

# Taxable Status Potential of Class A Bingos

## Recommendation:

That the April 5, 2018, Financial and Corporate Services report CR\_4702, be received for information.

## Executive Summary

This report provides an update on provincial legislation related to the taxable status of bingo associations. In 2017, Edmonton bingo associations requested Council to consider exempting them from property tax. Council chose to wait for relevant provincial legislation to be approved. The legislation has not yet been approved, but a draft was circulated publicly. This update is being provided in advance of the tax rate bylaw to confirm the City's approach relative to bingo associations for the 2018 tax year.

## Report

### Background

Last year, the City was approached by four Edmonton bingo associations requesting municipal tax exemption status. Property tax exemptions are typically dictated by provincial legislation through the Municipal Government Act and the Community Organization Property Tax Exemption Regulation. Under that legislation, bingo associations are taxable.

Section 8 of the *Community Organization Property Tax Exemption Regulation* reads:

#### Gaming and Liquor Licences

*8(1) For the purposes of section 365(2) of the Act, property described in section 362(1)(n) of the Act and Part 3 of this Regulation in respect of which a bingo licence, casino licence, pull ticket licence, Class C liquor licence or a special event licence is issued under the Gaming and Liquor Regulation (AR 143/96) is exempt from taxation if the requirements of section 362(1)(n) and this Regulation in respect of the property are met.*

*(2) Despite subsection (1), **property in respect of which a bingo facility licence or casino facility licence is issued is not exempt from taxation.***  
*(emphasis added)*

Given existing provincial legislation, bingo associations that operate under a bingo facility licence are not eligible for tax exemption status through normal administrative means (for the purposes of this report, bingo associations imply the existence of a bingo facility licence).

In cases where a property owner would normally pay taxes, City Council has two options available to them. First, if the organization is a non-profit, Council can exempt it from municipal property tax through bylaw. Second, Council has the ability to cancel, defer or refund taxes at their discretion.

Last year's request was initiated after a similar request was put forward to Calgary's City Council. Calgary did not provide a blanket exemption, but did approve municipal tax cancellation for 2016 under three conditions:

- That qualifying bingos had to verify and maintain a Class A Bingo Facility Licence;
- That property owners under whom bingo associations held leases would confirm that the benefits of a tax exemption would flow to the bingo associations;
- That the areas within the bingo that served alcohol or contained video lottery terminals would remain taxable.

This same approach was taken by Calgary in 2017.

In 2017, Edmonton City Council heard from local area bingo associations making a similar argument to those in Calgary - that revenue generated by bingo supports good work around the community and that this should be sufficient justification for tax exemption. Administration advised Council against acting ahead of provincial legislation, which was in the process of being updated, and that changing the criteria for tax exemption would create inconsistencies in the way property tax exemptions were determined. Tax exemptions are based on a property being used for a charitable purpose, not on whether revenues from that property filter to charities.

Council decided to not provide tax exemptions in 2017 and asked Administration to report on relevant provincial regulation updates as they became available.

### 2018 Update

At this time, the relevant legislation has not been passed. The Government of Alberta is currently suggesting a release date of second quarter 2018. If this timeline is met, there would still be a minimum 60 day public consultation and the province has stated that the legislation would not be effective until the 2019 tax year. A previously released draft copy of the legislation indicated bingo facilities would be exempt, but the

province has since indicated they are rethinking policies around various types of exempt properties, so the regulation's final drafting is unclear.

Administration continues to advocate that the legislation be written in a way that articulates policy decisions in a clear and consistent manner. More analysis on the challenge with exempting bingos is provided below.

### Tax Exemption Methodology and Analysis

Under current provincial legislation, the primary consideration for tax exemption status is the use of the property. If it is being used for charitable and benevolent activities, it may qualify for tax exemption (assuming other tests are met). Under this same legislation, gambling and liquor activities are considered to be strictly taxable activities. Where an exempt entity runs a wet-bar inside their otherwise exempt facility, for example, the space used for wet-bar activities becomes taxable. In the case of bingos, the same basis for determining exemption applies. The facility is being used for gambling activity and is therefore taxable.

In 2017, bingo associations argued that because their revenues accrue to groups that do good work around the City, the bingo hall itself should become exempt.

Administration cautioned against this approach because it would shift the case for exemption from use of the property to use of the revenue. Agreeing to exempt bingos under this justification would mean the argument should equally apply to casinos and bars that divert revenue to non-profit groups. Furthermore, a fully for-profit business may try to apply for exemption or partial exemption status using the argument that a portion of their revenues are donated to charities. In short, exempting bingos using this rationale could result in additional exemption requests.

While a provincial policy decision was made in the past to keep these properties taxable, that decision could change through the review process. Waiting until legislation is released will ensure the City's tax approach is consistent with the rest of the province.

In 2017, Administration outlined its concerns with proceeding outside provincial legislation as follows:

**Municipal vs. Provincial Education Tax:** When contemplating tax exemptions, Council only has the authority to cancel, defer or refund municipal tax amounts. Given current legislation, any applicable provincial education taxes would still be owed.

**Tax Burden Shift:** In providing a property tax exemption, the tax burden shifts onto other Edmonton property owners and taxpayers.

**Property Owners vs. Bingo Associations:** Any municipal tax exemption, cancellation, deferral or refund would be provided to the property owner rather than the bingo association. At present, it appears that all Edmonton bingo associations lease their space from a private property owner. Included within last year's bingo association correspondence were letters from the relevant building owner representatives indicating that any tax benefit will be passed along to the bingo association. Letters were not received from all property owners (though not requested) and the City of Edmonton would have no way of enforcing agreements between property owners and tenants.

**Charity Membership:** In reviewing the charity membership list provided by bingo associations, two areas of concern are raised. First, there is no requirement for the charities benefiting from the bingo operation to be located in Edmonton and several groups are based outside Edmonton. Providing special tax consideration would therefore be providing property tax benefit to non-Edmonton based charities at the cost of Edmonton taxpayers (though non-Edmonton based charities may provide benefit to Edmontonians). Second, several charities would likely not qualify for tax exemption status if they applied independently. This is primarily due to the restricted membership of particular groups.

**Policy Creep:** The request from bingo associations was to assist its membership in raising funds for charitable activities by decreasing overall operating costs. This was essentially a request to exempt a property by virtue of it being a non-profit regardless of the activity taking place. A subsequent argument may be presented by non-profits that serve alcohol within their facility and are taxable for that space. Approving a bingo tax exemption, cancellation, deferral or refund would likely invite subsequent requests from other organizations. This would likely include casinos, any applicable racing organizations and potentially expand to non-profits that have taxable spaces that serve alcohol.

### Legal Implications

Tax exemptions are governed by provincial legislation based on provincial policy decisions and this legislation is currently under review. Despite this Provincial legislation, section 364 of the *Municipal Government Act* allows City Council to exempt property held by a non-profit organization to any extent council considers appropriate.

### Policy

City Council has no existing policy on providing municipal tax exemptions to otherwise taxable entities. Policy C-543 relates specifically to non-profit organizations that qualify

for exemption status and are seeking tax refunds for the period of time when construction was underway and the facility not operational. Council has considered ad hoc requests for tax cancellation in the past.

## Corporate Outcomes and Performance Management

Corporate Outcome(s): The City of Edmonton has a resilient financial position			
Outcome(s)	Measure(s)	Result(s)	Target(s)
Ensure transparent and reasonable tax policy.	5-year total of Council- approved tax cancellations and refunds	Under City Policy C543: \$535,586.19 (2013-2017)  Ad-hoc requests from non-profit organizations: \$301,314.21 (2013-2017)	N/A
	5-year average value of Council- approved tax cancellations and refunds	Private property owners: \$0.00 (2013-2017)  Under City Policy C543: \$107,117.24 (2013-2017)  Ad-hoc requests from non-profit organizations: \$60,262.84 (2013-2017)  Private property owners: \$0.00 (2013-2017)	
Ensure transparent and reasonable tax policy.	5-year total of Council- approved tax deferrals	Ad-hoc requests from non-profit organizations: \$638,293.58 (2013-2017)  Private property owners: \$0.00 (2013-2017)	N/A
	5-year average value of Council- approved tax deferrals	Ad-hoc requests from non-profit organizations: \$127,658.72 (2013-2017)  Private property owners: \$0.00 (2013-2017)	

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Ensure transparent and reasonable tax policy.	Past year's taxes forgone as a result of Council exemption decisions.	Council has approved 5 ongoing municipal tax exemptions for non-profit organizations through Bylaw 12408. In 2017, these tax exemptions shifted \$209,727.43 in property tax burden to the remaining non-residential base.	N/A
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### Risk Assessment

Risk Element	Risk Description	Likelihood	Impact	Risk Score	Current Mitigations	Potential Future Mitigations
Commercial	Tax refunds will shift the tax burden onto remaining taxpayers	5	1	5	Council could choose not to approve the request	A refund will be absorbed by the remaining tax base, but will put pressure on tax increases.
Legal / Regulatory	The City runs the risk of additional groups requesting similar consideration	3	1	3	This risk is mitigated by the existence of Council policy.	Council ultimately has the authority to approve or deny subsequent requests.
Legal / Regulatory	The City would be out of step with provincial legislation if an independent policy is created	5	1	5	This will only occur if Council approves tax exemption or cancellation	The City could work with the GOA to develop policy parity.