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CHEVRON CANADA LTD.

v.

ASSESSOR OF AREA 18 - TRAIL

Supreme Court of British Columbia (A832961) Vancouver Registry

Before: MR. JUSTICE E. MEREDITH

Vancouver January 23, 1984

S.B. Armstrong for the Appellant  
J.E.D. Savage for the Respondent

## Reasons for Judgment

April 2, 1984

On my reading of the Section, I believe the Board should have found that the subject property, the gas storage tanks in question, be classified as Class 6 rather than Class 5. I think that the words in the second exclusion in Class 5 "purpose ancillary to or in conjunction with" must refer to land or improvements other than the subject property. The Board read the words "ancillary to or in conjunction with" as qualifying the word "purpose". I think they must qualify the improvements constituting the subject property. The interpretation of the Board makes sense. But it attributes no meaning to the words "land or improvements or both used or held for" where they appear in Regulation 5 (q).

The following passage appears from the judgment of the Board. I underline those words contained in the Regulation which have special application to this case:

### "Classification Issue

It is the position of the Assessor that this property falls squarely into the definition of class 5-industrial as defined in B.C. Reg. 438/81 filed November 2, 1981 and amended by B.C. Reg. 486/82 filed November 5, 1982. As so amended and insofar as material to this issue in the appeal Class 5 provides as follows:

"5. Class 5 property shall include only land or improvements or both, used or held for the purpose of extracting, processing, manufacturing, transporting or storing of any products, and without limiting the generality of the foregoing includes land or improvements, or both, used or held for the purpose of . . .

(b) the extraction, transportation, refining and storage of petroleum and natural gas; . . .

but not including those lands or improvements, or both . . .

(q) used or held for storage other than those used or held for a purpose ancillary to or in conjunction with land or improvements or both used or held for

- (i) the purpose of extracting, processing, manufacturing or transporting of any products,"

It was the addition in 1982 of paragraph (q) quoted above that gave rise to the appeal on this issue. The Appellant argued that although the subject land and improvements are admittedly used for the storage of products within the meaning of the general opening provision of Class 5, the exclusionary provision commencing with the words "but not including" remove the subject land and improvements from Class 5. Specifically as to the latter, Counsel for the Appellant argued that the use for storage is other than a purpose "ancillary to or in conjunction with" land and improvements used for the purpose of "extracting, processing, manufacturing or transporting of any products".

Counsel for the Respondent argued that the subject land and improvements do not fall within such exempting provision because the storage done thereon is "for a purpose ancillary to or in conjunction with" the transporting of products."

The finding of facts by the Board reveal that the subject of the assessment were "bulk tanks" used by the Appellant for the storage of refined gasoline for onward transmission to service stations. The Board considered that the exemption was added because the class should not "sweep into the industrial net kinds of product storage not reasonably associated with the industrial activity in the ordinary sense". In addition, the reasons state:

"All these considerations seem logically compelling but the Board must endeavour to construe the true intent of the amended regulation on the plain meaning of the language and used whatever results may flow from such an interpretation."

And:

"Only then if the subject property is used for storage of products ancillary to or in conjunction with property used for 'transporting' any product is the benefit of the exemption lost."

And further:

"The Board concludes therefore that the subject land:

(a) is used not only for the 'storage' [but] also the 'transporting' of a product within the meaning of the opening paragraph of Class 5; and that,

(b) the exemption in paragraph (q) does not apply."

For the reasons above-stated, I conclude that as the subject property was not used for a purpose ancillary to or in conjunction with other land or improvements, the "other than" provision of Regulation 5 (q) does not apply. What is left is the inclusion of storage tanks in the first part of the Regulation and their exclusion in the second. Though the words do not make good sense, I think that is what they must mean.

As the tanks do not fall within Class 5, they must therefore fall within Class 6.