

**Criteria for Property Tax Exemption Under Section 3(16)
of the Assessment Act - Request for Tax Exemption for
260 Adelaide Street East, Toronto's First Post Office and
Request for Tax Exemption of 78-80 Gerrard Street East,
Gallery Arcturus**

(City Council on July 4, 5 and 6, 2000, amended this Clause by amending Recommendation No. (6) of the Assessment and Tax Policy Task Force to read as follows:

“(6) the City Clerk be instructed to inform Toronto’s First Post Office, the Gallery Arcturus, and the Ontario Property Assessment Corporation of Council’s decision with respect to Recommendations Nos. (2), (3), (4) and (5), above;”.)

The Policy and Finance Committee recommends the adoption of the Recommendations of the Assessment and Tax Policy Task Force embodied in the communication (May 30, 2000) from the City Clerk.

The Policy and Finance Committee reports having received the report (June 14, 2000), from the Chief Financial Officer and Treasurer.

The Policy and Finance Committee submits the following communication (May 30, 2000) from the City Clerk:

Recommendations:

The Assessment and Tax Policy Task Force recommends that:

- (1) the criteria, as set out in Appendix A of the report (May 15, 2000) from the Chief Financial Officer and Treasurer, for consenting to property tax exemptions under *Section 3(16) of the Assessment Act, R.S.O. 1990*, be adopted, subject to the addition of a new criteria 3(4) to read:

“3(4) Each application is unique and should be considered on its own merits.”

- (2) despite the criteria contained in the report (May 15, 2000) from the Chief Financial Officer and Treasurer, and since the First Post Office at 252 Adelaide Street East is a unique historical part of Toronto which provides an exhibit of historical benefits to the community; and since there are no admission fees charged; and since it is a non-profit organization; the requirement for a 99 year lease or ownership be waived and the First Post Office be exempted from property tax under *Section 3(16) of the Assessment Act*, as long as the space is occupied by Toronto’s First Post Office;
- (3) O.P.A.C. provide a space utilization report respecting the First Post Office at 252 Adelaide Street East to the Chief Financial Officer and Treasurer;

- (4) Council not consent to exempt the space occupied by the Gallery Arcturus on the land municipally known as 78 Gerrard Street East under *Section 3(16) of the Assessment Act, R.S.O. 1990*;
- (5) the request put forward by the Gallery Arcturus for property tax exemption be forwarded to the Non-Profit Working Group of the City of Toronto's Business Reference Group for consideration in their development of a comprehensive tax policy for charitable and similar organizations;
- (6) The City Clerk be instructed to inform Toronto's First Post Office, the Gallery Arcturus, and the Ontario Property Assessment Corporation of Council's decision with respect to Recommendation No. (2) and Recommendation No. (3) above; and
- (7) The appropriate civic officials be authorized and directed to take any necessary action to give effect to the foregoing.

The Assessment and Tax Policy Task Force reports, for the information of the Policy and Finance Committee, having requested the Chief Financial Officer and Treasurer to forward to the Committee a summary of those buildings granted exemption under *Section 3(16) of the Assessment Act* with the amount of annual taxes foregone.

Background:

The Assessment and Tax Policy Task Force, on May 30, 2000, had before it a report (May 15, 2000) from the Chief Financial Officer and Treasurer Criteria for Property Tax Exemption Under *Section 3(16) of the Assessment Act*; Request for Tax Exemption for 260 Adelaide Street East, Toronto's First Post Office; and Request for Tax Exemption of 78-80 Gerrard Street East, Gallery Arcturus, and recommending that:

- “(1) Council adopt the criteria, as set out in Appendix A of this report, for consenting to property tax exemptions under *Section 3(16) of the Assessment Act, R.S.O. 1990*;
- (2) Council not consent to exempt the space occupied by Toronto's First Post Office on the land municipally known as 252 Adelaide Street East under *Section 3(16) of the Assessment Act, R.S.O. 1990*;
- (3) The request for property tax exemption for Toronto's First Post Office be referred to the Grants Sub-Committee for consideration;
- (4) Council not consent to exempt the space occupied by the Gallery Arcturus on the land municipally known as 78 Gerrard Street East under *Section 3(16) of the Assessment Act, R.S.O. 1990*;
- (5) The requests put forward by Toronto's First Post Office and the Gallery Arcturus for property tax exemption be forwarded to the Non-Profit Working Group of the City of Toronto's Business Reference Group for consideration in their development of a comprehensive tax policy for charitable and similar organizations;

- (6) The City Clerk be instructed to inform Toronto's First Post Office, the Gallery Arcturus, and the Ontario Property Assessment Corporation of Council's decision with respect to Recommendation No. (2) and Recommendation No. (3) above; and
- (7) The appropriate civic officials be authorized and directed to take any necessary action to give effect to the foregoing."

The Tax Force also had before it the following report/communications:

- October 29, 1999 from the Chief Financial Officer and Treasurer, recommending that:
 - “(1) Council adopt the criteria, as set out in Appendix A of this report, for consenting to property tax exemptions under *Section 3(16) of the Assessment Act, R.S.O. 1990*;
 - (2) Council not exempt the and municipally known as 78 Gerrard Street East under *Section 3(16) of the Assessment Act, R.S.O. 1990*.”;
- March 28, 2000 from the City Clerk, Assessment and Tax Policy Task Force, forwarding the Task Force's actions of March 28, 2000; and
- (April 3, 2000) from Mr. John Ridout, President, Town of York Historical Society, addressed to the Chief Financial Officer and Treasurer.

Mr. John Ridout, Town of York Historical Society appeared before the Assessment and Tax Policy Task Force in connection with the foregoing matter.

The Tax Force's actions are noted above.

(Report dated May 15, 2000, addressed to the
Assessment and Tax Policy Task Force from the
Chief Financial Officer and Treasurer)

Purpose:

This report relates to issues raised at the Assessment and Tax Policy Task Force meeting of March 27, 2000. Specifically, this report addresses recommended criteria for a proposed process for property tax exemptions for public exhibition space in privately owned property. The application is to be made under *Section 3(16) of the Assessment Act*, as set out in a report from the Chief Financial Officer and Treasurer entitled "Criteria for Property Tax Exemptions under *Section 3(16) of the Assessment Act*; and Request for Tax Exemption of 78-80 Gerrard Street East, Gallery Arcturus".

This report also provides information concerning the request of Toronto's First Post Office for a property tax exemption under this section of the Act.

Financial Implications:

As it is recommended that Council adopt the criteria for tax exemption for exhibition halls, as found in the initial report dated October 29, 1999 and restated in Appendix A of this report, no other exhibition buildings that qualify for a property tax exemption under *Section 3(16) of the Assessment Act* have been identified by City staff. Additional taxes foregone are expected to be minimal.

The annual property taxes that would be foregone if the portion of 252 Adelaide Street East occupied by Toronto's First Post Office is granted a property tax exemption under *Section 3(16) of the Assessment Act* would be approximately \$7,994.38 (\$3,581.53, City Share). This figure is based on the 1997 apportionment of the property at which time the Post Office occupied approximately 4 percent of the premises.

Recommendations:

It is recommended that:

- (1) Council adopt the criteria, as set out in Appendix A of this report, for consenting to property tax exemptions under *Section 3(16) of the Assessment Act, R.S.O. 1990*;
- (2) Council not consent to exempt the space occupied by Toronto's First Post Office on the land municipally known as 252 Adelaide Street East under *Section 3(16) of the Assessment Act, R.S.O. 1990*;
- (3) the request for property tax exemption for Toronto's First Post Office be referred to the Grants Sub-Committee for consideration;
- (4) Council not consent to exempt the space occupied by the Gallery Arcturus on the land municipally known as 78 Gerrard Street East under *Section 3(16) of the Assessment Act, R.S.O. 1990*;
- (5) the requests put forward by Toronto's First Post Office and the Gallery Arcturus for property tax exemption be forwarded to the Non-Profit Working Group of the City of Toronto's Business Reference Group for consideration in their development of a comprehensive tax policy for charitable and similar organizations;
- (6) the City Clerk be instructed to inform Toronto's First Post Office, the Gallery Arcturus, and the Ontario Property Assessment Corporation of Council's decision with respect to Recommendation No. (2) and Recommendation No. (3) above; and
- (7) the appropriate civic officials be authorized and directed to take any necessary action to give effect to the foregoing.

Background:

At the Assessment and Tax Policy Task Force meeting of March 27, 2000 a report entitled “Criteria for Property Tax Exemptions under *Section 3(16) of the Assessment Act*; and Request for Tax Exemption of 78-80 Gerrard Street East, Gallery Arcturus” (October 29, 1999) was put forth by the Chief Financial Officer and Treasurer. The Task Force referred Recommendation No. (1) of the report back to the Chief Financial Officer and Treasurer for a further report on the criteria which was to take into consideration the comments from Mr. John Ridout, Town of York Historical Society.

Recommendation No. (2) of the report (October 29, 1999) was also referred back for further consideration. In addition, the Chief Financial Officer and Treasurer was requested to report on the request for a property tax exemption under *Section 3(16) of the Assessment Act* for the space occupied by Toronto’s First Post Office located at 252 Adelaide Street East.

Comments:

Recommendation No. (1) – Council adopt the criteria, as set out in Appendix A of this report, for consenting to property tax exemptions under *Section 3(16) of the Assessment Act, R.S.O. 1990*:

Criteria (2) for application for property tax exemption (Appendix A) requires that the Regional Assessment Commissioner complete a space utilization report of the exhibition building, which has been requested to be exempted, that would clearly identify the area of the subject property to be used as an exhibition building as well as any space directly required to support the exhibition. This is not a requirement under *Section 3(16) of the Assessment Act*, as Council may support a property tax exemption without such a report, but is an important element in assisting Council to determine if a space should qualify for a property tax exemption.

There are factors that should be examined before consenting to a property tax exemption for exhibition buildings to ensure consistent application of the policy. There must be a clearly distinguished area of the property used for exhibition purposes. Any area used for retail purpose is considered separate of the exhibition and is therefore excluded from the property tax exemption. Ownership should also be established, either through absolute ownership or through a long-term tenancy agreement (i.e., 99 years or more). The former City of Toronto granted three organizations property tax exemption with all three spaces used for exhibit purposes being, owned as defined above, by the respective organization.

As part of their responsibilities, the Ontario Property Assessment Corporation (OPAC) through its Regional Assessment Commissioners determines the uses of properties for assessment purposes and the expertise in this area should be used in any property evaluation. They are in a better position to determine the use of property space and mapping out the portion used for operation by a particular organization. At the time of its decision, Council should have before it the best available information before deciding on whether a particular exhibition building, and its owner, are of a stature and quality equivalent to other museums and galleries whose property space has been exempted from property taxes. A report and recommendation from the Regional

Assessment Commissioner, when combined with a report by City staff about the organization in question, will ensure that Council has before it a complete analysis of the property and organization to assist them in their decision.

In 1997, the Hockey Hall of Fame (HHF), one of the three organizations currently exempt from property taxes under *Section 3(16) of the Assessment Act*, requested that additional space adjacent to the HHF, which is used as an archive and resource centre for the HHF, be granted exemption from property tax. The term of the lease for the archives and resource centre was 15 years which did not meet the criterion that called for ownership or a long-term tenancy agreement. Council for the former City of Toronto granted the exemption from property tax for this additional space, allowing for an exception of this criterion to be made. Council concurred with the reasoning found in the report from the Commissioner, Corporate Services for the former City of Toronto entitled “Hockey Hall of Fame Expansion – Tax Exemption under *Section 3(16) of the Assessment Act (Exhibition Halls)*”. In the report, it was stated that the archives and resource centre is unique, as it is an integral part of the HHF. Since the latter is subject to a 99 years lease agreement, it was considered reasonable to expect that the archives and resource centre will remain adjacent to the principal premises for the duration of the 99 years period. Also, the applicant advised the former City of Toronto that it expected to be successful in leasing the space for a much longer term.

In the former City of Toronto, the three organizations that were granted property tax exemption under *Section 3(16) of the Assessment Act* had common characteristics that justified their qualification for property tax exemption. Each organization was a major, one-of-a-kind museum that provided, and still provides, cultural, educational and historical benefits to the community as a whole.

These shared characteristics are included in Criteria (3) of the application for property tax exemption (Appendix A) under *Section 3(16) of the Assessment Act* and are important in ensuring that private artists’ displays and other private galleries of a similar nature do not qualify for the exemption. The legislation found in Section 3(16) of the Assessment Act is written in a manner that leaves room for interpretation by the City and therefore it is the responsibility of the City to establish a set of criteria free from ambiguity. Specifically, the term major is included to make certain of this.

The term ‘major’ refers not only to the physical size of the exhibit in question but also to the unique characteristics for which it is recognized on a local, national and/or international scale. Each application is unique and should be considered on its own merit. Attaching specific limits to the term ‘major’ is not recommended, as it is more appropriate to allow Council flexibility in reviewing each application. There maybe other alternatives for property tax relief which are more visible and manageable for those applications not supported under this process.

Establishing the term ‘major’ as part of the criteria for exhibition halls that qualify for a property tax exemption under *Section 3(16) of the Assessment Act* ensures that private, for profit displays and other private galleries of a similar nature, do not qualify for a property tax exemption. If the term ‘major’ were excluded, it would be impossible to determine the number of organizations and individuals that would qualify for tax exemption, risking a large financial impact for the City. For smaller organizations, it would be more appropriate to examine other means of property tax relief that allow for greater control on an annual basis, such as a tax rebate program.

This notion was originally presented in the report entitled ‘Criteria for Property Tax Exemptions under *Section 3(16) of the Assessment Act*; and Request for Tax Exemption of 78-80 Gerrard Street East, Gallery Arcturus’ (October 29, 1999) in which the same conclusion was arrived at. It was also discussed by the members of the Business Reference Group Non-Profit Work Group and they were in agreement that other options for providing tax relief to smaller organizations should be explored.

Toronto’s First Post Office - 260 Adelaide Street East:

The Town of York Historical Society, an organization whose mandate is to foster the preservation of the Town of York’s surviving built environment, operates Toronto’s First Post Office (Post Office). The Post Office is Canada’s oldest and only surviving purpose-built post office building of the British Postal period and is designated under the *Ontario Heritage Act* protected under a Heritage Easement held by the Ontario Heritage Foundation. The Town of York Historical Society operates the Post Office as a museum which currently operates a Canada Post full-service franchise to carry on the site’s original purpose. It receives 75 percent of its operating funds from its operations and donations and relies on government assistance for the balance.

Toronto’s First Post Office occupies a space of 1,200 sq. ft. of the property located at 260 Adelaide Street East. An additional 802 sq. ft. of the property is used by the Society to maintain a historical archive open to the public relating the City of York/Toronto in the 1830s.

On January 31, 2000, the Town of York Historical Society, on behalf of Toronto’s First Post Office, submitted an application in accordance with *Section 442/443 of the Municipal Act* for property tax exemption under *Section 3(16) of the Assessment Act*.

The following is an evaluation of Toronto’s First Post Office taking into consideration the criteria for exemption of property tax for exhibition buildings under Section 3(16) of the Assessment Act as set out in Appendix A:

- (1) Toronto’s First Post Office is a public museum with an emphasis placed on the historical role of the postal service in the communications of Upper Canada in the early 1800s. Admission is free and there are no restrictions with respect to who may enter the museum.
- (2) the property occupied by Toronto’s First Post Office is owned by Sagur Investments Limited. It was leased to the Town of York Historical Society in 1983 for a 15 year term with rent set at \$1.00 per year, and the landlord paying all other expenses. Since 1999, Toronto’s First Post Office has been operating without a lease agreement. The Town of York Historical Society has informed the City that the landlord will agree to a new 15 year lease term on the condition that the Town of York Historical Society assumes responsibility for the property tax.
- (3) the museum is a non-profit organization.
- (4) Toronto’s First Post Office is not a major, one-of-a kind exhibition. It is unique, as it is a

historical museum specifically providing the history of the City of York/Toronto in the 1830's but its size, occupying only 2,002 sq. ft., restricts it from qualifying as major.

As noted above, the former City of Toronto provided property tax exemptions under this section of the Act to three organizations which provided major one-of-a-kind museum collections. Although Toronto's First Post Office is a non-profit organization which provides a historical and educational benefit to the City, its physical size and lease term of 15 years makes examining other options for tax relief a more practical solution.

This application should be referred to the Grants Sub-Committee for consideration.

78 Gerrard Street East - Gallery Arcturus:

At the Assessment and Tax Policy Task Force meeting of March 27, 2000, the Task Force referred Recommendation No. 2 of the report entitled "Criteria for Property Tax Exemptions under *Section 3(16) of the Assessment Act*; and Request for Tax Exemption of 78-80 Gerrard Street East, Gallery Arcturus" (October 29, 1999) back to the Chief Financial Officer and Treasurer for further consideration. Recommendation No. 2 read that "Council not exempt the property municipally known as 78 Gerrard Street East under *Section 3(16) of the Assessment Act, R.S.O. 1990.*" Upon further review, and giving consideration to the content found in this report, it is concluded that the original staff recommendation should remain.

Section 442.1 of the Municipal Act provides for tax rebates for charities and similar organizations. For municipalities that did not adopt the 2.5 percent cap in 1998 under the provisions of Bill 16, Section 442.1(3) requires municipalities to adopt a rebate program that provides a minimum rebate of 40 percent of the taxes payable by an eligible charity.

In 1998, City Council opted for the 2.5 percent cap and was therefore not required to have a mandatory rebate program. As a result, at its meeting on July 21 and 23, 1998, City Council adopted the recommendation that no property tax rebate program be instituted for charitable and similar organizations for the duration of the capping period (i.e. 1998 to 2000).

The development of a comprehensive policy by examining various options for these organizations to receive tax relief is currently underway, and a non-profit working group, including a representative from the Toronto Arts Council, has been established as part of the City's Business Reference Group. The Toronto Arts Council supports exploring other alternatives for the provision of tax relief to these types of organizations.

Conclusion:

At the request of the Task Force, two issues previously presented at the March 27, 2000 Task Force meeting in a report entitled "Criteria for Property Tax Exemptions under *Section 3(16) of the Assessment Act*; and Request for Tax Exemption of 78-80 Gerrard Street East, Gallery Arcturus" (October 29, 1999), are further reviewed in this report. The first issue is whether or not a policy regarding tax exemptions for public exhibition space contained on privately-owned property should be established using criteria as found in Appendix A. The second issue to be re-examined is whether a property tax exemption should be granted to the Gallery Arcturus. The request for property tax exemption for Toronto's First Post Office is also discussed based on the

criteria found in Appendix A.

After further review of the criteria and process used by the former City of Toronto to evaluate and approve tax exemptions for public exhibition space under *Section 3(16) of the Assessment Act*, as set out in Appendix A of this report, it is again being recommended for adoption.

As both the Gallery Arcturus and Toronto's First Post Office do not meet all the criteria as presented in Appendix A of this report, it is not recommended that Council should consent to a property tax exemption for either under the legislative authority provided by *Section 3(16) of the Assessment Act*. Neither of the two exhibitions meet the definition of major one-of-a kind exhibition and therefore other avenues for property tax relief, such as tax rebates, should be examined.

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Appendix A

Process and Criteria for Property Tax Exemptions:
Section 3(16) of the Assessment Act

- (1) Since responsibility for property assessment in Ontario rests with the Ontario Property Assessment Corporation through its Regional Assessment Commissioners, any request for tax exemption under this section of the Act must be evaluated by the Commissioner. The evaluation by the Commissioner will determine whether the space under review is an exhibition building and could be considered for tax exemption under *Section 3(16) of the Assessment Act*, subject to consent by Council.
- (2) The Regional Assessment Commissioner will complete a space utilization report of the exhibition building that would clearly identify the area of the subject property to be used as an exhibition building as well as any space directly required to support the exhibition. An estimated assessed value would be included. The report would also include a determination of ownership of the space. Property ownership is determined through either outright ownership or through long-term tenancy agreements (i.e., 99 years or more) which may be deemed ownership. In both of these situations, the Regional Assessment Commissioner is responsible for their determination and in the case of a Section 3(16) application, Council only acts on his/her recommendation.
- (3) The Regional Assessment Commissioner's report will be forwarded to the Chief Financial Officer and Treasurer who will then complete a report for City's Council's consideration which would be based on the following criteria:

- (a) the applicant must be providing an exhibition (such as arts, culture, history or any other display considered by Council as appropriate) available to all residents of the City of Toronto and if an entrance fee is charged to the exhibit or exhibit space, it must be a reasonable fee;
 - (b) the applicant must be a non-profit organization.
 - (c) the applicant must be providing a major, one-of-a kind exhibit which provides cultural, educational, and/or historical benefits to the community as a whole.
- (4) City Council would determine whether or not to consent to the exemption request, including whether to exempt part or all of the space under review that was included in the Regional Assessment Commissioner's report. If Council supports the exemption request, a resolution of support by Council will be provided to the Regional Assessment Commissioner to implement the exemption.
- (5) Applicants will be advised that in parallel to their application under *Section 3(16) of the Assessment Act*, they should appeal their current property assessment within the appeal period allowed by the Minister of Finance. This will ensure that the assessment roll, as returned, can be amended to reflect the approved exemption retroactive to January 1st of the year of the application. Failure to appeal could result in limiting the exemption to subsequent years.

(Report dated October 29, 1999, addressed to the
Assessment and Tax Policy Task Force from the
Chief Financial Officer and Treasurer)

Purpose:

This report provides information for a proposed process for applications by non-profit exhibition buildings requesting property tax exemptions for public exhibition space on privately-owned property under *Section 3(16) of the Assessment Act*. It also provides specific information concerning the application of Gallery Arcturus for a property tax exemption under this section of the Act.

Financial Implications:

Most of the public exhibition buildings within the City of Toronto that would qualify for the property tax exemption under the criteria set out in Appendix A, are already exempt from property taxes, either through private legislation or *Section 3(16) of the Assessment Act* where the former City of Toronto consented to the exemption. No other exhibition buildings that would qualify for the property tax exemption can be identified by City staff. It is expected that any other exhibition buildings that believe they qualify for property tax exemption under *Section 3(16) of the Assessment Act* would submit applications which would be reviewed on a case by case basis. Additional taxes foregone are expected to be minimal.

The annual property taxes that would be foregone if the property owned and occupied by Gallery Arcturus at 78 Gerrard Street East is granted a property tax exemption *under Section 3(16) of the Assessment Act* would be \$3,798.00, of which the City's share would be \$2,503.00.

Recommendations:

It is recommended that:

- (1) Council adopt the criteria, as set out in Appendix A of this report, for consenting to property tax exemptions under *Section 3(16) of the Assessment Act, R.S.O. 1990*;
- (2) Council not consent to exempt the land municipally known as 78 Gerrard Street East under Section 3(16) of the Assessment Act, R.S.O. 1990.
- (3) the request of the Gallery Arcturus for property tax exemption be forwarded to the Non-Profit Working Group of the City of Toronto's Business Reference Group for consideration in their development of a comprehensive tax policy for charitable and similar organizations;
- (4) the City Clerk be instructed to inform the Gallery Arcturus and the Ontario Property Assessment Corporation of Council's decision with respect to Recommendation 2 above; and
- (5) the appropriate civic officials be authorized and directed to take any necessary action to give effect to the foregoing.

Background:

Section 3(16) of the Assessment Act, R.S.O. 1990 states the following:

All real property in Ontario is liable to assessment and taxation, subject to the following exemptions from taxation:

16. The land of every company formed for the erection of exhibition buildings to the extent to which the council of the municipality in which the land is situated consents that it shall be exempt.@

On May 25, 1992, the former City of Toronto, under the legislative authority stated above, granted a property tax exemption for the property occupied by the Canadian Museum for Textiles for their exhibition space located at 55 Centre Street. At that time, the combined City and Metro portion of taxes foregone due to the exemption was estimated to be \$255,929.00 annually.

In 1993, the former City of Toronto adopted a report submitted by the then Commissioner of Finance setting out criteria that exhibition buildings were required to meet to qualify for a property tax exemption under *Section 3(16) of the Assessment Act* (see Appendix A attached). The former City of Toronto was the only area municipality that provided exemptions under this section of the Act.

Following the adoption of this policy, two more exhibition buildings were granted exemption from property taxes by the former City of Toronto: the Hockey Hall of Fame on October 4, 1993, and the Bata Shoe Museum on June 26, 1995. Each property was evaluated separately based on the attached criteria, including the requirement that the Regional Assessment Commissioner provide a space utilization report of the exhibition building clearly identifying the area of the property used for exhibition purposes as well as any space directly required to support the exhibition. At the time that each property was granted a property tax exemption, it was estimated that the combined City and Metro portion of annual taxes foregone would be \$174,386.00, and \$62,004.00, respectively.

Each property was returned as exempt on the assessment roll the year following the approval of the property tax exemption by the former City of Toronto.

Comments:

Exhibition Buildings in General:

Section 3 of the Assessment Act specifically defines all lands that are property assessable and taxable, as well as properties that qualify for property tax exemptions. Lands that are exempt under Section 3 of the Act include lands owned by all levels of government, Indian lands, churches, public educational institutions, philanthropic or religious seminaries, charitable institutions, Children's Aid societies, scientific or literary institutions, battle sites, machinery, machinery for producing electric power, land for forestry purposes, mineral land and minerals, certain property of telephone and telegraph companies, improvements for seniors and handicapped persons, amusement rides, airports, conservation lands, and small theatres.

Sections 4 and 6 deal with exemptions that are conditional to Council approval, those being for certain recreational facilities owned by religious institutions and for land owned by the Navy League of Canada.

The only exemption under Section 3 requiring the approval of Council is specifically subsection 16, which relates to exhibition buildings. This would include not-for-profit corporations and foundations. In all other subsections of Section 3, the exemption from property taxes is automatic and the only jurisdiction would be the Regional Assessment Commissioner. There are factors which should be examined before consenting to the provision of a property tax exemption for exhibition buildings. For a museum or other exhibition halls where the land and buildings are owned by a foundation, as opposed to the government, the institution must apply to Council and receive consent to the exemption, which can be granted, refused, and/or rescinded. It is up to the Regional Assessment Commissioner to determine whether in fact the land and building is being used for the purposes of exhibition. The reason for this specific subsection of the Act is to enable Council to pass judgement on whether a particular exhibition building, and its owner, are of a stature and quality equivalent to other museums and galleries that are automatically exempt because they are situated on municipal or other exempt land.

The process adopted by the former City of Toronto required that the applicant must be providing an exhibition such as arts, culture, history or any other display deemed appropriate by Council.

The Regional Assessment Commissioner would complete a space utilization report which clearly distinguished the area of the property used for exhibition purposes as well as the space used to support the exhibition building. Any area used for retail purpose was considered separate of the exhibition and therefore was excluded from the property tax exemption. The report also included a determination of ownership, either through absolute ownership or through a long-term tenancy agreement (i.e., 99 years or more). This provided a certain level of assurance that the property would be used as an exhibition building for a long-term period. Each request was evaluated by the City and the Regional Assessment Office and reported on separately by City staff. Consent to the property tax exemption was given on an individual basis by Council.

In the former City of Toronto, the three organizations that were granted property tax exemption under *Section 3(16) of the Assessment Act* had common characteristics that justified their qualification for property tax exemption. Each organization was a major, one-of-a-kind museum which provided, and still provides, cultural, educational and historical benefits to the community as a whole. The Canadian Museum for Carpets and Textiles holds a collection of 16,000 handmade textiles, most of which date from the 19th century or earlier. The Hockey Hall of Fame and Museum collection is the most extensive collection of hockey artifacts in the world and includes all of the major team and individual trophies awarded by the National Hockey League as well as significant trophies and memorabilia presented by amateur hockey associations worldwide. It is also a major attraction for tourists visiting the City of Toronto. The Bata Shoe Museum houses the world's largest collection of shoes and shoe-related objects - 10,000 artifacts spanning 4,500 years.

The shared characteristics of the three exhibition buildings described above should be included in the criteria used by Council to determine whether an exhibition building qualifies for a tax exemption under *Section 3(16) of the Assessment Act*. The criteria stated in Section 3 of Appendix A of this report was amended to include the following:

- (iii) The applicant must be providing a major, one-of-a kind exhibit which provides cultural, educational, and/or historical benefits to the community as a whole.

Any exemption under *Section 3(16) of the Assessment Act* should not be supported by City Council unless Council, in the event that the exempt property is sold or the operations of the organization or intended use of the property significantly change, has the right to rescind its consent to the tax exemption.

In the past it was argued that annual grants would provide Council with greater control in ensuring that the exhibition building continues to operate in accordance with the above stated criteria. However, a property tax exemption granted under *Section 3(16) of the Assessment Act* will also provide a sufficient level of control. In the event that the organization does change its operations in a material fashion to the extent that this section of *the Assessment Act* is no longer applicable, the authority of Council to provide a property tax exemption will cease thus, terminating the property tax exemption.

The criteria mandating that the organization be a non-profit organization along with the criteria requiring that the organization be a major one-of-a-kind exhibit should ensure that private artists=

displays and other private galleries of a similar nature do not qualify for the exemption. Each case being examined on an individual basis should further assist in ensuring that these types of exhibitions are not granted property tax exemptions under *Section 3(16) of the Assessment Act*.

78 Gerrard Street East - Gallery Arcturus:

Gallery Arcturus is a not-for-profit contemporary art exhibition and art education centre located at 78 Gerrard Street East. It is funded and operated by The Foundation for the Study of Objective Art, a private charity. The Gallery exhibits the work of contemporary visual artists who do not have access to public forums in which to display their art. The Gallery usually showcases one artist's works at a time changing the exhibit six times a year.

The building, which is owned by The Foundation for the Study of Objective Art, has four stories with a basement and occupies just over 2,000 square feet of land. The first floor is the primary floor used for exhibition. The basement is mostly occupied by the Gallery's shop that sells art along with other novelty items. All money collected from the art sold in the shop goes directly to the artist. The second floor has a small exhibition area but is generally used as a work space containing a studio for artists to work out of as well as three offices. The third floor has two bedrooms, a kitchen, and a lounge area all used as a temporary residence for artists visiting from outside Toronto and the fourth floor is essentially used as storage space.

In December 1997, The Foundation for the Study of Objective Art, on behalf of the Gallery Arcturus, submitted an application in accordance with *Section 442/443 of the Municipal Act* for property tax exemption under *Section 3(16) of the Assessment Act*.

The following is an evaluation of the Gallery Arcturus taking into consideration the criteria for exemptions of property tax for exhibition buildings under *Section 3(16) of the Assessment Act* as set out in Appendix A:

- (1) The Gallery Arcturus is a public gallery that provides free exhibition space for contemporary visual artists. Admission is free and there are no restrictions with respect to whom may enter the Gallery. All art on display may be purchased directly from the artist with all proceeds from any piece of art sold going directly to the artist.
- (2) The property occupied by the Gallery Arcturus has been owned by The Foundation for the Study of Objective Art since 1995.

The exhibition provides an outlet for artists to display their work while allowing people within the City to observe and study the modern trends developed by artists from around the world.

- (3) The exhibition is a non-profit organization registered as a charity with Revenue Canada. All proceeds from the sale of art displayed in the Gallery go directly to the artists.
- (4) The Gallery Arcturus is not a major, one-of-a-kind exhibition. It displays the works of one contemporary artist at a time, changing its exhibit six times a year. There are many small art galleries located throughout the City of Toronto who also display the art work of individual artists.

As noted above, the property tax exemptions were provided by the former City of Toronto under this section of the Act to three organizations which provided major one-of-a-kind museum

collections. Although the Gallery Arcturus is a non-profit organization which provides a artistic cultural and educational benefit to the City through its exhibit of the works of contemporary artists, it also facilitates the sale of art by these individuals similar to other galleries located throughout the City of Toronto.

Tax Rebates for Charitable and Similar Organizations:

Section 442.1 of the Municipal Act provides for tax rebates for charities and similar organizations. For municipalities that did not adopt the 2.5 percent cap in 1998 under the provisions of Bill 16, Section 442.1(3) requires municipalities to adopt a rebate program that provides a minimum rebate of 40 percent of the taxes payable by an eligible charity.

In 1998, City Council opted for the 2.5 percent cap and was therefore not required to have a mandatory rebate program. As a result, at its meeting on July 21 and 23, 1998, City Council adopted the recommendation that no property tax rebate program be instituted for charitable and similar organizations for the duration of the capping period (i.e. 1998 to 2000).

The development of a comprehensive policy by examining various options for these organizations to receive tax relief is currently underway, and a non-profit working group, including a representative from the Toronto Arts Council, has been established as part of the City's Business Reference Group. It may therefore be more appropriate that property tax relief be provided to non-profit organizations supporting the arts, such as the Gallery Arcturus, through a tax rebate program. The Toronto Arts Council has reviewed this report and has expressed agreement that other options for providing tax relief to these organizations should be explored.

Conclusion:

Two issues are presented in this report. The first issue is whether or not a policy regarding tax exemptions for public exhibition space contained on privately-owned property should be established using criteria adopted by the former City of Toronto as a base. The second issue is whether a property tax exemption should be granted to the Gallery Arcturus.

This report recommends that the process and criteria used by the former City of Toronto to evaluate and approve tax exemptions for public exhibition space under *Section 3(16) of the Assessment Act*, as set out in Appendix A of this report, be adopted. This policy would apply to properties owned by non-profit charitable organizations that provide a major one-of-a kind public exhibition in the City of Toronto. Each tax exemption request would be evaluated on its own merits and against the criteria set out in Appendix A, by both the Ontario Property Assessment Corporation and City staff. Council would be requested to approve, or refuse, these tax exemption requests on a case by case basis.

The Gallery Arcturus does not meet all the criteria as presented in Appendix A of this report. It is an exhibition building that provides contemporary artists the opportunity to publicly display their work, as well as facilitate the sale of this art, at no cost to the artist with all proceeds from the sale of art going directly to the artist. It functions as a cultural and educational facility but is not a major one-of-a kind exhibition and therefore Council should not consent to the property tax exemption applied for under the legislative authority provided by *Section 3(16) of the Assessment Act*.

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Mark D-Souza, 395-6739.

Appendix A

Process and Criteria for Property Tax Exemptions:
Section 3(16) of the Assessment Act

- (1) Since responsibility for property assessment in Ontario rests with the Ontario Property Assessment Corporation through its Regional Assessment Commissioners, any request for tax exemption under this section of the Act must be evaluated by the Commissioner. The evaluation by the Commissioner will determine whether the space under review is an exhibition building and could be considered for tax exemption under *Section 3(16) of the Assessment Act*, subject to consent by Council.
- (2) The Regional Assessment Commissioner will complete a space utilization report of the exhibition building that would clearly identify the area of the subject property to be used as an exhibition building as well as any space directly required to support the exhibition. An estimated assessed value would be included. The report would also include a determination of ownership of the space. Property ownership is determined through either outright ownership or through long-term tenancy agreements (ie, 99 years or more) which may be deemed ownership. In both of these situations, the Regional Assessment Commissioner is responsible for their determination and in the case of a Section 3(16) application, Council only acts on his/her recommendation.
- (3) The Regional Assessment Commissioner's report will be forwarded to the Chief Financial Officer and Treasurer who will then complete a report for City's Council's consideration which would be based on the following criteria:
 - (i) The applicant must be providing an exhibition (such as arts, culture, history or any other display considered by Council as appropriate) available to all residents of the City of Toronto and if an entrance fee is charged to the exhibit or exhibit space, it must be a reasonable fee;
 - (ii) The applicant must be a non-profit organization.

- (iii) The applicant must be providing a major, one-of-a kind exhibit which provides cultural, educational, and/or historical benefits to the community as a whole.
- (4) City Council would determine whether or not to consent to the exemption request, including whether to exempt part or all of the space under review that was included in the Regional Assessment Commissioner's report. If Council supports the exemption request, a resolution of support by Council will be provided to the Regional Assessment Commissioner to implement the exemption.
- (5) Applicants will be advised that in parallel to their application under *Section 3(16) of the Assessment Act*, they should appeal their current property assessment within the appeal period allowed by the Minister of Finance. This will ensure that the assessment roll, as returned, can be amended to reflect the approved exemption retroactive to January 1st of the year of the application. Failure to appeal could result in limiting the exemption to subsequent years.

(A copy of the communication dated March 28, 2000 addressed to the Chief Financial Officer and Treasurer from the Assessment and Tax Policy Task Force with attachments from the Town of York Historical Society and the communication dated February 2, 2000, addressed to the Chief Financial Officer and Treasurer from Councillor Kyle Rae were forwarded to all Members of Council with the June 22, 2000, agenda of the Policy and Finance Committee and copies thereof are also on file in the office of the City Clerk).

The Policy and Finance Committee also submits the following report (June 14, 2000) from the Chief Financial Officer and Treasurer:

Purpose:

This report provides a summary of the taxes foregone for the three non-profit exhibition buildings in the City of Toronto granted property tax exemption for public exhibition space on privately-owned property under *Section 3(16) of the Assessment Act*.

Financial Implications:

The City is foregoing property taxes of \$500,000.00 annually from three exempted non-profit exhibition buildings.

Recommendation:

It is recommended that this report be received for information.

Background:

At its meeting of May 30, 2000, the Assessment and Tax Policy Task Force requested the Chief Financial Officer and Treasurer to forward to the Policy and Finance Committee a summary of those exhibition buildings previously granted property tax exemption under *Section 3(16) of the Assessment Act*.

Comments:

Three properties in the City of Toronto have received property tax exemptions under Section 3(16) of the Assessment Act: the Canadian Museum for Textiles, Bata Shoe Museum, and the Hockey Hall of Fame. All three properties are located in the former City of Toronto.

On May 25, 1992, Council of the former City of Toronto granted a property tax exemption for the property occupied by the Canadian Museum for Textiles for their exhibition space located at 55 Centre Street. At that time, the combined City and Metro portion of taxes foregone due to the exemption was approximately \$255,929.00 annually.

Two additional exhibition buildings were granted exemption from property taxes by the former City of Toronto: the Hockey Hall of Fame on October 4, 1993 and the Bata Shoe Museum on June 26, 1995. At the time that each property was granted a property tax exemption, the combined City and Metro portion of annual taxes foregone was \$174,386.00, and \$62,004.00, respectively.

The annual municipal share of taxes (City and Metro) for the three properties exempted from taxation totaled \$492,319.00.

Each property has continued to be returned as exempt on the assessment roll following the approval of the property tax exemption by the former City of Toronto.

Contact Name:

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Paul Wealleans, 397-4208

Insert Table/Map No. 1
summary-taxes foregone.....