No municipal tax reductions for mining companies

May 23, 2018

Author

Valérie Belle-Isle

Partner, Lawyer

What is a mine's equipment? What does it include? What is considered an access road to a mining operation?

These are, you might think, simple, perhaps even banal questions. Think again: the answer to these questions represents the difference between millions of dollars in property taxes pouring into the coffers of municipalities and mining companies across Québec holding on to them.

The *Administrative Tribunal of Québec* (Immovable Property Division) (hereinafter "TAQ") was confronted by these questions as part of an appeal lodged by Bloom Lake General Partner Limited against the City of Fermont[1].

The underlying principle is simple: municipal taxation is essentially applied as a function of the values entered on the property assessment roll. It is the responsibility of the assessor[2] to determine the composition of each assessment unit, what immovables are to be entered on the property assessment role and what their value is.

The law[3] provides that certain immovables are not to be entered on the role. Accordingly, their value has no impact on the taxes that can be collected by municipalities.

Among the immovables excluded from the role:

> "galleries,
> shafts,
> excavations,
> tunnels
> the equipment of underground or open mines"[4]
> "an access road to forest or mining operations"[5].

Hence the importance of the questions asked above.

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.

With respect to a mine's equipment, Bloom Lake argued that the equipment of a mine should be taken to refer to all the steps in the operation of a mine, from the extraction of the ore to its marketing and including its processing. Instead, the TAQ adopted a more limited interpretation of the concept of mine equipment that included only the equipment used to extract the ore.

As for the concept of an access road to a mining operation, Bloom Lake claimed that it included all the roads located within the mining operation, i.e. all the roads used by vehicles in the mining operation. Again here, the claim was not accepted by the TAQ, which instead circumscribed this concept to the road linking the public road to the entry gate of the mining operation.

If the TAQ had accepted the Bloom Lake interpretation, it could have had a serious financial impact for mining companies, which would have had a large part of their immovables that are included in their mining operation excluded from the assessment role.[6]

---

1. 2018 QCTAQ 04461
2. Also called Municipal Body Responsible for Assessment" or "MBRA", sections 19 ff. of the *Act respecting municipal taxation.*
3. *Act respecting municipal taxation* (AMT), ss. 63 to 68. In this case, the relevant paragraphs are 65 para 1 (4) and 65 para 1 (8).
4. Section 65 para 1 (4) AMT.
5. Section 65 para1 (8) AMT.
6. It should however be noted that at the time of this writing, the time period for appealing the TAQ decision had not yet expired.

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.