

BOARD ORDER: MGB 168/97

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:

Rowand, Lopatka & Savich for Videotron Communications Ltd.- Appellant

- a n d -

City of Edmonton - Respondent

BEFORE:

Carmen Johnson, Presiding Officer

Duane Berezowski, Member

Al Bishop, Member

Clarence Capowski, Secretariat

Upon notice being given to the affected parties, a hearing was held in the City of Edmonton, in the Province of Alberta on August 22, 1997.

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 assessments entered in the business roll of the Respondent municipality as follows:

Roll No. 00215798

Business: \$263,712

BACKGROUND

The property under appeal is located at 10450 - 178 Street, Edmonton. The building consists of two storeys, with 78,279 square feet on the main floor and 20,885 square feet on the second floor.

This appeal deals with the issue of a business tax on a building that is already subject to a property tax on linear equipment. The building is presently assessed a business tax for the entire floor area except for two exemptions. The first exemption is referred to as the "head end equipment room" which receives incoming microwave or satellite transmission signals from various companies. The

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second exemption of approximately 7,000 square feet was granted by the Assessment Review Board and upheld by the Municipal Government Board because this area had a direct functional relationship with the head end equipment room. From the head end room signals can be modified, edited, processed and distributed to Videotron cable customers.

At the Municipal Government Board hearing in 1996 the Appellant was successful in upholding the Assessment Review Board's decision to exempt 7,000 square feet from business tax assessment but was unsuccessful in exempting the entire premises.

This appeal focuses on three issues:

1. Does the term *premises* mean the entire premises or a portion thereof? Should all or only a portion of the building be exempt?
2. Does linear property exist in other parts of the premises in addition to the head end equipment room and the 7,000 square feet used in the production of cable signals, and should these other areas be exempted?
3. Does Videotron's operations fall within the exemption contemplated in section 376(1) of the Municipal Government Act (Act)?

LEGISLATION

376(1) When machinery and equipment or linear property is located on premises occupied for the purposes of a business and a property tax has been imposed in respect of the machinery and equipment or linear property under Division 2 of this Part in any year, the premises on which that property is located are exempt from taxation under this Division in that year.

376(2) If in any year the activities that result from the operation of the machinery and equipment or linear property are not the chief business carried on at the premises, the premises on which that property is located are not exempt from taxation under this Division in that year.

SUMMARY OF APPELLANT'S POSITION

The Appellant argued their business has now changed as they have expanded to include high speed Internet access services and Telecom/Data services to their customers. The Internet service uses Videotron's cable network rather than the traditional telephone network connected to the user's personal computer. The Telecom/Data services is the provision of telecommunication electronic equipment connected to its cable network to facilitate telecommunications services for business customers, to permit them to deal with an alternate vendor for computer information transfer. Videotron works in cooperation with alternate carriers such as AT&T and Sprint Canada

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to provide service to customers in competition with Telus. A floor plan was presented to the Board showing all the areas on both floors that the Appellant considered had extended use of inside linear property. These areas were considered to have a direct, functional relationship to the linear equipment and had to be located on this site for this purpose.

The Appellant argued that there is no definition of *premises* in the Act, however section 79 of the former Municipal Taxation Act defines it as follows:

Premises means the store, office, warehouse, factory, building, yard or any space occupied or used by a person for the conduct of a business.

Section 376(1) of the Act provides that where linear property is located on premises occupied for the purpose of a business and a property tax has been imposed in respect of linear property located on such premises, the premises on which the linear property is located are exempt from business tax.

Section 376(1) of the Act does not say “part of” or “some of” but rather “the premises”. Section 376(2) of the Act states if the linear property on the premises is not used for the chief or preponderating business, the exemption under section 376(1) of the Act is not available. Accordingly, Videotron submits that the only interpretation that can be given is that “the premises” means all the premises, i.e. all of the building at 10450 - 178 Street.

In the event the Municipal Government Board adopts the position that the term *premises* can mean a portion of a building, Videotron then argues that certain areas must be excluded from business assessment. The floor plan advanced as Exhibit 2 identifies approximately 45 percent of the total floor area which should be exempted. Some of the areas included were for main and small studios, program control center, edit suites, internal customer service area, stores and dock area, video and testing labs, computer room, information technology rooms and Internet rooms. These areas referred to as “inside linear property” have a direct, functional relationship to the linear equipment, and must be located at this site for this purpose. The “inside linear property” is an integral part of and connected to the outside linear property and is necessary for carrying on the chief business of Videotron at this location.

Section 372(2) of the Act states that a business tax “must not be imposed in respect of a business that is exempt under sections 351, 375 or 376”. This tax exemption is in respect of a business which means the entire business conducted regardless of the amount of space actually devoted to it, as long as the business is exempt pursuant to one of the three sections noted above. Based on the evidence presented, Videotron believes it is exempt from business tax under section 376(1) and (2). The wording of section 372(2) can only lead to the conclusion that it is the business rather than the premises that is exempt from business tax. The reference to premises is only to qualify that a business can claim an exemption.

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Videotron believes it is entitled to a complete exemption from business tax but alternately submits that at least 45 percent of the premises are exempt from business tax as shown on Exhibit 2.

SUMMARY OF RESPONDENT'S POSITION

The City of Edmonton confirmed that section 376(1) of the Act to be relevant to this hearing. This section reads:

376(1) When machinery and equipment or linear property is located on premises occupied for the purpose of a business and a property tax has been imposed in respect of the machinery and equipment or linear property under Division 2 of this Part in any year, the premises on which that property is located are exempt under this Division in that year.

Section 284(1) (in part) defines linear property including telecommunications systems as cables, amplifiers, antennae and drop lines, and structures, installations, materials, devices, fittings, apparatus, appliances and machinery and equipment intended for or used in the communication systems of cable distribution undertakings.

Linear property in a telecommunications system is divided into two parts, the distribution system and the head end equipment. The assessment of both parts of the linear property is based on rates that are established by the Minister's guidelines. A list of selected apparatus is defined as being part of the head end equipment. This list of apparatus is finite and does not include all equipment used in a telecommunication system. The primary monitoring activity is conducted in the head end room which has been exempted from business assessment and taxation.

The interpretation that the City of Edmonton has used pertaining to section 376(1) is that the Act is very specific in reference to linear property and the premises on which that property is located. The linear property that has been assessed and taxed as linear property under Division 2 is the "head end equipment". This equipment is located in a specific premises within the building, the area of which has been removed from business assessment. It is important to remember that the only premises exempted from business tax is the area where linear property is found; it is not the entire space occupied by the business.

The Act does not provide a definition of "premises". In parts 9 and 10 of the Act the word "premises" is used solely in connection with business assessment and taxation. Sections 371 to 379 allow a municipality to impose a business assessment and levy taxes on an individual business occupying all or part of the land or building. A review of various definitions confirms that "premises" is an elastic term and could be all of the building or just a single room.

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The City of Edmonton defines *premises* as:

“a store, office, warehouse, factory, building, enclosure, yard or any space occupied for the purpose of a business”

Webster’s II Dictionary defines *premises* as:

a) land and the building on it, or b) a building or a section of a building.

Black’s Law Dictionary defines *premises* as:

A distinct and definite locality, and may mean a room, shop, building or other definite area.

This definition is further reinforced by Board Order MGB 174/96 which states:

The Board is of the opinion that the meaning of “premises” in Black’s Law Dictionary and the old Municipal Government Act supports the elastic nature of the word. If the new Act intended to use the word to describe an “entire premises”, then it would say the “entire premises”.

The Respondent disagrees that the areas occupied for the purpose of the new Internet/ Telecommunication system are equivalent in nature to linear property and should be exempted from business tax. By allowing this exemption it would create an inequity in the assessment as all other Internet providers conducting the same service are being assessed.

The City contends that Board Orders MGB 111/97 and MGB 123/97 both address the customer service areas and production studios. It was found that neither of these areas contained linear property, which could be considered head end equipment.

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 in the matter to be as follows:

1. The term *premises* is not defined in the Act but is used in parts 9 and 10 in conjunction with business assessments. The definition of *premises* is elastic and can mean a defined space, room or portion of building

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2. The head end equipment room contains specific apparatus which is finite and not inclusive of all telecommunication equipment. Linear property is only found in the head end room and the 7,000 square feet. The additional areas requested for exemption do not contain linear property.
3. The Provincial Assessor assesses the linear property found in the head end room. The assessment is based upon a rate and the number of subscribers and channels supplied by the cable company.
4. The Board considered whether the areas outlined in Exhibit 2 meet the test of section 376(2). The Board finds these areas are not part of linear property. The Board is not convinced these areas are an integral part of the head end equipment.

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 with respect to the business assessment is denied.

It is so ordered.

REASONS

The Board finds that the definition of *premises* is sufficiently elastic to disallow the Appellant's claim that it means *all the premises*. The Act does not provide a definition, therefore the Board relied on other interpretations for guidance. Black's Law Dictionary defines *premises* as:

A distinct and definite locality, and may mean a room, shop, building or other definite area.

The Board concurs with this definition and further notes the context of the term *premises* used in conjunction with sections 371 to 379 of the Act. Within these sections the city is given authority to impose an assessment on businesses occupying all or part of the land or building.

The Appellant has failed to convince the Board that 45 percent of the floor area should be exempted. The business carried on at the premises is that of providing telecommunication and related services to their customers. The areas enumerated in Exhibit 2 are not directly linked to the linear property found in the head end room. As an example, the store's area and dock area are used for storage and the Board could not find a correlation to the head end room. Other areas are used for reconfiguring signals and other similar functions which the Board agrees is not linear property.

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Section 376(1) exempts the premises from business tax where linear equipment is found. Section 376(2) does not exempt a business from taxation solely because the business is a telecommunication business. This section directs that the exemption provided for in subsection (1) is disallowed if the operation of linear property is not the chief business carried on at the premises for which exemption is sought.

No costs to either party.

Dated at the City of Edmonton, in the Province of Alberta, this 31st day of October, 1997

MUNICIPAL GOVERNMENT BOARD

D. Berezowski, Member

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APPENDIX "A"

APPEARANCES

NAME	CAPACITY
Dave Rowand	Counsel for Appellant
John Campbell	Witness for Appellant
Merle Forseth	Assessor for Respondent
Brenda Riczu	Assessor for Respondent

APPENDIX "B"

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
Exhibit 1	Appellants Submission
Exhibit 2	Building Floor Plan
Exhibit 3	Bylaw No. 11423
Exhibit 4	Board Order: MGB 174/96
Exhibit 5	Board Order: MGB 123/97
Exhibit 6	Board Order: MGB 111/97