

Class A Bingos Associations

Update of Taxable Status

Recommendation

That the April 8, 2019, Financial and Corporate Services report CR_5898, be received for information.

Previous Council/Committee Action

At the April 10, 2018 City Council meeting, the following motion was passed:

1. That the municipal portion of the taxes for the 2017 taxation year for Class A Bingo Associations be cancelled subject to: qualifying bingos verifying and maintaining a Class A Bingo Facility Licence; property owners under whom bingo associations hold leases confirming that the benefits of a tax exemption would flow to the bingo associations; areas within the bingo that serve alcohol or contain video lottery terminals remain taxable.
2. That the municipal portion of the taxes for the 2018 taxation year for Class A Bingo Associations be cancelled conditional upon Community Organization Property Tax Exemption Regulation exempting Class A Bingo Associations.
3. That, should Community Organization Property Tax Exemption Regulation not be passed in 2018, 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. This update is being provided in advance of the tax rate bylaw to confirm the City's approach relative to bingo associations for the 2019 tax year.

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 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. 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.

In 2016, 2017 and 2018, similar requests were put forward to Calgary's City Council by their local bingo associations. Calgary did not provide a blanket exemption but did approve municipal tax cancellation 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.

In 2017, Edmonton City Council heard from local area bingo associations making a similar argument to those made 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. 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.

2019 Update

Provincial legislation has not changed and bingo associations remain taxable. No further updates regarding changes to property tax exemption legislation have been provided by the Province.

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.

For the past four years, bingo associations have argued that, because their revenues accrue to groups that do good work around the City and in the region, the bingo hall itself should become exempt. Administration cautions 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 would create an inconsistency in approach and may result in additional exemption requests.

Under existing legislation, the policy decision was to keep these properties taxable. Updated legislation has been pending for several years and continues to be pending.

Administration outlines its concerns with proceeding outside provincial legislation as follows:

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 Edmonton property owners and taxpayers.

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.

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 but one lease their space. Last year's bingo association correspondence included 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 and the City of Edmonton would have no way of ensuring agreements are honoured 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 expense of Edmonton taxpayers (although it could be argued that 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 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 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. 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*.

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

2018 marked the first year that the five-year amount of tax cancellations outside Council policy exceeded the five-year amount provided within Council policy. On January 22, 2019, Council reviewed and updated its Retroactive Municipal Tax Rebate policy to better align with its vision for future rebate requests.

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: \$513,905.08 (2014-2018) Ad-hoc requests from non-profit organizations: \$810,247.05 (2014-2018) Private property owners: \$0.00 (2014-2018)	N/A
	5-year average value of Council-approved tax cancellations and refunds.	Under City Policy C543: \$102,781.02 (2014-2018) Ad-hoc requests from non-profit organizations:	

		\$162,049.41 (2014-2018) Private property owners: \$0.00 (2014-2018)	
Ensure transparent and reasonable tax policy.	5-year total of Council-approved tax deferrals. 5-year average value of Council-approved tax deferrals.	Ad-hoc requests from non-profit organizations: \$756,166.76 (2014-2018) Private property owners: \$0.00 (2014-2018) Ad-hoc requests from non-profit organizations: \$151,233.35 (2014-2018) Private property owners: \$0.00 (2014-2018)	N/A
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 2018, these tax exemptions shifted \$258,044.22 in property tax burden to the remaining non-residential base.	N/A

Risk Assessment

Risk Element	Risk Description	Likelihood	Impact	Risk Score (with current mitigations)	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	3	1	3	This risk is mitigated by the existence	Council ultimately has the authority to

	groups requesting similar consideration.				of Council policy.	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.

Others Reviewing this Report

- B Andriachuk, City Solicitor