

Clarebank, Inc.

v.

City of Claremont

Docket No.: 16111-95PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" property taxation of the following items (collectively the "Appealed Items"):

- 1) automatic-teller machines (ATM's);
- 2) free-standing safes that are connected to night-deposit doors (Safes); and
- 3) drive-up teller systems (Drive-Up Equipment).

At the hearing, the board asserted its RSA 71-B:16 II jurisdiction to ensure jurisdiction over all of the Appealed Items for tax year 1995 and 1996.

The Taxpayer argued the Appealed Items should not have been assessed under RSA 72:6 because the Appealed Items are personalty and not realty. The City disagreed with the Taxpayer's categorization of the Items.

Description of Appealed Items

Automatic-Teller Machines

ATM's are basically computers that dispense and accept money. See

Taxpayer Exhibit 2, photographs 1 and 3. They are wired for electricity and telephone (for modem connection to central computer) and are alarmed for heat and motion detection. The ATM's, in this case, are not bolted to the floor but weigh between 1,500 to 1,800 pounds. (FDIC requires a minimum weight of

Page 2
Clarebank Inc. v. City of Claremont
Docket No.: 16111-95PT

1,500 pounds.) The ATM's are inside the bank buildings and are in framed wall openings. The Taxpayer stated that the ATM's can be easily moved without damaging the building and without damaging the ATM's themselves.

Safes

The Safes are combination night-deposit safes and teller safes. See Taxpayer Exhibit 2, photographs 2, 3, and 10. They are free-standing safes, but one side of each safe is connected to the wall and then to the outside of the building through the night-deposit door. The Safes are not bolted to the floor. They weigh between 2,400 and 2,600 pounds but are moveable by jacks and rollers. The Safes are manually opened and are alarmed and, thus, include electrical wiring and alarm wiring that is hooked up to the buildings' security systems.

(Note: The Taxpayer did not contest the Town's assessments on the main vaults. The Taxpayer conceded that main vaults, which are built into the buildings, are realty.)

Drive-Up Equipment

There are two basic types of Drive-Up Equipment -- overhead and direct burial. Both types consist of a blower unit and pneumatic tubes that allow a small carrier to transport papers and money between the customer outside and the teller inside. See Taxpayer Exhibit 2, photographs 4, 5, 8, and 9.

The overhead type consists of the following components: a customer unit that includes an electrical connection and an intercom connection (The customer units are bolted to concrete pads.); piping from the customer unit to the teller unit (The piping runs through the overhead canopy and is connected to the interior of the canopy by hangers.); a blower unit in the overhead canopy; and a teller unit that includes a control panel and intercom. (The teller's area has been adapted to accommodate this equipment.) See Taxpayer Exhibit 2, photographs 4 and 5.

The direct burial type is similar to the overhead type, except: all of the piping is made of galvanized metal; the piping is buried beneath the

Page 3
Clarebank Inc. v. City of Claremont
Docket No.: 16111-95PT

drive-up station in a culvert that allows access; and the customer unit, which is bolted to the concrete pad, includes the blower unit. See Taxpayer Exhibit 2, photographs 12 and 13.

Board's Rulings

The board finds the ATM's and the Safes to be personalty and, therefore, not taxable. The board finds the Drive-Up Equipment to be realty and, therefore, taxable.

Legal Test

Under RSA 72:6, "[a]ll real estate, whether improved or unimproved, shall be taxed except as otherwise provided." Accordingly, if the Appealed Items are real estate, they would be taxable, and if the Appealed Items are personalty, they would not be taxable.

Determining whether the Appealed Items are real estate or not requires the board to perform fixture analysis, which was most recently addressed in

New England Telephone & Telegraph Company v. City of Franklin, 141 N.H. 449

(1996) (hereinafter "NET&T"). In NET&T, the supreme court decided the telephone company's central office equipment was personalty and, thus, not taxable. The court, citing The Saver's Bank v. Anderson, 125 N.H. 193, 195 (1984), stated:

"A chattel loses its character as personalty and becomes a fixture and part of the realty when there exists an actual or constructive annexation to the realty *with the intention of making it a permanent accession to the freehold*, and an appropriation or adaption to the use or purpose of that part of the realty with which it is connected." Id. at 453.

The court went on to state that:

whether an item of property is properly classified either as personalty or a fixture turns on several factors, including: the item's nature and use; the intent of the party making the annexation; the degree and extent to which the item is specially adapted to the realty; the degree and extent of the item's annexation to the realty; and the relationship between the realty's owner and the person claiming the item. The central factors are "the nature of the article and its use, as connected with the use" of the underlying land because these factors provide the basis for ascertaining the intent of the party who affixes or annexes the item in question. Id. (Citations omitted.)

Page 4

Clarebank Inc. v. City of Claremont

Docket No.: 16111-95PT

The board will now apply the NET&T analysis to the Appealed Items.

ATM's

The board concludes the ATM's, in this case, are personalty. As with all of the Appealed Items, the ATM's are owned by the Taxpayer who also owns the buildings in which the ATM's are located. Nonetheless, mutual ownership does not create a realty interest unless the item meets the other fixture requirements. The board concludes the ATM's have not lost their character as

personalty and have not become part of the real estate. This conclusion is based on the following factors from the NET&T case.

1) ATM's are basically computers that dispense and accept money. The Taxpayer testified to this and stated that a portion of the purchase price pays for software that is installed in the ATM's.

2) The Taxpayer stated that the ATM's were installed so that they could be removed if necessary, especially if removal was warranted by advances in technology.

3) The ATM's are not specially adapted to the realty. With the exception of a telephone line and an electrical line, which apparently can be accomplished by simple plugs, the ATM's are free-standing units.

4) The ATM's are not annexed to the real estate in any substantial way. There are no bolts attaching the ATM's to the buildings, and the ATM's can be removed without damaging the ATM's and without requiring substantial renovation cost to fix the building after removal.

5) The ATM's are placed into walls that have been framed to accommodate the ATM's. The Taxpayer stated the framing was similar to door framing.

6) A review of the ATM's photographs in this case, confirms that the ATM's have not been so adapted and the real estate has not been so adapted so that the ATM's have become part of the building. Rather, the ATM's remain separate from the building.

7) If the ATM's were removed, the buildings could still be used for other commercial or retail uses.

board had significant discussions on this point. During deliberations, some board members opined that other ATM's, with more substantial integration with the building, could be realty. Other board members thought ATM's would never be considered realty. The board need not decide today whether ATM's are always personalty or could be realty in other situations. Nonetheless, the board wants readers of this decision to realize the decision is limited to the presented facts.

We also note that the board's analysis might differ if there had been sufficient evidence to show that the buildings in which the Appealed Items were located were special-use properties. One of the factors of the NET&T case was that the buildings were not special-use buildings.

Safes

The Safes are personalty based on the following factors.

- 1) The Safes are free-standing.
- 2) The Taxpayer testified the Safes can be jacked up and moved easily.
- 3) The Safes are not adapted to the realty, except to the extent the Safes include a night-deposit door.
- 4) The Safes are not bolted to the real estate. The only connection is via the wall opening to the exterior of the building onto which the night-deposit door is attached.
- 5) The photographs of the Safes demonstrate the Safes are personal property and have not been so annexed to the building to constitute realty.
- 6) If the Safes were removed, the buildings could still be used for other commercial or retail uses.

Drive-Up Equipment

The Drive-Up Equipment are fixtures based on the following factors.

1) The Drive-Up Equipment is part of an integrated system to allow customers to transact business from their vehicles. The components of the Drive-Up Equipment are intertwined with the buildings and other real estate such as the concrete pads outside.

2) Based on the construction of the drive-up windows, the board concludes the Taxpayer's intention was to make the Drive-Up Equipment a permanent fixture to the real estate.

3) The Drive-Up Equipment is specially adapted to the realty. The easiest way to make this point is to realize the Drive-Up Equipment is not free-standing equipment but consists of various components that begin inside the building and then run either above ground or below ground to an outside area designed specifically for drive-up banking. The components of the drive-up system have value as part of that integrated system and would have little value if disconnected from the realty.

4) The Drive-Up Equipment is substantially annexed to the realty. Even though the overhead type of piping is only attached to the building with hangers, there is substantially more annexation. Specifically, the customer units are bolted to a concrete pad, the piping then runs through the rafters of the canopy, through the ceiling of the bank building and then to a teller station specifically adapted to allow drive-up transactions. It is hard to imagine any more substantial annexation than this. The same holds true for

the below-ground components that required substantial work on the realty to allow the units to operate.

Conclusion

Based on the above, the board finds the ATM's and the Safes are not taxable, but the Drive-Up Equipment is taxable. The City shall, within 20 days of the clerk's date below, recalculate the Taxpayer's 1995, 1996 and 1997 assessments consistent with the board's decision. The City shall, within 20

Page 7
Clarebank Inc. v. City of Claremont
Docket No.: 16111-95PT

days of the clerk's date below, file its recalculation of the assessments and its recalculation of the taxes due, issuing a refund consistent with the refund paragraph below.

Refund

If the taxes have been paid, the amount paid on the value in excess of the new 1995 assessment, shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, unless the City has undergone a general reassessment, the City shall also refund any overpayment for 1996 and 1997. Until the City undergoes a general reassessment, the City shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

Rehearing Process

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the

reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

Page 8
Clarebank Inc. v. City of Claremont
Docket No.: 16111-95PT

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this

date, postage prepaid, to Clarebank, Inc., Taxpayer; and Chairman, Board of Assessors, City of Claremont.

Date: November 26, 1997

Valerie B. Lanigan, Clerk

0006

Clarebank, Inc.

v.

City of Claremont

Docket No. 16111-95PT

ORDER

This order responds to the "City's" rehearing motion, which is denied. The motion did not demonstrate that the board erred in its decision, and thus, the motion failed to show any "good reason" to grant a rehearing. See RSA 541:3.

To appeal this matter, an appeal must be filed with the supreme court within thirty (30) days of the clerk's date below. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I certify that copies of the within Order have this date been mailed, postage prepaid, to Clarebank, Inc., Taxpayer; John J. Yazinski, Esq., counsel for the Town; and Chairman, Board of Assessors, City of Claremont.

Date: January 7, 1998

0006

Valerie B. Lanigan, Clerk