

Ottawa, Tuesday, July 25, 1995

Appeal No. AP-94-098

IN THE MATTER OF an appeal heard on March 21, 1995, under section 81.19 of the *Excise Tax Act*, R.S.C. 1985, c. E-15;

AND IN THE MATTER OF decisions of the Minister of National Revenue dated March 29, 1994, with respect to notices of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

**PROVINCIAL TREASURER, ALBERTA DEPARTMENT OF
PUBLIC WORKS, SUPPLY AND SERVICES**

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Lyle M. Russell
Lyle M. Russell
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-94-098

**PROVINCIAL TREASURER, ALBERTA DEPARTMENT OF
PUBLIC WORKS, SUPPLY AND SERVICES**

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal under section 81.19 of the Excise Tax Act of two determinations of the Minister of National Revenue dated January 19, 1993, that rejected applications for refunds of federal sales tax in the amounts of \$35,430.87 and \$18,230.54. The appellant was granted refunds of federal sales tax that were determined using a method of calculation applicable to provincial governments, in accordance with Excise Memorandum ET 404. The appellant claims that the refunds should have been determined using a method of calculation applicable to “educational institution[s]” in accordance with Excise Memorandum ET 406. The appellant, therefore, claims the difference between the amount that it received and the amount that it should have received if a different method of calculation had been used. The issue in this appeal is whether the Remington Alberta Carriage Centre and Reynolds Alberta Museum are “educational institution[s]” within the meaning of section 68.26 of the Excise Tax Act and, as such, whether the respondent chose the appropriate percentage in determining the appellant’s refunds of federal sales tax.

HELD: *The appeal is dismissed. The Tribunal finds that, although the Remington Alberta Carriage Centre and Reynolds Alberta Museum may be of an educational nature, they are not “educational institution[s]” within the meaning of the Excise Tax Act or Excise Memorandum ET 406. Therefore, the respondent properly took into account the class of goods and chose the appropriate percentage in determining the appellant’s refunds of federal sales tax in accordance with the Formula Refunds Regulations.*

Place of Hearing: Winnipeg, Manitoba

Date of Hearing: March 21, 1995

Date of Decision: July 25, 1995

Tribunal Members: Robert C. Coates, Q.C., Presiding Member
Arthur B. Trudeau, Member
Lyle M. Russell, Member

Counsel for the Tribunal: Joël J. Robichaud

Clerk of the Tribunal: Anne Jamieson

Appearances: Brian L. Anderson, for the appellant
Jennifer Oulton, for the respondent

Appeal No. AP-94-098

**PROVINCIAL TREASURER, ALBERTA DEPARTMENT OF
PUBLIC WORKS, SUPPLY AND SERVICES**

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member
ARTHUR B. TRUDEAU, Member
LYLE M. RUSSELL, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ (the Act) of two determinations of the Minister of National Revenue dated January 19, 1993, that rejected applications for refunds of federal sales tax (FST) in the amounts of \$35,430.87 and \$18,230.54. The appellant served notices of objection dated April 8, 1993, that were disallowed by the respondent in decisions dated March 29, 1994.

The appellant was granted refunds of FST that were determined using a method of calculation applicable to provincial governments, in accordance with Excise Memorandum ET 404.² The appellant claims that the refunds should have been determined using a method of calculation applicable to “educational institution[s]” in accordance with Excise Memorandum ET 406³ (Memorandum ET 406). The appellant, therefore, claims the difference between the amount that it received and the amount that it should have received if a different method of calculation had been used.

The issue in this appeal is whether the Remington Alberta Carriage Centre and Reynolds Alberta Museum are “educational institution[s]” within the meaning of section 68.26 of the Act and, as such, whether the respondent chose the appropriate percentage in determining the appellant’s refunds of FST.

Sections 68.26 and 76 of the Act provide, in part, as follows:

68.26 Where tax under Part VI has been paid in respect of any materials and the materials have been purchased by or on behalf of

(a) a school, university or other similar educational institution for use exclusively in the construction of a building for that institution,

an amount equal to the amount of that tax shall, subject to this Part, be paid to that institution ... if it applies therefor within two years after the materials were purchased.

76. Where circumstances render it difficult to determine the exact amount of any payment that may be made pursuant to any of sections 68 to 68.29 ... ,the Minister,

1. R.S.C. 1985, c. E-15.

2. Provincial Governments, Department of National Revenue, Customs and Excise, March 15, 1989.

3. Schools, Universities, Public Libraries and Student Residences, Department of National Revenue, Customs and Excise, March 3, 1989.

with the consent of the person to whom the payment ... may be made, may in lieu of that amount make a payment pursuant to ... that section in an amount determined, in such manner as the Governor in Council may by regulation prescribe, to be the exact amount of the payment.

Subsection 3(2) of the *Formula Refunds Regulations*⁴ provides as follows:

(2) The exact amount of deduction, refund or payment by the Minister, determined for the purpose of subsection (1), shall be equal to the tax that would have been paid at the time of imposition of the tax on the goods on a price or value determined by reducing

(a) the sale price of the goods in the transactions in respect of which the deduction, refund or payment by the Minister is applied for, or

(b) the contract price where the goods were used in carrying out a contract and no sale price of the goods in the transactions in respect of which the deduction, refund or payment by the Minister is applied for can be established,

by a percentage thereof determined by the Minister after taking into account the class of the goods and the nature of and parties to the transaction that resulted in the application for a deduction, refund or payment by the Minister.

Memorandum ET 406 defines “educational institution” as follows:

“educational institution” means a school, university or other similar educational institution which is organized basically for teaching and which conducts regular classroom courses in preparation for all levels of education, issuing, at the end of the course, degrees, diplomas or certificates and which institution is recognized as an educational institution by a government department such as a provincial or territorial department of education.

During the hearing, the appellant’s representative did not call any witnesses. He attempted to rely on information contained in certain letters which had been filed with the Tribunal. Although the Tribunal normally accepts hearsay evidence, it was of the view that, in the present case, there was absolutely no basis upon which the information contained in the letters could be tested, as there were no witnesses present at the hearing. The Tribunal, therefore, ruled that it would give little weight to the information contained in the letters.

The appellant’s representative argued that the Remington Alberta Carriage Centre and Reynolds Alberta Museum are “educational institution[s],” notwithstanding the fact that they do not precisely meet the definition of such in Memorandum ET 406. According to the representative, a museum is an “educational institution” just as is a library. A museum houses objects and displays for the education of the public. This is similar to a library which houses books, films, etc., for the education of the public. The representative argued that the materials used in the construction of the museums are of a type used in the construction of “educational institution[s]” and not of a type used in other government buildings and hospitals. Referring to subsection 3(2) of the *Formula Refunds Regulations*, the representative argued that the class of goods used

4. C.R.C. 1978, c. 591.

in the construction of the museums and the nature of the parties involved are related more to “educational institution[s]” than to other types of government buildings or hospitals.

Counsel for the respondent argued that the appellant has not provided any evidence that shows that the Remington Alberta Carriage Centre and Reynolds Alberta Museum are “educational institution[s]” within the meaning of section 68.26 of the Act. There is also no evidence that the museums conduct regular classroom courses or are recognized by the Alberta Department of Education as “educational institution[s].” Therefore, they do not meet the definition of “educational institution” found in Memorandum ET 406. Relying on the Tribunal’s decision in *Vancouver Public Aquarium Association v. The Minister of National Revenue*,⁵ counsel argued that museums cannot be considered “educational institution[s].” She argued that the type of materials used in the construction is an irrelevant factor in determining whether a building is an “educational institution” for purposes of the Act. Counsel also argued that the appellant had the option to choose the identification method in order to calculate the exact amount of FST owing to it.

In *Vancouver Public Aquarium*, the Tribunal dealt with a similar issue. It considered whether the appellant qualified as “a school, university or other similar educational institution” pursuant to paragraph 68.26(a) of the Act. The Tribunal found that the nature of the institution and its primary activities were directly relevant to any conclusions relating to its status. The Tribunal found that, although one of the principal goals of the aquarium was of an educational nature, it could not be considered an educational institution similar to a school or university. In the Tribunal’s view, the aquarium more closely resembled a museum than an educational institution. In the present case, the Tribunal adopts a similar approach and finds that, although the Remington Alberta Carriage Centre and Reynolds Alberta Museum may be of an educational nature, they are not “educational institution[s]” within the meaning of the Act or Memorandum ET 406. Therefore, the respondent properly took into account the class of goods and chose the appropriate percentage in determining the appellant’s refunds of FST in accordance with the *Formula Refunds Regulations*.

Accordingly, the appeal is dismissed.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.

Presiding Member

Arthur B. Trudeau

Arthur B. Trudeau

Member

Lyle M. Russell

Lyle M. Russell

Member

5. Appeal No. AP-91-181, June 8, 1992.