINGTON
MAY 28, 2021

MEMORANDUM OF DECISION

RE: PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT NO. 117 (Docket No. CV-19-6022324-S) & 115 (Docket No. CV-19-6022592-S), and DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT NO. 121 (Docket No. CV-19-6022324-S) & 119 (Docket No. CV-19-6022592-S)

■

INTRODUCTION

The present motions concern the plaintiff's appeals and claims for relief against towns of New Hartford (Docket No. CV-19-6022324-S) (New Hartford appeal) (#116) and Barkhamsted (Docket No. CV-19-6022592-S) (Barkhamsted appeal) (#114), which were brought pursuant to General Statutes §§ 12-117a and 12-119.¹ The question before the court is whether the plaintiff's motions for summary judgment as to counts three and four of its amended complaint against New Hartford (#117), and counts one and two of its amended complaint against Barkhamsted (#115), should be granted on the basis that the personal property that is the

¹The present appeals consist of two separate files and docket numbers as the plaintiff appealed the assessments of its personal property to the two- separate towns, New Hartford (Docket No. CV-19-6022324-S) and Barkhamsted (Docket No. CV-19-6022592-S). Accordingly, the court's references to the filing numbers correspond to each of these individual files, respectively.

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subject of the appeal is exempt from taxation pursuant to General Statutes § 12-81 (57) (D). The defendants New Hartford and Barkhamsted have filed their own motions for summary judgment (#121 and #119, respectively), as to the same counts on, the basis that the personal property is subject to taxation and is not exempt under that statute. The court notes that the present inquiry regarding § 12-81 (57) (D) appears to be a matter of first impression in Connecticut.

II

PROCEDURAL HISTORY

The following procedural history is relevant to the present motions before the court. As to the New Hartford appeal, the plaintiff LSE Canis Minor, LLC appealed from an action of the board of assessment appeals of the town of New Hartford pursuant to General Statutes § 12-117a and applied for relief from such wrongful assessment under General Statutes § 12-119 on June 26, 2020 (#116). Although the assessor determined that all property should be liable for taxation at 70 percent of its true and actual valuation on October 1, 2018, the plaintiff claims the tax laid on the subject New Hartford property was manifestly excessive and that it should have been treated as exempt from taxation pursuant to General Statutes § 12-81 (57) (D). The plaintiff appealed to the board claiming that it was aggrieved by the actions of the assessor. For the 2018 tax year, the board reduced the assessment of the plaintiff's property but, despite this reduction, the plaintiff claims it is aggrieved by the actions of the board.

As to the Barkhamsted appeal, the plaintiff appealed from an action of the town of Barkhamsted board of assessment appeals pursuant to General Statutes § 12-117a and applied for relief from the wrongful tax assessment by the assessor of Barkhamsted pursuant to General Statutes § 12-119 on June 26, 2020 (#114). The plaintiff claims the taxes laid on this property for the tax years October 1, 2018 and October 1, 2019, were manifestly excessive and could not

have been arrived at except by disregarding the provisions of tax statutes including, but not limited to, § 12-81 (57) (D). The plaintiff claimed to be aggrieved by the assessor's actions and appealed to the board. The board did not reduce the assessment of the property and the plaintiff therefore claims it is aggrieved by the board's decision.

. In both appeals, the plaintiff seeks a reduction in the valuation of the subject properties, a ruling that the properties are exempt from taxation under § 12-81 (57) (D), a reduction in the amount of taxes to be laid on the property, a refund of the plaintiff's overpayment of taxes, interest on these overpayments, costs, and other relief.

On June 30, 2020, the plaintiff moved for summary judgment as to counts three and four, of the New Hartford appeal (#117). On that same date, the plaintiff also moved for summary judgment on counts one and two of the Barkhamsted appeal (#115). In each of these motions, the plaintiff seeks an order that the personal property constituting the subject facility is exempt from taxation pursuant to § 12-81 (57) (D).

The plaintiff submitted supporting memoranda of law on its motions and supporting affidavits (#118 and #116, respectively). The defendant New Hartford submitted both an objection to the plaintiff's motion and its own partial motion for summary judgment on counts three and four of the amended appeal (#121) and a supporting brief (#122), along with supporting affidavits. The defendant Barkhamsted submitted an objection to the plaintiff's motion and a motion for summary judgment as to the plaintiff's amended appeal (#119) and supporting brief (#120), along with supporting affidavits. The plaintiff submitted objections to the defendants' motions and a reply to the defendants' objections (#130 and #128, respectively), along with supporting affidavits (#131 and #129, respectively). Oral argument was held before the court on February 19, 2021.

For the reasons set forth below, the court denies the plaintiff s, motions for summary judgment as to counts three and four of its amended complaint against New Hartford and counts one and two of its amended complaint against Barkhamsted. The defendants' motions for summary judgment directed to those counts are also denied.

III
FACTS

As supported by the affidavits and exhibits (#119 and #117, respectively), the following facts are common to each of the parties' motions. In its respective appeals, the plaintiff LSE Canis Minor, LLC alleges that it is the lessee of certain real property known as "Main Street (Dump)" in New Hartford, Connecticut. It is also the owner of 31 New Hartford Road, in Barkhamsted, Connecticut.

The plaintiff s personal property is located on three adjoining parcels. Two of the parcels are located in the town of Barkhamsted and the third parcel is located in the town of New Hartford. These three properties are used to generate solar power by way of an approximately one megawatt AC ground mounted solar photovoltaic facility (the facility) that consists of solar panels, transformers, electric switchgear, and monitoring equipment. It is this personal property that is the subject of the plaintiff s appeals. The facility is a single power generation system that began commercial operation on December 30, 2016. The agricultural customer host² for the plaintiff s properties is Sanitation Refuse Co. of Manchester; Inc. (d/b/a/ Overbrook Farms of Manchester) and was formally Jarmoc Farms, LLC of Enfield, while the beneficiary is the town

² "'Agricultural customer host' means an in-state retail end user of an electric distribution company that uses electricity for the purpose of agriculture, as defined in subsection (q) of section 16-244u (a) (3); see also Change of Customer Host Form appended to affidavit of Daniel Jerram (#123) in support of New Hartford's motion for summary judgment.

of Vernon, Connecticut,³ The solar power produced by the facility is transferred to a distribution grid owned and operated by the Connecticut Light & Power Company, doing business as Eversource Energy. ,

On October 1, 2018, as part of its annual assessment of the town properties, the tax assessor of New Hartford assessed the full market value of the plaintiff's personal property as \$633,785 for the 2018 tax year.⁴ Thereafter, the assessor determined that the property should be liable for taxation at 70 percent of its true and actual valuation on the assessment date and in doing so, established the assessed value of the property as \$443,650. Following an appeal to the town's board of assessment appeals, the board reduced the assessment of the property from \$443,650 to \$340,000. The plaintiff now appeals from that action of the board.

On October 1, 2018, and October 1, 2019, as part of its annual assessment of the town properties, the tax assessor of Barkhamsted, as noted in the affidavit of Carmen Smith (#121), assessed the full market value of the plaintiff's personal property as \$546,800 for the 2018 tax year and \$448,130 for the 2019 tax year. The assessor determined that all property should be liable for taxation at 70 percent of its true and actual valuation on those assessment dates. Despite an appeal to the town's board of assessment appeals, the plaintiff's personal property assessment was not reduced. The plaintiff now appeals from that action of the board.

³ General Statutes § 16-244u (a) (1) defines "beneficial account" as "an in-state retail end user of an electric distribution company designated by a customer host or an agricultural customer host in such electric distribution company's service area to receive virtual net metering credits from a virtual net metering facility or an agricultural virtual net metering facility"

⁴ According to the Macel affidavit, the New Hartford property was assessed at \$633,785 for both the 2018 and 2019 tax years. In this appeal, however, the plaintiff is only appealing the 2018 assessment.

IV
ANALYSIS

"Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party." (Internal quotation marks omitted.) *Graham v. Commissioner of Transportation*, 330 Conn. 400, 414-15, 195 A.3d 664 (2018).

"The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law . . . and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact. . . . A material fact . . . [is] a fact which will make a difference in the result of the case." (Internal quotation marks omitted.) *Doe v. West Hartford*, 328 Conn. 172, 191-92, 177 A.3d 1128 (2018).

Importantly, for purposes of the present motions, "[i]t is . . . well established that in taxation cases . . . provisions granting a tax exemption are to be construed strictly against the party claiming the exemption, who bears the burden of proving entitlement to it. . . . Exemptions, no matter how meritorious, are of grace. . . . [Therefore] [t]hey embrace only what is strictly within their terms. . . . We strictly construe such statutory exemptions because [e]xemption from taxation is the equivalent of an appropriation of public funds, because the burden of the tax is lifted from the back of the potential taxpayer who is exempted and shifted to the backs of others. . . . [I]t is also true, however, that such strict construction neither requires nor permits the contravention of the true intent and purpose of the statute as expressed in the language used. . . ."

(Citations omitted; internal quotation marks omitted.) *St. Joseph's Living Center, Inc. v. Windham*, 290 Conn. 695, 707, 966 A.2d 188 (2009).

In its motions, the plaintiff argues that the facility, which generates electricity through solar power, is exempt from taxation under § 12-81 (57) (D).⁵ Specifically, the plaintiff argues that § 12-81 (57) (D) is unambiguous and clearly applies to the situation in the present appeal because the facility at issue meets the requirements of §§ 1281 (57) (D), 16-1,⁶ and 16-244u⁷ in that: it was installed after January 1, 2014; the facility is used for commercial purposes; and the nameplate capacity of the facility does not exceed the aggregate load of the beneficial accounts⁸ for the facility that is participating in virtual net metering.⁹

The defendants, conversely, argue that the plaintiff has not met the stringent requirements under § 12-81 (57) (D) in order for its facility to be exempt from taxation. The defendants argue that the agricultural host, Sanitation Refuse Co. of Manchester, Inc. (d/b/a Overbrook-Farms of

⁵ "For assessment years commencing on and after October 1, 2014, any (i) Class I renewable energy source, as defined in section 16-1, (ii) hydropower facility described in subdivision (21) of subsection (a) of section 16-1, or (iii) solar thermal or geothermal renewable energy source, installed for generation or displacement of energy, provided (I) such installation occurs on or after January 1, 2014, (II) is for commercial or industrial purposes, (III) the nameplate capacity of such source or facility does not exceed the load for the location where such generation or displacement is located or the aggregated load of the beneficial accounts for any Class I renewable energy source participating in virtual net metering pursuant to section 16-244u, and (IV) in the case of clause (iii) of this subparagraph, such exemption shall apply only to the amount by which the assessed valuation of the real property equipped with such source exceeds the assessed valuation of such real property equipped with the conventional portion of the source . . ." General Statutes § 12-81 (57) (D).

⁶ "'Class I renewable energy source' means (A) electricity derived from (i) solar power. . . ." General Statutes § 16-1 (20).

⁷ "'Agricultural virtual net metering facility' means a Class I renewable energy source that is operated as part of a business for the purpose of agriculture, as defined in subsection (q) of section 1-1, that: (i) Is served by an electric distribution company on land owned or controlled by an agricultural customer host and serves the electricity needs of the agricultural customer host and its beneficial accounts; (ii) is within the same electric distribution company service territory as the agricultural customer host and its beneficial accounts; and (iii) has a nameplate capacity rating of three megawatts or less." General Statutes § 16-244u (a) (7) (B).

⁸ See Footnote 3, above.

⁹ "'Virtual net metering' means the process of combining the electric meter readings and billings, including any virtual net metering credits, for a municipal, state or agricultural customer host and a beneficial account related to such customer host's account through an electric distribution company billing process related to the generation service charges and a declining percentage of the transmission and distribution charges on such billings . . ." General Statutes § 16-244u (a) (5).

Manchester) has no physical connection to the facility or the beneficiary town of Vernon, and, accordingly, the plaintiff's situation does not meet the requirements of § 12-81 (57) (D). More specifically, the defendants contend that the language of § 12-81 (57) (D) is ambiguous and the legislative history surrounding the statute suggests that the legislature intended the statute to apply to the electricity needs of the property where the solar panels reside. In other words, the defendants contend that the legislature did not intend to exempt miniature electric companies from paying taxes on their properties when the facility produces and sells and/or transfers all of the energy back into the grid.

In its memoranda in opposition to the defendants' motions and replies to the defendants' objections, the plaintiff further argues that § 12-81 (57) (D) is unambiguous and that it has clearly satisfied the requirements for tax exemption under the statute. Notably, the plaintiff contends that nothing in §§ 12-81 (57) (D) or 16-244u suggests that the tax exemption applies only to on-site generation. Rather, the language of the statutes, Connecticut Public Utilities Regulatory Authority (PURA) decisions, and the electric distribution company's tariffs demonstrate that the defendants' arguments that the legislature did not intend to exempt from taxation sites that produce and then sell or transfer all of their electricity back into the grid are without merit. The plaintiff also contends that the defendants failed to identify any ambiguous language in § 12-81 (57) (D) and that resort to legislative history is, therefore, inappropriate. Further, the plaintiff argues that it meets all of the requirements of § 16-244u and that there is no requirement in the statute that the energy source be located on the land owned by the agricultural customer host and, regardless, the facility at issue serves the electricity needs of the agricultural host and its beneficial accounts. Finally, the plaintiff argues that the defendants have not met their burden on their motions for summary judgment and that they further lack standing to

question the qualification of the facility as that is the discretion of PURA, alone. The court addresses the plaintiff's and the defendants' motions in turn.

A

Plaintiff's Motions

In considering the plaintiff's motions, the court turns first to a review of the statutory language in issue. "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." General Statutes § 1-2z. "When a statute is not plain and unambiguous, [courts] also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter. . . ." (Internal quotation marks omitted.) *State v. Pond*, 315 Conn. 451, 467, 108 A.3d 1083 (2015).

General Statutes § 12-81 (57) (D) provides: "For assessment years commencing on and after October 1, 2014, any (i) Class I renewable energy source, as defined in section 16-1, (ii) hydropower facility described in subdivision (21) of subsection (a) of section 16-1, or (iii) solar thermal or geothermal renewable energy source, installed for generation or displacement of energy, provided (I) such installation occurs on or after January 1, 2014, (II) is for commercial or industrial purposes, (III) the nameplate capacity of such source or facility does not exceed the load for the location where such generation or displacement is located or the aggregated load of the beneficial accounts for any Class I renewable energy source participating in virtual net metering pursuant to section 16-244u, and (IV) in the case of clause (iii) of this subparagraph,

such exemption shall apply only to the amount by which the assessed valuation of the real property equipped with such source exceeds the assessed valuation of such real property equipped with the conventional portion of the source"

In the present case, the first requirements of the statute, § 12-81 (57) (D) (i) and (I), are unambiguous. Accordingly, the court is not required to consider extratextual evidence of the legislature's intent or resort to analyzing legislative history. Rather, the remaining inquiry is whether the plaintiff has met its burden of demonstrating the absence of a genuine issue of material fact that it has met the requirements of subsections (i) and (I) of the statute.

The definition of "Class I renewable energy source" in General Statutes § 16-1 (20) (A) (i) includes "electricity derived from . . . solar power." In the present case, the undisputed evidence demonstrates the absence of a genuine issue of material fact that the facility at issue fits the definition of a "Class I renewable energy source" under § 16-1 (20) (A) and that the facility was installed "after January 1, 2014." As noted in the plaintiff's affidavit of Jeffrey J. Macel, the facility in question is an "approximately 1 MW AC ground mounted solar photovoltaic electric generating facility consisting of solar panels, transformers, electric switchgear and monitoring equipment." Importantly, nothing in the defendants' affidavits counter this assertion. Further, the Macel affidavit also states that the facility at issue was installed between September, 2016, and December, 2016. In the absence of conflicting factual evidence, the court concludes that the first two subsections of the statute, subsections (i) and (I) are met. Accordingly, the court next considers the requirements of subsection (II) of § 12-81 (57) (D).

Section 12-81 (57) (D) (II) provides that the Class I renewable energy source be used "for commercial or industrial purposes." The terms, "commercial or industrial" are generally unambiguous and likely carry their everyday meaning. The term "commercial" is defined as

"[o]f, relating to, or involving the buying and selling of goods." Black's Law Dictionary (11th Ed. 2019). Relatedly, "industry" is defined as "[a] particular form or branch of productive labor; an aggregate of enterprises employing similar production and marketing facilities to produce items having markedly similar characteristics." Black's Law Dictionary, *supra*.

Indeed, there is no genuine issue of material fact that the facility at issue falls under the "commercial or industrial" definition. In Macel's affidavit, he notes that the facility's solar power is "transferred to a commercial distribution grid owned and operated by the Connecticut Light and Power Company, doing business as Eversource Energy." The Macel affidavit also notes that "the beneficial amounts for the Facility are accounts owned by the Town of Vernon." In other words, the facility at issue owned by the plaintiff generates electricity through its solar panels, transfers that energy to Eversource, and then Eversource distributes that energy to the town of Vernon. The transfer of energy as discussed in the plaintiff's affidavits shows that the plaintiff's class I renewable energy source is being used for "commercial" purposes. Accordingly, given the evidence submitted by the plaintiff, subsection (II) of § 12-81 (57) (D) is fulfilled.

The last inquiry under the statute is whether the facility at issue fits the requirements of subsection (III) of § 12-81 (57) (D).¹⁰ Section 12-81 (57) (D) (III) requires that "the nameplate capacity of such source or facility does not exceed the load for the location where such generation or displacement is located *or* the aggregated load of the beneficial accounts for any Class I renewable energy source participating in virtual net metering pursuant to section 16-

¹⁰ The court is not required to address whether the plaintiff's facility meets § 12-81 (57) (D) (IV), as subsection (IV) only applies "in the case of clause (iii)" of the statute. As the court has already noted, the plaintiff's facility meets the requirements of clause (i) as it is a Class I renewable energy source and, accordingly, analysis of subsection (IV) is unnecessary. Further, neither party has addressed subsection (IV) in their briefs as being applicable.

244u. . . ." (Emphasis added.) Relatedly, § 16-244u (a) (7) (B) defines "[a]gricultural virtual net metering facility" as "a Class I renewable energy source that is operated as part of a business for the purpose of agriculture, as defined in subsection (q) of section 1-1, that: (i) Is served by an electric distribution company on land owned or controlled by an agricultural customer host and serves the electricity needs of the agricultural customer host and its beneficial accounts; (ii) is within the same electric distribution company service territory as the agricultural customer host and its beneficial accounts; and (iii) has a nameplate capacity rating of three megawatts or less."

The court first finds that the requirements of §§ 12-81 (57) (D) (11) and 16-244u are not ambiguous. Section 16-244u (1) defines "beneficial account" as "an in-state retail end user of an electric distribution company designated by a customer host or an agricultural customer host in such electric distribution company's service area to receive virtual net metering credits from a virtual net metering facility or an agricultural virtual net metering facility." Putting these relevant definitions together, § 12-81 (57) (D) (11) requires that the nameplate capacity or output of the subject solar panel facility does not exceed the load used for the location where the generation occurs *or* that the output does not exceed the total aggregate load for the end user who is receiving the virtual net metering credits. Accordingly, the court now considers whether the plaintiff has shown that there are no issues of fact that it meets the requirements of these statutory provisions.

First, the plaintiff has not shown that it meets the requirement that "the nameplate capacity of such source or facility does not exceed the load for the location where such generation or displacement is located" General Statutes § 12-81 (57) (D) (11). As previously noted, in his affidavit in support of the plaintiff's motion for summary judgment, Macel states that the plaintiff's facility is an "approximately 1 MW AC ground mounted solar

photovoltaic electric generating facility. . . ." Despite this information about the facility's output, Macel's affidavit does not provide a discernable factual basis that the output does not exceed the load for the location where the generation is occurring. Accordingly, the court considers whether the plaintiff has shown that there are no genuine issues of fact that it meets the second requirement under § 12-81 (57) (D) (III).

In his affidavit, Macel states that: "[t]he Facility is part of a Virtual Net Metering' program administered by Eversource pursuant to" § 16-244u and that "[t]he nameplate capacity of the Facility does not exceed the aggregate load of the beneficial amounts for the facility. The beneficial amounts for the Facility are accounts owned by the Town of Vernon." This statement, alone, is conclusory and does not provide any real evidence that the facility meets the requirements of § P-81 (57) (D) (III). Similarly, in his supplemental affidavit submitted with the plaintiff's reply (#131 and #129, respectively), Macel states that "[t]he Facility at issue in these instant cases does not exceed the combined 'aggregate load' of the Customer Host and the Beneficial Accounts." This statement is also conclusory and does not provide a factual basis to show that the plaintiff's facility meets the requirements of § 12-81 (57) (D) (III). From his statement, it is unknown to the court what the combined aggregate load is.

Further, Macel's supplemental affidavit states that the facility does not transfer all of the energy back into the grid. Rather, he notes that: "the Customer Host is required to utilize some portion of the electricity generated by the Facility"; "Overbrook Farms (the Agricultural Customer Host) is an owner of LSE Canis Minor [LLC], and is an entity engaged in agriculture as defined in subsection (q) of section 1-1"; and Overbrook Farms is an Eversource customer "located and using the monetized credits produced from the facility in the agricultural entity." Nevertheless, under the requirements of § 12-81 (57) (D), the -requirement is not that some

portion of the electricity is utilized by the customer host but rather, that "the nameplate capacity of such source or facility does not exceed the load for the location where such generation or displacement is located or the aggregated load of the beneficial accounts for any Class I renewable energy source participating in virtual net metering pursuant to section 16-244u." The plaintiff's supporting affidavits do not establish a factual basis sufficient to conclude that the requirements of subsection (III) have been met.

For all of the foregoing reasons, there are genuine issues of material fact in dispute concerning whether the plaintiff's facility meets the requirements set forth in §§ 12-81 (57) (D) (III) and 16-24u (a) (7) (B). Indeed, while the affidavits and additional exhibits submitted by the plaintiff show that the facility at issue was at all relevant times a Class I renewable energy source and was used for commercial or industrial purposes, the submitted proof does not establish that "the nameplate capacity of such source or facility does not exceed the load for the location where such generation or displacement is located or the aggregated load of the beneficial accounts for any Class I renewable energy source participating in virtual net metering." Rather, the plaintiff's submitted affidavits and exhibits only state, in a conclusory fashion, that this last statutory requirement is met. Although the affidavit of Macel has appended to it exhibits, including a virtual net metering application dated June 5, 2015, which provide detailed information as to the beneficial accounts and the proposed pricing, sales, and usage of electricity, the court cannot discern from the information provided whether the requirements of subsection (III) have been met as of the date of the assessments challenged by the plaintiff's appeals. See Exhibits D & E appended to Macel's affidavit (#119 and #117, respectively). Further, Macel's supplemental affidavit (#131 and #129, respectively), while providing

additional facts, is replete with opinions and conclusions which are beyond the scope of an affidavit submitted in support of, or in opposition to, a motion for summary judgment.¹¹

"In seeking summary judgment, it is the movant who has the burden of showing the nonexistence of any issue of fact. The courts are in entire agreement that the moving party for summary judgment has the burden of showing the absence of any genuine issue as to all the material facts, which, under applicable principles of substantive law, entitle[s] him to a judgment as a matter of law." (Internal quotation marks omitted.) *Fiano v. Old Saybrook Fire Co. No. 1, Inc.*, 332 Conn. 93, 101, 209 A.3d 629 (2019). Additionally, "provisions granting a tax exemption are to be construed strictly against the party claiming the exemption, who bears the burden of proving entitlement to it." (Internal quotation marks omitted.) *St. Joseph's Living Center, Inc. v. Windham*, supra, 290 Conn. 707. Construing the plaintiff's affidavits and exhibits in the light most favorable to the nonmoving party, as is required on a motion for summary judgment, the court concludes that the plaintiff has not met its burden on its motions for summary judgment. For these reasons, the court denies the plaintiff's motions for summary judgment.

B

Defendants' Motions

The court next considers the defendants' motions for summary judgment. Because the court has already determined that subsections (I) and (II) of § 12-81 (57) (D) are met, the inquiry on the defendants' motions becomes whether the defendants have shown that there is no genuine

¹¹ Macel has not been disclosed as an expert.

issue of material fact in dispute that the plaintiff's facility does *not* meet the requirements of § 12-81 (57) (D) (III).

The defendants' submitted affidavits and attachments do not establish that there are no genuine issues of material fact that the plaintiff does not meet the requirements of § 12-81 (57) (D) (III). Indeed, the defendants' submitted affidavits show only the tax assessments for both of the plaintiff's adjoining parcels. Specifically, New Hartford's affidavit of Daniel Jerram discusses the tax assessments for New Hartford for 2018 and states that the exemption requested by the plaintiff was not approved. Similarly, Barkhamsted's affidavit of Carmen Smith only mentions the tax assessments of Barkhamsted for 2018 and 2019 and states that the exemption requested by the plaintiff was denied.

Additionally, attached to each of the defendants' affidavits is a Change of Customer Host form. The Change of Customer Host forms, dated May 5, 2016, indicate that the Sanitary Refuse Company of Manchester, Inc. (doing business as Overbrook Farm) was the new consumer host. On these forms, the plaintiff indicated that the new customer host was "an in-state retail end user of an electric distribution company that uses electricity for the purpose of agriculture, as defined in subsection (q) of . . . General Statutes § 1-1 ('Agricultural Customer')." Further, those affidavits also include a copy of a Farmer's Tax Exemption Permit that the State of Connecticut issued to Overbrook Farm on August 26, 2014. Nevertheless, the evidence submitted by the defendant does not establish that there are no genuine issues of material fact in dispute that the plaintiff does not meet the requirements in §§ 12-81 (57) (D) (III).

"Summary judgment should be denied where the affidavits of the moving party do not affirmatively show that there is no genuine issue of fact as to all of the relevant issues of the case. . . . Accordingly, the rule that the party opposing summary judgment must provide

evidentiary support for its opposition applies only when the moving party has first made out a prima facie case for summary judgment. . . . [I]f the party moving for summary judgment fails to show that there are no genuine issues of material fact, the nonmoving party may rest on mere allegations or denials contained in his pleadings" (Citations omitted; internal quotation marks omitted.) *Rompney v. Safeco Ins. Co. of America*, 310 Conn. 304, 320-21, 77 A.3d 726 (2013). Construing the submitted affidavits and exhibits in the light most favorable to the plaintiff, there are genuine issues of fact in dispute concerning whether the facility at issue does not fit the requirements of § 12-81 (57) (D). For these reasons, the defendants' motions are denied.

V

CONCLUSION

For all of the foregoing reasons, the court denies the plaintiff's motions for summary judgment as to counts three and four of its amended complaint as to New Hartford and counts one and two as to Barkhamsted. The court also denies the defendants' New Hartford and Barkhamsted motions for summary judgment.

BY THE COURT

A handwritten signature in black ink, appearing to read 'J. Shaban', written over a horizontal line.

Shaban, J.