

Ottawa, Monday, June 15, 1992

**Appeal No. AP-90-143**

IN THE MATTER OF an appeal heard on April 2, 1992,  
under section 81.19 of the *Excise Tax Act*, R.S.C., 1985,  
c. E-15, as amended;

AND IN THE MATTER OF a decision of the Minister of  
National Revenue dated September 27, 1990, with respect to  
a notice of objection served under section 81.17 of the  
*Excise Tax Act*.

**BETWEEN**

**THUNDERCHILD TECHNICAL INSTITUTE INC.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed.

Kathleen E. Macmillan  
Kathleen E. Macmillan  
Presiding Member

Sidney A. Fraleigh  
Sidney A. Fraleigh  
Member

W. Roy Hines  
W. Roy Hines  
Member

Robert J. Martin  
Robert J. Martin  
Secretary

*UNOFFICIAL SUMMARY*

**Appeal No. AP-90-143**

**THUNDERCHILD TECHNICAL INSTITUTE INC.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*The issue in this appeal is whether the appellant is entitled to a sales tax refund pursuant to paragraph 68.26(a) of the Excise Tax Act.*

**HELD:** *The appeal is allowed.*

*Place of Hearing: Vancouver, British Columbia*  
*Date of Hearing: April 2, 1992*  
*Date of Decision: June 15, 1992*

*Tribunal Members: Kathleen E. Macmillan, Presiding Member*  
*Sidney A. Fraleigh, Member*  
*W. Roy Hines, Member*

*Counsel for the Tribunal: Robert Desjardins*

*Clerk of the Tribunal: Janet Rumball*

*Appearances: Warren Baker, for the appellant*  
*John Edmond, for the respondent*

**Appeal No. AP-90-143**

**THUNDERCHILD TECHNICAL INSTITUTE INC.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: KATHLEEN E. MACMILLAN, Presiding Member  
SIDNEY A. FRALEIGH, Member  
W. ROY HINES, Member

**REASONS FOR DECISION**

On September 23, 1988, the appellant, pursuant to section 44.27 of the *Excise Tax Act*<sup>1</sup> (the Act), filed a refund claim requesting an amount equal to \$35,383.33 for the sales tax paid on materials used in the construction of its physical facilities during the period from February 15, 1984, to October 31, 1986. A notice of determination rejecting the claim was issued on October 18, 1988. On January 6, 1989, the appellant filed a notice of objection to this determination. In a notice of decision dated September 27, 1990, the respondent confirmed the determination.

The issue in this appeal is whether the appellant qualifies, to use the terms of paragraph 68.26(a) of the Act, as "a school, university or other similar educational institution ...," thus entitling it to a refund of sales tax paid on materials used in the construction of its physical facilities. A second issue relates to whether the refund claim was filed by the appellant within the time limits imposed by the Act.

As to the second issue, both parties have agreed to leave the matter to a review of the documentation by officials of the Department of National Revenue for Customs and Excise in the event that the appellant is successful on the first issue.

The Thunderchild Technical Institute Inc. (the Institute) was built between 1984 and 1986 under the sponsorship of the federal Department of Employment and Immigration. It is situated in northern Saskatchewan on land held by the Thunderchild Band (the Band). In 1985-86, the Band approached the Southern Alberta Institute of Technology (SAIT) for advice on programs that could be offered at its newly constructed facility. SAIT made a submission to the Band to provide courses on power engineering, welding and heavy oil technology. In 1986, SAIT's proposal to "broker" courses for the Band was accepted, and the appellant and SAIT entered a contract.

Pursuant to this contractual arrangement, SAIT provided all the course instructors, as well as course equipment and materials. The latter were reimbursed by the Band. SAIT set the academic standards. In addition to meeting SAIT's entrance requirements upon enrolment, the students wrote examinations set by SAIT and, upon graduation, were granted a diploma bearing

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1. Now section 68.26 of the *Excise Tax Act*, R.S.C., 1985, c. E-15, as amended.

SAIT's seal issued in conjunction with the Institute's diploma. While paying SAIT an annual fee, the Band supplied the physical building and its furniture. The Institute's caretaker, secretary and coordinator were also provided by the Band. Students attending the Institute had their tuition paid by the federal government's Manpower Training Program. No courses were provided at the Institute other than those "brokered" by SAIT.

The Institute ran courses for two years between 1986 and 1988. Since that time, the building has been used as a residence for Band elders, and no courses have been offered there since then.

Counsel for the appellant argued that the Institute qualified as an educational institution for the purposes of section 68.26 of the Act. He pointed to a number of documentary exhibits filed at the hearing that established, in his view, that the Institute was offering courses and issuing diplomas.

Counsel for the respondent maintained that the Institute did not meet the description of "a school, university or other similar educational institution...." Counsel referred the Tribunal to the wording of Excise Memorandum ET 406<sup>2</sup> and argued that the Institute fell short of meeting the requirements stated in this document. The Institute was, according to counsel, a bare shell. SAIT provided virtually everything, much as a private contractor would to a corporation wishing to train its employees. However, the mere act of providing on-site training would not make that corporation an educational institution for the purposes of the Act.

The Tribunal's first consideration in deciding appeals such as the one at issue is the wording of the Act itself. In this instance, the Act sets out two basic conditions for the refund of taxes paid, namely, that the taxes were paid in respect of materials purchased by or on behalf of a school, university or similar educational institution, and that the materials in issue were used exclusively in the construction of a building for that institution.

There is no dispute between the parties on the second issue. It appears that the materials for which the sales tax refund is sought were used exclusively in the construction of a building for the Institute. The question facing the Tribunal is whether the Institute qualifies as "a school, university or other similar educational institution...."

It is apparent to the Tribunal that the Act contains no stipulation as to how long the institution must function as a school, university or similar educational institution. In the absence of such limiting language, it would seem improper for the Tribunal to impose limitations of its own. Rather, the Tribunal's concern should be with the nature of the institution at the time that construction was undertaken and the sales taxes were incurred, and not some years thereafter.

The Oxford<sup>3</sup> provides the following definition of the word "school:" "Institution for educating children or giving instruction, usu. of more elementary or more technical kind than that given at universities ... buildings of such institution...."

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2. Department of National Revenue for Customs and Excise, Ottawa, June 28, 1985.

3. The Concise Oxford Dictionary, London, Oxford University Press, Fifth Edition, 1964, p. 1126.

In the Tribunal's view, the Institute fell within the meaning of the expression "a school, university or other similar educational institution ... " at the time of its construction. Indeed, it was built for the purpose of providing education or instruction, and it was on that basis that it received funding from the federal government. It had an established curriculum, set enrolment standards, held examinations and issued diplomas for *bona fide* courses. The fact that all of this was done through a contracting arrangement with SAIT is, in the Tribunal's view, irrelevant. There is no escaping the central conclusion that the building itself was constructed for use as a school and operated as such after its completion.

In light of the foregoing, the Tribunal finds that the appellant meets the requirements of paragraph 68.26(a) of the Act and is entitled to the claimed refund.

The appeal is allowed.

Kathleen E. Macmillan  
Kathleen E. Macmillan  
Presiding Member

Sidney A. Fraleigh  
Sidney A. Fraleigh  
Member

W. Roy Hines  
W. Roy Hines  
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