HALIFAX
REGIONAL MUNICIPALITY

P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

**Info Item No. 1**
**Grants Committee**
**March 3, 2014**

**TO:** Chair and Members of HRM Grants Committee

Original signed

**SUBMITTED BY:** ______________________________
Greg Keefe, Director of Finance and ICT/CFO

**DATE:** February 25, 2014

**SUBJECT:** **HRM Leasing of Property Owned by a Non-Profit Organization: Tax Implications**

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## INFORMATION REPORT

## ORIGIN

November 4, 2013 – Grants Committee request for a report on the tax exemption status of a property owned by a non-profit organization and leased to HRM.

## LEGISLATIVE AUTHORITY

Assessment Act (1996) s. 5(1) tax status of government property.
HRM Charter (2008) s.89 pertaining to tax exemption and s.79 regarding discretionary grants and contributions.
HRM Administrative Order 59 Tax Relief for Non-Profit Organizations.

## BACKGROUND

At their meeting of November 4, 2013, the Grants Committee requested a staff report to explain the tax implications should a non-profit property owner in receipt of municipal tax relief lease all or some portion of the premises to the Municipality. Specifically, the request for information was made in reference to the proposed lease of the Windsor Junction Community Centre (WJCC) to HRM. Background information regarding the WJCC and proposed lease are included in **Attachment 1.**

## DISCUSSION

### Standard Practice

The owner of a property is the party assessed for property tax. In the event of leasing all or a portion of their property, it is the owner's responsibility to determine if and how they will recoup applicable taxes. Although some leasing arrangements may assign payment of tax to a tenant, responsibility reverts to the owner in the case of default. Hence, the owner must protect their interest in the property, typically through the terms of the lease negotiated between tenant and landlord.

Unless exempt by legislation or a contractual agreement, HRM pays the applicable real property tax when leasing property either within the 'base rent' or as an additional charge. HRM would do so if leasing from a private interest or a non-profit property owner not in receipt of discretionary municipal tax relief. So, why would an HRM department not pay the applicable tax if leasing from an owner in receipt of discretionary tax relief?

### Precedence

To date, municipal tax assistance has been provided to eligible non-profit property owners when owner occupied (including vacant) or leased to another non-profit. The question with respect to HRM leasing property owned by a non-profit organization is whether the relationship would fit into the category of a non-profit owner leasing to another non-profit, or whether it is more analogous to a lease with a commercial entity.

In the development of Administrative Order 2014-001-ADM it was determined that government is not truly a non-profit, charitable, or commercial entity. Instead, the nature of the relationship is in a category by itself. This distinction has been made clear in s. 6 (a) of the proposed policy which states:

*"that portion of the real property leased, sub-leased, or occupied by Government, another person or another entity must be excluded from eligibility for tax relief and the amount of tax relief must be pro-rated based on the proportional share of non-profit organization or registered Canadian charitable organization occupancy, expressed as a percentage for the entire property"*

Accordingly, if HRM leased the entire Windsor Junction Community Centre property HRM would be fully responsible for the payment of property tax for the duration of the lease agreement. If the lease is for less than the entire fiscal year (ie. 6 to 9 months) the tenant and landlord may negotiate a pro-rated share of tax based on duration of occupancy. It is the owner of the property who is ultimately responsible for the payment of tax and the allocation of taxes is part of the lease negotiation between tenant and landlord. In this scenario, if the WJCC remains fully responsible for tax for a portion of the year the society would not be removed from the *Tax Relief for Non-Profit Organizations Program.* Instead, WJCC's tax relief would be pro-rated for the balance of the year in which the premises are owner occupied (ie. 3 to 6 months). Pro-rata tax relief is explained in s.6 of Administrative Order 2014-001-ADM.

**HRM's Grant Eligibility**

To provide Council latitude in the provision of tax relief to eligible non-profit organizations, the authority is derived under s.79 of the HRM Charter (2008) respecting grants and contributions. Extending the tax relief provided to the Windsor Junction Community Centre to HRM would in effect represent the Municipality awarded a grant to itself. Impartiality may be questioned.

**Reputational Risk to HRM**

There is potential reputational risk to HRM if the municipal government is perceived to be:

- Selecting a non-profit property owner exempt by legislation or in receipt of discretionary tax assistance in preference to a non-profit property owner who pays full or partial tax. To counter this risk, the applicable municipal department should be expected to disclose and explain the process through which a venue/owner was selected.
- Leveraging free or less than market value rent from a non-profit property owner by the prospect of withholding consideration or providing preferential consideration for tax relief.
- Granting full or partial tax relief to a non-profit owner based on the Municipality's vested self-interest as tenant.
- Diverting program budget resources to benefit a municipal program or service when in fact HRM has the ability the pay the applicable tax.

**Full Costing Approach to Municipal Services**

HRM's ability to account for the cost of a specific municipal program or service is compromised if some costs are 'buried' in an assistance program intended for non-profit community groups. Ideally, the cost of HRM's direct delivery of a service should align with a departmental budget. If not closely monitored, there is also the risk of 'double-dipping' if an organization in receipt of tax relief also receives payment for tax within the negotiated rental rate. Or, a non-profit owner might receive financial concessions despite the fact that they are not the party providing a public benefit. Even if the owner does not generate a 'profit' through leasing, the contract is still an economic activity that could realize direct or indirect financial benefit to the owner through averting costs or generating revenue in excess of costs.

**Summary**

HRM's tenancy in a particular location should be substantiated by a business case that considers the cost/benefit in relation to other options including occupancy of an HRM-owned property, leasing in the open market, or acquiring property. For administrative efficiency, the duration of a lease agreement should also be taken into account. This review concludes that payment of tax is a 'normal' cost of leasing from third parties and therefore a departmental responsibility associated with provision of a particular municipal program or service.

## FINANCIAL IMPLICATIONS

In 2013, the property was assessed at the Commercial rate for total taxes of $7,905. As of the date of this report, a lease agreement is not in effect between HRM and the Windsor Junction Community Centre. Any change in the tax status of the Windsor Junction Community Centre would be adjusted in 2014.

## COMMUNITY ENGAGEMENT

Not applicable.

## ALTERNATIVES

1. HRM could, by policy, exclude all tenancy or occupancy from eligibility for municipal tax relief. This recommendation would require an amendment to Administrative Order 2014-001-ADM as proposed.

## ATTACHMENTS

1. Windsor Junction Community Centre: Background Notes.

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A copy of this report can be obtained online at http://www.halifax.ca/council/agendasc/cagenda.html then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Peta-Jane Temple, Team Lead Grants & Contributions, Finance & ICT, 490-5469

Original signed

Report Approved by: ______________________________
Bruce Fisher, Manager of Financial Policy & Planning

**Attachment 1**

## Windsor Junction Community Centre: Background Notes

Incorporated in 1949, the WJCC is a registered company limited by guarantee. Profits are not distributed to the membership but retained by the organization. The WJCC own and operate a property abutting Third Lake, Windsor Junction, that includes beach access, two ball fields, a playground, and clubhouse. Operations are sustained by a local area rate. The Centre provides summer recreation programs from July to September. Access to both the facility and programming is restricted to members of the LWF Ratepayers Association who reside in the geographic area of Lakeview, Windsor Junction, and Fall River. Relatives of LWF members may purchase a seasonal (non-voting) membership and members of the LWF Fire Department receive complimentary seasonal passes (non-voting) irrespective of where they reside. In 1999, the property was added to HRM By-law T-200 as fully exempt.

In 2014, Community & Recreation Services proposes entering into a lease agreement for a 6-month pilot project with option to renew for a further three (3) consecutive years. The intended use is to host the Adventure Earth Program, an environmental education program for youth. The proposed rental rate is $1.00 plus incremental costs, road maintenance, and an arbitrary amount for "wear and tear". During HRM's tenancy non-members will have access to the premises. WJCC have inquired as to the impact of leasing on their current tax exempt status under By-law T-200.