

WILL YOUR INDUSTRIAL ACTIVITIES ALLOW YOUR PROPERTY ASSESSMENT TO BE REDUCED?

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IT'S THE TIME OF YEAR WHEN MUNICIPALITIES SEND OUT TAX ACCOUNTS TO THEIR CITIZENS. IN CERTAIN CASES, THEY MAY CONTAIN A VERY UNPLEASANT SURPRISE. FOR CITIZENS LIVING IN MUNICIPALITIES WHOSE PROPERTY ASSESSMENTS ARE FOR THE YEARS 2010 TO 2012, NOW IS THE TIME TO DO SOME DOUBLE-CHECKING. DOES THE ASSESSMENT OF THE BUILDING'S VALUE APPEAR ADEQUATE? DID THOSE PARTS OF THE BUILDING THAT MAY BE EXEMPTED FROM ALL PROPERTY AND SCHOOL TAXES RECEIVE THE EXEMPTION?

Article 65 of the *Loi sur la fiscalité municipale*¹ (An Act respecting Municipal taxation - hereafter "LFM") refers to exemptions related to machines, equipment and their accessories used or intended to be used for purposes of industrial production.

Until the judgment of the Supreme Court handed down in 1993 in the case of *Ciment Québec Inc.*², the courts always considered that this legislative provision only applied to moveable property placed for a permanency and not to structures. However, in this judgment, the Supreme Court decided that Article 65 LFM also applied to buildings within the meaning of the *Civil Code of Quebec*.

In reacting to this decision and in order to state clearly what should be exempted from property and school taxes, the Quebec legislator modified Article 65 LFM so that buildings intended to shelter or lodge persons, animals or things, as well as concrete slabs would continue to be evaluated and placed on the roll.

Article 65 LFM was also amended in order to provide that the mechanical and electrical systems of a building also be excluded from the roll if used or intended to be used mainly for purposes of industrial production. It is generally agreed that "industrial production" refers to the transformation of goods into consumables.

It hardly needs saying that in the evaluation of a building, the electrical and mechanical components represent a considerable percentage of total value. Therefore, excluding this value for the purpose of assessing property taxes has economic repercussions which are not negligible for companies involved in industrial production. All buildings require a minimum of electrical or mechanical systems in order to function. Since, in the majority of evaluations of buildings with an industrial vocation, the evaluation is done using the cost method outlined in the *Manuel d'évaluation foncière du Québec* (Quebec Property Tax Evaluation Manual), the rates contained in this manual including only the minimum electrical or mechanical system required to make

the building complete or, put another way, these rates do not include the portion of the systems required for industrial production. Thus did this issue come before the courts.

On the one hand, the municipalities argued that the cost of mechanical and electrical systems should be maintained on the property tax roll, as calculated in the *Manuel d'évaluation foncière du Québec*. According to them, these systems do not include components required for purposes of industrial production. As for the industry, it claimed that Article 65 LFM was clearly written and that the legislator had provided for the complete exclusion of mechanical and electrical systems whenever they were used or intended to be used mainly for purposes of industrial production.

¹ *Loi sur la fiscalité municipale*, L.R.Q. c. F-2.1.

² *Saint-Basile, Village Sud (Corporation municipale de) v. Ciment Québec Inc.*, [1993] 2 R.C.S. 823.

In the trial judgment, in *IBM Canada Ltée v. Bromont (Ville de)*³, the *Tribunal administratif du Québec* accepted the municipality's argument and maintained the value of mechanical and electrical systems on the property tax roll, as calculated in the *Manuel d'évaluation foncière du Québec*. However, the decision was reversed on appeal and the Court of Québec concluded that, by virtue of Article 65 LFM, the electrical and mechanical systems of the complex did not have to be placed on the roll⁴.

In *Boehringer Ingelheim (Canada) Itée v. Laval (Ville de)*⁵, the *Tribunal administratif du Québec* also accepted the arguments of the municipality. However, on appeal⁶, the Court of Québec decided that Boehringer's activities constituted research and not industrial production. Therefore, the decision as to whether or not to exclude a part of the mechanical or electrical systems was no longer at issue. In effect, since a demonstration of industrial production constitutes an essential criterion, the absence of proof of such production prevented Boehringer from benefiting from the exemption in Article 65 LFM. It should be noted that this decision is presently on appeal before the Superior Court.

Furthermore, in *Imperial Tobacco v. Ville de Montréal*⁷, the Court of Québec decided that Article 65 LFM is clear and that as soon as a system is used or intended to be used mainly for purposes of industrial production, it must be totally excluded from the calculation of a building's value. This decision was reversed on appeal by the Superior Court⁸, however it was for a motive that did not affect the decision of the *Tribunal administratif du Québec* relative to the issue involved.

Finally, in *Laval (Ville de) v. Multi-Markes inc.*⁹, the *Tribunal administratif du Québec* confirmed the industry's argument to the effect that as soon as a mechanical or electrical system is mainly used for purposes of industrial production, the entire system must be excluded from the property tax roll. This decision was confirmed on appeal by the Court of Québec¹⁰. Since then, it seems that the jurisprudence has been settled and that mechanical or electrical systems are in fact excluded from the value of the building as soon as they are used or intended to be used for purposes of industrial production.

Obviously, the decision rendered by the courts in this instance is not able to resolve every problem. The notion of industrial production has not yet been determined precisely. The criteria that guide the municipal assessor in order to determine whether a system is used or intended to be used mainly for purposes of industrial production have not all been established. Furthermore, as the Court of Québec noted in *Laval (Ville de) v. Multi-Markes*¹¹, each case remains unique.

In light of these elements, it is important to highlight the fact that any company that transforms goods in a process that could be qualified as being industrial production should not fail to consult a professional in order to verify whether an opportunity exists to reduce the property tax burden of the buildings in which the transformation takes place, and this applies whether the company owns or leases the building.

Don't forget that the last date for contesting an entry on the property tax roll for a building for the 2010 to 2012 triennial roll is April 30, 2010, after which this right is forfeited.

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³ *IBM Canada Ltée v. Bromont (Ville de)*, 2007 QCTAQ 05593.

⁴ *IBM Canada Ltée v. Bromont (Ville de)*, January 12, 2010, n°455-80-000103-075, C.Q.

⁵ *Boehringer Ingelheim (Canada) Itée c. Laval (Ville de)*, 2007 QCTAQ 12310.

⁶ *Laval (Ville de) v. Boehringer Ingelheim (Canada) Itée*, J.E. 2009-777 (C.Q.).

⁷ *Imperial Tobacco Canada Itée v. Montréal (Ville de)*, J.E. 2005-794 (C.Q.).

⁸ *Montréal (Ville de) v. Cour du Québec*, J.E. 2009-1612 (C.S.).

⁹ *Laval (Ville de) v. Multi-Markes inc.*, 2007 QCTAQ 0873.

¹⁰ *Laval (Ville de) v. Multi-Markes inc.*, J.E. 2009-1113 (C.Q.).

¹¹ *Ibid.*

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