

# When all else fails, there's tax registration

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Resources

“When all else fails, there’s tax registrations”



# This presentation is only an overview

When conducting, or considering conducting, a tax registration, please refer to the pertinent legislation and regulations.



# Definitions for the purposes of this webinar

## **Tax sale**

The set of procedures that are required in order to offer a property for sale in order to recover realty tax arrears

## **Tax registration**

The one-year long set of procedures that must be followed before you can commence tax sale procedures

## **Expedited tax sale**

An expedited process that's available if property was owned by a corporation that has been cancelled



# Legislation and Rules

## Legislation

Main legislation is the *Municipal Act, 2001, Part XI*

- Some sections outside of *Part XI* are involved
- Other Acts that may also be involved, such as
  - *Farm Debt Mediation Act,*
  - *Forfeited Corporate Property Act, 2015*

All section numbers in this presentation refer to the *Municipal Act, 2001*, unless otherwise noted

## Rules

*Municipal Tax Sales Rules ("Rules")*  
*O. Reg. 181/03 as amended by 571/17*



# Why do a tax registration?

## All collection efforts to date have failed

- This is the last resort

## Highly effective

- On 85% of the properties we've handled, the arrears were paid within 1 year—did not have to go to tax sale

## No cost to municipality (usually)

- Costs are charged back to the properties that are in arrears (371(1))
- When the taxes are recovered, your costs are recovered



# Why do a tax registration?

## There is a cost to a municipality if

- A property is advertised for tax sale, but no one buys it

## There's still some cost recovery when this happens

- You must charge back to the school board and upper-tier (if applicable) a proportionate share of the amount that is being written off (353)

## Fairness

- Not right for some property owners to have to pay taxes, while others don't

## Get property back into productive use, generating tax revenue



# When is a property eligible for tax registration?

## Second year of arrears

You can register a *tax arrears certificate* when a property is in at least its second year of arrears

**373** (1) Where any part of tax arrears is owing with respect to land in a municipality on January 1 in the second year following that in which the real property taxes become owing, the treasurer of the municipality, unless otherwise directed by the municipality, may prepare and register a tax arrears certificate against the title to that land.

## Not two calendar years!

## In plain English...

If there are arrears from any time in 2020

- On 1 January 2021 property is in its first year of arrears
- On 1 January 2022 property is in its second year of arrears, so you can register a tax arrears certificate any time after this day





# When is a property eligible for tax registration?

## Do you need to amend your collection policy?

If you were previously registering when a property was in at least its third year of arrears, you might need to amend your collection policy

## Suggestion

Send a final warning letter—it's not in the legislation, but it's a good idea!



# Notice under the *Farm Debt Mediation Act*

FDMA is federal legislation, gives farmers an opportunity to re-organize their debts before a creditor can take action to realize on a debt

Creditor must send a farmer a *NOTICE OF INTENT TO REALIZE ON SECURITY* (“*Farm Debt Notice*”) at least 22 business days before taking action to realize on a debt (FDMA (21) and FDM Regulations (SOR/98-168) 17(1) and (2))

The way the Act is worded, it does not have to be a farm that is in tax arrears

If the property owner has an interest in a farming operation anywhere in Canada, you must send them a notice

Notice should be sent to assessed owner(s) **before** proceeding with tax registration

Link to the NOTICE

<https://agriculture.canada.ca/en/agricultural-programs-and-services/farm-debt-mediation-service/notice-intent-secured-creditor>



# Title search and execution search

## Need to find

- Legal description of property
- Name and address of *Interested Parties* (374(1)), because you have to send notices to them

(we'll discuss *Interested Parties* shortly)

**Conduct a corporate search if property is owned by a corporation**



# Can't register a tax arrears certificate if...

## **Order Cancelling Encumbrances has been registered by Crown (373.2(1)(a))**

- This only applies to forfeited corporate lands
- Order does not cancel property taxes owed by former corporate owner
- You can still register if you obtain consent from the Crown

## **Notice of Intent to Use for Crown Purposes has been registered**

- This can apply to forfeited corporate lands (373.2(1)(b)), or to
- Land that belongs to the Crown as a result of the death of an individual who did not have any lawful heirs (373.2(1)(c))
- Province will not register this if a tax arrears certificate has already been registered



# The registration

**Prepare a tax arrears certificate and register it on title (373(1))**

- *Municipal Tax Sales Rules, Schedule 1*

**Tax arrears certificate can't include more than 1 separately assessed property (373.1(3))**

- For example, if you have a subdivision of 10 separately assessed properties that are all in arrears, you need 10 tax arrears certificates

**You need to know who the interested parties were on the day the tax arrears certificate was registered**



# Who the Interested Parties are 374(1)

## These are the parties you must send notices to

- Assessed owner(s)
- Spouse of assessed owner(s)
- Registered owner(s)
- Spouse of registered owner(s)
- Everyone else who had a registered interest on the day the tax arrears certificate was registered, *except*
  - Parties whose interest is only through an easement or restrictive covenants (379 (7.1)(a))
  - Crown (379 (7.1)(b))

***There's more...***



## More Interested Parties (374(1))

**If the Crown is shown as the assessed owner as a result of an escheat or forfeiture, notices must also be sent to**

- The Directors and Officers of the dissolved corporation
- Minister responsible for the administration of the *Forfeited Corporate Property Act, 2015*

**Where the Treasurer is aware that the assessed owner is a dissolved corporation, they must also send notices to**

- Minister responsible for the administration of the *Forfeited Corporate Property Act, 2015*. That minister is:

Manager, Portfolio Performance  
Ministry of Government and Consumer Services, Realty Division



# Can you accept a partial payment?

## If you have not yet registered a tax arrears certificate

- Yes, you can accept a partial payment

## Can you still register a tax arrears certificate after accepting partial payment?

- Yes, as long as the property is still in at least it's second year of arrears
- We recommend that you advise owners that you will still be registering the TAC

## If you have registered a tax arrears certificate

- No, you cannot accept a partial payment  
**(347(3)) “No part payment shall be accepted on account of taxes in respect of which a tax arrears certificate is registered under this Act except under an extension agreement entered into under section 378.”**

(We'll discuss extension agreements shortly)





# Form 1—Notice of Registration of Tax Arrears Certificate (“*First Notices*”)

**Within 60 days of registration, prepare and send First Notices to Interested Parties (374(1))**

- By “...personal delivery or be sent by certified or registered mail” (381(1))
- ‘Certified mail’ is a product that Canada Post had many years ago, but it has been discontinued



# Form 2—Statutory Declaration Regarding Sending of Notice (374(3))

- Sets out names, addresses, nature of interest, date notice was sent
- Must be signed and commissioned
- Does not have to be registered on title
- If someone asks to inspect it, you must allow them to do so (374(4))



## Form 3—Final Notice (379(1))

If the taxes have not yet been paid, Final Notices must be sent between 280 and 310 days after the registration of the tax arrears certificate

Must be sent to the parties who were entitled to receive a First Notice

Update the searches before you prepare the Final Notices  
Need to know if any interested parties have a new address



# Extension Agreements (378(1))

## Before the expiry of the *one-year period*

(that's one year from the date of the registration of a tax arrears certificate)

a municipality may enter into an Extension Agreement with any of the following:

- Any owner of the land
- Spouse of any owner
- Any mortgagee
- Any tenant in occupation of the land
- Any person the treasurer is satisfied has an interest in the land



# Extension Agreements (378(1))

Agreement cannot reduce the amount of the cancellation price, or prohibit any person from paying the cancellation price (378(2))

Extension Agreement “freezes the clock” that’s ticking down in the one-year period (378(4))

Agreement must state under what conditions it ceases to be considered a subsisting agreement (378(3)(a))

For example:

If any of the terms of the Agreement are not met, it ceases to be considered a subsisting agreement on the day that the treasurer notifies the party by registered mail.

When it ceases to be considered a subsisting agreement, the clock starts ticking again (378(4))

You may enter into an extension agreement, you do not have to!



# Extension Agreements Authorized by Treasurer

Only pertains to properties where Tax Arrears Certificate was registered after January 1 2018 (388(2))

'Municipality' may enter into extension agreement; authorizing by-law is no longer required each time (378(1))

Municipality (Council) may delegate this authority to Treasurer or other Officer and set limits, or may decide to maintain status quo

If it affects a cancelled corporate property, consent of the Minister responsible for the administration of the *Forfeited Corporate Properties Act* is required (378(1.2))



# Cancellation Certificate (375(1))

Legislation states,

“Before the expiry of the one-year period...any person may have a tax arrears certificate ...cancelled by paying to the municipality the cancellation price as of the date the payment is tendered” (375(1)), (1.1)

**But what if the one year-period has already expired? Can you accept payment in full?**



# Can you accept payment in full after 1-year period has expired?

Yes, you can accept payment in full and then cancel the tax sale

*It's probably your best option*

According to the Cunningham case, 2004, the treasurer retains the discretion to cancel a tax sale at any time prior to the registration of a tax deed or notice of vesting

More on the Cunningham case

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Resources

[Article—The Cunningham Case](#)





# Expedited Tax Sales

These are properties owned by corporations that were cancelled or dissolved

Can register Tax Arrears Certificate (TAC) on title as soon as there are arrears (373.1)

First notices to be sent within 30 days of registration (374(1))

No final notices

Extension agreement can only be done within 90 days of registration (378(1.1))

Begin tax sale 90 days after registration of TAC (379(2.0.1))

No priority lien awarded if cancellation price paid (375(3.1))



# Transferring certain properties to municipality without conducting a tax sale

## Order to Transfer

Province may transfer 'certain' properties directly to municipality (without tax sale) if appropriate (*Forfeited Corporate Properties Act, 29*)

Includes properties such as 1-foot reserves, storm water retention ponds, blocks for walkways and parks that were to be granted to the municipality as part of the Subdivision/Development Agreement but the corporation was cancelled before this was completed.



# Forms & Schedules

## Forms 1 to 10

(First and Final Notices, Statutory Declarations re: sending of Notices, Statement of Facts, Advertisements, Tender Form, etc.) are no longer found attached to the MTSR regulation but are available on line on the Government of Ontario Central Forms Repository under the listing for the Ministry of Municipal Affairs:

<http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/>

Index of Forms and their official names for searching the Repository can be found in the MTSR Schedule 5

Schedules 1 to 4 for the Tax Arrears and Cancellation Certificates and Statements to include with Tax Deeds and Vestings are attached to the MTSR



# KEY TAKE AWAYS

Don't accept a partial payment when you cannot, do accept payment in full when you can



**Thanks for watching this webinar!**

**Questions?**

