

December 13, 2002

REVIEW OF CHANGES TO TAX REGISTRATIONS AND TAX SALES

Under the *Municipal Act, 2001* (the “Act”) the *Municipal Tax Sales Act* (the “MTSA”) will be repealed as of 1 January 2003. Part XI of the Act will then govern tax registrations and tax sales. The Act has been amended by *The Municipal Statute Law Amendment Act, 2002* (“MSLA”, formerly called Bill 177).

The MTSA was itself amended by the *Brownfields Statute Law Amendment Act, 2001* (“Brownfields”) as of 1 December 2002, even though the MTSA will be repealed on 1 January 2003. Most of the amendments under Brownfields have been incorporated into the new Act as amended by MSLA. In the following article all references to the MTSA deal with the MTSA as it existed prior to being amended by Brownfields.

Part XI of the Act as amended by the MSLA incorporates some important changes to the way tax registrations and tax sales will be conducted. The following is a description of some of these changes. Please note that all ***bold italic*** text in this article has been inserted by the author.

Not registering a notice of vesting

Perhaps the most important changes to tax registrations and tax sales are the powers now given to municipalities when dealing with lands that are, or may be, contaminated. One of these powers is to not register a notice of vesting after a tax sale at which there was no successful purchaser.

Subsection 5(1) of the MTSA stated:

“...after the expiry of the one-year period the land ***shall be sold or vested*** in the municipality...”

This subsection has been replaced in the new Act by subsection 375(1), which states,

“...after the expiry of the one-year period, a ***public sale shall be conducted*** by the treasurer...”

Furthermore, subsection 9(3)(b) of the MTSA stated:

“where there is no successful purchaser, the treasurer ***shall*** prepare and register, in the name of the municipality, a notice of vesting in the prescribed form...”

Subsection 379(5)(b) of the new Act states:

“if there is no successful purchaser, ***may*** prepare and register, in the name of the municipality, a notice of vesting.”

Thus, a municipality is not obligated to take title to a property where there is no successful purchaser at a tax sale. Furthermore, subsection 379(15) of the new Act states:

“If a notice of vesting is not registered within one year after a public sale is conducted at which there is no successful purchaser, the tax arrears certificate with respect to the land shall be deemed to be cancelled.”

Perhaps the message of subsection 379(15) is that you shouldn’t sit on your hands after an unsuccessful tax sale. If you are concerned that the lands may be contaminated, quickly commence whatever research

or assessments that need to be done. If it turns out that the site is not contaminated but a notice of vesting is not registered within one year, the municipality has just wasted a lot of time and money by doing a tax registration and an unsuccessful tax sale.

Power of entry after a tax sale for which there has been no successful purchaser

For the purpose of assisting a municipality to determine whether it is desirable to acquire land that has been offered for public sale but for which there is no successful purchaser, subsections 386.1 to 386.5 of the new Act set out conditions under which a municipality may enter on and inspect the land and dwelling. The MTSA did not contain any such provisions. These new provisions allow a municipality to

“...do anything reasonably necessary to carry out an environmental site assessment...” (subsection 386.1(2)).

This power should be immensely helpful in dealing with lands that are, or may be, contaminated.

Treasurers statutory declaration *might not have to be registered*

After sending a Notice of Registration of a Tax Arrears Certificate (“first notice”) to the interested parties, subsection 4(4) of the MTSA required the treasurer to:

“...make ***and register*** a statutory declaration in the prescribed form stating the names and addresses of the persons to whom notice was sent”.

Under the new Act it is still necessary for the treasurer to make a statutory declaration. However, this statutory declaration ***might not have to be registered*** on title. This is dealt with in subsection 374(3), which states:

“The treasurer shall...make a statutory declaration in the prescribed form stating the names and addresses of the persons to whom notice was sent”.

When the form that is required for subsection 374(3) is published we will know for certain if the statutory declaration does or does not have to be registered.

Exclusion of all mobile homes

The MTSA made no provision for excluding a mobile home from a tax sale of the land on which the mobile home was situate. Thus, if property owner A didn't pay their realty taxes, mobile home owner B could lose their home in a tax sale. The new Act has provided a remedy for this potential inequity. Subsection 379(3) states as follows:

“The municipality may by by-law determine that all mobile homes situate on the land offered for sale shall not be included in the sale.”

Furthermore, subsection 379(4) states as follows:

“If a by-law is passed under subsection (3), the advertisement of the sale shall state that the land to be sold does not include the mobile homes on the land.”

Extension agreements with spouse of owner, mortgagee or tenant

Subsection 8(1) of the MTSA allowed a municipality to authorize an extension agreement with the owner of the land extending the period of time in which the cancellation price is to be paid. An extension agreement had to be passed by a by-law within one year of the date that a tax arrears certificate was registered.

Under subsection 378(1) of the new Act a municipality may authorize an extension with agreement not only with the owner, but also with the spouse of the owner, a mortgagee or a tenant in occupation of the land. Again, an extension agreement may be authorized by a by-law within one year of the date that a tax arrears certificate was registered.

Vacant land and improved land now treated the same

Under subsection s. 3(1)(a) of the MTSA a tax registration could be commenced on *improved* land
“...on the 1st day of January in the *third* year following that in which the real property taxes become owing...”

Under subsection 3(1)(b) of the MTSA a tax registration could be commenced on *vacant* land
“...on the 1st day of January in the *second* year following that in which the real property taxes become owing...”

Under the new Act vacant land and improved land are both treated the same for the purposes of tax registration. Under subsection 373(1) a tax arrears certificate may be registered

“...on January 1 in the third year following that in which the real property taxes become owing...”.

In plain English, where taxes became owing in 2000, a tax arrears certificate can be registered on or after January 1, 2003 (2001 was the first year in arrears, 2002 was the second year). This will apply to both improved and vacant land.

Notice to interested parties after payment into court

Subsection 10(2) of the MTSA required that the treasurer pay the proceeds of sale, minus the cancellation price into court, together with a statement in the prescribed form. Subsection 10(2.2) required that a copy of this statement be sent to the Public Trustee within 60 days after making the payment into court.

Subsection 380(3) of the new Act mandates that a copy of the required statement shall be sent to the Public Guardian and Trustee and to the persons to whom the treasurer sent notice under subsection 379(1)—that is, the interested parties to whom notices were required to be sent pursuant to the Act.

No requirement to send notices to tenants who do not have a registered interest in the lands

Under subsection 4(1) of the MTSA assessed tenants in occupation of the land were included in the persons who had to be sent a Notice of Registration of a Tax Arrears Certificate ('first notice'). Similarly, if the arrears were not paid within 280 of the registration of the tax arrears certificate (subsection 9(1)) assessed tenants in occupation of the land, as well as other persons, had to be sent a final notice.

In the new Act first notices and final notices are dealt with under subsections 374(1) and 379(1) respectively. Neither of these subsections requires that notices be sent to assessed tenants in occupation of the land, nor is this requirement addressed anywhere else in Part XI.

Please note however, that if the tenants have a lease or notice of lease registered on title it will be necessary to send them notices, as they then have a registered interest in the land.

Addition to definition of "real property taxes"

As defined under the MTSA

"real property taxes" means the amount of taxes levied on real property under this Act, the Education Act and under section 21.1 of the Provincial Land Tax Act and any amounts owed under the Drainage Act, the Tile Drainage Act and the Shoreline Property Assistance Act with respect to the real property and includes any amounts deemed to be taxes by or under any other Act;

Under subsection 371(1) this definition has been expanded to include:

"... and any amounts given priority lien status by or under any Act".

Thus, any amounts which are given "priority lien status" under any Act can now be included in the amount owing to the municipality that is shown on a tax arrears certificate.

What lands certificate may embrace

Under subsection 3(4) of the MTSA

A tax arrears certificate in respect of improved land shall not embrace more than one such property or any vacant land that is a separate parcel, and a tax arrears certificate in respect of vacant land shall not embrace lots according to more than one registered plan or any improved land.

Under the subsection 373(4) of the new Act

A tax arrears certificate shall not include more than one separately assessed parcel of land.

The wording of the new Act certainly clarifies what lands a tax arrears certificate may embrace, as it confirms that each separately assessed parcel of land will require its own tax arrears certificate.

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