



REPORT FOR ACTION

Options to Address Outstanding Property Taxes on an Otherwise Exempt Entity under the Assessment Act: Crow's Theatre

Date: August 20, 2019

To: General Government and Licensing Committee

From: Controller

Wards: Ward 14 - Toronto-Danforth

SUMMARY

This report provides information with respect to outstanding taxes for Crow's Theatre located at 345 and 347 Carlaw Avenue.

In 2016, Crow's Theatre, through a collaboration with its lead sponsor, Streetcar, purchased two adjoining properties (345-347 Carlaw Avenue) at the northeast corner of Dundas Street East and Carlaw Avenue. Following a period of construction, Crow's Theatre opened its doors to the public in January, 2017. Section 3 of the *Assessment Act* provides for a property tax exemption for small theatres for which Crow's Theatre is eligible since its opening, however, the Municipal Property Assessment Corporation (MPAC) has advised that the property tax exemption does not apply during the period of construction, as it was not being used as a theatre during this time.

Crow's Theatre was under the assumption that the exemption for the theatre would also apply during the time that these properties were under construction. They are in a difficult position for the 2016 taxation year, as these arrears are causing hardship and this situation may jeopardize their financial viability. Crow's Theatre has been in contact with their local Ward Councillor, the Municipal Property Assessment Corporation, City staff from Economic Development and Culture as well as Revenue Services requesting financial relief for these taxes which remain unpaid.

This report provides a summary of Crow's Theatre's request, and the issues and options available to Council, should the decision be made to address this request.

RECOMMENDATIONS

The Controller recommends that:

1. The General Government and Licensing Committee receive this report for information.

FINANCIAL IMPACT

There are no immediate financial implications arising from the adoption of the recommendation contained in this report.

There are two assessment parcels (with two separate roll numbers) for Crow's Theatre. The parcel at 345 Carlaw Avenue includes a taxable portion (occupied by a restaurant) and an exempt portion (occupied by the theatre). The parcel at 347 Carlaw Avenue is entirely occupied by the theatre, and is currently exempt from taxation.

The portion of 345 Carlaw that is occupied by the restaurant is assessed within the commercial tax class and is taxable at commercial tax rates. Crow's Theatre is not seeking relief for any of the taxes attributable to the taxable restaurant portion of this facility, and acknowledges that these taxes remain payable.

Crow's Theatre is requesting relief for the outstanding tax amounts pertaining to the theatre portions of 345-347 Carlaw Avenue. Although these portions have been exempt from taxes since the theatre opened in January 2017, these portions were assessed as taxable for the 2016 taxation year, while the properties were under construction and during which period the tax exemption did not apply. Table 1 below provides a summary of property tax amounts currently outstanding as at July 5, 2019.

Table 1: Summary of Property Taxes, Fees and Interest - 345 and 347 Carlaw Avenue

Property	Year	Taxes Billed	Fees	Interest	Total Taxes, Fees and Interest
Crow's Theatre portion (Financial relief requested)					
345 Carlaw Avenue - taxes on theatre portion during construction	2016	\$40,645.83	\$94.48	\$5,588.77	\$46,329.08
347 Carlaw Avenue - taxes on theatre portion during construction	2016	\$21,747.48	\$76.82	\$2,990.24	\$24,814.54
Total		\$62,393.31	\$171.30	\$8,579.01	\$71,143.62
Restaurant/Non-Theatre portion (No financial relief requested)					
345 Carlaw Avenue - taxes and fees					
Total		\$49,291.33	\$112.36	\$7,595.76	\$56,999.45

Table 1 provides that the combined property tax amount outstanding for the theatre portions of 345 and 347 Carlaw Avenue is \$71,143.62, including principal taxes, interest

and fees. This total represents the amounts remaining outstanding for the 2016 taxation year on the theatre portion of the building while it was under construction, and therefore not eligible for a tax exemption. This is the amount for which Crow's Theatre is seeking tax relief.

Should Council choose to provide assistance to Crow's Theatre, it may do so by providing a one-time grant in the amount of approximately \$71,143.62 (see Table 1). A grant in this amount would offset the current remaining tax arrears attributable to the theatre portion of the property at 345 and 347 Carlaw Avenue. Council may approve that the grant in the amount of approximately \$71,143.62 (adjusted to include additional interest accumulating to the date of Council's decision) be funded from the City's 2019 Tax Deficiency Account, with no anticipated impact on future year budgets. In doing so, Council would also have to deem the grant to be in the interest of the municipality.

As a condition of its approval of a grant, Council may require that Crow's Theatre pay in full the remaining unpaid taxes on 345 Carlaw Avenue for the taxation years 2017 to 2019 that pertain to the restaurant at this location, plus the new account fee levied against 347 Carlaw Avenue that remains payable, totalling \$56,999.45 (see Table 1).

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At its meeting of June 18, 2019, City Council, in its consideration of item MM8.55: Crow's Theatre: Options to Address Outstanding Taxes Relating to the Period of Construction on an Otherwise Exempt Entity under the Assessment Act - by Councillor Paula Fletcher, seconded by Councillor Paul Ainslie, recommended that:

1. City Council direct the Controller to report to the September 4, 2019 meeting of the General Government and Licensing Committee on the facts regarding Crow's Theatre's outstanding taxes and identify options to address the outstanding taxes that accumulated during the construction phase on an otherwise exempt entity under the Assessment Act.

COMMENTS

Crow's Theatre has been a leading force in the Canadian theatre landscape since it was founded in 1983. Since its inception, this theatre has created, produced and presented local, national, and international talent in the performing arts within Toronto. It is a registered charity and operates with public subsidies from all levels of government, including an annual operating grant from the Toronto Arts Council.

On May 1st, 2016, Crow's Theatre purchased the 345 and 347 Carlaw Avenue properties at the base of a high rise condominium tower and underwent a period of construction prior to opening its doors to the public in January 2017. Once they moved into the Carlaw location, they began programming the Guloien and Scotiabank Community Studio, preparing for their grand opening and seasonal launch, as well as obtaining all of the necessary licensing and permits required. They also undertook various other administrative functions during this period before opening their doors to the public, such as recruitment and hiring of staff, grant writing, foundation writing, and they continued a hands-on approach to getting the building ready to open.

Section 3 of the *Assessment Act* provides for a property tax exemption for small theatres as well as large non-profit theatres. Crow's Theatre falls under the category of small theatres and is therefore exempt from taxation. The section in *The Act* pertaining to small theatres stipulates that the exemption applies to "*Land used as a theatre that contains fewer than 1,000 seats and that, when it is used in the taxation year, is used predominantly to present live performances of drama, comedy, music or dance.*" This differs from the *Assessment Act's* definition pertaining to large non-profit theatres which allows for the exemption to extend to "*land upon which such a theatre is being constructed*".

There is merit in reviewing this discrepancy within this section of the *Assessment Act*, and how these two categories of theatres are treated for assessment and taxation purposes. Providing an exemption during periods of construction to small theatres would allow for a more consistent and equitable approach to assessment and taxation of this property classification.

Options and Implications of Supporting Crow's Theatre's request for Council Support for tax assistance

Staff are of the opinion that three options exist for Council in addressing Crow's Theatre's financial concerns relating to the unpaid taxes that exist for the 2016 taxation year. Staff are not recommending a particular option.

Option 1: Provide No Tax Relief

Option 1 would require Crow's Theatre to pay all outstanding amounts based on the tax classifications returned by MPAC for the 2016 taxation years for both 345 and 347 Carlaw Avenue.

This option would ensure both accountability and transparency as the classification that MPAC has returned on the roll is in line with the current *Assessment Act* provisions pertaining to small theatres. MPAC has reviewed this specific case and has maintained that the exemption does not apply until the space is being 'used' as a theatre. Given that MPAC is governed by this legislation, they cannot support individual efforts or requests to obtain specialized treatment. City staff also have no mechanism or authority to exempt Crow's Theatre for the 2016 taxation year while the properties were under construction.

Should Council choose to take no action (exercise Option 1) Crow's Theatre will be required to clear all outstanding taxes owing on both 345 and 347 Carlaw Avenue. In total, Crow's Theatre would pay approximately \$128,143.07. This total includes all instalments billed for 2019, and excludes any future interest.

Option 2: City may provide the full financial assistance requested

Crow's Theatre has approached their local Ward Councillor requesting assistance for the 2016 taxation year on both 345 and 347 Carlaw Avenue. Representatives of Crow's Theatre have also been in contact with MPAC as well as City staff to try to resolve their concerns on various occasions since they have been in receipt of their notice of assessment from MPAC, and subsequent tax bills from the City. This theatre purchased their current location on Carlaw Avenue in the spring of 2016 and immediately began activities to prepare this new location to open its doors to the public. There is a restaurant located at 345 Carlaw Avenue, which Crow's Theatre acknowledges and understands that commercial taxes are owing. Although the lease was signed with this restaurant in the fall of 2016, the restaurant also did not open until the spring of 2017. Crow's Theatre is only disputing the taxes for the 2016 taxation year for both 345 and 347 Carlaw Avenue, as they assumed that the exemption for the theatre portion would have applied during the time that this location was under construction.

Staff have calculated and identified the financial impact to the City of accommodating Crow's Theatre's request for financial assistance under the "Financial Impact" section of this report. The amounts identified in Table 1 include interest, penalty and fees associated with the unpaid tax amounts.

In summary, if Council so chooses, it may elect to provide a one-time grant to Crow's Theatre of approximately \$71,143.62. This amount would clear all unpaid taxes for the 2016 taxation year for both 345 and 347 Carlaw Avenue. Once applied to the tax accounts for these two assessment roll numbers, Crow's Theatre would be required to pay a further amount of \$56,945.55 for 345 Carlaw Avenue, which is for the commercially occupied portion of this assessment, and \$53.90 for 347 Carlaw Avenue, which is for the new account fee for this assessment roll. These amounts exclude any future interest or fees that may accumulate pending approval by Council. Such a grant in the amount of \$71,143.62 could be funded from the City's 2019 Tax Deficiency Account, with no anticipated impact on future year budgets.

Should Council elect to support Crow's Theatre's request for financial assistance by approving a one-time grant as set out above, the City needs to be assured that Crow's Theatre will pay taxes for the commercially tenanted space at 345 Carlaw Avenue, and to clear all outstanding taxes owing on both properties.

Option 3: City may provide partial financial assistance

Council may also decide to make a one-time grant to Crow's Theatre in an amount between the amounts set out in Options 1 and 2 above, thereby providing less financial relief than would be provided by Option 2.

Staff of Revenue Services and Economic Development and Culture will continue to communicate with Crow's Theatre to resolve the outstanding tax arrears in an effort to ensure that their tax accounts remain in good standing.

CONTACT

Casey Brendon, Director, Revenue Services
Phone: (416) 392-8065, Fax: (416) 696-3778, E-mail: Casey.Brendon@toronto.ca

SIGNATURE

Andrew Flynn
Controller