

BOARD ORDER: MGB 123/97

IN THE MATTER OF THE “Municipal Government Act” being Chapter M-26.1 of the Statutes of Alberta 1994.

AND IN THE MATTER OF AN APPEAL from a decision of the 1996 Assessment Review Board of the City of Edmonton.

BETWEEN:

Shaw Cable Systems Incorporated - Appellant

- and-

The City of Edmonton .- Respondent

BEFORE:

Peter VanBelle, Presiding Officer
Jack Edworthy, Member
William Doyle, Member
Clarence Capowski, Secretariat

Upon Notice being given to the affected parties, hearings were held in the City of Edmonton, in the Province of Alberta on November 28, 1996

This is an appeal to the Municipal Government Board from a decision of the Assessment Review Board of the City of Edmonton with respect to property assessment entered in the assessment roll of the Respondent municipality as follows:

Roll No. 00209171 7633 - 50 Street

Business Assessment \$246,375

BACKGROUND

The City of Edmonton assessed the entire building for business assessment exempting only that portion of the building that contained linear property, the head end room. The head end room is the receiving end of the satellite and microwave transmission signals. The Assessment Review Board ruled that 2,000 square feet of the building, used as a production studio, should also be exempt from business assessment.

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The Appellant appealed this decision to the Municipal Government Board requesting that the entire building be exempt from business assessment. The City of Edmonton appealed the Assessment Review Board decision to the Municipal Government Board requesting that the exemption from business assessment granted to the production studio be set aside. This hearing deals with both appeals.

The following are the issues in this appeal:

1. Does linear assessment which is taxed, permeate the entire building?
2. Is there linear assessment which is taxed, present in the production studio?
3. Did the Assessment Review Board exceed its authority in dealing with this decision by defining what is linear assessment?

SUMMARY OF THE APPELLANT'S POSITION:

The Appellant argued that the entire building is exempt from business assessment and taxation. He supported his argument as follows:

1. There is linear equipment throughout the building.
 - 1.1. The business carried on by Shaw Cable at the premises at 7633 - 50th Street is a "telecommunication system" as defined under section 284(l)(k) of the Municipal Government Act (the Act).
 - 1.2. Satellite and microwave signals are received at the north end of the building and transferred to the south side via fibre optic lines and coaxial cables.
 - 1.3. The product delivery, signal processing and billing information is controlled throughout the entire premises. All the business units within the building are interconnected electronically. From any office in the building the products that the customer receives can be turned on or off. Accounts and services can be accessed and altered at any terminal.
 - 1.4. 80 percent of the rooms in the building have terminals.
 - 1.5. Channel locations are assigned and signals routed at the south side of the building.

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2. The definition of the word “premises” can only mean the whole premises.
 - 2.1. There is no definition of the word “premises” in the Act. However the predecessor Act, the Municipal Taxation Act, section 79 defines premises as follows: “Premises means the store, office, warehouse, factory, building, yard or any space occupied or used by a person for the conduct of business”.
 - 2.2. The former Alberta Assessment Appeal Board ruled in Board Order 22/92 that the machinery and equipment at a premises was essential for the operation of a business and that therefore the entire premises was except from business tax. The linear equipment which is taxed is essential to the operation of Shaw Cable.
 - 2.3. In July, 1996, the Assessment Review Board of the City of Calgary exempted from business taxation an entire building because of the presence on the premises of linear property that was assessed (Exhibit 5). The facts in that appeal and the subject appeal are virtually identical.
 - 2.4. Section 376(1) and (2) of the Act when read as a whole, supports the interpretation that the word “premises” should mean the total building.
 - 2.5. The Shorter Oxford English Dictionary defines “premises” as follows: “4.(PL) - a house or building with its grounds or other appurtenances”.
3. The definition of linear property in section 284(1)(k)(ii)(a) and (b) of the Act includes many of the apparatus used in a telecommunication system; computers, cables, wiring, etc. This equipment is not restricted to the head end room but is found throughout the building.
4. When interpreting taxing statutes the task of the Board is to determine the purpose of the legislation and give effect to that purpose. The purpose of section 376(1) of the Act is to grant exemption to avoid double taxation, leading to the conclusion that the exemption should be applied to the entire building.
5. If the interpretation of a word such as “premises” is not clear, the principle of statutory interpretation for taxing legislation suggests that the Board should find in favour of the taxpayer.

The Appellant requested that the entire premises be exempt from business assessment and taxation.

SUMMARY OF THE RESPONDENT'S ARGUMENT

The Respondent argued that the head end equipment is confined to the head end room and only the head end room should be exempt from business taxation. The Respondent provided the following argument in support of this position:

1. The linear equipment that is taxed does not occur throughout the building.
 - 1.1. The building has a total of 45,560 square feet of floor area. The head end room is only 1,085 square feet and the production studio contains 2,000 square feet. There are many activities in the remainder of the building such as customer sales, connecting customers to various programs, advertising, etc. These are normal business activities and the equipment used is similar to the equipment in other businesses.
 - 1.2. The phrase, telecommunication facility, does not include all relay equipment used by Shaw Cable. The decision of the Alberta Court of Appeal in Regina v. McLaughlin, November 5, 1979, (Exhibit 5) found that the relay equipment was incidental to the telecommunication facility.
 - 1.3. Out of the 115 employees of Shaw Cable only 12 have anything to do with the signal processing.
 - 1.4. Linear property is defined in section 284(k) of the Act as various systems but the installation and equipment “must be intended for or used in the communication systems of cable distribution undertakings and telecommunication carriers”. This definition does not include buildings. This requirement of a direct relationship between the system and its use is reinforced in section 284(l)(w) of the Act which defines telecommunication system as “a system intended for or used in the transmission, emission, or reception of cable television or telecommunications”.
 - 1.5. A portion of a building containing apparatus falling within the definition of linear equipment does not automatically qualify for the exemption under section 376(1) of the Act. This section also requires that there be a tax imposed on that linear assessment.
 - 1.6. It is the Provincial Assessor who determines what linear equipment is assessed and taxed, sections 289(1) and 292(1) of the Act. The assessment is described in the assessment notice dated February 16, 1996. Exhibit 2. This notice describes part of the assessment as head end equipment. This head end equipment is located in the head end room.

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- 1.7. There is nothing to show that the apparatus located elsewhere in the building is assessed and taxed as head end equipment.
- 1.8. There is no evidence that linear equipment on which a tax has been imposed is found in the production studio.
2. The word premises can mean something less than the entire building.
 - 2.1. The Municipal Government Board ruled in Videotron v. the City of Edmonton that the word premises can mean less than the entire building.
3. The telecommunication system as the chief business of the owner is irrelevant.
 - 3.1. Section 376(1) of the Act does not make the chief business the test for exemption. Section 376(2) of the Act, which does refer to chief business, merely voids the exemption in section 376(1) of the Act when the linear equipment is incidental to the main business, for example, a telephone in a restaurant.
4. The Assessment Review Board is denied jurisdiction in the Act to deal with a complaint about linear assessment, section 460(11) of the Act. This prevents the Assessment Review Board from extending the business tax exemption based on the definition of linear assessment.
5. The production studios operated by other businesses are not exempt for business taxation.
6. The general rule when applying tax exemption legislation is that the person seeking the exemption must fall squarely within the provisions of the Act. In this instance there is ambiguity and therefore the exemption should not be granted.

The City requested that the decision of the Assessment Review Board be set aside and the exemption granted to the production studio be removed.

FINDINGS OF FACT

Upon hearing and considering the representations and the evidence of the parties shown on Appendix A and upon having read and considered the documents shown on appendix B attached hereto, the Board finds the facts to be as follows:

1. The linear assessment for a cable system is divided into two components, the receiving side and the distribution side. The distribution side is located outside the building. The receiving side is called the head end equipment

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2. The assessment for the linear equipment is prepared by the Provincial Assessor based on the information provided by Shaw Cable. The amount of assessment for the head end equipment is calculated by multiplying the rate based on the number of subscribers with the number of channels provided by Shaw Cable.
3. As noted in Board Order MGB 111/97 the rates used to calculate the assessed value, were established utilizing a finite list of equipment. This list does not include all the electronic apparatus used in a telecommunication system.
4. The word premises is not defined in the Act nor Regulation
5. The word “premises” is used in parts 9 and 10 of the Act only in connection with business assessment. The normal scheme in the business assessment is to apply the levy to that portion of the building occupied by the firm.
6. Section 376(2) of the Act does not exempt a business from taxation solely because the business is a telecommunication business. This section simply directs that the exemption provided for in section 376(1) of the Act is disallowed if the operation of the linear property is not the dominant business.

In consideration of the above and having regard to the provisions of the Municipal Government Act, the Board makes the following decision, for the reasons set out below.

DECISION

The appeal for exemption for the balance of the building is denied. The appeal with respect to reinstating the business assessment for the production studio is granted and the business assessment for **Roll No. 00209171, 7633 - 50 St.** is set at **\$264,375**

REASONS

1. The Board determined that the Act specifies three tests to exempt premises with linear property from business assessment as follows:
 - 1.1. That linear property is located on the premises, section 376(1) of the Act, and
 - 1.2. That taxes are imposed for that linear property, section 376(1) of the Act, and
 - 1.3. That the operation of the linear property is the chief business carried on at the premises, section 376(2) of the Act.

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2. The Board considered whether or not the entire building and, in particular, the production studio contained linear assessment that was taxed as such. The Board found that there were many activities occurring in this building that would occur in many other businesses. The Board notes that the production studio is a use also associated with businesses other than a cable transmission firm.
3. Based upon the evidence, the Board was not convinced that the production studio nor the balance of the building contain identifiable linear property on which taxes are paid. Therefore, these areas are not exempt from business assessment.
4. The Board next considered whether the word premises could mean less than an entire building. In parts 9 and 10 of the Act the word premises is used solely in connection with business assessment and taxation. Therefore the Board placed the word premises in the context of the portion of the Act dealing with business assessment namely sections 371 to 379 of the Act. The purpose of these particular sections is to permit a municipality to impose an assessment and levy taxes on individual businesses occupying all or part of the land or building. For this reason the Board concluded that the word premises in section 376(1) of the Act can mean a portion of a building.
5. The Board notes that section 376(1) of the Act does not exempt the business operating the linear property from taxation for business purposes. Section 376(1) of the Act exempts the “premises on which that [linear] property is located”. This varies clearly from the wording used in the predecessor to section 376(1) of the Act as set out in section 80(2)(3) of the Municipal Taxation Act which exempts “the owner or occupier of the premises on which any such property is located”. From this, the Board concludes that the legislature intended a narrower exemption for business taxation and the entire building is not exempt from business taxation simply by reason of it being a part of a telecommunication system.
6. The Board notes that the Assessment Review Board dealt with a complaint about business assessment which is provided for in the Act, section 460(5)(j).

It is so ordered. No costs to either party.

Dated at the City of Edmonton, in the Province of Alberta, this 17th day of July, 1997.

MUNICIPAL GOVERNMENT BOARD

Peter VanBelle, Presiding Officer

APPENDIX A

APPEARANCES

NAME	CAPACITY
Mr. David Rowland	Solicitor for the appellant
Mr. Ron Bell	Regional Manager for Shaw Cable
Ms. Sophia Stadnyk	Solicitor for the City of Edmonton
Mr. Merle Forsyth	Assessor for the City of Edmonton

APPENDIX B

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
Exhibit 1	Appellant's submission, undated
Exhibit 2	Assessment Notice dated February 16, 1996
Exhibit 3	Summary of the City's Argument, undated
Exhibit 4	Extract from the Municipal Government Act
Exhibit 5	Decision of the Alberta Court of Appeal, dated November 5, 1979
Exhibit 6	Board order MGB 174/96, dated September, 17, 1996
Exhibit 7	Floor plan of the subject building, undated
Exhibit 8	Decision of the City of Edmonton Assessment Review Board dated May 28, 1996

RECEIVED AFTER THE HEARING

Summary of the evidence provided by Mr. Ron Bell dated November 28, 1996
Summary of the City of Edmonton argument, dated December 12, 1996
Summary of the legal argument Shaw Cable, undated