




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

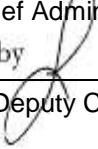
Item No. 11.1.6
Halifax Regional Council
March 31, 2015

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY:

Original signed by 

Richard Butts, Chief Administrative Officer

Original Signed by 

Mike Labrecque, Deputy Chief Administrative Officer

DATE: March 12, 2015

SUBJECT: Policy – Refunds for Payment of Taxes Paid in Error

ORIGIN

The September 11, 2012 motion of Regional Council, as follows:

“MOVED by Councillor Hendsbee, seconded by Councillor Nicoll, that Halifax Regional Council request a staff report to require the Municipality to bring about policy, procedures, and a program to refund taxes to property owners that have paid taxes either in error or overpaid due to errors in property assessment rolls, valuation adjustments, billing information, file misinformation, or anything else that created an overpayment to occur (Reference Sec. 113 of the MGA).”

LEGISLATIVE AUTHORITY

The Legislative Authority is set out in Attachment 1 of this report.

RECOMMENDATION

It is recommended that Halifax Regional Council ratify and confirm *Administrative Order 18, The Revenue & Collections Policy* without amendment.

BACKGROUND

Finance (Revenue Division) has the responsibility for the billing and collection of property taxes. There are 4 essential attributes to the taxation formula and HRM's ability to bill and collect property taxes.

ATTRIBUTE	RESPONSIBILITY / MANDATE
1) Property Description	Property Owner and Service Nova Scotia
2) Ownership	Property Owner and SNS / Department of Natural Resources
3) Assessed Value	Property Valuation Services Corporation (PVSC)
4) Tax Rate	Halifax Regional Municipality

Annual Property Tax Bill to Property Owner = Assessed Value of Property X Tax Rate

Of the four items mentioned above, HRM as the taxing authority has a mandate to set the property tax rate. It does not have the mandate or the tools, in many cases, to resolve issues associated with property descriptions, ownership or assessed values.

There currently exists the utility of staff under *Administrative Order 18, The Revenue & Collections Policy* to address arrears and refund issues as explained below.

Administrative Order 18, section 5 states:

5.0 Other Collection Policies

- (a) Principal or interest for less than \$10 can be written off for accounts in arrears at staff's discretion.
- (b) Interest charges on an account may be relieved by staff when it is determined that the account has been in dispute and the process to settle the debt has been prolonged and the client is not at fault.
- (c) Interest charges on an account may be relieved by staff if it is determined that insufficient support for the billing or insufficient follow up by staff has resulted in undue interest charges.
- (d) Where staff determines that both the taxpayer and staff may have been jointly responsible for delays in billing, or in providing appropriate details to support or refute the billing or for lack of timely follow up, staff may grant partial interest relief on an account up to their applicable spending authorization limits.
- (e) No adjustment to billings can be made, except as outlined above by any staff member, unless where there was an error in the original billing and corresponding back up by appropriate managerial levels of staff involved is provided.
- (f) No account will be sent to write off unless all efforts have been exhausted in its collection and will only be so sent after recommendation of Supervisor and concurrence of Team Leader and Manager.
- (g) Only Council can approve final write off of any revenue accounts. Such write off reports will be provided not less than once per year.

- (h) After an assessment appeal is determined and any appeal from that decision is decided, any taxes that were overpaid shall be refunded to the applicant, together with interest at a rate equal to the rate actually earned by Halifax Regional Municipality on its short term investments. The interest rate shall be determined and the interest calculated monthly but shall not be compounded.

Property owners, typically the assessed owner, whether in their own right or in a representative capacity, are accountable for their properties and the assessment thereof. Accountability includes paying taxes and appealing annual assessments to PVSC pursuant to the *Assessment Act* and extends to reviewing annual tax bills and assessment notices for accuracy.

DISCUSSION

The discussion section of this report will explain staff's advice to follow the recommended action from the perspective of:

- (1) Overpayments on Tax Accounts;
- (2) Billings Issues & Errors;
- (3) Assessment/Valuation Issues & Errors; and
- (4) Financial Risk.

(1) Overpayments on Tax Accounts

An overpayment on a tax account in its simplest form could be when a taxpayer overpays their tax account due to an error on their part, posts their payment through an on-line banking option to an account that is not theirs or a staff posting error. In these cases, staff has appropriate internal controls, information/communication protocols and business practices to easily amend and fix these issues, including a refund to the property owner if applicable.

(2) Billing Issues & Errors

Council through the HRM operating budget sets general tax and area rates. If a property owner is erroneously charged by HRM then HRM may correct and adjust the account in accordance with *Administrative Order 18*. Staff can reference and rely on what Council approved in that fiscal year's budget and make the appropriate refund to the taxpayer.

(3) Assessment Valuation/Issues & Errors

Errors impacting assessed value have a clearly defined process under the *Assessment Act*, the *HRM Charter* as well as *Administrative Order 18*.

Under the *Assessment Act*, every property owner has the right to appeal their current year property assessment should they believe that their property assessment is not a true reflection or representation of market value, ownership, legal description, land size, etc. This appeal must be filed within a specified period of time to PVSC. Should a property owner be successful in appealing their property assessment, the Director of Assessment will provide HRM with a change to the current filed roll. Subsequently, HRM will process the change and if applicable, will refund the taxpayer with interest as per the *HRM Charter* and *Administrative Order 18*. Annually there are approximately 4,000 adjustments to assessed value that staff administers. The legislative basis for this includes Section 126 of the *HRM Charter* which states that:

Tax collection where assessment appeal

- 126 (1) Taxes on a property may be collected or recovered even if the assessment of the property is under appeal.
- (2) After an assessment appeal is determined and any appeal from that decision is decided, any taxes that were overpaid shall be refunded to the appellant, together with interest at a rate set by the Council by policy.

There are a number of legislative provisions in the *HRM Charter* and the *Assessment Act* which speak to the appeal process respecting property assessments as well as the responsibility, accountability and expectations of the property owners, for example sections 139, 140 of the *HRM Charter* and sections 54 and 57 of the *Assessment Act*. The basic concept is that people acting in a representative capacity have the same rights and responsibilities as assessed owners who act in their personal capacity. With respect to subsection 88(5) of the *HRM Charter*, the process available to all property owners and persons with an interest in the property who feel there is an erroneous issue with value, is to file an appeal with PVSC. For example, section 57 of the *Assessment Act* deals with “gross and manifest errors” and is reproduced here as follows:

Error in assessment – *Assessment Act* Section 57

- 57 (1) Where in any year after the assessment roll has been filed the Director determines that
- (a) property has been assessed in the name of someone other than the owner;
 - (b) property has been left off the roll;
 - (c) property has been entered on the roll in error;
 - (d) property has been improperly classified;
 - (e) property has been improperly assessed as taxable or exempt; or
 - (f) a gross and manifest error has occurred in the assessment

the Director may, at any time before the end of the taxation year in respect of which the roll has been filed, issue an amended notice of assessment with the changes required to correct the error.

The *Assessment Act* is clear that errors in assessments are to be addressed on an annual basis. Assessments may only be adjusted for the taxation year in which they have been appealed. Adjustments are not retroactive. This provides HRM with some predictability and revenue certainty.

(4) Financial Risk

With respect to appeals and other adjustments to tax accounts and Council approved programs around tax relief, Staff budget each year in the HRM Operating Budget the following amounts:

Tax Revenue Allowances	Budget
Allowance Residential Assessment Appeals	\$400,000

Allowance Commercial Assessment Appeals	\$2,700,000
Allowance Prior Year Assessment Appeals	\$600,000
Allowance Taxes – Bad Debts	\$2,000,000
Total Allowances for Property Taxes	\$5,700,000
Grants and Tax Concessions	\$5,585,000
Totals Allowances, Grants and Tax Concessions	\$11,285,000

HRM currently budgets \$5.7M for various tax adjustments currently not within our control as well as another \$5.6M for grants and tax concessions for low income home owners and grants for tax relief for Non-profit Organizations and registered charities.

Approving a policy outside of the assessment appeals process and current legislation and policy to deal with valuation errors would require staff to budget and request additional funding to the annual operating budget to accommodate adjustments and mitigate additional financial risk.

In 2014 the commercial assessment roll has been adjusted by -\$70,000,000 equating to \$2,400,000 in revenue lost to appeals year-to-date. Having powers to retroactively adjust assessments beyond the current taxation year in a policy would create more uncertainty with respect to budgeting and currently does not fit within the existing legislative framework.

FINANCIAL IMPLICATIONS

None if the staff recommendation is approved.

COMMUNITY ENGAGEMENT

N/A

ENVIRONMENTAL IMPLICATIONS

N/A

ALTERNATIVES

The legislative foundation currently in place supports the policies set out in *Administrative Order 18*. Section 113A of the *Municipal Government Act* which gives the Province the power to regulate Municipalities in respect of taxes paid in error or overpaid, limiting the time for property owners to apply for a refund, or respecting the payment of interest does not apply to HRM. The *HRM Charter* and *Administrative Order 18*, *The Revenue & Collections Policy*, provide HRM with a workable tax system which aims to provide revenue certainty, while at the same time ensuring that property owners are responsible for their own properties and the assessment information associated therewith. There is no identified Alternative at this time.

ATTACHMENTS

Attachment 1 Legislative Provisions

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.php> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

Report Prepared by: Jerry Blackwood, CGA, Manager of Revenue 902.490.6470

Report Prepared by: Ben Fairbanks, Solicitor, Legal, Insurance & Risk Management Services 902.490.1036

Financial Approval by: _____
Greg Keefe, Director of Finance & ICT/CFO, 902.490.6308

Report Approved by: _____
John Traves, Director of Legal Services and Risk Management 902.490.4219

Attachment 1: Legislative Provisions

Municipal Government Act (“MGA”)

MGA section 113A:

- (1) The Governor in Council may make regulations respecting taxes paid in error or overpaid and, without limiting the generality of the foregoing, may make regulations
 - (a) requiring a municipality to refund taxes paid in error or overpaid;
 - (b) limiting the time for applying for a refund;
 - (c) respecting the payment of interest.
- (2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the Regulations Act.

Halifax Regional Municipality Charter (“HRM Charter”)

HRM Charter subsection 88(5):

Except as otherwise provided by this Act or another Act of the Legislature, the Council may not relieve a taxpayer from all or a portion of taxes.

HRM Charter subsections 126(1) and (2):

- (1) Taxes on a property may be collected or recovered even if the assessment of the property is under appeal.
- (2) After an assessment appeal is determined and any appeal from that decision is decided, any taxes that were overpaid shall be refunded to the appellant, together with interest at a rate set by the Council by policy.

HRM Charter section 139:

- (1) The property of a deceased person is liable for taxes levied with respect to the property before or after death, and the property is liable to be sold for non-payment of taxes.
- (2) The tax bills may be served on the executor or administrator sent to the last address of the deceased person or posted upon the property.
- (3) Where there is no executor or administrator, property of a deceased person may be levied on and sold for non-payment of taxes.
- (4) The executors or administrators shall pay the taxes out of the property of the deceased person that comes into their hands and are personally liable for the taxes to the extent of the property or income of the deceased person that comes under their control.

HRM Charter section 140:

- (1) Where property under the control of a person as executor, administrator, trustee, guardian or agent is assessed to that person in a representative capacity, any proceedings must be kept separate and distinct from any based on property assessed personally to that person.
- (2) Where a person assessed for property in a representative capacity fails to pay the taxes on the property, the person is personally liable for the taxes to the extent that the property or the income from it is sufficient to pay the taxes.

- (3) A person assessed for property in a representative capacity may raise the amount of the taxes by sale, mortgage or lease of the property.
- (4) Where more than one person is assessed for a property in a representative capacity, notice to any one of them is notice to all of them.

HRM Charter section 179:

Validity of taxes

- 179 (1) No
- (a) error, informality or irregularity on the part of the Council, the assessor, the regional assessment appeal court, the recorder, the Clerk, the Treasurer or any other officer; and
 - (b) no error or omission in giving a notice required pursuant to this Act, affects or prejudices the validity of taxes or the tax levy.

Administrative Order 18, The Revenue & Collections Policy

Administrative Order 18, section 5:

- (a) Principal or interest for less than \$10 can be written off for accounts in arrears at staff's discretion.
- (b) Interest charges on an account may be relieved by staff when it is determined that the account has been in dispute and the process to settle the debt has been prolonged and the client is not at fault.
- (c) Interest charges on an account may be relieved by staff if it is determined that insufficient support for the billing or insufficient follow up by staff has resulted in undue interest charges.
- (d) Where staff determines that both the taxpayer and staff may have been jointly responsible for delays in billing, or in providing appropriate details to support or refute the billing or for lack of timely follow up, staff may grant partial interest relief on an account up to their applicable spending authorization limits.
- (e) No adjustment to billings can be made, except as outlined above by any staff member, unless where there was an error in the original billing and corresponding back up by appropriate managerial levels of staff involved is provided.
- (f) No account will be sent to write off unless all efforts have been exhausted in its collection and will only be so sent after recommendation of Supervisor and concurrence of Team Leader and Manager.
- (g) Only Council can approve final write off of any revenue accounts. Such write off reports will be provided not less than once per year.
- (h) After an assessment appeal is determined and any appeal from that decision is decided, any taxes that were overpaid shall be refunded to the applicant, together with interest at a rate equal to the rate actually earned by Halifax Regional Municipality on its short term investments. The interest rate shall be determined and the interest calculated monthly but shall not be compounded.

Assessment Act

The Assessment Act generally and specifically sections 54 and 57:

- 54 (1) If a person who is assessed in the assessment roll dies either before or after the Director forwards the roll to the clerk, the notice required by this Act to be given to the person assessed may be given to his executors or administrators or one of them and he or they shall have a right of appeal in the same manner as if he or they were assessed as such executors or administrators in respect of the property assessed to the deceased.
- (2) If no executor or administrator has been appointed, or if they are not known to the assessor, the notice may be served on a person whom the assessor believes to have an interest in the property, or it may be served by being posted on the property assessed.
- (3) Any person having an interest in the property may appeal from the assessment.
- 57 (1) Where in any year after the assessment roll has been filed the Director determines that
- (a) property has been assessed in the name of someone other than the owner;
 - (b) property has been left off the roll;
 - (c) property has been entered on the roll in error;
 - (d) property has been improperly classified;
 - (e) property has been improperly assessed as taxable or exempt; or
 - (f) a gross and manifest error has occurred in the assessment, the Director may, at any time before the end of the taxation year in respect of which the roll has been filed, issue an amended notice of assessment with the changes required to correct the error.
- (2) The amended notice of assessment, setting out clearly the change in assessment, the right of the person to appeal the amended assessment and the time within which the right to appeal shall be exercised, shall be served by mailing it to the person assessed by postage prepaid addressed to the last address known to the Director, and the Director shall also send a copy of the notice to the clerk.
- (3) Any amended assessment made under this Section may be appealed in accordance with Sections 62 and 63.