

IN FACT AND IN LAW

Municipal Taxation

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Anti-pollution equipment will be excluded from property assessment rolls as of 2001

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When the Honorable Bernard Landry, Minister of State for the Economy and Finance, presented the 2000-2001 budget, he announced that anti-pollution equipment would be excluded from real estate assessment rolls. True to that promise, on June 16, 2000, Québec's National Assembly enacted Bill 110 entitled "An Act to amend various legislative provisions concerning municipal affairs"¹, section 28 of which amends section 65 of the *Act respecting Municipal Taxation* by inserting a new paragraph 1.1. That section now reads follows:

"65. The following immovables are not to be entered on the roll:

(1) (...)

(1.1) machines, apparatus and their accessories, other than those of an oil refinery, which are used or intended for the purpose of the abatement or control of pollution, within the meaning of the *Environment Quality Act* (chapter Q-2), that may result from industrial production or for the purpose of monitoring such pollution;".

Since the 1998 Court of Appeal decision in *Municipalité de la ville de Charny v. Alex Couture inc.*, only anti-pollution equipment used primarily for and as an integral part of industrial production was entitled to the exemption provided for under section 65 of the *Act respecting Municipal Taxation*. In his ruling, Mr. Justice Brossard stated:

[translation:] "One must not lose sight of the fact that the legislator has decided that not all equipment required by a manufacturing enterprise is to be excluded from real estate assessment rolls, but only that part of the equipment used primarily for industrial production, which does not necessarily include equipment required for compliance with environmental obligations."

The purpose of the recent amendment to section 65 of the *Act respecting Municipal Taxation* is to exempt all equipment used for the abatement or control of industrial pollution, regardless of whether such equipment is used for industrial production.

According to section 38 of the amending legislation, the amendment to section 65 of the *Act respecting Municipal Taxation* has effect "for the purposes of every municipal fiscal year from the municipal fiscal year 2001" (even in the case of a triennial role that took effect in 1999 or 2000).

Therefore, as of January 1, 2001, municipal assessors throughout the Province of Québec will be required to subtract the value of the machines, apparatus and their accessories used for the abatement or control of industrial pollution that may result from industrial production or for the purposes of monitoring such pollution.

In order to do this, municipal assessors must prepare a new roll for 2001-2003. In the case of a triennial roll currently in effect (for example, a roll covering the three year-period of 2000 - 2002) they must amend the assessment roll currently in effect by issuing a certificate of alteration.

Should a municipal assessor fail to exclude the equipment used for the abatement or control of pollution, certain recourses are available to compel him to do so.

¹ Chapter 19 of the Statutes of Québec of 2000





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Similarly, if a municipal assessor excludes anti-pollution equipment but the value subtracted is too low, certain recourses may be initiated so that the full true value of the equipment is properly deducted from the assessment roll.

However, the recourses mentioned above must be brought within the prescribed time limits and both the assessor and the taxpayer have certain follow-up obligations in this matter. Accordingly, if a municipal assessor refuses or neglects to revise or update the assessment roll, the taxpayer wishing to rectify the situation must then apply for administrative review under section 131.2 of the *Act respecting Municipal Taxation*.

If the taxpayer wishes to contest the value of the anti-pollution equipment subtracted from the roll by the assessor, he must file an application for administrative review under section 124 of the *Act respecting Municipal Taxation*.

In either case, the municipal assessor must formally respond by indicating whether or not he proposes to amend the roll. If the assessor's proposal is not acceptable to the taxpayer, then a formal complaint must be lodged within the prescribed time limits. Should the assessor not respond to the request for administrative review, the complainant must be vigilant because it is his responsibility to file the complaint before the prescribed time limit has expired. It should be noted that the prescribed time periods vary depending on the particular situation.

Given that anti-pollution equipment is generally very costly, failure to act in accordance with the proper procedure and within the prescribed time limits may result in an overpayment of municipal and school taxes amounting to tens of thousands of dollars.

We would be more than pleased to provide you with advice on any issue pertaining to your real estate assessment and specifically in relation to the various recourses available under the *Act respecting Municipal Taxation* for the proper exercise of your rights should a municipal assessor neglect or refuse to comply with his statutory obligations.

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