

2015 BUSINESS TAX BYLAW AMENDMENT

EXECUTIVE SUMMARY

A February 2015 decision of the Court of Appeal found the owners of certain parking facilities – those that rent parking spaces exclusively to tenants located in the same building – are not liable to pay the business tax on the parking spaces within the building. In order to preserve equity in the assessment of parking facilities and clarify that operators of parking facilities are the parties liable to pay the business tax in all applicable cases, an amendment to Bylaw 1M2015 is required.

The *Municipal Government Act* (MGA) provides that a business tax bylaw or any amendment to it applies to the year in which it is passed, only if it is passed before May 1 of that year. Due to the requirement to pass this bylaw prior to 2015 May 1, the recommendations in this report are of a highly urgent nature.

ADMINISTRATION RECOMMENDATION(S)

That the Priorities and Finance Committee recommends that Council:

1. Give three readings to the proposed bylaw to amend Bylaw 1M2015, the 2015 Business Tax Bylaw:
2. That Report PFC2015-0297 be forwarded as an item of Urgent Business to the 2015 April 27 Regular Meeting of Council.

PREVIOUS COUNCIL DIRECTION / POLICY

Council passed Bylaw 1M2015 in December 2014, prior to the Court of Appeal decision being issued in February 2015.

BACKGROUND

The MGA gives municipalities the option to levy a business tax by passing a business tax bylaw. The bylaw provides the authority for business taxes to be collected from businesses operating within Calgary. It specifies the business assessment method, the basis for business taxes to be imposed, and provides for exemptions from business tax. The MGA requires that a bylaw be passed annually.

INVESTIGATION: ALTERNATIVES AND ANALYSIS

The Assessment business unit has been assessing the operators of commercial parking facilities, which include owners of parking facilities, for the purposes of business tax. On 2015 February 27, after Bylaw 1M2015 came into force, the Court of Appeal reached a decision with respect to the 2010 business assessments of certain parking facilities. The Court of Appeal found, as the 2010 Business Tax Bylaw was written, that when parking spaces are allocated exclusively to tenants that lease space in a building, the owner of the parking facility is not liable for the business tax on those parking spaces. The current Bylaw 1M2015 has similar wording to that of the 2010 bylaw.

The amendments to Bylaw 1M2015 aim to clarify the party liable for the business tax associated with parking facilities. The intention is that all parking facilities are treated in the same manner, with the operator of the parking facility being the party liable for the business tax in all cases. Administration believes that the proposed amendments are consistent with achieving this intention and with the related provisions of the MGA.

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Stakeholder Engagement, Research and Communication

After the Court of Appeal decision was released in February 2015, Administration immediately began to examine the implications of the decision and its effects, and to determine possible options for The City to address the court's decision. The work group included staff members from the Law and Assessment business units.

Strategic Alignment

The recommendation is in alignment with the direction in Council's Action Plan 2015-2018.

Social, Environmental, Economic (External)

Administration anticipates no social or environmental impact resulting from the proposed bylaw amendments. Administration believes the proposed amendments will achieve a more fair and equitable business tax treatment in the realm of commercial parking and other businesses currently paying business tax. If the proposed amendments are not passed, the owners of parking facilities that rent to their tenants could avoid having to pay business tax on those parking spaces, which may have an impact on the operations of other parking operators.

The proposed bylaw amendments should not affect the eligibility requirements in the exemption provisions of the existing Bylaw 1M2015.

Financial Capacity

Current and Future Operating Budget:

As reflected in the 2014 Business Tax Rate Bylaw report PFC2014-0062, the net 2014 business tax revenue was estimated at \$190.5 million. Business tax revenues, including those relating to parking facilities, are a source of funding for current and future operating fiscal plans, until business tax is fully consolidated into non-residential property tax by 2019.

Current and Future Capital Budget:

Business tax revenues are a source of funding for current and future capital fiscal plans, with the business tax being fully consolidated into the non-residential property tax by 2019.

Risk Assessment

The proposed amendments are aimed to mitigate financial risk associated with the 2015 business assessments of parking facilities and corresponding tax liability. Although the amendments are Administration's best efforts at maintaining equitable tax treatment among operators of parking facilities, significant financial risk still remains as it is expected that the 2015 business assessments of parking facilities will continue to be subject to complaints to the Assessment Review Board. Given the recent Court of Appeal decision, The City of Calgary could experience a revenue reduction of approximately \$7.5 million in tax revenue in 2015 if the amendments are not implemented as proposed. Longer term, the risks associated with this issue will be mitigated by the consolidation of business tax revenues with the non-residential property tax.

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REASON(S) FOR RECOMMENDATION(S):

The proposed bylaw to amend Bylaw 1M2015 addresses the issues raised by the February 2015 Court of Appeal decision. The intent of the proposed bylaw to amend Bylaw 1M2015 is to clarify that operators of parking facilities are the parties liable to pay the business tax while remaining consistent with the *Municipal Government Act*.

ATTACHMENT(S)

1. Proposed wording for the bylaw to amend Bylaw 1M2015
2. Comparison of the language of the current version of Bylaw 1M2015 and the proposed amended version of Bylaw 1M2015.