

NOVA SCOTIA COURT OF APPEAL

Cite as: Nova Scotia (Assessment) v. McQuillan, 2001 NSCA 91

Glube, C.J.N.S.; Roscoe and Oland, J.J.A.

BETWEEN:

DIRECTOR OF ASSESSMENT

Appellant

- and -

EDWARD MCQUILLAN and SANDRA
MCQUILLAN and the MUNICIPALITY
OF THE DISTRICT OF EAST HANTS

Respondents

REASONS FOR JUDGMENT

Counsel: Randall R. Duplak, Q.C. for the Appellant
 Anne-Marie MacDougall for the Respondent McQuillans

Appeal Heard: June 4, 2001

Judgment Delivered: June 4, 2001

THE COURT; The appeal is dismissed with costs of \$1,500.00, plus
disbursements as per oral reasons for judgment of Roscoe, J.A.;
Glube, C.J.N.S. and Oland, J.A. concurring.

ROSCOE, J.A.:

[1] The issue in this appeal is whether the Nova Scotia Utility and Review Board erred in affirming a decision of the Regional Assessment Appeal Court which determined that the respondent McQuillans were not responsible for the payment of a change-in-use tax assessed after they sold their farm land to the provincial Department of Transportation and Public Works, which subsequently built a school on the property.

[2] After they sold the property on August 27, 1997, the McQuillans were assessed a change-in-use tax pursuant to s. 46 of the **Assessment Act**, R.S.N.S. 1989, c. 23, as amended, the relevant parts of which then stated: (ss. 46(6) and (7) have since been repealed and replaced by different provisions of the **Municipal Government Act**, S.N.S. 1998, c.18).

46 (1) All land, excluding any buildings or structures thereon, classified as farm property shall be exempt from taxation under this Act or any other public or private Act of the Legislature authorizing a tax on the assessed value of property.

. . .

46 (6) In the event that any land, or any part of it, to which this Section applies, ceases to be land used for agricultural purposes, this Section shall cease to apply and a change-in-use tax equal to twenty per cent of the value, determined by the assessor pursuant to Section 42, of the land or part thereof to which this Section ceases to apply, shall become due and payable to the municipality in which the land is situate, unless the land or part thereof becomes forest property to which Section 47 applies, in which case no change-in-use tax is payable.

46 (7) The change-in-use tax shall be payable by the assessed owner of the land or part thereof formerly subject to this Section when this Section ceases to apply, but if the use of the land is changed by a purchaser of the land, then the purchaser shall be liable for the change-in-use tax.

[3] The Board correctly concluded that this court's decision in **Eastern Forestry Resources Ltd. v. Director of Assessment (N.S.) et al.** (1991), 108 N.S.R. (2d) 357 was determinative of the issue before it, and referred specifically to the following relevant passages from the decision of Matthews, J.A.:

[7] This Court has determined that change-in-use tax is triggered at the time the property ceased to be used for its previous exempt purposes. Macdonald, J.A., speaking for the Court in **Green Meadows Estates Ltd. v. Director of Assessment** (1984), 64 N.S.R. (2d) 36; 143 A.P.R. 36, commented at p. 39:

[14] Section 40A(6) (now 46(6)) of the **Assessment Act** does not specify that the change in use tax shall be based on a new use of the property. The section simply says in effect that if farm property ceases to be used for agricultural purposes it is no longer exempt from taxation and a change-in-use tax is payable. What triggers the change-in-use tax therefore is not a new use of the land but rather the cessation of an existing one. The phrase 'change-in-use tax' is really not quite accurate; it is a tax rather for ceasing to use for farm purposes. It requires a new assessment to be made valued at the time of cessation of use. It is a tax additional to whatever tax has been or will be levied as a result of the normal annual classification and assessment of the land for the year in which cessation of use occurs or the normal tax for the following year.

. . .

[16] Such issues as whether there was any evidence of a substantial act indicating an intent to use the land as residential property or as to how the property should be classified when it has ceased to be used for agricultural purposes are really irrelevant. The question here for determination is not when did the property first become used for residential purposes; rather, the crucial question is when did the property cease to be used for agricultural purposes.

[8] The same reasoning applies to land which had been used for forestry purposes.

[9] Over the years Scott had used the Lake Parcel in the same manner as its other lands for forestry purposes. The fact that Scott, in calculating the sale price recognized that the Lake Parcel was of greater value to the appellant who intended a different use, is irrelevant. Also irrelevant is the fact that the sale to the appellant took place in mid year and thus Scott was the assessed owner on the assessment records at the time the change-in-use occurred. It was the appellant [the new owner] who ceased using the land for forestry purposes.

[4] The Board found that this case was indistinguishable from **Eastern Forestry Resources** and made the following critical findings of fact at p. 11 of its decision:

. . . The McQuillans used the lands for agricultural purposes until the lands were sold to the Province. There is no evidence that they intended anything but an agricultural use for the lands. They did nothing different with the lands up to the time they were conveyed. The McQuillans did not survey or subdivide the lands. The Board finds that it was the Province who ceased using the land for agricultural purposes as they proceeded with steps leading to the construction of a school immediately upon taking title to the property, including surveying and

subdividing the lands in preparation for the development.

[5] An appeal to this court lies on a question of the Board's jurisdiction or upon any question of law. See s. 30 of the **Utility and Review Board Act**, S.N.S. 1992, c. 11.

[6] A detailed review of the record and the submissions of counsel fail to show any error in law or jurisdiction on the part of the Board in arriving at the conclusion that the property ceased to be used for agricultural purposes while it was owned by the Province, and not when it was owned by the McQuillans.

[7] The appeal is therefore dismissed with costs to the respondent McQuillans which are fixed at \$1,500.00, plus disbursements.

Roscoe, J.A.

Concurred in:

Glube, C.J.N.S.

Oland, J.A.