

Class A Bingo Associations

Update on Taxable Status - Considerations to Exempt and Consequences and Principles to support Exemptions

Recommendation

That the October 16, 2020, Financial and Corporate Services report CR_7153, be received for information.

Previous Council/Committee Action

At the April 8, 2019, Executive Committee meeting, the following motion was passed:

That, if there are no changes to Copter prior to the next taxation year, Administration prepare a report outlining the considerations to exempt class A Bingo Associations, as well as an analysis of the consequences of doing so, and the principle choices that would support such an exemption.

At the April 16, 2019, City Council meeting, the following motion was passed:

That, should Community Organization Property Tax Exemption Regulation not be passed in the first quarter of 2020, Administration return to Committee with an update in advance of the tax rate bylaw.

Executive Summary

Under provincial legislation, bingo associations are considered taxable because gambling is not considered a tax exempt use. However, City Council does have the authority to cancel municipal taxes on any property or exempt any non-profit organization from municipal property tax. Applying rebates to bingo halls in a manner similar to rebates applied in 2019 will cost the City approximately \$300,000 in 2020.

Ad-hoc property tax rebates for bingo associations do not fit within any City policy and add costs to other ratepayers in future years. It is also difficult for Administration to ensure that non-profit organizations and Edmontonians they serve benefit from property tax rebates.

Report

Background

For the past three years, the City has been approached by Edmonton bingo associations requesting municipal tax exemption status. Property tax exemptions are typically decided 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.

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, there are a couple of tools to consider. First, if the organization is a non-profit, Council can exempt it from municipal property tax through bylaw under section 364 of the MGA. Second, Council has the ability to cancel, defer or refund taxes at their discretion, under section 347 of the MGA, for any particular property or class of properties.

In 2016, 2017, 2018 and 2019, Calgary's bingo associations made exemption requests to Calgary's City Council. Calgary did not provide a blanket exemption but did approve municipal tax cancellation under three conditions:

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

In 2017, Edmonton City Council heard from local area bingo associations arguing that revenue generated by bingo supports good work around the community and that this should justify tax exemption.

Administration advised Council against acting ahead of provincial legislation, which was in the process of being updated. Administration noted changing the criteria for tax exemption would create inconsistencies in the way it determines tax exemptions. Within existing legislation, exemptions are based on a property being used for a charitable purpose, not on whether revenues from that property filter to charities.

Council decided not to provide tax rebates in 2017 and asked Administration to report on relevant provincial regulation updates as they became available. The following year, Edmonton City Council provided a one-time municipal tax rebate in anticipation of future provincial legislation. This resulted in a total tax rebate of \$278,990.61 to five Edmonton bingo associations. That same motion also requested a report return to Council in 2019. In 2019, Council once again approved the tax cancellation asking for a similar report to come forward in 2020. This resulted in a total tax rebate of \$310,586.60.

2020 Update

Provincial legislation has not changed and bingo associations remain taxable. The provincial government has not indicated that there will be any immediate updates to property tax exemption legislation.

Tax Exemption Methodology and Analysis

Under current provincial legislation, use of the property is the primary consideration for tax exemption status. If the property 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 consumption are considered to be strictly taxable activities. Where an exempt entity operates a wet bar inside their otherwise exempt facility, for example, the space used for serving alcohol becomes taxable. In the case of bingos, the same basis for determining exemption applies. The facility is being used for gambling and is therefore taxable.

For the past five years, bingo associations have argued that, because their revenues go to groups that do good work around the City and in the region, the bingo hall itself should be exempt. Administration cautions against accepting 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 could mean a similar argument applies for casinos and bars that divert revenue to non-profit groups. A fully for-profit business could also argue for exemption or partial exemption status because a portion of their revenue is donated to charities. In short, exempting bingos using this rationale

would create an inconsistent approach and may result in additional exemption requests.

Administration's concerns with proceeding outside provincial legislation and exempting bingo associations include:

- **Budget Impact:** Cancelling bingo association taxes will negatively impact total budget revenues by the amount cancelled.
- **Tax Burden Shift:** If the budget is increased to compensate for this revenue loss, additional tax burden shifts onto other property owners and taxpayers.
- **Municipal vs. Provincial Education Tax:** 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.
- **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 nearly all Edmonton bingo associations lease their space. The City would have no way of ensuring agreements are honoured between property owners and tenants. For example, a property owner could terminate the lease with a bingo association but still benefit from the tax rebate. Administration may not be notified about the change.
- **Charity Membership:** In reviewing the charity membership list provided by bingo associations, there are two areas of concern. 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 benefit non-Edmonton based charities at the expense of Edmonton taxpayers (although non-Edmonton based charities may provide benefit to Edmontonians). Second, several charities would likely not qualify for tax exemption status if they applied independently, primarily due to membership restrictions (e.g., geography, religious affiliation, etc.).
- **Policy Expansion:** 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 similar 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 could 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. However, 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. City Council can also cancel or defer taxes using its authority under section 347 of the *Municipal Government Act*, if *Council considers it to be equitable to do so*.

Policy

On January 22, 2019, City Council passed a new amalgamated Retroactive Municipal Tax Relief Policy (C607). This policy is meant to include all possible uses of Council tax cancellation powers and does not contemplate providing municipal tax rebates to otherwise taxable entities. Exempting property is typically based on provincial legislation. At present, bingo associations are taxable under that legislation.

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 C543/607: \$940,831.67 (2015-2019)	\$0.00 outside Council policy
		Ad-hoc requests from non-profit organizations: \$1,155,124.05 (2015-2019)	
		Private property owners: \$0.00 (2015-2019)	
	5-year average value of Council-approved tax cancellation and refunds	Under City Policy C543/607: \$188,166.33 (2015-2019)	
		Ad-hoc requests from non-profit organizations: \$231,025.01 (2015-2019)	
		Private property owners: \$0.00 (2015-2019)	

Class A Bingo Associations - Update on Taxable Status

Ensure transparent and reasonable tax policy	<p>5-year total of Council-approved tax deferrals</p> <p>5-year average value of Council-approved tax deferrals</p>	<p>Ad-hoc requests from non-profit organizations: \$693,884.19 (2015-2019)</p> <p>Private property owners: \$0.00 (2015-2019)</p> <p>Ad-hoc requests from non-profit organizations: \$138,776.84 (2015-2019)</p> <p>Private property owners: \$0.00 (2014-2018)</p>	\$0.00 outside Council policy
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 2019, these tax exemptions shifted \$285,279.21 in property tax burden to the remaining non-residential base	N/A

Others Reviewing this Report

- B. Andriachuk, City Solicitor