

Ottawa, Tuesday, September 10, 1996

**Appeal No. AP-95-135**

IN THE MATTER OF an appeal heard on March 18, 1996, 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 27 and 29, 1995, with respect to notices of objection served under sections 81.15 and 81.17 of the *Excise Tax Act*.

**BETWEEN**

**SOUTHAM INC., RBW GRAPHICS DIVISION**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Lyle M. Russell  
Lyle M. Russell  
Presiding Member

Anthony T. Eyton  
Anthony T. Eyton  
Member

Arthur B. Trudeau  
Arthur B. Trudeau  
Member

Susanne Grimes  
Susanne Grimes  
Acting Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-95-135**

**SOUTHAM INC., RBW GRAPHICS DIVISION**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

This is an appeal under section 81.19 of the *Excise Tax Act* concerning the issue of whether the sales of certain publications, namely, *Business Connexions*, *Telex Directory* and *The Official Fax Directory*, are exempt from federal sales tax on the basis that these publications are “national manufacturing, industrial or trade directories” pursuant to paragraph 3(1)(a) of Part III of Schedule III to the *Excise Tax Act*.

**HELD:** The appeal is dismissed. Having reviewed the publications in issue and considered the arguments of both counsel, the Tribunal is of the view that the sales of these publications are not exempt from federal sales tax as “national manufacturing, industrial or trade directories” pursuant to paragraph 3(1)(a) of Part III of Schedule III to the *Excise Tax Act*. The publications in issue cover a broad range of unrelated organizations, a substantial portion of which may not be considered to be manufacturing, industrial or trade organizations within the common meaning of those terms. The common meanings of “manufacturing,” “industrial,” “industry” and “trade” provided contemplate that those terms relate either to manufacture as distinct from other types of business or to a particular type or line of manufacture, work, business, trade or industrial activity. The Tribunal acknowledges that organizations listed in the publications in issue are grouped, to a certain extent, by type of product and service. However, this grouping by type of product and service does not change the fact that a substantial number of the organizations listed in the publications appear to have no connection at all to manufacture, industry or trade. Indeed, it would appear that any and all Canadian organizations, both governmental and non-governmental, could be listed in these directories on the basis that they have either facsimile or telex numbers. As such, the Tribunal is of the view that they cannot be considered to be “manufacturing, industrial or trade directories.”

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	March 18, 1996
Date of Decision:	September 10, 1996
Tribunal Members:	Lyle M. Russell, Presiding Member Anthony T. Eyton, Member Arthur B. Trudeau, Member
Counsel for the Tribunal:	Shelley Rowe
Clerk of the Tribunal:	Susanne Grimes
Appearances:	Michael Kaylor, for the appellant Lyndsay K. Jeanes, for the respondent

**Appeal No. AP-95-135**

**SOUTHAM INC., RBW GRAPHICS DIVISION**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: LYLE M. RUSSELL, Presiding Member  
ANTHONY T. EYTON, Member  
ARTHUR B. TRUDEAU, Member

**REASONS FOR DECISION**

This is an appeal under section 81.19 of the *Excise Tax Act*<sup>1</sup> (the Act) of a determination of the Minister of National Revenue dated September 11, 1992, disallowing \$170,829.51 of the total amount of \$171,673.26 claimed by the appellant as a refund of federal sales tax (FST) paid in respect of sales of the following publications: *Business Connexions*,<sup>2</sup> *Telex Directory*<sup>3</sup> and *The Official Fax Directory*.<sup>4</sup> This is also an appeal of an assessment dated October 22, 1993, in which the appellant was assessed FST in respect of the sales of various publications, of which only *The Official Fax Directory* is in issue. The issue in this appeal is whether the sales of these publications are exempt from FST as “national manufacturing, industrial or trade directories” pursuant to paragraph 3(1)(a) of Part III of Schedule III to the Act, which reads as follows:

3. (1) The following printed matter, articles and materials:

(a) college and school annuals; unbound literary papers regularly issued at stated intervals not less frequently than four times yearly; sheet music; manuscripts; national manufacturing, industrial or trade directories; printed books that contain no advertising and are solely for educational, technical, cultural or literary purposes; articles and materials for use exclusively in the manufacture or production of the foregoing;

...

but excluding ... directories of all kinds not mentioned in this section.

Counsel for the respondent conceded that the publications in issue are national directories. However, she disputed that they were “national manufacturing, industrial or trade directories.”

*Business Connexions* is divided into five sections: (1) Informationals: Business/Communications; (2) Alphabetic: Company Listings; (3) Government: Federal, Provincial, Municipal; (4) English Classified: Product/Services; and (5) French Classified: Product/Services. The first section includes information on communications technology, a North American area code map, world area code listings, useful business

1. R.S.C. 1985, c. E-15.
2. 1991 Business Directory.
3. 1992 edition.
4. Canadian Edition, Fall/Winter 1988/89.

information, calendars, distance and population charts and metric/imperial conversion charts. The second section lists, alphabetically, organizations from across Canada and provides addresses and facsimile and telephone numbers. The organizations include manufacturers, producers, wholesalers, retailers, service providers, charitable organizations, associations and federations. The third section is an alphabetical government listing, including Canadian embassies and trade commissions worldwide, federal and provincial government departments, agencies and crown corporations, and municipalities. The fourth and fifth sections are alphabetical “classified” pages, in English and in French, for products and services, which include listings by the following groupings: Accommodation, Food and Beverage; Agriculture; Business Service; Communications/Utilities; Construction; Educational; Finance, Insurance and Real Estate; Fishing; Government Service; Health and Social Service; Logging and Forestry; Manufacturing; Mining, Oil and Quarry; Miscellaneous Service; Retail; Transportation; and Wholesale.

The *Telex Directory* includes the same information as that in *Business Connexions* as described above and includes, as well, a telex directory organized by city and province. Unlike *Business Connexions*, the “classified” pages include only product/service headings with no groupings.

*The Official Fax Directory* is divided into two sections: (1) Canadian Alphabetical Listings; and (2) Classified Business Index. The first section lists, alphabetically, various businesses and federal and provincial government departments, agencies and crown corporations, and municipalities with their addresses and telephone and facsimile numbers. Advertisements for *The Official Fax Directory*, as well as for a few businesses, are interspersed throughout this section. The second section is intended as a guide for using the alphabetical listings and lists companies under the following groupings: Accounting; Advertising, Graphics and Public Relation Firms; Agriculture; Associations and Unions; Automotive Industry; Banking, Finances, Investments; Building and Construction Industries; Chemical, Plastic, Rubber and Glass Industries; Communication – Television, Radio, Media; Computer and Electronic; Engineering and Architecture; Education and Cultural; Oil and Energy, Exploration and Refinement; Electrical Manufacturers, Distribution and Services; Fashion and Textile; Foreign Trade – Import and Export; Food Industry; Forestry, Lumber, Pulp and Paper, Packaging; Government and Public Administration; Health Services, Hospitals and Pharmaceuticals; Household and Family, Products and Services; Industrial Equipment; Insurance and Underwriters; Law and Legal Services; Metals and Mining; Office Equipment and Business Services; Printing and Publishing; Real Estate; Science, Technology and Research; Tourism and Travel; Transport and Warehousing; and Utility and Sanitary.

Counsel for the appellant referred to the Tribunal’s decision in *Bowne of Canada, Inc. v. The Minister of National Revenue*<sup>5</sup> in which it was found that sales of the *Canadian Payments Association Directory* were exempt from FST as “national ... industrial or trade directories.” The Tribunal found that the goods in issue were directories and were national, as they covered a listing of names, addresses and other specialized information relating to banks, credit unions and trust companies located across Canada. The Tribunal accepted that the term “industry” is commonly used to describe the activities of banks, trust companies, credit unions and caisse populaire systems and found no reason why the term had to be interpreted narrowly to exclude service activities.

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5. Appeal No. 3003, July 11, 1989.

Counsel for the appellant submitted that a review of the publications in issue shows that there are relatively few listings for services, such as government, legal and accounting, as a percentage of the total listings. Counsel submitted that the Tribunal should interpret the word “trade” based on the following definition of that term: “*a*) a means of earning one’s living; occupation, work, or line of business *b*) skilled work, as distinguished from unskilled work or from a profession or business; craft *c*) all the persons or companies in a particular line of business or work ... of or relating to trade or commerce.”<sup>6</sup> Based on this definition of “trade,” counsel argued that trade may encompass all of those persons within a given line of work, not necessarily a profession or a skilled line of work, but work in general. Therefore, he argued, a national trade directory, as referred to in paragraph 3(1)(a) of Part III of Schedule III to the Act, may include government-related listings and services being offered by various government departments, charitable organizations and legal and accounting firms. In counsel’s view, the presence of some non-trade services, as well as advertisements in the publications in issue, should not preclude those publications from qualifying for exemption under paragraph 3(1)(a) of Part III of Schedule III to the Act.

In addressing the issue of whether publications must provide listings for only one manufacturing, industrial or trade grouping to qualify as “national manufacturing, industrial or trade directories” pursuant to paragraph 3(1)(a) of Part III of Schedule III to the Act, counsel submitted that there is no such requirement in the Act.

Counsel for the respondent argued that, in order to qualify for exemption from FST under paragraph 3(1)(a) of Part III of Schedule III to the Act, the publications in issue must be all of the following: (1) directories; (2) national in scope; and (3) manufacturing, industrial or trade directories. Counsel accepts that the publications in issue are directories and that they are national in nature. However, counsel submits that they are not “manufacturing, industrial or trade directories.” Counsel introduced the following definitions of “manufacture,” “industrial” and “industry” to assist the Tribunal in interpreting paragraph 3(1)(a) of Part III of Schedule III to the Act: “manufacture” - “produce (articles) by organized manual labour or machinery”; “industrial” - “pertaining to industry, designed for use in industry”; and “industry” - “large-scale mechanized production of goods, manufacture; particular branch of manufacture or trade.”<sup>7</sup> In counsel’s view, many of the businesses listed in the publications in issue would not fall under the categories of either manufacturing or industrial. Therefore, the issue is whether they qualify as trade directories.

In the view of counsel for the respondent, in order for a directory to be a “manufacturing, industrial or trade” directory, it must be a directory limited to one manufacturing, industrial or trade group or a group of related manufacturing, industrial or trade groups. Referring to the Tariff Board’s decision in *Maclean Hunter Limited v. The Deputy Minister of National Revenue for Customs and Excise*<sup>8</sup> and the Tribunal’s decision in *Bowne*, counsel submitted that directories listing unrelated businesses, services, government departments, agencies and crown corporations, and municipalities, pertaining to no specific trade or industry, such as the publications in issue, which list a wide range of businesses and include charitable organizations, federations, manufacturers, producers, wholesalers and retailers, do not qualify for exemption from FST

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6. *Webster’s New World Dictionary of the American Language*, Second College ed. (New York: Simon & Schuster, 1986) at 1506.

7. *The Penguin Concise English Dictionary*, revised ed. (London: Bloomsbury Books, 1991) at 462, 392 and 393 respectively.

8. (1986), 11 T.B.R. 29.

under paragraph 3(1)(a) of Part III of Schedule III to the Act. Rather, such publications would fall under the exclusion to the exemption for “directories of all kinds not mentioned in this section” at the end of subsection 3(1) of Part III of Schedule III to the Act.

Having reviewed the publications in issue and considered the arguments of both counsel, the Tribunal is of the view that the sales of these publications are not exempt from FST as “national manufacturing, industrial or trade directories” pursuant to paragraph 3(1)(a) of Part III of Schedule III to the Act. The publications in issue cover a broad range of unrelated organizations, a substantial portion of which may not be considered to be manufacturing, industrial or trade organizations within the common meaning of those terms. The common meanings of “manufacturing,” “industrial,” “industry” and “trade” provided contemplate that those terms relate either to manufacture as distinct from other types of business or to a particular type or line of manufacture, work, business, trade or industrial activity. The Tribunal acknowledges that organizations listed in the publications in issue are grouped, to a certain extent, by type of product and service. However, the grouping by type of product and service does not change the fact that a substantial number of the organizations listed in the publications appear to have no connection at all to manufacture, industry or trade. Indeed, these directories are more akin to national telephone directories, as they list any or all businesses, organizations, government departments and agencies, associations, charitable organizations, etc., that happen to have facsimile or telex numbers. As such, the Tribunal is of the view that they cannot be considered to be “manufacturing, industrial or trade directories.”

Accordingly, the appeal is dismissed.

Lyle M. Russell  
Lyle M. Russell  
Presiding Member

Anthony T. Eyton  
Anthony T. Eyton  
Member

Arthur B. Trudeau  
Arthur B. Trudeau  
Member