

# HALIFAX

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**Item No. 14.1**  
**Halifax Regional Council**  
**June 18, 2019**  
**July 16, 2019**

**TO:** Mayor Savage and Members of Halifax Regional Council

**SUBMITTED BY:**

Original Signed by 

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Jacques Dube, Chief Administrative Officer

**DATE:** May 3, 2019

**SUBJECT:** **Municipal Discretionary Tax Relief: Eligibility of Market Leases**

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## INFORMATION REPORT

### ORIGIN

March 22, 2016 – Regional Council requested a staff information report respecting the Municipality's ability to provide tax relief for property, or some portion thereof, leased by a registered non-profit organization or registered Canadian charity in the private sector with the implications in regards to:

- (i) The Municipality's legislative authority;
- (ii) The policy rationale for tax relief;
- (iii) The capacity of the Municipality to administer tax relief;
- (iv) The Municipality's financial capacity and any indirect impact on other taxpayers including non-profit organizations.

### LEGISLATIVE AUTHORITY

A detailed outline of legislative authority is included at Attachment 1 of this report.

### BACKGROUND

Non-profits in Halifax frequently own the property that they occupy but in many cases, they are tenants, leasing the property and paying rent to the owner. The property tax system in Nova Scotia, however, is based on property ownership, not tenancy. Property tax is payable by the owner of the property, even though the tenant may be reimbursing the owner for the full amount of the property tax. While there is a clear rationale for providing grants as a form of "tax relief" to many non-profits that lease, there are considerable legal and administrative issues that would need to be addressed.

## **DISCUSSION**

### **Municipal Legislative Authority**

Property taxation and exemption in HRM is governed by the Halifax Regional Municipality Charter and the Assessment Act. Together these two Provincial laws set out the taxation powers of the municipality and restrict the type and amount of exemptions it may provide. The two main considerations are who HRM is permitted to tax and, who (and by how much) HRM may exempt from taxation.

With respect to taxation, the assessed owners of residential, commercial and resource properties are liable to taxation by HRM: it has no authority to tax the tenants or occupants of those properties directly. In most cases HRM would not know whether a property is owner-occupied or has a tenant. The owner of the property is free to pass the cost of the property tax along to their tenants in their rent in any manner they wish. While square footage of space is commonly used, some tenants pay no tax to the owner while others may pay what they see as a disproportionate amount. The municipality has no control over these payments as they are part of a private arrangement between two parties.

As a general rule, HRM may not grant a tax concessions to business or industry. HRM has limited ability to provide tax exemptions, which is set out in section 89 of the HRM Charter. Council may only provide a full 100% tax exemption to: 1) registered Canadian charities for properties used directly and solely for a charitable purpose, or 2) to a non-profit organization that "in the opinion of the Council, ... provides a service that might otherwise be a responsibility of the Council". Other non-profits cannot be provided a 100% tax exemption but can have their taxes reduced from the commercial to the residential tax rate. A tax exemption means that the property owner is not required to pay those taxes from which it is exempt.

Currently, Administrative Order 2014-001-ADM provides tax relief to non-profits in the form of grants. It was drafted in accordance with section 79(1)(av) of the HRM Charter that allowed HRM to provide grants to "charitable, nursing, athletic, educational, environmental, cultural, community, fraternal, recreational, religious or social" organizations. With the repeal of section 79, it now falls within the authorities of the new section 79A. It provides for five levels of grants, all of them designed to reduce the taxes paid by eligible non-profits. Without the use of section 79, HRM would be required to provide tax relief under the more restrictive section 89, essentially raising taxes on many non-profits (Regional Council has asked the Province for increased flexibility in non-profit taxation).

Grants for tax relief under AO 2014-001-ADM are primarily geared towards eligible non-profit owners of properties, not tenants. However, 33 leased properties (about 5% of all recipients) are included in AO 2014-001-ADM. Most of those are on the program for historical reasons. The majority are leasing space within a property owned and operated by a non-profit organization or from one of the three levels of government, although there are a small number of private leases. Often they have their own assessment account. The presence of some leases on the program, while most are ineligible, has created an inequity.

### **Policy Rationale for Tax Relief**

Property tax is meant to be based on ability to pay. It assumes that owners of higher value properties have a greater ability to pay while lower valued properties pay proportionately less. Most non-profits are taxed at the commercial tax rate (nearly three times higher than the residential tax rate) even though they have a limited ability to pass the cost of the property tax on to their client. Often non-profit revenue sources are fund raising, are fixed in nature, or are based on conditional grants and may fluctuate annually. In many cases property taxes can consume a disproportionate share of annual revenues. For instance, nearly 40% of the organizations on Administrative Order 2014-ADM-001 (*Tax Relief to Non-Profit Organizations Administrative Order*) have tax bills (prior to providing tax relief) in excess of 10% of revenues. While few of these organizations provide alternative service delivery in the strict sense of the term, some of them are providing community amenities and services that may augment municipal services. All of this provides a strong "ability to pay" rationale for providing tax relief to non-profits.

If one assumes that the cost of municipal property taxes are passed on to non-profit tenants by property owners, this rationale remains consistent whether the non-profit is the owner of a property or simply leases it. In itself, neither ownership nor tenancy implies a greater or lesser ability to pay. Providing tax relief to

only owners, however, disadvantages tenants that pay taxes as part of their lease and may damage their ability to provide services to clients. It may inadvertently encourage some non-profits to seek ownership of property or leases from the government, even when that may not be in their best interests. Providing comparable tax relief for non-profit organizations to lease in the market might (i) reduce pressure on government leasing and aid disposal of surplus property, (ii) decrease managed dependency, and (iii) reduce the displacement of non-profits from locations with high market values.

### **The Capacity of the Municipality to Administer Tax Relief as a Grant**

Providing grants for tax relief to tenants, however, is administratively difficult as there is no consistent way to verify tenancy or how much property tax a tenant has paid or will pay as part of their lease. While many property owners allocate property tax to tenants according to their square footage, others do not and HRM has no record showing how the tax has been allocated by the property owner. Moreover, if HRM were willing to rebate the tax passed through to tenants by landlords, landlords would have an incentive to allocate a disproportionate share of their tax to their non-profits, thereby saving on the remaining tax bill. To manage that risk, HRM would need a standardized approach to determining the tax embedded in a lease. There are three options:

- HRM could estimate the tax by calculating each leasee's share of the property's square footage. – This would involve considerable ongoing work. In many cases the basic data would be unavailable or might be inconsistent. In other cases a tenant might have relocated more than once during the year and proration would be required. Even then, square footage may not be a valid measure. For instance, a non-profit might rent a gym that is part of a larger building. Using this method introduces significant complexity and would likely require additional staff. It also brings financial risk and uncertainty.
- HRM could require each applicant to have an assessment of the leased space by a qualified appraiser. While this approach might work for larger non-profits, it would add considerable cost to the application and is not realistic for the majority of non-profits.
- HRM could use a standardized formula to estimate the average amount of property tax included in lease payments and provide a grant to eligible non-profits for a percent of its annual lease payment. Such a formula could only provide an approximation of the tax that is embedded in a lease. The advantages are that it would treat all leased non-profits in a similar manner and it would be based upon actual lease payments, so it would reflect known amounts. However, it could prove to be expensive with numerous new applicants plus administrative cost. The complexities involved would make the payment for tax relief less transparent for leasees.

As the tax exemption provisions of the HRM Charter demonstrate, the provision of municipal tax relief historically reflects an implicit agreement wherein taxpayers provide financial support in return for programs and services deemed to be of social benefit.

In general, leased property poses higher risk as compared to ownership in terms of:

- the property owner's discretion in apportioning all or some portion of the annual property tax, the timing and method of collection, and any additional charge-back such as a proportional share of tax for common areas;
- tenant turnover, sub-leasing or informal 'shared' occupancy; and
- the expiry, termination, holdover of a lease agreement, abandonment or refusal to surrender occupancy.

The cost of any program expansion includes HRM's administrative overhead and capacity. The ability to effectively manage risk within acceptable standards of customer service may be predicated on the re-design of the current tax relief program or additional administrative resources. Reform to the overall tax relief program and billing/collection process is required prior to or concurrent with any expansion.

### **Financial Capacity and Affordability for Other Taxpayers**

Property tax concessions are “budget neutral” meaning that the opportunity cost (tax not paid by some parties) is absorbed by other taxpayers, including other non-profits not fully exempt, business, and homeowners throughout the region.

The number and scope of non-profits that lease is unknown, hence a reliable estimate of the cost of any leasing program cannot be established. It is reasonable to expect that expansion of tax relief for non-profit market tenancy would be characterized as follows:

- concentrated in the urban core (office buildings, malls, business parks);
- a concentration of umbrella organizations, charities, and larger non-profit organizations based on proximity to consumers and/or a concentration of public institutions (for example, universities, hospitals, government);
- non-profit and charitable organizations representing large geographic catchment or service areas such as Nova Scotia, Atlantic Canada, the Maritimes, national and international networks that tend to concentrate administrative headquarters or branches in a provincial capital city; and
- higher value properties based on land scarcity and market demand in urban property markets.

Should Regional Council wish to design a grant program to provide tax relief for leases, the relief provided may have to be defined more modestly than for owners or the eligibility criteria for both owners and leases may have to be narrowed to those more in need.

Another alternative is to initiate a phased discontinuation of tax relief for leased property and municipal licenses. This action would:

- align practice with legislation and reduce both risk and cost to the Municipality;
- establish consistency with HRM’s tax assistance to lower income homeowners<sup>1</sup>; and
- restore a degree of equity between government leasing at nominal rates and the private sector.

### **FINANCIAL IMPLICATIONS**

No immediate financial implications as this is an information report only. Should the municipality extend tax relief to non-profits that lease in the market, there would be considerable financial implications due to a loss in tax revenues. These could be offset by reducing the non-profit tax relief currently provided to owners of properties. In addition, depending on the design and participation rates, there is the risk that there will be additional administrative costs to operate the program.

Changes to the tax relief program will also change the level of distortion amongst taxpayers. Currently owners receive tax relief while most lessors do not. Providing tax relief to lessors will decrease the inequities that exist between non-profit lessors and owners but will also shift additional taxes onto residential and commercial property taxpayers, hence creating additional distortions in the tax system.

### **COMMUNITY ENGAGEMENT**

Not applicable. This is an information report only.

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<sup>1</sup> Administrative Order 10 limits eligibility to property owners and the applicant’s principle place of residence.

**ATTACHMENTS**

- Attachment 1 Legislative Authority
- Attachment 2 HRM's Current Practice.
- Attachment 3. Cross-Jurisdictional Policy Scan and Policy Options.

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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.

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## LEGISLATIVE AUTHORITY

### ***HRM Charter, S.N.S 2008 c.39***

#### Section 89

(1) The Council may, by policy, exempt from taxation, to the extent and under the conditions set out in the policy

- (a) property
  - (i) of a named registered Canadian charitable organization, and
  - (ii) that is used directly and solely for a charitable purpose;
- (b) property of a non-profit community, charitable, fraternal, educational, recreational, religious, cultural or sporting organization if, in the opinion of the Council, the organization provides a service that might otherwise be a responsibility of the Council;
- (c) the buildings, pump stations, deep well pumps, main transmission lines, distribution lines, meters and associated plant and equipment of a municipal water utility.

(2) The Council may, by policy, to the extent and under the conditions set out in the policy, provide that the tax payable with respect to all or part of the taxable commercial property of any non-profit community, charitable, fraternal, educational, recreational, religious, cultural or sporting organization named in the policy be reduced to the tax that would otherwise be payable if the property were residential property, inclusive of area rates.

(3) A tax exemption or reduction pursuant to this Section must be shown on the tax bill and accounted for by the Municipality as an expenditure.

(4) The Council may, in its discretion, refuse to grant an exemption or reduction pursuant to this Section and a policy made pursuant to this Section extends only to properties specifically named in the policy.

(5) An exemption given pursuant to this Section does not apply to area rates unless specified in the policy.

(6) A policy made pursuant to this Section has effect in the fiscal year following the fiscal year in which it is published, unless the policy sets a different effective date, including an effective date retroactive to the beginning of the current fiscal year.

#### Section 79 (repealed)

(1) The Council may expend money required by the Municipality for

- ...
- (av) a grant or contribution to:
  - ...
  - (i) any charitable, nursing, athletic, educational, environmental, cultural, community, fraternal, recreational, religious or social organization within the Province;
  - ...
  - (vii) a registered Canadian charitable organization.

#### Section 79A (replacing section 79)

(1) Subject to subsections (2) to (4), the Municipality may only spend money for municipal purposes if

- (a) the expenditure is included in the Municipality's operating budget or capital budget or is otherwise authorized by the Municipality;
- (b) the expenditure is in respect of an emergency under the Emergency Management Act; or
- (c) the expenditure is legally required to be paid.

**Assessment Act, S.N.S 1989 c.23**

4 Subject to the exemptions in Section 5, all assessable property and business and residential occupancy assessments are liable to taxation for all purposes for which municipal taxes and rates are levied by authority of law.

5 (1) The following property is exempt from taxation under this Act:

(a) all property vested in Her Majesty or vested in any person for Imperial, Dominion or Provincial purposes, and either unoccupied or occupied by some person in an official capacity, except that, if any such property is occupied by any person otherwise than in an official capacity, the occupant shall be assessed and rated in respect thereof, but the property shall not be liable;

(b) every church and place of worship and the land used in connection therewith, and every churchyard and church burial ground and every church hall used for religious or congregational purposes exclusively save only for occasions specially authorized by the church authorities and for which no revenue in excess of one hundred dollars *per annum* is received, but in computing revenue for the purposes of this clause there shall be excluded any contribution paid towards the reasonable additional costs of upkeep imposed by the use;

(c) the property of a non-profit community cemetery, as cemetery is defined by the *Cemetery and Funeral Services Act*;

(d) the property of every college, academy or other public institution of learning with the exception of property mainly used for commercial, industrial, business, rental or other non-educational purpose;

(e) every public school house, city or town hall, court house, gaol, lockup house and temperance hall, and the land used in connection therewith;

(f) all school lands;

(g) all public landings, public breakwaters and public wharves;

(h) the property of every municipality if occupied or used for the purpose of such municipality or unoccupied, excepting nevertheless that property owned, operated or managed by a municipality either directly or through the medium of a board or commission, for the purpose of producing, transmitting, delivering or furnishing electricity, water or power directly or indirectly to or for the public, shall be assessed and taxed by that municipality;

(i) the building or part thereof in which equipment not owned by the municipality, used or to be used exclusively for fighting fires, is kept and the land in connection with such a building, but only if and while

(i) the equipment will be used for the fighting of any fires within a radius of five miles from the building in which it is kept, and

(ii) a written undertaking by the owners is in force and is on file in the office of the clerk of the municipality, undertaking that it will be so used, which undertaking may be subject to cancellation on six months notice in writing;

(ia) the property of a fire department or an emergency service provider, registered pursuant to the Municipal Government Act, used directly and solely for community purposes or fund-raising activities of the department or provider;

(j) the property of every agency, board, or commission in which two or more municipalities participate if occupied or used for the purposes of the municipalities;

....

(n) the property of The Royal Canadian Legion which is used exclusively for the purposes of The Royal Canadian Legion;

(o) the property of any pack, troop, group, committee or district council, regional council or provincial council which is used exclusively for the purposes of the Boy Scouts;

(p) the property of any pack, company, district, division, local or provincial association which is used exclusively for the purpose of the Girl Guides;

(q) property, used directly and solely for a charitable purpose, of a particular charitable organization registered as such under the *Income Tax Act (Canada)* and regulations made thereunder, if exempted by the Council by by-law and to the extent and under conditions set out in the by-law;

(r) property of a non-profit community, charitable, fraternal, educational, recreational, religious, cultural or sporting organization, if exempted by the council by by-law, and to the extent and under the conditions set out in the by-law, and if, in the opinion of the council, the organization provides a service that might otherwise be a responsibility of the council;

(s) property of a fire company incorporated under the *Societies Act* or the *Rural Fire District Act* used directly and solely for community purposes or fund-raising activities of the fire company, if exempted by the council by by-law and to the extent and under conditions set out in the by-law;

.....

(2) Where a council passes a by-law pursuant to clause (q)(r) or (s) of subsection (1) and the by-law does not provide for periodic review of the tax-exempt status of the properties exempted by by-law, the council shall carry out such a review within three years from the date the by-law comes into effect and every three years thereafter.

***Administrative Order 2014-001-ADM Tax Relief to Non-Profit Organizations.***



### HRM's Current Practice

Section 5A(4)(c) of Administrative Order 2014-001-ADM recognizes non-profit tenancy located within a property owned by another non-profit or charity provided certain conditions are met by the owner<sup>1</sup>. Under these conditions the tenant receives the same level of tax relief as the non-profit owner. The rationale in support of this policy was to encourage tenancy for organizations who may lack the financial and human resources to operate a building, and to encourage efficiencies derived from co-location. The practice does however place non-profit owners at an advantage relative to private property owners leasing to non-profit groups in the open market ("commercial" leasing).

To date, most non-profit tenants recognized under HRM's current tax relief program are leasing space within a property owned and operated by a non-profit organization. The single largest concentration of non-profit occupancy is located within an office building owned and operated by Sport Nova Scotia. In 2017, approximately thirty-nine (39) non-profit tenants/service providers were recognized under the non-profit owner's tax relief. The second largest concentration is located within a building leased by the Cultural Federations of Nova Scotia from the Halifax Port Authority. Eight (8) provincial umbrella organizations occupy the premises and formally coordinate their activities and resources such as marketing, shared office equipment and a meeting room.

Arguably, HRM's practice of recognizing tenants billed directly by the Municipality has favoured government-owned property. Of the thirty-three (33) leases currently recognized under direct billing 79% are located on government property as shown below:

HRM	48.5%
Provincial	24.5%
Private	21%
Federal	6%

In general, federal government leases (Halifax Port Authority) are of shorter duration with rental rates at or moderately below market value. In contrast, provincial and municipal leases tend to be of longer duration with greater variance in the rental rate. In general, a longer-term lease has been executed in cases where the non-profit has significant financial investment in the construction of a building or infrastructure on the leased land. Although these tenants have a legal interest in the land under a lease, their ability to sell or convey the building to another party is constrained unless the lease permits assignment. In general, long-term land leases have been issued for sport and housing facilities.

The disproportionate representation of tenancy in government-owned property is a function of assessment practices. Both the federal and provincial government pay municipalities a grant or payment in lieu of tax: this payment is collected using a different billing process. To identify the government owner-occupied portion exempt by legislation, Property Valuation Services Corporation ("PVSC") has created a separate assessment account number. Assigning a separate assessment account number to the tenant enables direct billing by the municipality but has been used only in cases where there is one lease.

Separate assessment accounts have rarely been applied to HRM-owned property but direct billing "care of [tenant]" has been used when an entire parcel or building has been leased and the total tax bill can be attributed to only one party. The risk to this approach is that HRM could lose track of its property inventory.

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<sup>1</sup> The lessee must be a registered non-profit or charity, a copy of the signed lease and total area leased must be submitted by the owner.

### Cross-Jurisdictional Policy Scan and Policy Options

Across Canada, the provision of tax relief to charities and non-profit organizations varies widely both in terms of the level of any relief and the sophistication of approaches. In part, variance is due to the extent to which the provincial government establishes the legislative framework and any delegation of decision-making authority. In New Brunswick and Alberta, for example, the provincial government has developed detailed legislation and application is either made directly to the province (New Brunswick) or a municipality administers the provincial program locally (Alberta). In Ontario, most non-profit organizations pay the full commercial or residential tax unless explicitly exempt by provincial legislation. In Nova Scotia the discretionary authority granted under the *Municipal Government Act* (equivalent to section 89 of the *HRM Charter*), is implemented differently at different municipalities, but unlike HRM's program most provide only one or two levels of relief, primarily for non-residential property use taxed at the Commercial rate.

From a benchmark sample of municipalities there is no general trend or 'consensus' on tax relief for leased property. Policies include:

- the exclusion of leased property (majority of Nova Scotia);
- only those organizations receiving a municipal tax bill (Moncton);
- only tenants leasing municipal property (Victoria, Regina);
- specific types of service such as a focus on recreational facilities open to non-members;
- only leases registered at the provincial land title office (Winnipeg);
- leased property included (Edmonton, St. John's);
- with limitations, for example eligibility restricted to registered Canadian charities located in commercial or industrial property assessed Commercial (London, Toronto).

In general, the inclusion of leased property in municipal tax relief programs is subject to restrictions intended to address risk and/or manage cost. Such restrictions may include one or more of the following:

- eligibility limited to registered charities;
- tax relief for tenancy assessed as Commercial (excludes Residential or Resource<sup>1</sup>);
- the use of tax rebates (a refund on tax paid) not exemption;
- partial not full tax relief;
- eligibility restricted to those organizations billed directly by the municipality;
- eligibility requires that a lease be registered;
- by contractual agreement between the municipality and applicant for a defined term<sup>2</sup>.

This review concludes that any expansion of municipal tax relief to include market tenancy may require a higher level of risk management as compared to property ownership given the volatility of tenancy and the lack of recourse to tax sale proceedings in the event of payment default. Also, property owners may assume higher risk compared to tenants in terms of financial exposure.

The following considers which, if any, of the criteria used by other Canadian municipalities identified in the cross-jurisdictional policy scan might be appropriate for HRM to adopt should Council wish to proceed with an expanded tax relief program.

**Charitable Status:** Typically, a charity pursues altruistic/benevolent aims and is subject to greater scrutiny under the federal *Income Tax Act* as compared to other forms of registration, including restrictions on the accrual of wealth, investments, and the distribution of residual assets to eligible entity

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<sup>1</sup> For example, in Toronto a registered charity located in a commercial or industrial property and responsible to pay the applicable tax may qualify for a 40% rebate (equivalent of a conversion to the Residential tax rate).

<sup>2</sup> For example, tax relief provided under Alberta's program is subject to an agreement for up to 3 years with a review every 3 years. Although Nova Scotia's *Assessment Act* does not require a contractual agreement this could be implemented under Section 89 (1) and (2) per "the conditions set out in the policy"

as determined by Revenue Canada<sup>3</sup>. However, charitable status has been obtained by membership-based organizations including those representing the interests of a business or industrial sector and international programs and services. Typically, these organizations represent an occupation (profession or trade), serve the interests of its membership in an advocacy or marketing role, or provide funding such as scholarships or bursaries, or administer international aid. Restricting eligibility to exclusively charitable organizations would reduce the program's scope and thereby the administrative requirements and the cost of tax relief to other taxpayers but contradicts the current tax relief program for non-profit property owners.

*Restricting eligibility to registered Canadian charities contradicts HRM's current tax relief program and is not in and of itself indicative of "affordability". However, the approach does reduce risk in terms of the financial reporting and stringent oversight managed by the Revenue Canada Agency.*

**Commercial Assessment:** The 'Commercial' assessment category and corresponding municipal tax rate is not de facto indicative of for-profit intent or activity: this classification is a default category for property that is non-residential and not resource land. Although a non-profit might not engage in profit-sharing activities<sup>4</sup> the tax system groups them with other non-residential users. However, the Commercial municipal tax rate is significantly higher than the Residential/Resource rate and is indicative of higher cost to the owner/tenant.

*If it is accepted that most non-profit tenants do not engage in activities of a commercial nature and its members do not derive any prospect of personal remuneration from its operations (shares, dividends, assets) tax relief for eligible organizations assessed at the Commercial tax rate may be a reasonable consideration.*

**Partial Tax Relief:** Under current legislation it is the property owner who is assessed and responsible for the payment of municipal taxes. The owner may collect tax from tenants through various means but remains liable in the event of default including interest charges, a lien or tax sale proceedings for arrears. A property owner, including non-profit property owners, assumes greater financial and legal risk as compared to tenancy – this distinction could be reflected in the level of tax relief such as a higher minimum and maximum payable or a formula that rebates a defined dollar-value per square foot of primary occupancy<sup>5</sup> as stated in the lease agreement.

*Given that property owners are by default responsible for property tax and typically face higher risk/costs associated with ownership, consideration could be given to limiting tenancy to partial tax relief.*

**Direct Billing:** As demonstrated in current practice, restricting eligibility to those organizations billed directly by the Municipality has distorted program uptake in favour of government leases. Many of these tenants have enjoyed the benefit of municipal tax assistance in addition to a less than market value rental rate: costs that might be cost-prohibitive for private and non-profit property owners.

*Restricting eligibility to direct billing is not equitable and would be negated if Property Valuation Services Corporation amends its current practice of assigning more than one assessment number to government property leased to third parties.*

**Registered Lease:** Registering a lease is evidence of an interest in the land and may enable this interest to continue should title be conveyed. Registration also affords the lessee some protection should an unregistered party subsequently claim an interest in the land. However, a registered lease could be problematic should the owner wish to sell or convey title unencumbered<sup>6</sup> or obtain a mortgage secured by the property.

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<sup>3</sup> : A charity is required to distribute its assets to an eligible entity as determined by Revenue Canada. Registered status alone is insufficient assurance of altruistic purpose.

<sup>4</sup> Profit-sharing activities would include shares or dividends to members, joint ventures with individuals or a for-profit entity, operation of a registered business.

<sup>5</sup> Within this context the term "primary occupancy" refers to the square footage used for the direct delivery of a program or service and excludes common areas including exterior grounds, private or customer parking etc.

<sup>6</sup> A lease agreement can include conditions whereby the lease terminates in the event of a sale or conveyance.

*Although registration might be advisable for non-profit organizations who own a building constructed on leased land, mandatory registration as a condition of eligibility for municipal tax relief may place some tenants at a disadvantage due to a property owner's discretion in protecting their interest (government, private or non-profit).*

**Contractual Agreement.** Section 79A of the HRM Charter permits a grant or contribution to non-profit and charitable organizations. Typically, a contribution agreement is used to manage higher risk or to achieve cost-effectiveness in administering a large or complex funding program. Under a contribution agreement the funder provides money or in-kind assistance that must be spent or accounted for in accordance with the terms and conditions of the contract.

*Given the higher risk associated with tax relief as compared to municipal cash grant, a contractual agreement would establish the basis for continued eligibility, the obligations of the recipient, the property owner, and the Municipality. Further, administrative efficiencies could be realized through multi-year awards – subject to annual budget capacity, Council approval, and the right to audit – that enable predictability. A contribution agreement would also include recourse for breach of the contract's terms and conditions.*