

TAX STATUS OF BINGO FACILITIES

EXECUTIVE SUMMARY

This report responds to NM2016-11, adopted by Council on 2016 April 11, as sponsored by Councillors Jones, Carra and Chabot. Provincial property tax and exemption legislation expressly states that bingo facilities are subject to property tax. Should Council choose to provide a tax exemption for the municipal tax portion, Administration has described alternatives that may be considered.

ADMINISTRATION RECOMMENDATION(S)

That the Priorities and Finance Committee recommend that Council receive this report for information.

RECOMMENDATION OF THE PRIORITIES AND FINANCE COMMITTEE, DATED 2016 MAY 31:

That Council receive this report for information.

Excerpts from the Minutes of the Regular Meeting of the Priorities and Finance Committee, held 2016 May 31:

"FORWARD LOST MOTION, that at the request of Councillor Chabot, and pursuant to Section 155 (7) of the Procedure Bylaw 44M2006, as amended, the Lost Motion with respect to Report PFC2016-0445 be forwarded to the 2016 June 20 Regular Meeting of Council for information, as excerpts from the Minutes."

"APPROVE, Moved by Councillor Chabot, that the Administration Recommendation contained in Report PFC2016-0445 be approved, **after amendment**, as follows:

That the Priorities and Finance Committee recommends that Council:

2. **Direct Administration to bring a resolution for cancellation of the Municipal Portion of the Property Tax for 2016, in consultation with the Law Department, to provide annually renewable tax exemption with provisions for verification of Class "A" Bingo Facility Licences (for example excluding areas that serve liquor and video lottery terminals) upon confirmation that tax monies would flow to tenants.**

ROLL CALL VOTE:

For:

A. Chabot, R. Pootmans, N. Nenshi

Against:

S. Chu, D. Colley-Urquhart, P. Demong, W. Sutherland

MOTION LOST"

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PREVIOUS COUNCIL DIRECTION / POLICY

At the 2016 April 11 Combined Meeting, Council adopted Notice of Motion NM2016-11, brought forward by Councillors Jones, Carra and Chabot, as follows:

“NOW THEREFORE BE IT RESOLVED that Council direct “Administration to consult with the bingos and bring a report with options, including a draft tax exemption bylaw to exempt the municipal property taxes on the three bingo facilities, and a recommendations on how and whether to address the issue.

AND FURTHER BE IT RESOLVED that the report be brought to the Priorities and Finance Committee no later than May 31.”

On 2015 December 08, Council passed the annual Business Tax Bylaw (Bylaw 1M2016) which includes the provisions for business tax exemptions, including bingo facilities, in section 18.

On 2016 April 25, Council passed the annual Property Tax Bylaw (Bylaw 20M2016).

BACKGROUND

In Alberta, property tax liability is governed by the *Municipal Government Act*. The *Community Organization Property Tax Exemption Regulation* establishes criteria non-profits must meet to be eligible for non-statutory tax exemption. Decisions about property tax liability are considered policy decisions: alignment with the broader goals of government is encouraged by exempting specific property uses and, in effect, providing a subsidy through taxes levied on other properties. Municipalities administer provincial provisions locally within that policy and legislative framework.

Through NM2016-11, Calgary bingo halls have asked Council to use its powers to exempt them from paying municipal property taxes (Attachment 1). Bingo halls are designated as commercial style bingo facilities under the *Regulation*. There are three commercial style bingo facilities within Calgary's assessment and taxation jurisdiction: The Bingo Barn located in Ward 10, The Bingo Palace located in Ward 5, and Five Star Bingo & Pub located in Ward 9.

The properties are privately owned and leased to incorporated non-profit societies called Bingo Associations. One of the properties, Five Star Bingo & Pub, is also licenced to operate Video Lottery Terminals (VLTs) and to operate as a public bar.

Provincial legislation expressly states that property licenced to operate a commercial style bingo facility or sell liquor to the public is not exempt from taxation. However, Council is given the authority to cancel a taxpayer's property tax liability, wholly or in part(Attachment 2).

Council has in the past provided tax relief to bingo facilities outside the tax exemption provisions in the *Regulation*.

Business Tax Relief: The 2008 business tax exemption policy exempted commercial style bingo facilities from paying business tax. Prior to the 2008, they were traditionally business tax exempt and so have been grandfathered each year through the *Business Tax Bylaw*.

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Property Tax Relief: For 2014 and 2015, the *Limited Benefit Non-Profit Tax Mitigation Program* provided each with a refund equal to the property tax increase associated with the process of consolidating the business tax with the non-residential property tax. The program was established to allow organisations a three-year transition period to plan and budget for the loss of a business tax exemption in the consolidated tax environment. The refund program ended, as scheduled, with the 2016 tax year.

INVESTIGATION: ALTERNATIVES AND ANALYSIS

The purpose of this report is to provide information needed to consider how and whether Council should address the issue of the property tax status of bingo facilities. This section of the report highlights important aspects of the legal context, rationale for current tax status, oversight, and operations of the facilities identified by Administration.

Legal Context

In Alberta, the Alberta Gaming and Liquor Commission (AGLC) has sole responsibility for the licensing and regulation of gambling in the province. All gambling activity is illegal by default and falls under the *Criminal Code (Canada)*. The Code allows certain exceptions, one being where a provincial government has issued licences and net proceeds are used for 'a charitable or religious object or purpose'. In this way, gambling is permitted only on the condition that operators provide some benefit to the community beyond just the players.

A 'charitable or religious object or purpose' has been interpreted by AGLC under common law as providing a charitable community benefit to a significant segment of the community: meaning relief of poverty, advancement of education or religion and other purposes beneficial to the community. The operators of gambling venues may be for-profit or non-profit entities but the actual gambling 'event' must be performed by licenced charitable or religious groups, as defined by the AGLC.

Rationale for Current Tax Status

Provincial legislation on tax exemptions focuses on the primary use of the property and so applies different treatment for properties based on the different styles of gambling.

In Calgary, all bingos are operated by non-profits and are required to distribute the proceeds that result in providing the venue and opportunity to play games of chance. There are three types of venues, each with different considerations for the primary use of the property: (1) permanent, commercial style bingo facilities operated by non-profit Bingo Associations, (2) permanent commercial style bingo facilities that are privately operated (for-profit), and (3) individual organizations' locations, like community centres and churches, where a 'community bingo' is operated by individual non-profit organizations.

With bingo facilities, the property is licenced to operate seven days a week and is solely used for commercial style gambling. This use does not qualify for exemption under the *Act* or *Regulation*, even if the property is associated with a non-profit organization. The *Regulation* specifically identifies the facility licence as a disqualification.

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With community bingo, events are limited to a maximum of three times per week and the property is chiefly used for a purpose other than gambling. For this reason, if the primary property use meets all other criteria for a property tax exemption under the *Community Organization Property Tax Exemption Regulation*, it may still qualify for an exemption. The *Regulation* specifically identifies the community bingo licence as permissible.

Oversight and Operations

Bingo Associations and Bingo Facilities

The AGLC requires that licences for non-profit bingo facilities be held by incorporated, not-for-profit Bingo Associations. Each Association is owned by and represents the non-profit organizations and clubs that derive revenue from that facility's bingo activities. The Association acts as agent or on behalf of its own members only and the facility's revenue is not distributed to non-profits that are not members. The management of Association affairs falls under the control of its elected volunteer executive officers and board of directors. The AGLC does not allow Association responsibilities to be delegated to another entity or to paid facility or management staff.

Association Members

Association non-profits and clubs have a Calgary focus: the AGLC requires that only non-profits located within Calgary conduct bingos in Calgary; and almost all of the 96 members of the three Associations serve populations within Calgary (Attachment 3).

Individual Bingo Association memberships are consistent year to year. The Bingo Barn facility licence is held by the 33rd Street N.E. Community Bingo Association. Its membership is comprised of forty-seven (47) groups including community associations, social and health services, arts, ethno-cultural, and sports related organizations. The Bingo Palace facility licence is held by the Calgary Community & Sport Bingo Association. Its membership is comprised of twenty-eight (28) groups, primarily sports-related, marching bands and community associations. Five Star Bingo & Pub is held by the Five Star Bingo Association. It currently has twenty-one (21) members of a variety of types. Five Star is the only Association currently accepting new members; it can accommodate up to forty-two (42) members in total.

Accessibility of Membership

The maximum number of members is set by each Association. It is based on the allocation of timeslots in the schedule of events at the Association's own facility. The allocation of timeslots was set by the original Association members, based on the number of events each member's volunteers could staff. Thereafter, facilities are required to follow the same schedule week to week. The timeslot allocation does not change year to year unless a group reduces its number of events or withdraws from the Association. New members are able to join the Association if existing members do not take on vacated timeslots.

There is a nominal cost to being a member. When joining, the new member pays the Association a one-time fee for providing space and services for bingo events; this is refunded

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when they leave. There is an additional fee for each individual bingo event paid out of the gross revenue for that event and used towards operating costs.

Eligibility for membership is determined by the AGLC, who then issues a two-year licence to conduct the actual gambling events. The AGLC scrutinize all event transactions, financial information and group activities aggressively for the duration of the licence to ensure compliance with its regulations, guidelines and obligations under the *Criminal Code*.

Proceeds

Licences limit the use of gaming proceeds to specific AGLC approved purposes (Attachment 4). Proceeds are calculated using gross bingo revenues, less the cost of prizes and expenses. The percentage of revenue that is returned to the members varies with the licenced facility's profitability. Generally, the percentage the AGLC intended was 10 to 19 per cent or higher. Based on financial information provided by the Associations, in the 2015, the percentage of gross revenue that was returned to members was 5 to 7 per cent. The small return is a motivating factor for the Associations' request for tax exemption.

Proceeds are distributed monthly by the Association. The dollar amount for each member varies depending on the agreed-to share of pooled net revenue of all events for the month. Individual shares of pooled revenues are determined by the number of scheduled events worked by the members' volunteers.

Based on the summary information provided by two Associations, the total annual proceeds divided by the number of members, the average given would have been approximately \$7,000 to \$13,500 per member for 2015 (Attachment 5).

Alternatives

Currently, a representative for all three bingo facility properties has filed complaints on the assessed values and tax status with the Assessment Review Board. The wording in the legislation is clear that the intention is for bingo facilities to pay property tax. However, the outcome of any specific Board hearing is uncertain.

Their present tax liability is grounded in the policy framework provided by the Province. There is no indication of whether or not that policy decision or direction will change. The new Municipal Government Act will be introduced in the Legislature this spring; the current timelines from Municipal Affairs suggest any replacement for the current *Community Organization Property Tax Exemption Regulation* may not be available until 2018.

Apart from a decision from the Board or amendment to the *Regulation*, there are other alternatives that may be considered. The key question becomes: what is the policy objective of Council? The municipal tax relief previously provided to the bingo facilities had a specific purpose: grandfathering a traditional practice of providing a business tax exemption and, with the ongoing consolidation of business and non-residential property taxes, providing additional time for entities like Bingo Associations to prepare for the associated tax increase. Relief of municipal taxes does not affect the level of City services provided to the property. Whenever

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services are provided without financial contribution, The City is explicitly subsidizing the operation of the organization. Given that City budget requirements do not decrease, all other municipal taxpayers must pay the taxes owing on the organization's behalf.

The facilities under consideration here are highly regulated gambling establishments, traditionally used by non-profits and clubs for their fundraising ability. The use of the proceeds is strictly monitored to ensure their legitimate use in supporting 96 Calgary- based non-profits in providing activities and services for Calgarians. However, their effectiveness in terms of fundraising is declining and the Associations are concerned that the facilities may not be sustainable. Whether or not to address the issue of their property tax status hinges on whether it is a goal of Council to subsidize the operational sustainability of charitable gambling.

Council has used its authority to cancel all or part of municipal taxes, ad hoc and through Council policy in the past. In this situation, it would require the property owner or the Bingo Association to present their request to a Councillor. A Notice of Motion with the details of the tax cancellation request would be brought to the floor of Council where it must be approved by a majority of Council for a tax cancellation to occur. To avoid an annual process, a Council policy and program could be established through a later report. It would require a new tax cancellation fund to be established with the specific purpose of cancelling municipal property taxes for these facilities.

Where cancellations are a provisional alternative, bylaws, once in place, have more permanency and do not require establishing a program or fund. In consideration of the Notice of Motion, a bylaw has been drafted to exempt properties held by the three Bingo Associations from 100 per cent of their municipal property taxes (Attachment 6). In considering any bylaw, the issue of a sunset clause may be of concern. The draft attached limits the exemption to the current Bingo Associations and current property ownership. It also allows any section of the property used for a public bar or VLTs to be taxed.

Currently, the Associations pay property tax through their rent. Any exemption, by cancellation or bylaw, should be conditional on a commitment by the property owner to pass on the full value of the reduction to the Association tenant.

Financial Impact

The motivating factor for the Bingo Associations' request is their inability to recover from the impact of the 2008 ban on smoking in bingo facilities. The decrease in the number of players and the profitability of bingo events has significantly reduced the effectiveness of this type of charitable gambling as a fundraising tool. If the facilities did not have to pay municipal property taxes, an equivalent amount could be used to increase the value of the proceeds available to their members.

Given that the dollar amount of the proceeds distributed to each member varies based on an agreed-to share of pooled net revenue, it is difficult to estimate the impact with accuracy. However, looking strictly at averages, Bingo Barn and Five Star Bingo members would have seen an average increase of about \$1,100 - \$1,500 each if the properties had been municipal tax exempt in 2015 (based the summary financial information provided). In terms of operating

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expenses, the AGLC allows up to 50 per cent of gross revenue to be used for expenses, including property taxes. Based on the financial information provided by two Associations, about 30 per cent of the gross is used for expenses. A municipal tax exemption would have a less than 1 per cent impact on this ratio (Attachment 5). Comparable summary financial information for the Bingo Palace was not available.

The value of a municipal tax exemption is estimated below, based on the full property and using its current assessed value. Because the Associations pay their taxes through rent as determined by the property owner, this is only an estimate:

	Bingo Barn	Bingo Palace	Five Star Bingo	Total Cost to City
2016	\$56,883	\$60,165	\$48,740	\$165,787

Stakeholder Engagement, Research and Communication

Administration approached the Alberta Gaming and Liquor Commission, The City of Edmonton and representatives from the three bingo facilities in Calgary.

AGLC

Given the Commission's regulatory and policy-making role, their position on the tax status of bingo facilities in Alberta in general was requested. They confirmed the intention is that only community bingo events, like those conducted in church halls, where the property use meets other criteria under the *Regulation*, would be exempt from taxation (Attachment 7).

Other Municipalities

The City of Edmonton does not exempt bingo facilities from property taxes. Additional research identified one city in Alberta that has passed a bylaw to exempt a bingo facility within its assessment and tax jurisdiction: in 2015, The City of Leduc passed a bylaw exempting its one bingo facility from municipal taxes from 2015 onwards.

Bingo Facilities

Administration met with representatives from the three bingo facilities and Bingo Associations. Association representatives were also able to speak to the interests and concerns of the non-profit organizations and clubs. They have requested that the properties they occupy be exempted from municipal taxes indefinitely, with the exclusion of any portions that are licenced for liquor sales and VLTs.

During the consultation, representatives provided detailed information about operations and the extent of AGLC scrutiny of all activities undertaken by the Associations and the use of proceeds by the individual non-profit members. The Associations also provided Administration with copies of formal documents, like certificates of incorporation and bylaws, licences, lease information, and the financial statements used in the analysis in this report.

Strategic Alignment

None

Social, Environmental, Economic (External)

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Social

No known social impacts.

Environmental

No known environmental impacts.

Economic

Should Council choose to relieve the properties from the obligation to pay municipal taxes, the non-profit Bingo Associations that operate bingo facilities would benefit from a reduced overall property tax liability.

Financial Capacity

Current and Future Operating Budget:

Should Council choose to relieve the properties of their municipal tax liability through a tax cancelation, the current year amount would come out of loss provision account. The total municipal taxes to be cancelled could be approximately \$165,787. Should Council choose to exempt by Bylaw, no adjustments to future budget allocations are required.

Current and Future Capital Budget:

There are no capital budget implications associated with the recommendation.

Risk Assessment

No implications were identified.

REASONS FOR RECOMMENDATION:

The purpose of this report is to provide information needed to consider how and whether Council should address the policy issue related to the property tax status of non-profit bingo facilities. The current tax status aligns conceptually with exemption legislation in terms of the use of the property.

ATTACHMENTS

1. Notice of Motion NM2016-11
2. Relevant Legislation
3. Calgary Bingo Association Membership
4. Permitted Use of Gaming Proceeds
5. Proceeds, Estimated Change and Summary Financial Statements
6. Draft Bylaw
7. Letter from Alberta Gaming and Liquor Commission