
*For the First Meeting of the Hearing Committee
to be held on **Monday, June 12th, 2007**
in **Committee Room C-11, Tom Davies Square 4:00 p.m.***

DECLARATIONS OF PECUNIARY INTEREST

MANAGERS' REPORTS

- R-1 Report dated June 1st, 2007 from the Chief Financial Officer/Treasurer regarding Charity Rebate Application, Section 361, Municipal Act. 1 - 10
(RECOMMENDATION PREPARED)

ADJOURNMENT
(RESOLUTION PREPARED)

COMMITTEE MEMBERS

Councillor Cimino
Councillor Thompson
Councillor Caldarelli

DISTRIBUTION

Mayor and Members of Council
M. Mieto
Senior Management Team
R. Swiddle
T. Derro
A. Haché

Angie Haché
City Clerk

Franca Bortolussi
Planning Committee Secretary

Request for Decision Hearing Committee

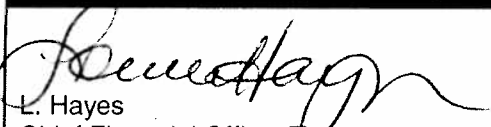


Type of Decision							
Meeting Date	June 12, 2007			Report Date	June 1, 2007		
Decision Requested		Yes	No	Priority		High	Low
	Direction Only			Type of Meeting		Open	Closed

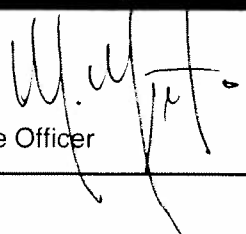
Report Title
Charity Rebate Application , Section 361, Municipal Act

Budget Impact / Policy Implication	Recommendation
<p>This report has been reviewed by the Finance Division and the funding source has been identified.</p>	<p>It is recommended that the request by Le Centre Alpha Culturel for the City of Greater Sudbury to accept and process the charity's application after the statutory deadline <u>not</u> be approved.</p>
<p>Background Attached</p>	<p>Recommendation Continued</p>


Recommended by the Department


L. Hayes
Chief Financial Officer/Treasurer

Recommended by the C.A.O.


Mark Mieto
Chief Administrative Officer

Date: June 1, 2007

Report Prepared By	Division Review
 Tony Derro Supervisor of Tax/Chief Tax Collector	

PURPOSE

Le Centre Alpha Culturel has requested that the City of Greater Sudbury receive and process a late application for a charity property tax rebate under Section 361 of the Municipal Act. Appended to this report as Schedules A and B is correspondence from Le Centre Alpha Culturel.

BACKGROUND

Section 361 of the Municipal Act provides the authority for a municipality to give a property tax rebate to registered charities occupying commercial space within the municipality. This is a provincially mandated program and eligible charities are rebated 40% of the municipal property taxes paid to the landlord. The charity must have a registered charity number under the Income Tax Act (Federal), be occupying commercial space and applications must be made after January 1st of the subject year and before the last day of February in the following year. In order to comply with the statutory deadline, the City of Greater Sudbury's administrative practice is to honour the postmark of the application in the same manner as tax payments are received towards the tax instalment due dates. A copy of Section 361 of the Municipal Act is appended to this report as Schedule C.

In 2005 37 charities were rebated \$187,997.00 in property taxes of which the City of Greater Sudbury's share was \$108,616.10. The remainder was charged to the school boards. Le Centre Alpha Culturel was one of the charities that applied for and received a property tax rebate in 2005. In 2006 40 charities have applied for property tax rebates and it is estimated that \$194,497.64 in rebates will be refunded of which the City's share is estimated to be \$120,616.10.

In mid March of 2007, Ms Lianne Bergeron of Le Centre Alpha Culturel contacted the writer and stated that although the charity had not yet submitted an application for a rebate, a request was being made for the City to accept an application late. Ms. Bergeron was advised that the City of Greater Sudbury was unable to entertain her request for legislative reasons. The writer referred Ms. Bergeron to the following excerpt of the legislation:

Section 361 (3)7. An application for a taxation year must be made after January 1 of the year and no later than the last day of February of the following year.

For the information of the Committee, another charity had also contacted the Tax Department requesting that a late application be received and this request was denied.

Date: June 1, 2007

When Ms. Bergeron requested confirmation of this legislation, the writer referred her to the Ministry of Municipal Affairs and Housing. Upon receiving correspondence from Le Centre Alpha Culturel dated March 17th 2007, the writer contacted Susan Heffernan, Senior Municipal Financial Advisor for clarification purposes. Ms. Heffernan responded by email as follows:

“I received the letter that you faxed over and I discussed it with Ben Horner (Municipal Advisor). Ben referred Ms. Bergeron to Section 361(3) of the Municipal Act and indicated that the administration of charity rebates is a local matter and that all municipalities set their own administrative processes within the framework of the legislation. Ben was also asked if our Ministry would be concerned about late applications and he indicated that we have no involvement in the administrative process as, again, this is a local matter”.

The charity rebate program is only one of a number of provincially mandated programs that are administered by the City of Greater Sudbury. The Province has set the last day of February of each year as the deadline for applications for tax adjustments for charity rebates, Section 357/358 applications and adjustments under the commercial vacancy rebate program. This is done in an effort to provide budgeting continuity and ease of administration for both the municipality and the taxpayers. As well, statutory deadlines are established to ensure that all taxpayers are treated equally and that no animosity or bias is shown to any taxpayer. Adherence to the provincial legislation ensures that the City of Greater Sudbury remains in good standing with it's auditors in order to comply with accepted accounting principles.

RECOMMENDATION

It is recommended that the request by Le Centre Alpha Culturel for the City of Greater Sudbury to accept and process the charity's application after the statutory deadline not be approved.

SCHEDULE A

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Le 17 mars 2007

Ville du Grand Sudbury
Impôt foncier
CP 5000, Succ. A
200, rue Brady
Sudbury, ON P3A 5P3

Objet: Remise de l'impôt foncier 2006

Madame, Monsieur,

Veillez trouver ci-joint le formulaire de demande pour le remboursement de l'impôt foncier payé par le Centre Alpha-culturel de Sudbury en 2006. Conformément à la demande, vous trouverez également ci-joints une copie du bail, un relevé de compte et une preuve de versement du propriétaire.

Je tiens à vous faire part de mon entretien avec M. Tony Derro le 15 mars dernier en ce qui concerne la date limite pour présenter notre demande. Je demandais à M. Derro de bien vouloir considérer notre demande, soumise quelques jours après la date limite du 28 février, mais il a refusé, citant que l'échéance est fixé par le Ministère des affaires municipales/Ministry of Municipal Affairs.

J'ai donc communiqué avec un représentant de ce ministère, M. Ben Horner, qui m'a informé que c'est à la discrétion de la municipalité de prendre la décision, et que le ministère n'imposerait aucune pénalité à la Ville du Grand Sudbury si elle approuvait ma demande.

Suite à une dernière tentative auprès de M. Derro, je fais appel à votre bonne foi pour demander que le Conseil municipal évalue la possibilité de nous rembourser. Nous regrettons vivement avoir dépassé la date limite, mais nous tenons prendre tous les moyens possibles pour obtenir ce remboursement qui nous est d'un prix incalculable.

En attendant votre confirmation, nous vous prions d'agréer l'expression de nos sentiments distingués.

Lianne Bergeron
Directrice

SCHEDULE B

Reimbursement of 2006 taxes

Dear Sir, Madam,

Please find enclosed the application for reimbursement of municipal taxes paid by Centre Alpha-Culturel de Sudbury in 2006. We have also attached a copy of the lease agreement, a statement of account and a proof of payment by the owner.

I wish to provide you with details of a discussion I had with Tony Derro last March 15th, concerning the deadline for submitting my request. I asked Mister Derro to consider our request even though we did not meet the February 28th deadline. Mr. Derro claims that the deadline is set by the Ministry of Municipal Affairs.

I then contacted a representative from the ministry, Mr. Ben Horner, who informed me that the municipality has the authority to accept our request and that the Ministry would not impose any penalty should the City choose to do so.

After trying again unsuccessfully with Mr. Derro, I am hereby requesting that, in a spirit of fairness, you bring the matter to the attention of City Council so that it can make the final decision in this matter. We are very sorry that we exceeded the deadline and are taking all possible steps to have our taxes refunded to us. These funds are crucial to our organization.

Awaiting your confirmation, I remain

Yours truly,

Lianne Bergeron
Director.

SCHEDULE C

ONTARIO MUNICIPAL ACT & COMMENTARY SUPPLEMENT

which the application is made which reflects what the taxes would have been on the land for the previous year if the error had not been made.

Meeting

- (2) Before making a decision under subsection (1), council shall,
- (a) hold a meeting at which the treasurer and the person in respect of whom the application is made may make representations to council; and
 - (b) notify the treasurer and the person in respect of whom the application is made of the meeting by mail sent at least 14 days before the meeting.

Notice

(3) Within 14 days after making its decision, the council shall notify the treasurer and the person in respect of whom the application is made of the decision.

Appeal

(4) The provisions of subsections 359 (5), (6) and (7) apply to a decision of a council under this section, with necessary modifications.

No authority to change previous year's taxes

(5) Nothing in this section authorizes a municipality to change the taxes levied on land for a previous year.

S.O. 2004, c. 31, Sched. 26, s. 7.

Regulation

360. For the purpose of sections 357, 358 and 359, the Minister may by regulation define "gross or manifest error".

S.O. 2001, c. 25, s. 360, in force January 1, 2003 (Act, s. 485(1)).

Rebates for charities

- * 361. (1) Every municipality, other than a lower-tier municipality, shall have a tax rebate program for eligible charities for the purposes of giving them relief from taxes or amounts paid on account of taxes on eligible property they occupy.

Eligible charities, property

- (2) For the purposes of this section,
- (a) a charity is eligible if it is a registered charity as defined in subsection 248 (1) of the Income Tax Act (Canada) that has a registration number issued by the Canada Customs and Revenue Agency;

SCHEDULE C

MUNICIPAL ACT, 2001

- (b) a property is eligible if it is in one of the commercial classes or industrial classes, within the meaning of subsection 308 (1).

Program requirements

(3) A tax rebate program under this section is subject to the following requirements:

1. The program must provide for a rebate for an eligible charity that pays taxes or amounts on account of taxes on eligible property it occupies.
2. The amount of a rebate required under paragraph 1 must be at least 40 per cent, or such other percentage as the Minister of Finance may prescribe, of the taxes or amounts on account of taxes paid by the eligible charity on the property it occupies. If the eligible charity is required to pay an amount under section 367 or 368, the amount of the rebate shall be the total of the amounts paid by the eligible charity under those sections.
3. The program must provide that payment of one-half of the rebate must be made within 60 days after the receipt by the municipality of the application of the eligible charity for the rebate for the taxation year and the balance of the rebate must be paid within 120 days of the receipt of the application.
4. The program must permit the eligible charity to make an application for a rebate for a taxation year based on an estimate of the taxes or amounts on account of taxes payable by the eligible charity on the property it occupies.
5. The program must provide for final adjustments, to be made after the taxes or amounts on account of taxes paid by the charity can be determined, in respect of differences between the estimated rebate paid by the municipality and the rebate to which the charity is entitled.
6. The program must require, as a condition of receiving a rebate for a year, that a charity repay any other municipality amounts by which the rebates the charity received for the year from that other municipality exceed the rebates from that other municipality to which the charity is entitled for the year.
7. An application for a taxation year must be made after January

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1 of the year and no later than the last day of February of the following year.

Program options

(4) The following apply with respect to what a tax rebate program under this section may provide but is not required to provide:

1. The program may provide for rebates to organizations that are similar to eligible charities or a class of such organizations defined by the municipality.
2. The program may provide for rebates to eligible charities or similar organizations for taxes or amounts on account of taxes on property that is in any class of real property prescribed under the Assessment Act.
3. The program may provide for rebates that are greater than those required under subsection (3) and may provide for different rebate amounts for different eligible charities or similar organizations up to 100 per cent of the taxes paid by the eligible charity or similar organization.
4. The program may provide for adjustments in respect of the rebates for a year to be deducted from amounts payable in the next year for the next year's rebates.

Procedural requirements

(5) The program may include procedural requirements that must be satisfied for an eligible charity to be entitled to a rebate required under subsection (3).

Who gives rebates

(6) Rebates under a program of a municipality under this section shall be given by the municipality unless the municipality is an upper-tier municipality, in which case the rebates shall be given by the lower-tier municipalities.

Sharing amounts of rebates

(7) The amount of a rebate paid under this section on a property shall be shared by the municipalities and school boards that share in the revenue from the taxes on the property in the same proportion as the municipalities and school boards share in those revenues.

Statement of costs shared by school boards

(8) The municipality that gives a rebate to a charity or similar organization shall also give the charity or similar organization a written statement of the proportion of the costs of the rebate that is shared by school boards.

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MUNICIPAL ACT, 2001

Interest

(9) The municipality shall pay interest, at the same rate of interest that applies under subsection 257.11 (4) of the Education Act, on the amount of any rebate to which the eligible charity is entitled under this section if the municipality fails to rebate or credit the amount within the time specified in paragraph 3 of subsection (3) or within such other time as the Minister of Finance may prescribe.

No fee

(10) Despite this Act, no fee may be charged by the municipality to process an application under this section.

Change of assessment

(10.1) The following apply if the assessment of an eligible property for a year changes as a result of a request under section 39.1 of the Assessment Act, a complaint under section 40 of that Act or an application under section 46 of that Act:

1. A rebate under subsection (3) with respect to the year shall be redetermined using the new taxes on property for the year based on the new assessment.
2. If, as a result of a redetermination under paragraph 1, the amount of the rebate is increased, the increased amount shall be paid to the eligible charity in accordance with this section.
3. If, as a result of a redetermination under paragraph 1, the amount of the rebate is decreased and amounts paid on account of the rebate exceed the redetermined amount of the rebate, the excess payments are a debt due to the municipality which gave the rebate but the municipality shall not take any action to collect the debt, including the imposition of interest, until 120 days after providing the eligible charity with notice of the debt.

Regulations

(11) The Minister of Finance may make regulations,

- (a) governing programs under this section including prescribing additional requirements for the programs;
- (b) governing procedural requirements the programs must include;
- (c) prescribing a percentage for the purpose of paragraph 2 of subsection (3);

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- (d) prescribing a time period for the purpose of subsection (9).

Definition

(12) In this section,

“tax” includes,

- (a) charges that are imposed under section 208, and
- (b) fees and charges, other than charges described in clause (a), that are imposed under this Act and satisfy the conditions set out in paragraphs 1, 2 and 3 of subsection (13).

Same

(13) The conditions referred to in clause (b) of the definition of “tax” in subsection (12) are:

- 1. The fees and charges are imposed to raise an amount for at least one of the following purposes:
 - i. Promotion of an area as a business or shopping area.
 - ii. Improvement, beautification and maintenance of land, buildings and structures of the municipality in the area, beyond that provided at the expense of the municipality generally.
 - iii. Interest payable by the municipality on money it borrows for the purposes of subparagraph i or ii.
- 2. The fees and charges are imposed on owners of land that is included in the commercial or industrial classes within the meaning of subsection 308 (1).
- 3. The fees and charges have priority lien status and are added to the tax roll.

S.O. 2001, c. 25, s. 361, in force January 1, 2003 (Act, s. 485(1)); S.O. 2002, c. 17, Sched. A, s. 64; S.O. 2002, c. 22, s. 159; S.O. 2006, c. 32, Sched. A, s. 148.

Tax reductions

362. (1) The council of a municipality, other than a lower-tier municipality, may by by-law passed on or before April 30 of the year to which it relates, provide for tax reductions for owners of all or part of the eligible amount on properties in the property classes described in subsection (2) that are designated in the by-law.

