

# Background and Previous Council Direction

## Background

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### Tax Cancellations Related to Prior Years' Assessment Rolls

Section 305 of the MGA allows corrections or amendments to the property assessment roll only during the current tax year. A current year amendment to an individual assessment triggers a corresponding adjustment to the current year taxes for that account.

Property owners have a responsibility to inform the municipality of assessment errors or changes to their property in a timely manner for Administration to make the relevant changes to the property assessment accounts within the current taxation year. This self-reporting is encouraged every year before the end of the 67-day Customer Review Period that follows each assessment notice mailing although self-reporting is accepted year-round. Administration does not have the ability to alter property assessment rolls of prior years.

Inaccuracies in assessment rolls may result from several factors, including but not limited to operational considerations associated with year-end assessment roll production, timing of communication between business units, and incorrect data or mailing address information.

Generally, valid cancellation requests are for tax amounts that were levied due to the following circumstances:

- › an incorrect issuance of a property assessment
- › a property assessment correction error
- › a tax exemption processing error
- › year-end timing and/or systems issues

Administration uses the following criteria to determine if the circumstances and corresponding property or Business Improvement Area (BIA) tax amounts should be brought forward to Council in this semi-annual report:

- › Typically, the inaccuracy was reported within two years of the occurrence
- › One of the following:
  - › Assessment was advised of the inaccuracy within the year the inaccuracy occurred, but the correction was either not processed or incorrectly processed
  - › the taxpayer was not aware and/or was not notified of the change in assessment and was unable to bring the inaccuracy to the assessor's attention within the applicable tax year
  - › the property or Business Improvement Area assessment account was set up in error, and the assessment notice was sent to the wrong party
  - › another City department(s) was notified by the taxpayer of a change to the business and Assessment & Tax was not notified during the applicable taxation year.

The recommended adjustments to property tax accounts due to assessment roll corrections would cancel or reduce both the municipal and provincial property taxes. Upon cancellation, the provincial portion of the property tax is a cost to The City until it is recovered next year through the provincial property tax rate calculation. Any tax cancellations in this report supported by Council will be funded through the tax

cancellation budget. If Council chooses not to support the recommendation, the tax liabilities and amounts owed will remain as originally billed. Individual requests for prior years' tax cancellation that met these criteria are listed in Attachment 2.

Since the *Compassionate Property Tax Penalty Relief and Correcting Prior Year Errors* Notice of Motion be approved by Council on 2023 May 9, administration will return to Council in Q1 of 2024 to recommend an updated Charter Bylaw and new Council Policy that will delegate tax relief authority to Administration. This would authorize Administration to cancel, reduce, refund or defer taxes to:

- › Provide compassionate property tax penalty relief in accordance with an updated Dorothy Motherwell Compassionate Property Tax Penalty Relief Program; and
- › Correct prior year errors in limited circumstances where property owners incurred property tax or penalties in error (i.e. errors identified within two years after the error occurred, consistent with current practice).

Should those changes be approved by Council, situations currently addressed through the Circumstance Report will be addressed more expediently by Administration, starting in 2024. Administration would report to Council annually on taxes cancelled through this delegated authority. Cancellations pursuant to the Non-Profit Tax Mitigation Policy would still come to Council for approval annually.

## Exempt Organizations and the Non-Profit Tax Mitigation Policy

At the 2014 December 15 Regular Meeting of Council, through C2014-0919, Council adopted the *Non-Profit Tax Mitigation Policy* to cancel the property taxes of non-profit organizations that paid tax during the construction period of their facility and whose subsequent use of the property met the criteria for property tax exemption. The *Policy* is administered using the Assessment and Tax Circumstances Report for administrative efficiency.

Property tax exemptions are governed by the MGA and the *Community Organization Property Tax Exemption Regulation* (COPTER). Provisions in the legislation differ based on the use of the property and the nature of the organization which holds it. One of the differences is the tax treatment of non-profit-held property that is not in use because of construction or renovation. Property held by specific entities such as public institutions (e.g., hospitals, public colleges and universities) are exempt from property tax when they are under construction/renovation. Property that is held by non-profit organizations and societies and is to be used for an approved activity (e.g., places of worship, chambers of commerce, food banks, and under certain conditions, arts and cultural activities) are not property tax exempt until it is actually in use for these purposes. To be considered for municipal property tax cancellation under the *Policy*, organizations must attain property tax exemption for the property under the provincial legislation. Until the property is completed and occupied, and being used for the exempt purpose, applicants pay municipal and provincial property taxes.

The *Policy* ensures that tax cancellations for properties and/or facilities that are under construction are conducted in an equitable and consistent manner through an open and transparent process. The following criteria are used to determine if the circumstances and corresponding municipal property tax amounts should be brought forward to Council:

- › From the *Policy*
  - › a building permit for the site was issued after the date established in the *Policy*; and
  - › the organization has filed the necessary application form to request tax cancellation under the *Policy* to Assessment and Tax and
  - › upon completion and occupancy, the organization has filed an application for property tax exemption under the MGA or COPTER to Assessment and Tax and the application has been approved.

The non-profit organization must meet all the above criteria to qualify for a tax cancellation under the *Policy*. Then up to four years of the municipal taxes paid over the construction period are subject to retroactive cancellation. The value of the cancellation amount is based on the municipal tax levied during the eligible period the property was under construction and is retroactive to the organization attaining property tax exemption under provincial legislation. The eligible period begins the year that the required application is submitted to Assessment and Tax. If the application is submitted the same year the building permit is issued, the period begins as of the date the permit is issued. If the application is submitted at any point thereafter, the eligible period begins January 01 of the year in which the application is received by Assessment and Tax. The period ends either four years from the date that the eligible period begins or when the property becomes exempt from taxation, whichever is earlier. The recommended adjustments due to the *Policy* would cancel or reduce only the municipal property taxes in each organization's account. If Council chooses not to support the recommendation, the tax liabilities and amounts paid will remain as originally billed.

## Previous Council Direction

This is a routine report that is presented to Council twice per year.

### Assessment and Tax Circumstances Report Timeline

Date	Direction	Description
2023/05/09	Motion Carried	Notice of Motion – Compassionate Property Tax Penalty Relief Policy Updates, EC2023 - 0457
2022/11/01	Motion Carried	2022 Assessment and Tax Circumstances Report 2 Combined Meeting of Council
2022/10/18	Motion Carried	2022 Assessment and Tax Circumstances Report 2 Executive Committee
2022/06/07	Motion Carried	2022 Assessment and Tax Circumstances Report 1 Combined Meeting of Council
2022/05/17	Motion Carried	2022 Assessment and Tax Circumstances Report 1 Executive Committee
2021/11/15	Motion Carried	2021 Assessment and Tax Circumstances Report 2 Combined Meeting of Council
2021/11/9	Motion Carried	2021 Assessment and Tax Circumstances Report 2 Executive Committee
2021/05/31	Motion Carried	2021 Assessment and Tax Circumstances Report 1 Combined Meeting of Council
2021/05/18	Motion Carried	2021 Assessment and Tax Circumstances Report 1 Priorities and Finance Committee
Numerous	NA	Multiple Assessment and Tax Circumstances Reports Throughout the years many Assessment and Tax Circumstances Reports have gone to Council and Committee.
2014/12/15	Motion Carried	Non-Profit Tax Mitigation Policy At the 2014 December 15 Regular Meeting of Council, through C2014-0919, Council adopted the Non-Profit Tax Mitigation Policy to cancel the property taxes of non-profit organizations that paid tax during the construction period of their facility and whose subsequent use of the property met the criteria for property tax exemption.

## Bylaws, Regulations, Council Policies

The following are excerpts of the relevant Bylaws, Regulations, and Council Policies

### Community Organization Property Tax Exemption Regulation (COPTER) Excerpt of Section 15

Day cares, museums, and other facilities

15 A non-profit organization that holds property on which any of the following facilities are operated may apply to the municipality within whose area the property is located for an exemption from taxation:

- (a) a facility used for sports or recreation to the extent that the facility is not used in the operation of a professional sports franchise;
- (b) a facility used for fairs or exhibitions, including agricultural exhibitions;
- (c) a facility used for the arts or a museum;
- ...
- (e) a facility used by a linguistic organization if
  - (i) the use of the property by the general public is actively encouraged, and
  - (ii) a sign is prominently posted in the facility indicating the hours that the whole or part of the facility is accessible to the public;
- (f) a facility used by an ethno-cultural association for sports, recreation or education or for charitable or other benevolent purposes if
  - (i) the use of the property by the general public is actively encouraged, and
  - (ii) a sign is prominently posted in the facility indicating the hours that the whole or part of the facility is accessible to the public;
- (g) a facility in a municipality operated and used by an organization for a charitable or benevolent purpose where the majority of the organization's beneficiaries do not reside in the municipality;
- (h) a facility used as a thrift shop;
- (i) a facility used as a sheltered workshop;
- (j) a facility operated and used by a chamber of commerce;
- (k) a facility used for a charitable or benevolent purpose that is for the benefit of the general public if
  - (i) the charitable or benevolent purpose for which the facility is primarily used is a purpose that benefits the general public in the municipality in which the facility is located, and
  - (ii) the resources of the non-profit organization that holds the facility are devoted chiefly to the charitable or benevolent purpose for which the facility is used.

AR 281/98 s15;283/2003;182/2008;77/2010

### Municipal Government Act (MGA) Excerpt of Section 203

#### Delegation by council

**203(1)** A council may by bylaw delegate any of its powers, duties or functions under this or any other enactment or a bylaw to a council committee or any person unless an enactment or bylaw provides otherwise.

(2) A council may not delegate

...

- (d) its power with respect to taxes under section 347, and

...

RSA 2000 cM-26 s203;2019 c22 s10(6)

### Municipal Government Act (MGA) Excerpt of Section 305

### **Correction of roll**

**305(1)** If it is discovered that there is an error, omission or misdescription in any of the information shown on the assessment roll,

- (a) the assessor may correct the assessment roll for the current year only, and
- (b) on correcting the roll, an amended assessment notice must be prepared and sent to the assessed person.

**(1.1)** Where an assessor corrects the assessment roll in respect of an assessment about which a complaint has been made, the assessor must send to the assessment review board or the Municipal Government Board, as the case may be, no later than the time required by the regulations,

- (a) a copy of the amended assessment notice, and
- (b) a statement containing the following information:
  - (i) the reason for which the assessment roll was corrected;
  - (ii) what correction was made;
  - (iii) how the correction affected the amount of the assessment.

**(1.2)** Where the assessor sends a copy of an amended assessment notice under subsection (1.1) before the date of the hearing in respect of the complaint,

- (a) the complaint is cancelled,
- (b) the complainant's complaint fees must be returned, and
- (c) the complainant has a new right of complaint in respect of the amended assessment notice.

...

**(3)** If exempt property becomes taxable or taxable property becomes exempt under section 364.1, 364.2 or 368, the assessment roll must be corrected for the current year only and an amended assessment notice must be prepared and sent to the assessed person.

...

RSA 2000 cM- 26 s305;2002 c19 s8;2009 c29 s7;  
2015 c8 s43;2016 c24 s37;2017 c13 s1(24);2019 c6 s

### **Report to Minister**

**305.1** If an assessment roll is corrected under section 305 or changed under section 477 or 517, the municipality must, in the form and within the time prescribed by the regulations, report the correction or change, as the case may be, to the Minister.

2002 c19 s9

### ***Municipal Government Act (MGA) Excerpt of Section 347***

#### **Cancellation, reduction, refund or deferral of taxes**

**347(1)** If a council considers it equitable to do so, it may, generally or with respect to a particular taxable property or business or a class of taxable property or business, do one or more of the following, with or without conditions:

- (a) cancel or reduce tax arrears;
- (b) cancel or refund all or part of a tax;
- (c) defer the collection of a tax.

**(2)** A council may phase in a tax increase or decrease resulting from the preparation of any new assessment.

1994 cM 26.1 s347

### ***Municipal Government Act (MGA) Excerpt of Section 362***

#### **Exemptions for Government, churches and other bodies**

**362(1)** The following are exempt from taxation under this Division:

...

- (k) property held by a religious body and used chiefly for divine service, public worship or religious education and any parcel of land that is held by the religious body and used only as a parking area in connection with those purposes;

- (l) property consisting of any of the following:
  - (i) a parcel of land, to a maximum of 10 hectares, that is used as a cemetery as defined in the Cemeteries Act;
  - (ii) any additional land that has been conveyed by the owner of the cemetery to individuals to be used as burial sites;
  - (iii) any improvement on land described in subclause (i) or (ii) that is used for burial purposes;
- (m) property held by
  - (i) a foundation constituted under the Senior Citizens Housing Act, RSA 1980 cS- 13, before July 1, 1994, or
  - (ii) a management body established under the Alberta Housing Act, and used to provide senior citizens with lodge accommodation as defined in the Alberta Housing Act;
- (n) property that is
  - ...
  - (ii) held by a non-profit organization and used solely for community games, sports, athletics or recreation for the benefit of the general public,
  - (iii) used for a charitable or benevolent purpose that is for the benefit of the general public, and owned by
    - (A) the Crown in right of Alberta or Canada, a municipality or any other body that is exempt from taxation under this Division and held by a non-profit organization, or
    - (B) by a non-profit organization,
  - (iv) held by a non-profit organization and used to provide senior citizens with lodge accommodation as defined in the Alberta Housing Act, or
  - (v) held by and used in connection with a society as defined in the Agricultural Societies Act or with a community association as defined in the regulations, and that meets the qualifications and conditions in the regulations and any other property that is described and that meets the qualifications and conditions in the regulations;
- (o) property
  - (i) owned by a municipality and used solely for the operation of an airport by the municipality, or
  - (ii) held under a lease, licence or permit from a municipality and used solely for the operation of an airport by the lessee, licensee or permittee;

...  
RSA 2000 cM- 26 s362;2003 cP- 19.5 s142;2012 cE- 0.3 s279;  
2017 c13 s1(35);2018 c19 s71

### ***Non-Profit Tax Mitigation Policy***

**Policy Title:** Non-Profit Tax Mitigation

**Policy Number:** PDA002

**Report Number:** C2014-0919

**Approved by:** Council

**Effective Date:** 2014 December 15

**Business Unit:** Assessment

### **COUNCIL POLICY**

#### **BACKGROUND**

1. Non-profit organizations that provide public facilities are generally exempt from property tax through the Municipal Government Act (RSA 2000, c M-26) (MGA) and the Community Organization Property Tax Exemption Regulation (AR281/98) (COPTER). These property tax exemptions require that property and/or facility is actually used for an exempt purpose. Taking direction from a 2008 Court of Queen's Bench decision (Edmonton (City) v. North Pointe Community Church, 2008 ABQB 110), exemptions based on use do not generally apply to properties and/or facilities that are under construction and not actually in use for an exempt purpose.
2. Prior to this policy, Council provided tax relief for the affected non-profit organizations through its tax cancellation powers under section 347 of the MGA on a case by case basis.

#### **PURPOSE**

3. This policy will ensure that tax cancellations for properties and/or facilities that are under construction in Calgary are conducted in an equitable and consistent manner through an open and transparent process.
4. This policy will:
  - a. guide how Council addresses the issue of property taxes for a non-profit organization that holds a property and/or facility under construction in Calgary and is not exempt from taxation by using its tax cancellation powers in section 347 of the MGA;
  - b. set out the eligibility criteria that qualifies a non-profit organization for a tax cancellation under the policy; and,
  - c. set out the procedure through which tax cancellations are administered.
5. The policy does not limit Council's discretion in exercising its section 347 powers under the MGA.

#### **APPLICABILITY**

6. This policy applies to properties and/or facilities that qualify under the following sections in the MGA and COPTER, where "use" has been interpreted by the Court of Queen's Bench not to include the construction period of the property and/or facility:
  - a. Sections 362(1)(k-m), 362(1)(n)(ii)-(iv), and 362(o) of the MGA, and
  - b. Sections 15(a)-(c) and 15(e)-(k) of the COPTER

#### **DEFINITIONS**

7. In this Council Policy:
  - a. "Building Permit" means a permit issued under the Calgary Building Permit Bylaw 64M94 and defined in the Alberta Building Code 2014.

## **POLICY**

8. For up to four years, Council will consider cancelling the municipal taxes for non-profit organizations that hold a property and/or facility that is under construction in Calgary when all of the following criteria have been met:
  - a. A building permit for the site has been issued;
  - b. The non-profit organization has filed the necessary application forms to qualify for the tax cancellation under this policy to Assessment; and,
  - c. Upon completion and occupancy of the facility, the organization has filed an application for property tax exemption under the MGA or COPTER to Assessment and the application has been approved.
9. Transition Program
  - a. Notwithstanding section 11(a)(iii), to aid with transition, this policy will apply to projects that would have qualified had the program been in place on 2013 January 01, so long as an application for cancellation under this section is filed by 2015 December 31.

## **PROCEDURE**

10. Applications for tax cancellation and property and business tax exemption are available directly from Assessment and from calgary.ca and must be submitted to Assessment for consideration.
11. Timing
  - a. Cancellation Period
    - i. The cancellation period begins when a building permit has been issued so long as an application for cancellation has been filed within the same calendar year.
    - ii. The cancellation period ends either 4 years from the date of that the cancellation period begins or when the subject property becomes exempt from taxation, whichever is earlier.
    - iii. If an application is filed in a calendar year following the issuance of a building permit, then the cancellation period will begin on January 1 of the year in which an application is submitted.
  - b. Cancellation Timing
    - i. Applications will be reviewed by Assessment and those properties and/or facilities that qualify for tax cancellation under this policy will be placed on the semi-annual Assessment and Tax Circumstances Report as soon as possible after qualification.

## **AMENDMENTS**

2016 October 13 - Minor revision relates to the update of Alberta Building Code 2006 to Alberta Building Code 2014, which defines "Building Permit" for the purposes of this Council policy