Member Briefing Note

Bill 77 (Restoring Tax Accountability)

March 10th, 2022

Below is a summary of a legal opinion regarding Bill 77 and its applicability to municipalities dealing with unpaid taxes from the energy sector. Included are potential strategies to entice tax delinquents to settle arrears. The entirety of the legal opinion from RMRF is also attached.

WHAT IS BILL 77?

Bill 77 is the Province's response to the 2019 '*Virginia Hills*' decision, where the courts found that linear property taxes were not subject to special lien powers granted by the MGA. This made municipalities unsecured creditors in insolvency proceedings and likely contributed to some of the willful tax delinquency in the energy sector.

WHAT DOES BILL 77 DO?

- Confirms that municipalities are secured creditors.
- Clarifies that both the owner and operator are responsible for tax payment.
- Clarifies that a special lien on all assessable property within a municipality exists once a company or owner is in arrears.
- Retroactively applies to all existing arrears owed to a municipality.

WHAT ARE THE SHORTCOMINGS OF BILL 77?

- Bill 77 primarily supports municipal claims in insolvency proceedings but does not provide new tools to address the willful neglect of property tax obligations by companies that continue to operate.
- Municipal claims are still behind those of the Crown (including the AER and OWA) during insolvency proceedings.
- Municipalities are only able to stake a claim on assets that are within their boundaries. Should a receiver disclaim those assets during insolvency proceedings, there may be no funds to collect.

HOW CAN MUNICIPALITIES USE BILL 77?

*** Please note that it is important to discuss things with your solicitor, as individual circumstances may vary***

For Dealing with Insolvent Companies:

1. Secured Creditor Status: Bill 77 provides a straightforward mechanism to identify claims against a company owing taxes. As a secured creditor, there is now better recourse and standing for municipalities during insolvency proceedings. However, municipalities will only be entitled to payment if there is residual value left once the Crown has exercised its rights and the receiver has collect its fees.

For Dealing with Delinquent Companies Still in Operation:

Addressing this issue is not the intent of Bill 77. However, by providing secured creditor status to municipalities, Bill 77 adds more teeth to both direct and indirect methods of persuasion.

1. Creditor Notification: Through conducting a PPR search, a tax delinquents' creditors can be determined, and correspondence sent to each outlining the extent of the delinquency and stating the municipality's lien against the assets within its boundary. Given that special liens now apply to linear/M&E assets, there could be a higher level of concern from financial institutions backing those companies that their security is being threatened by a creditor with higher priority. This is a simple, low cost, and potentially effective course of action for most rural municipalities to undertake.

2. Receivership: If outstanding amounts are significant, forcing receivership is now an option. In other words, municipalities as secured creditors, can now apply to the Courts to force a receivership to collect debts owing. This process is expensive and complicated to undertake but may be worth it if outstanding dollar amounts are significant. It is possible that multiple municipalities could work together should they share a significant tax delinquent.
3. Garnishments: This avenue existed prior to Bill 77 and involves suing delinquent taxpayers for owed amounts, obtaining a summary judgment against them, and then using the *Civil Enforcement Act* to garnish their bank accounts.
4. Distressed Assets: This avenue also existed prior to Bill 77 (MGA, Division 9) and is where a municipality makes claims on property and seizes assets with the intent to sell them. Given the priority claims of the Crown, and adverse

experience of some members who have tried this approach, it is not recommended without consulting the AER first.

None of the above methods will guarantee increased collection of bad debt; however, should rural municipalities adopt a coordinated approach, that could at the very least, put the industry on notice that tax delinquency will no longer be passively accepted. As noted in the opinion, municipalities should generally start taking a more active stance on tax delinquency to ensure consistency and forthrightness on this issue.

WHAT OTHER WORK NEEDS TO BE DONE?

Despite the above statutory changes, options for municipal intervention in situations of industrial tax delinquency remain limited in the absence of significant participation by the Alberta Energy Regulator, which the current regulatory framework precludes, and which has been consistently resisted by the Government of Alberta.

Bill 77, whilst a positive step, is considered less effective than a linking of each company's license to operate with its municipal tax delinquency status, particularly in cases of willful tax delinquency in the absence of insolvency. Again, Bill 77 is not intended to address and does not directly address these situations, which ultimately require regulatory intervention to mitigate directly and definitively.

This policy stance has been consistently advocated for by the municipal sector throughout the course of this ongoing concern and remains preferable as a mechanism to secured creditor status or special liens and is considered critical from an advocacy perspective in pursuit of a finite and concrete solution to the issue at hand.

We hope that you find this information worthwhile. If you have any questions on this matter, please reach out to your zone director or to any other member of the ARMAA executive.

Regards,

ARMAA Executive