

EMERGING TRENDS IN MUNICIPAL LAW 2019

All About That Tax Base – Achieving Sustainable Tax Revenues in Challenging Times



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Overview


1. Old Tools, New Revenues
2. New Tools, New Revenues
3. Brownfield Properties
4. The Do's and Don'ts of Tax Incentives
5. Tax Recovery Involving Oil and Gas Companies



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The Usual Approach


Revenue = Property Taxes = Assessed Value x Tax Rate



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Broad Authority to Tax

- Business taxes;
- Business improvement area taxes;
- Community aggregate payment levies;
- Local improvement taxes;
- Well drilling equipment taxes;
- Special taxes;
- Community revitalization levies.


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Van Raay Paskal Farms Ltd v County of Lethbridge, 2017 ABQB 274

The business tax bylaw authorizes the council to impose a tax in respect of all businesses operating in the municipality except businesses that are exempt in accordance with that bylaw




s 372(1)


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Van Raay Paskal Farms Ltd v County of Lethbridge, 2017 ABQB 274

Assessment based on storage capacity of the premises occupied for the purposes of the business



s 374(1)(b)(ii)

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Van Raay Paskal Farms Ltd v County of Lethbridge, 2017 ABQB 274

“Business taxes...may be imposed against all, some, or no businesses within the municipality provided the business occupies premises within that municipality...The purpose of these provisions is to provide municipal councils with a broad variety of tools to generate tax revenue in a scheme which allows the municipality to do so in a manner that best suits the local conditions.”

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Van Raay Paskal Farms Ltd v County of Lethbridge, 2017 ABQB 274

“The stated parameters are intended to capture all businesses operating within the municipality’s boundaries and to permit the municipality to select the method that best suits the business reality of a particular municipality.”



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Bergman v Innisfree (Village), 2018 ABQB 326

357(1) Despite anything in this Division, the property tax bylaw may specify a **minimum amount** payable as property tax.




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Clean Energy Improvement Program


- *An Act to Enable Clean Energy Improvements*
- Voluntary Program
- Aimed at incentivizing clean-energy upgrades to properties
- Based off Property Assessed Clean Energy ("PACE")



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Clean Energy Improvement Program


- How it will work:
 - Council may pass a Clean Energy Improvement Tax Bylaw
 - Owner proposes project, and once approved, signs agreement with municipality
 - Municipality funds improvement
 - Municipality recovers installation costs through tax

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Clean Energy Improvement Program

- Eligible Improvements
 - Solar Power
 - Upgraded insulation, windows and doors
 - High efficiency heating and cooling systems

Not Yet Established

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Clean Energy Improvement Program

- Benefits for Municipalities:
 - Foster environmental stewardship
 - now an explicit municipal purpose (MGA, s. 3(a.1))
 - Increase property values
 - Applies to residential, commercial and agricultural properties

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Provincial Education Requisition Credit ("PERC")

- Applies to oil and gas properties that have had their municipal tax written off
- Retroactive to the 2015 tax year
- PERC operates for 5 years, until the 2019 tax year
 - January 2020 – last application date
- Does not apply to other types of uncollectable municipal property tax

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Brownfield Property Tax Incentives

Why consider this tax incentive?

- Derelict properties
- Unsightly properties
- Under utilized properties
- Social and economic desire to redevelop
- Generate new or increased tax revenue

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Brownfield Property Tax Incentives

Brownfield Property – Minimum Requirements (s. 364.1):


- Industrial or commercial property (except designated industrial property).

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Brownfield Property Tax Incentives

Brownfield Property – Minimum Requirements (s. 364.1):

- Property that, in the opinion of the municipal council:
 - Is or possibly is contaminated;
 - Is vacant, derelict or under-utilized; and
 - Is suitable for development or redevelopment for the general benefit of the municipality

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Brownfield Property Tax Incentives

Brownfield Property Tax Incentives can be granted in one of two ways:

- 1) By Bylaw
- 2) By Agreement





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Bylaw Stream

Contents of Bylaw:

- Must identify brownfield properties in respect of which an application can be made
- Must specify the taxation year(s) during which identified properties may qualify for an exemption or deferral




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Bylaw Stream

Contents of Bylaw:

- Must specify any conditions which, if breached, will result in cancellation of the exemption or deferral, and the taxation years in which the condition(s) apply

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Bylaw Stream

Procedural requirements:

- Before second reading, Council must give notice of and then hold a public hearing with respect to the proposed bylaw (MGA, sections 606 and 230)

Administrative requirements:

- After bylaw is passed, owner of brownfield property identified in the bylaw can apply for an exemption or deferral

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Agreement Stream – Requirements

- Council may enter into an agreement with the owner of a brownfield property → full or partial exemptions or deferrals of tax
- Agreement must state:
 - i. Taxation years to which the exemption or deferral applies (not retroactive);
 - ii. Conditions on which the exemption or deferral is granted; and
 - iii. Consequences, rights and remedies arising in the event of any breach

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Agreement Stream – Requirements

- Before voting on a resolution to enter into an agreement of this nature, Council must give notice of and hold a public hearing with respect to the proposed agreement



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Brownfield Property Tax Incentives

Practical Considerations:

- Council has more direct control over tax incentives under agreement stream
 - Downside: investment of Council resources (reviewing agreements, public hearings)
- Bylaw stream may be more efficient but will require more administrative resources
 - Appointment of designated officer, process for vetting applications under bylaw, etc.

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Cancellation, Reduction, Refund or Deferral of Taxes

347(1) If a council considers it equitable to do so, it may, generally or with respect to a particular taxable property or business or a class of taxable property or business, do one or more of the following, with or without conditions:

- (a) cancel or reduce tax arrears;
- (b) cancel or refund all or part of a tax;
- (c) defer the collection of a tax.




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New West Partnership Trade Agreement (NWPTA)


Removing obstacles to trade, investment or labour mobility between the four provinces

Removing discrimination or preferential treatment of province's people, investments and goods or services.

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Limits on Business Subsidies

- Shall not provide business subsidies that provide an advantage to an enterprise that results in material injury to a competing enterprise of another party
- Shall not provide business subsidies that entice or assist the relocation of an enterprise from another party
- Shall not provide business subsidies that otherwise distort investment decisions

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New West Partnership Trade Agreement (NWPTA)


“... A business subsidy does not include a financial contribution made available to entities within a particular industry or group of industries where the measure pursuant to which the financial contribution is made available establishes objective criteria or conditions governing eligibility that are not structured, in law or in fact, so as to make the financial contribution uniquely available to one single entity, whether that entity is structured as one legal entity or a group of legal entities.”

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New West Partnership Trade Agreement (NWPTA)


Not a “business subsidy” within the meaning of the NWPTA:

- Generally Available Financial Program
- Generally Available Infrastructure


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Tax Recovery Involving Oil and Gas Companies

Property Taxes (Land)	<ul style="list-style-type: none">• Register Tax Notification• Sell Land at Tax Auction
Property Taxes (M&E and Linear)	<ul style="list-style-type: none">• Seize and Sell Goods• Commence a Civil Claim

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Insolvency Overview



What is Insolvency?


Types of Insolvency Regimes

- Bankruptcy
- Receivership
- CCAA (*Companies' Creditors Arrangement Act*)

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Regent Resources Decision

- *Regent Resources* (2018 ABQB 669)
 - What happened?
 - What does this mean to us?
 - Where are things now?

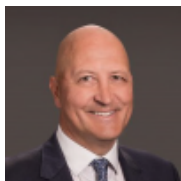
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Linear Property Taxes

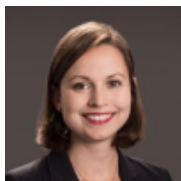
- MGA, section 348
- *Re Virginia Hills Oil Corp and Dolomite Energy Inc.*
 - What happened?
 - Where are things now?
 - What does this mean to us?

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Questions?



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