

Chapter 4

Department of Finance – Overdue Property Tax: Collections and Forgiveness

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Department of Finance

Overdue Property Tax: Collections and Forgiveness

Report of the Auditor General – Volume I, Chapter 4 – June 2019
One-Page Chapter Summary

Why Is This Important?

- Property Tax represents over \$1 billion per year in revenue for the Province and municipalities
- Forgiveness of overdue property tax represents lost tax revenue and creates a perception of unfairness to taxpayers who remain current with their tax payments
- Over \$30 million in property tax and penalties forgiven during the six-year period covered by our audit

Overall Conclusions

The Department of Finance:

- lacks policies to direct its use of discretionary property tax forgiveness;
- does not actively manage the property tax collections services contracted to Service New Brunswick; and
- lacks detailed criteria and prioritization of properties to be sold for non-payment of property tax.

What We Found

Collections

- Overdue property tax and penalties grew by 16% or \$15 million in five years
- The Department of Finance has not provided sufficient direction to Service New Brunswick to guide the identification of property tax sale accounts
- The Department does not have documented policies related to the use of *Provincial Offences Procedure Act* in the collection of property tax
- The Province has a 99.1% collections rate on property tax

Forgiveness

- The Department does not have documented policies and procedures for the use of discretionary forgiveness
- We found instances where forgiveness transactions were processed twice in error
- The Department has not received recurring internal audits to ensure system controls are functioning
- The Department did not respond to a 2014 Government directive to review the *Real Property Tax Act*

Key Findings and Observations Table

Department of Finance – Overdue Property Tax: Collections and Forgiveness

Paragraph	Key Findings and Observations
4.15	<i>Overdue property tax and penalties grew by 16% or \$15 million in five years</i>
4.16	<i>\$109 million in overdue property tax and penalties in 2017/18</i>
	Overdue Property Tax Collections
4.18	<i>CRA Set-off program not implemented</i>
4.22	<i>The Department does not have documented policies related to the use of Provincial Offenses Procedure Act in collection of property tax</i>
4.25	<i>The Department has a 99.1% collections rate</i>
4.26	<i>The Department does not track the impact of forgiven municipal property tax</i>
4.27	<i>The Department is unable to resolve overdue property tax in a timely manner by selling properties for non-payment of property tax</i>
4.29	<i>The Department has not provided sufficient direction to SNB to guide the identification of property sale accounts</i>
4.31	<i>The Department does not actively manage the performance of SNB collections</i>
4.32	<i>SNB does not report back to the Department with Key Performance Indicators</i>
	Property Tax Forgiveness
4.38	<i>Over \$30 million in property tax and penalties forgiven in six years</i>
4.40	<i>On average, \$5.4 million per year of overdue property tax and penalties have been forgiven since 2012/13</i>
4.43	<i>The Department of Finance does not have documented policies and procedures for the use of discretionary forgiveness</i>
4.44	<i>We noted six instances where forgiveness transactions were processed twice in error</i>
4.45	<i>The Department did not have control mechanisms to detect errors</i>
4.45	<i>The Department had not received recurring internal audits to ensure system controls are functioning</i>
4.46	<i>Non-profit organizations accounted for \$12.6 million, 39% of government approved forgiveness</i>
4.47	<i>Property tax and penalties forgiven in response to proposals from taxpayers due to financial hardship</i>
4.49	<i>The Department did not respond to 2014 Treasury Board directive to review the Real Property Tax Act</i>

Recommendations and Responses

Recommendation	Department's response	Target date for implementation
We recommend the Department of Finance:		
<p>4.34 develop a policy for its use of section 25 of the <i>Real Property Tax Act</i> to improve collections of overdue property tax. This section states that a person in whose name real property is assessed, who fails to pay the taxes on that real property, commits an offence punishable under part II of the <i>Provincial Offences Procedure Act</i>.</p>	<p><i>Finance and Treasury Board agrees with this recommendation and will develop a policy regarding the use of section 25 of the Real Property Tax Act. Results on previous research and analysis regarding the use of similar fines levied under Part II of the Provincial Offences Procedure Act have shown that this type of measure is ineffective in improving tax compliance and would result in increased costs to the Province.</i></p>	<p><i>End of fiscal year 2019-20</i></p>
<p>4.35 calculate and track the impact of forgiven municipal property tax on the Province's expenses.</p>	<p><i>Finance and Treasury Board agrees with this recommendation and will perform analysis on the portion of municipal taxes forgiven.</i></p>	<p><i>End of each fiscal year starting with 2019-20</i></p>
<p>4.36 We recommend the Department of Finance:</p> <ul style="list-style-type: none"> • clarify performance expectations of Service New Brunswick in collecting overdue property tax; and • monitor Service New Brunswick's performance against pre-defined performance indicators and targets. 	<p><i>Finance and Treasury Board agrees with these recommendations and will work collaboratively with SNB to clarify performance expectations and implement a monitoring process.</i></p>	<p><i>End of fiscal year 2019-20</i></p>

Recommendations and Responses (continued)

Recommendation	Department's response	Target date for implementation
We recommend the Department of Finance:		
4.51 set detailed eligibility criteria for property tax forgiveness to ensure consistency of forgiveness decisions.	<i>Finance and Treasury Board agrees with this recommendation. A policy will be developed to define the intent of the legislated forgiveness criteria to ensure they are applied with consistency while not being too restrictive to exclude exceptional circumstances.</i>	<i>End of fiscal year 2019-20</i>
4.52 request the Office of the Comptroller internal audit group perform periodic reviews of system controls.	<i>Finance and Treasury Board agrees with this recommendation. Consultation will be undertaken with the Office of the Comptroller to identify the best plan for periodic system reviews.</i>	<i>End of fiscal year 2019-20</i>
4.53 consult with Treasury Board to determine whether the 2014 directive to review the <i>Real Property Tax Act</i> is still appropriate.	<i>The Department will continue to review each situation on a case-by-case basis, prepare options to maximize the recovery of unpaid property taxes and, where appropriate, make recommendations to Treasury Board.</i>	<i>On-Going</i>

Audit Introduction

4.1 Property tax in New Brunswick represents over \$1 billion per year in revenue for the provincial and municipal governments. The Province is responsible for billing property tax in its entirety on behalf of municipalities. Under this arrangement, the Province retains the collections risk. The Province guarantees the municipal tax regardless of its rate of collection or changes in assessed valuation due to appeals. If property owners fall behind on their property tax payments, the Province stands to lose both its own revenue as well as the municipalities' revenue.

4.2 Provincial property tax receivable includes both provincial and municipal taxes receivable and the Province bears the cost of forgiveness in its entirety. Property tax forgiveness refers to overdue property tax that the Province removes from its receivables and ceases to pursue payment on. Property tax is forgiven where the property owner has filed for bankruptcy, ownership of the property has transferred to the Province or at the discretion of the Tax Commissioner or Treasury Board. Discretionary forgiveness is used to resolve instances where hardship or injustice has occurred or is likely to occur if property tax were to be paid, such as homelessness, or where it is assessed as being in the public interest, such as to facilitate the purchase and sale of abandoned commercial property and bring it back into productive use.

Why we chose this topic

- 4.3** We chose to examine property tax forgiveness for the following reasons:
- property tax represents over \$1 billion per year in revenue for the Province and municipalities;
 - forgiveness of overdue property tax represents lost tax revenue and creates a perception of unfairness to taxpayers who remain current;
 - the Department of Finance is expected to comply with the *Real Property Tax Act* and *Financial Administration Act*;
 - over \$30 million in property tax and penalties forgiven during the six year period covered by our audit; and
 - we received public concerns in relation to fairness of tax forgiveness decisions.

Audit Objective

4.4 The objectives of this audit were to determine if the Department of Finance:

- collects overdue property tax in accordance with the *Real Property Tax Act*; and
- makes property tax forgiveness decisions or recommendations in accordance with applicable policies and legislation.

4.5 The criteria we used in completing our audit can be found in Appendix I.

Conclusions

4.6 We have concluded that, while generally complying with legislation applicable to property tax collections and forgiveness, the Department of Finance:

- lacks policies to direct its use of discretionary property tax forgiveness;
- does not actively manage the property tax collections efforts of Service New Brunswick; and
- lacks detailed criteria and prioritization of properties to be sold for non-payment of property tax.

Audit Scope

4.7 The scope of this chapter includes the Department of Finance's activity in meeting its responsibilities and utilizing its authority granted under the *Real Property Tax Act* and *Financial Administration Act* in collecting overdue property tax and in forgiving property tax debt. We examined property tax forgiveness transactions for the six fiscal years 2012/13 through 2017/18.

4.8 It should be noted we did not audit property tax exemption, deferral or relief programs. Deferral and relief programs include the Farm Land Identification Program, Residential Property Tax Credit, Low Income Property Tax Allowance and the Property Tax Deferral Program for Seniors. The *Assessment Act* specifies which properties are exempt from property tax such as:

- church property;
- property owned by historical and literary societies;
- property owned by an agricultural society or agricultural fair association;
- property owned by rural voluntary fire associations;
- property that is an arena used for such sports as hockey and figure skating; and
- property that is a public library.

Audit Approach

4.9 Our audit approach involved interviews, documentation review and analysis. Our audit procedures included:

- interviews with selected staff from the Departments and SNB;
- examination of legislation and other documentation relevant to our work; and
- analysis and sample testing of property account transactions as applicable to our work.

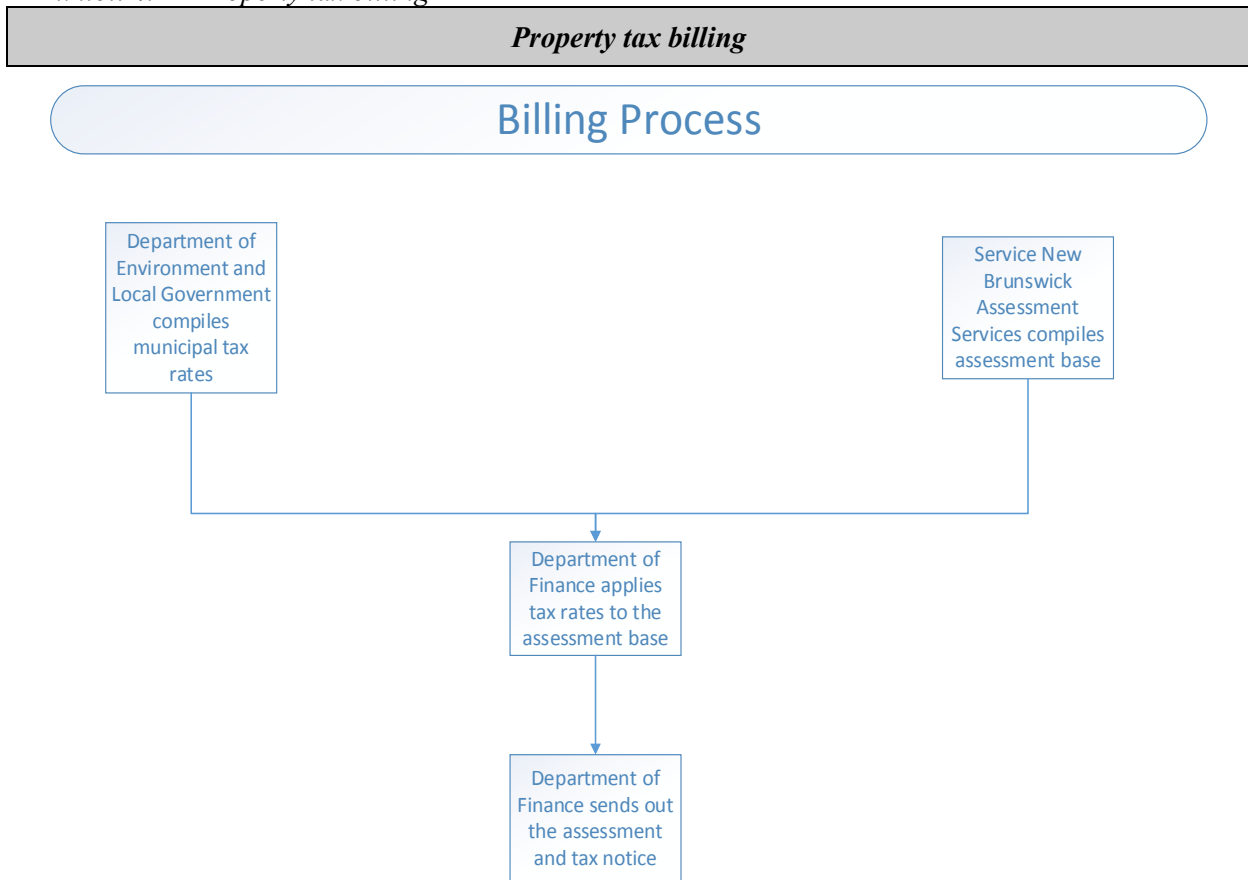
4.10 Our audit was performed in accordance with Canadian Standard for Assurance Engagements (CSAE) 3001 established by the Chartered Professional Accountants of Canada, and accordingly, we carried out such tests and other procedures as we considered necessary in the circumstances. Other information about the audit can be found in Appendix II.

Background Information

4.11 Through the *Assessment Act*, the *Real Property Tax Act* and Regulations, the Province has a centralized assessment and collection system for real property taxation.

4.12 Under this centralized system, the Department of Finance (the Department) is responsible for billing and collecting real property taxes levied, including those levied by local government bodies. In January, 2014, collections of property tax overdue for payment transitioned to the collections branch formerly under New Brunswick Internal Services Agency, which later amalgamated with Service New Brunswick (SNB).

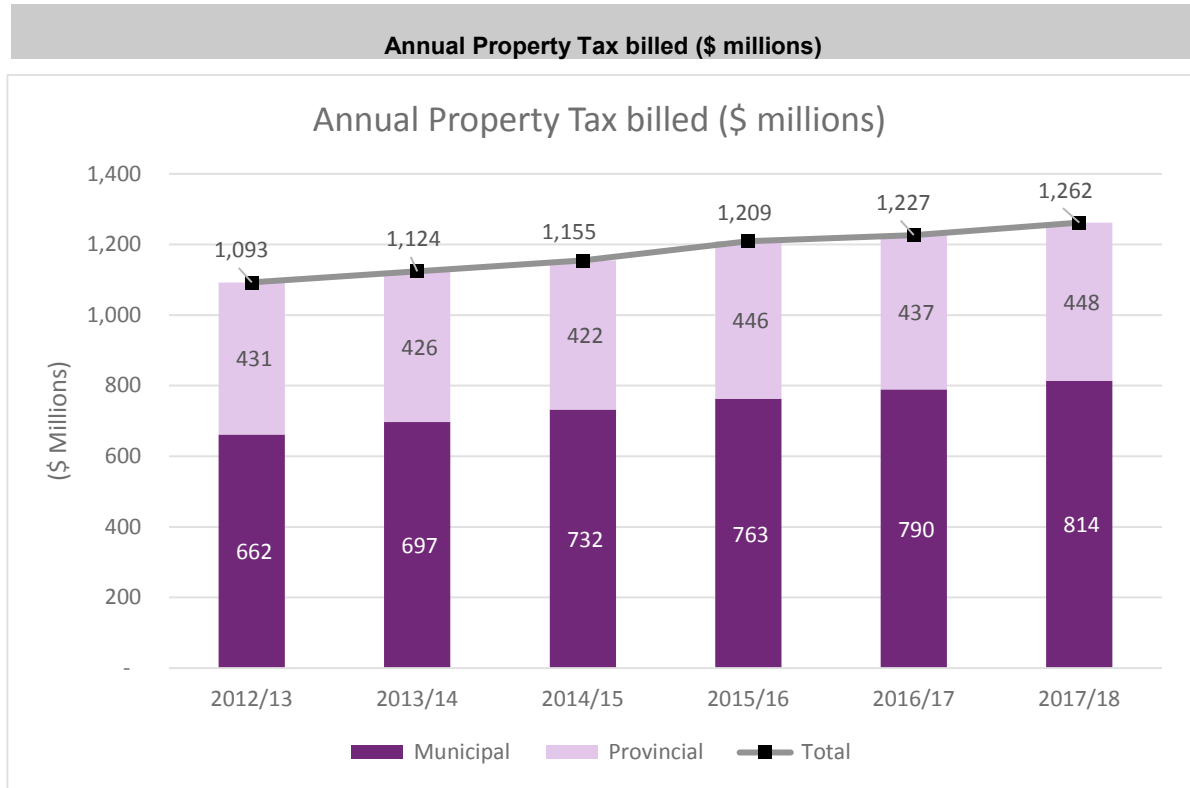
Exhibit 4.1 - Property tax billing



Source: Prepared by Office of the Auditor General

4.13 Exhibit 4.1 shows the Department of Environment and Local Government annually supplies the Department of Finance with the list of municipal, local service district and rural community rates, which are used to calculate the amount of annual tax to be levied. SNB Assessment Services provides the property assessment values to serve as the tax base. The Department of Finance then notifies taxpayers by way of an Assessment and Tax Notice. This usually happens the first working day of March each year.

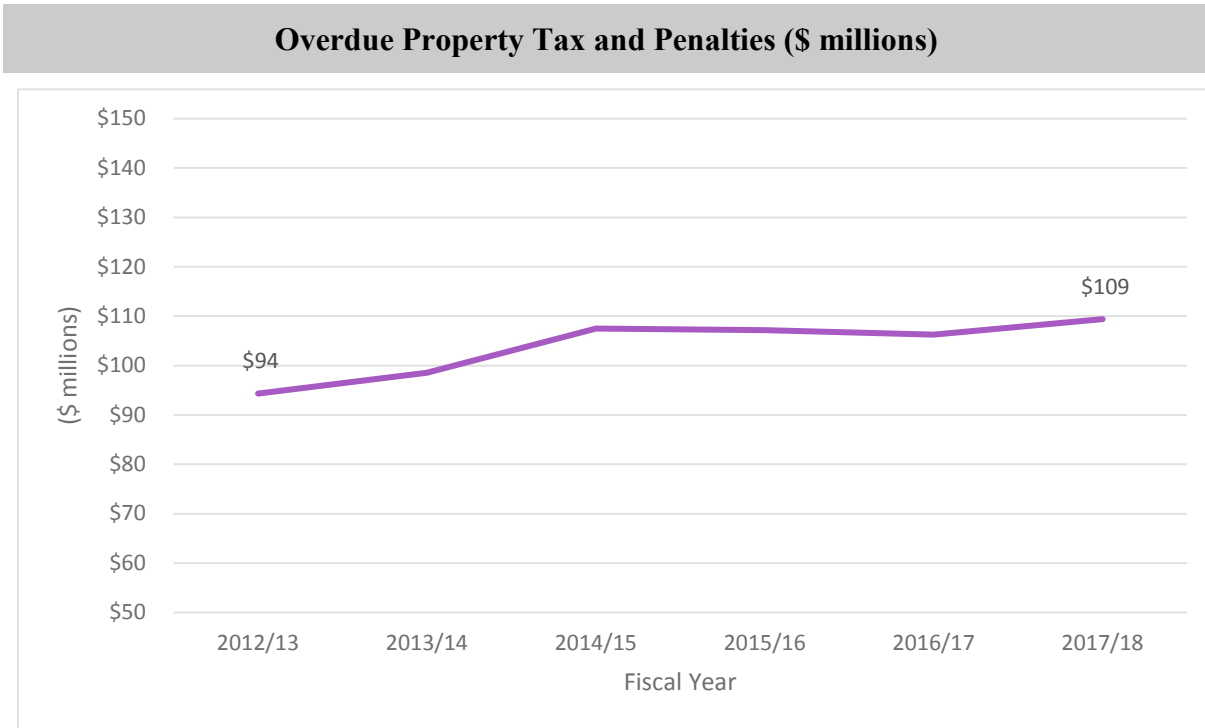
Exhibit 4.2 - Annual Property Tax billed (\$ millions)



Source: Chart prepared by AGNB with information provided by Department of Finance

4.14 Exhibit 4.2 shows the trend of property tax billed in New Brunswick from fiscal years 2012/13 through 2017/18. Property taxes billed grew from \$1.09 billion to \$1.26 billion during this time, a 15% increase. This represents tax revenue for the benefit of the Province as well as municipalities. The provincial portion of the tax bill grew from \$431 million to \$448 million during this time while the municipal portion grew from \$662 million to \$814 million, a 4% and 23% increase, respectively.

Exhibit 4.3 – Overdue Property Tax and Penalties (\$ millions)

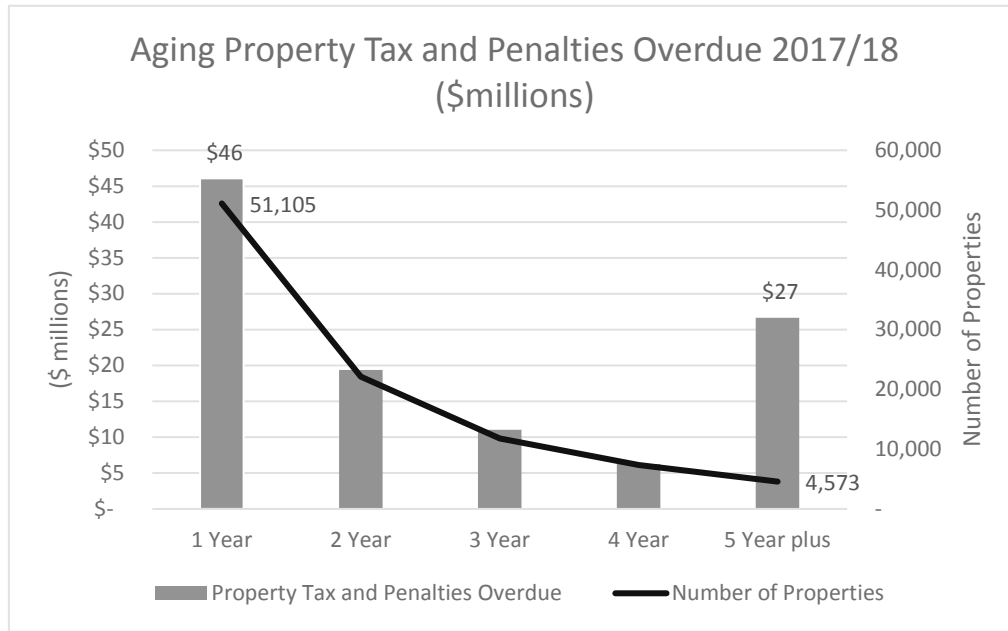


Source: Chart prepared by AGNB with information provided by Department of Finance

Overdue property tax and penalties grew by 16% or \$15 million in five years

4.15 Exhibit 4.3 identifies the amounts that were at least one year overdue in each of the respective years. Those amounts were due and unpaid from prior tax years. The chart shows that amounts overdue from prior years have gone from \$94 million in 2012/13 to \$109 million in 2017/18, a 16% or \$15 million increase.

Exhibit 4.4 – Aging of Property Tax and Penalties Overdue 2017/18 (\$ millions)



Source: Prepared by AGNB with information provided by the Department of Finance

\$109 million in overdue property tax and penalties in 2017/18

4.16 Exhibit 4.4 shows the composition of the \$109 million in overdue property tax and penalties at the end of fiscal 2017/18. \$46 million of property tax and penalties were one year overdue related to 51,105 properties. \$27 million of property tax and penalties were overdue for five years or more related to 4,573 properties. Of those 4,573 properties, 43 had over \$100,000 in tax and penalties overdue for five years or more and these 43 properties combined totalled \$12 million of the \$27 million, or 44%.

Overdue Property Tax Collections

CRA set-off program not implemented

4.17 When a property tax account is not paid by the penalty date, the property owner is sent a statement as a reminder of amounts owed. The property account is forwarded to SNB for follow up. SNB is delegated partial responsibility for collecting overdue property tax accounts through a service agreement with the Department of Finance. Under the agreement, SNB attempts to contact property owners and arrange a suitable payment arrangement.

4.18 In the Report of the Auditor General of New Brunswick 2013, Volume II, we recommended the Department of Finance complete its work to routinely register overdue property tax receivable accounts with the Canada Revenue Agency (CRA) Refund Set-off Program. Treasury Board approved the use of this program in 2012. At the time of this report, however, the set-off program is not being utilized to collect on overdue property tax. Although we posed a number of questions to the Department and SNB, we did not receive a satisfactory answer as to why this initiative was not complete after seven years.

4.19 Under the *Real Property Tax Act*, the Department of Finance has authority and responsibility to ensure that all property owners in New Brunswick remain current with their property tax accounts.

4.20 Where amounts owed are due and unpaid on the first day of January following the imposition of taxes, the *Real Property Tax Act* requires that notice be given stating that the property will be sold. The *Real Property Tax Act* provides authority for the Department to proceed with the sale of the property at any time after proper notice has been given. Appendix III contains an excerpt from the *Real Property Tax Act* detailing the requirements for notifications. According to the Department, properties are generally considered for property tax sale after the account has had tax overdue for four years or more and if the account balance exceeds \$500.

4.21 Further, according to section 8 of the *Real Property Tax Act*, each person in whose name real property is assessed shall pay the taxes and any penalties on that property. Per section 25, a person who violates or fails to comply commits a category E offence punishable under the *Provincial Offences Procedure Act*. Legal consequences

under the *Provincial Offenses Procedure Act* include the imposition of fines and potential incarceration.

The Department does not have documented policies related to the use of Provincial Offenses Procedure Act in collection of property tax

4.22 The Department does not have documented policies related to the use of section 25 of the *Real Property Tax Act*. As such, it is unclear under what circumstances it would bring charges or levy a fine under the *Provincial Offenses Procedure Act* against an individual. The Department indicated, in its view, the penalty rate applied to overdue tax is sufficiently punitive. As such, the Department has not used its authority under this section of the Act in recent history.

4.23 *New Brunswick Regulation 84-210* under the *Real Property Tax Act* determines the penalty rate and how it is applied. Under the Regulation, penalties will be payable beginning in the month after 85 days has passed from the date the assessment and tax notice was mailed. This means that, starting June 1, penalties will be charged at a rate of 0.7591% per month compounded monthly or 9.5% per year. Prior to March 31, 2013, the annual rate was 13.5%.

4.24 Finally, unpaid taxes and penalties constitute a lien on the real property in respect of which taxes are imposed. The lien is held by the Province and does not require registration or filing and has priority over any other claim against the property. If the property is sold, the sum of liens imposed under the *Real Property Tax Act* constitute a first charge on the proceeds of sale.

The Department has a 99.1% collections rate

4.25 We calculated that the Province had an average net collections rate of 99.1% for the six-year period from fiscal 2012/13 through 2017/18. This means that a significant majority of New Brunswick property tax is paid within one year. This also means that, during the same six-year period, \$53 million was either forgiven or contributed to the increase in overdue taxes. We attempted to compare this result with other jurisdictions, however, this was difficult as New Brunswick's approach is unique. In most other provinces, municipalities typically are responsible for billing and collection of property tax.

The Department does not track the impact of forgiven municipal property tax

4.26 We noted that the Department does not track the impact of forgiven municipal property tax. Municipal tax revenue is paid to municipalities by the Province in monthly payments and is not recovered from municipalities if the property owner does not pay.

The Department is unable to resolve overdue property tax in a timely manner by selling properties for non-payment of property tax

4.27 At March 31, 2018, approximately 6,000 properties were eligible to be sold for non-payment of property tax, based on the eligibility criteria of four years overdue and amounts greater than \$500. The Department processes approximately 830 properties through property tax sales each year. Given it could take over seven years to process, and that more properties would meet eligibility criteria each year, the Department is unable to resolve overdue property tax in a timely manner using property tax sales, meaning potential revenue will remain uncollected. According to the Tax Commissioner, the Department lacks capacity to process more property tax sales.

4.28 The property tax sale process requires several steps to complete. The Department indicated that it takes approximately 14 months for an individual property to proceed to property tax sale. As shown in Appendix III the *Real Property Tax Act* is prescriptive in this regard and outlines all communications and notifications that are required before proceeding with a sale. Initiating property tax sale often elicits a response from property owners and results in a payment plan to bring accounts current, which involves negotiation.

The Department has not provided sufficient direction to SNB to guide the identification of property sale accounts

4.29 SNB informed us that the Department has not provided direction for identifying properties appropriate for property tax sale beyond the criteria of four years and \$500. However, it identifies properties that have property tax outstanding for the longest period and which have been deemed uncollectible. Given the Department's limited ability to process properties for tax sale, the selection process is critical for ensuring that it proceeds with the properties that will make the most impact while ensuring fairness. Also, consideration needs to be given to the circumstances of the property owner. Property tax sale is not appropriate where it is likely to cause undue harm or injustice, as in the case of causing homelessness. Further, in some instances property tax sale may not be practical, such as a property with diminished value due to environmental contamination.

4.30 Property tax sale is the most powerful tool being utilized to resolve outstanding property tax accounts, however, its use as a collections tool should be viewed as a last resort. As such, it is imperative that the Department work with SNB to develop comprehensive criteria to prioritize which properties will proceed with tax sale. In this way, the Department can better ensure property tax sale is utilized where it is the most appropriate solution. The Department indicated it feels the emphasis should be placed on other initiatives to resolve outstanding property tax, such as the CRA set-off program.

The Department does not actively manage the performance of SNB collections

4.31 We expected the Department would have metrics reflecting SNB's performance in terms of progress contacting taxpayers with overdue property tax, how many accounts are identified as uncollectable as well as progress on initiatives to improve the overall effectiveness of collections. We found no such metrics were in place.

SNB does not report back to the Department with Key Performance Indicators

4.32 We noted the service agreement between the Department and SNB states that SNB is committed to establishing Key Performance Indicators (KPIs) and encouraging a culture of continuous improvement. However, SNB is not reporting back to the Department with KPIs to demonstrate the effectiveness of its collections efforts.

4.33 The current service agreement has been in place since April 2016. However, in the Report of the Auditor General of New Brunswick 2018, Volume III, we noted that collections of overdue property tax transitioned to the collections branch formerly under New Brunswick Internal Services Agency in January 2014. We also highlighted issues related to centralizing the collections of accounts receivable under SNB, including a lack of clear direction or mandate, inconsistent processes and resource challenges. We pointed out that, after a seven-year effort, the project to centralize accounts receivable collections is still incomplete. A lack of clear direction of roles and responsibilities of SNB has contributed to decreasing the effectiveness of collections.

Recommendations

4.34 We recommend the Department of Finance develop a policy for its use of section 25 of the *Real Property Tax Act* to improve collections of overdue property tax. This section states that a person in whose name real property is assessed, who fails to pay the taxes on that real

property, commits an offence punishable under part II of the *Provincial Offences Procedure Act*.

4.35 We recommend the Department of Finance calculate and track the impact of forgiven municipal property tax on the Province's expenses.

4.36 We recommend the Department of Finance:

- **clarify performance expectations of Service New Brunswick in collecting overdue property tax; and**
- **monitor Service New Brunswick's performance against pre-defined performance indicators and targets.**

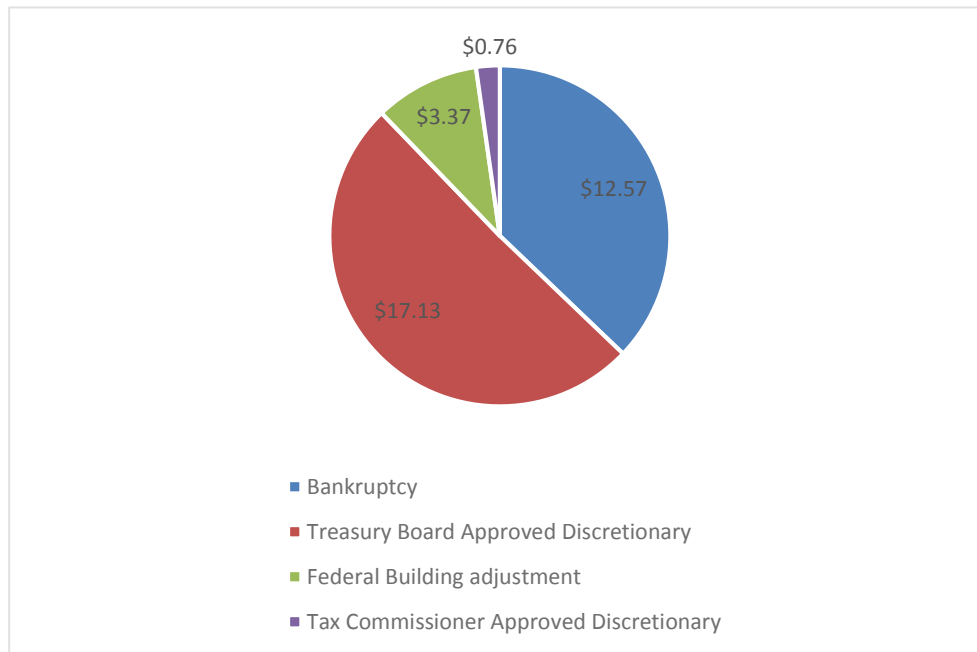
Property Tax Forgiveness

4.37 The *Financial Administration Act* provides authority to the Department of Finance for the forgiveness of taxes outstanding. The Act provides authority to the Minister of Finance, and the Minister has delegated that authority to the Provincial Tax Commissioner. As such, the Provincial Tax Commissioner may forgive property tax debt under the following circumstances:

- bankruptcy of the taxpayer [provincial portion];
- property account number is terminated;
- Minister of Finance purchases the property at a tax sale;
- property is assessed in the name of the Province; or
- the total amount to be forgiven does not exceed \$25,000 and the Provincial Tax Commissioner considers it in the public interest to do so or considers that hardship or injustice has resulted or is likely to result.

Exhibit 4.5 - Property tax and penalty forgiveness 2012/13 through 2017/18 (\$ millions)

Property tax and penalty forgiveness 2012/13 through 2017/18 (\$ millions)



Source: Chart prepared by AGNB from information provided by Department of Finance

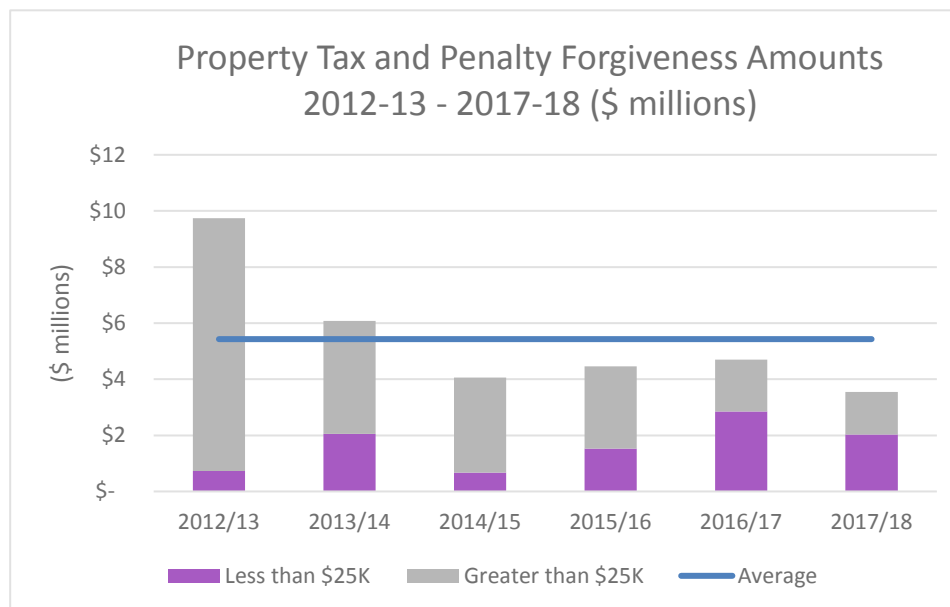
Over \$30 million in property tax and penalties forgiven in six years

4.38 Any forgiveness of property tax and penalties which does not satisfy the conditions outlined in paragraph 4.37 needs to be approved by Treasury Board. Exhibit 4.5 shows total debt forgiveness during fiscal years 2012/13 through 2017/18. In total, over \$30 million in property taxes and penalties were forgiven during the six-year period. This total includes discretionary forgiveness as well as non-discretionary. Discretionary forgiveness included \$17.13 million in forgiveness approved by Treasury Board. As well, \$760,000 forgiveness was at the discretion of the Tax Commissioner, including small balances adjustments and error corrections. Non-discretionary forgiveness included \$12.57 million related to property owners who filed for bankruptcy.

4.39 \$3.37 million from Exhibit 4.5 is a change in estimate related to a reconciliation of taxes levied against Federal properties in the Province and transfers received in lieu of tax from the Government of Canada. Under Section 125 of the *Constitution Act*, the Government of Canada is exempt from paying any taxes levied by local and provincial levels of government. The Government of Canada does, however, submit payment in lieu of property tax to the Province. Each year, the Province adjusts the difference between

what is billed in the property tax system and what the Government of Canada pays.

Exhibit 4.6 – Property Tax and Penalty Forgiveness Amounts 2012-13 – 2017-18 (\$ millions)



Source: Chart prepared by AGNB from information provided by Department of Finance

On average, \$5.4 million per year of overdue property tax and penalties have been forgiven since 2012/13

4.40 Exhibit 4.6 shows property tax and penalty forgiveness averaged \$5.4 million per year during the audit period. We separated forgiveness amounts by the threshold of \$25,000 because any discretionary adjustments above this threshold would require Treasury Board approval. In fiscal years 2012/13 and 2013/14 forgiveness totals were above average.

4.41 In 2012, one property account had a \$ 7 million reduction in taxes and penalties payable. This stemmed from a unique circumstance involving an agreement between the City of Fredericton and a not for profit organization dating back to the 1960's. The agreement exempted the property owners in question from paying property tax and, when the Province assumed responsibility for property tax billing, it was unclear whether the agreement should be upheld. Under current tax rules, however, the property is not subject to provincial property tax. The dispute was resolved by Treasury Board decision in 2012, resulting in forgiveness of decades worth of previously accumulated tax and penalties.

4.42 In December 2013, the Department initiated the Account Reconciliation Program (ARP). Under ARP, property owners could apply for forgiveness of penalties on

their property accounts on the condition that they pay taxes owing. According to the Department, this one-time initiative resulted in payment arrangements worth \$15 million in overdue property tax and resulted in the forgiveness of \$1.6 million.

The Department of Finance does not have documented policies and procedures for the use of discretionary forgiveness

4.43 We expected the Department of Finance to have documented policies and procedures to describe under what circumstances forgiveness of property tax is appropriate. We found no such policies and procedures are in place to guide the Tax Commissioner in exercising his authority. Without such policies and procedures, eligibility for debt forgiveness is not explicit and forgiveness may be awarded in an inconsistent and inequitable manner.

We noted six instances where forgiveness transactions were processed twice in error

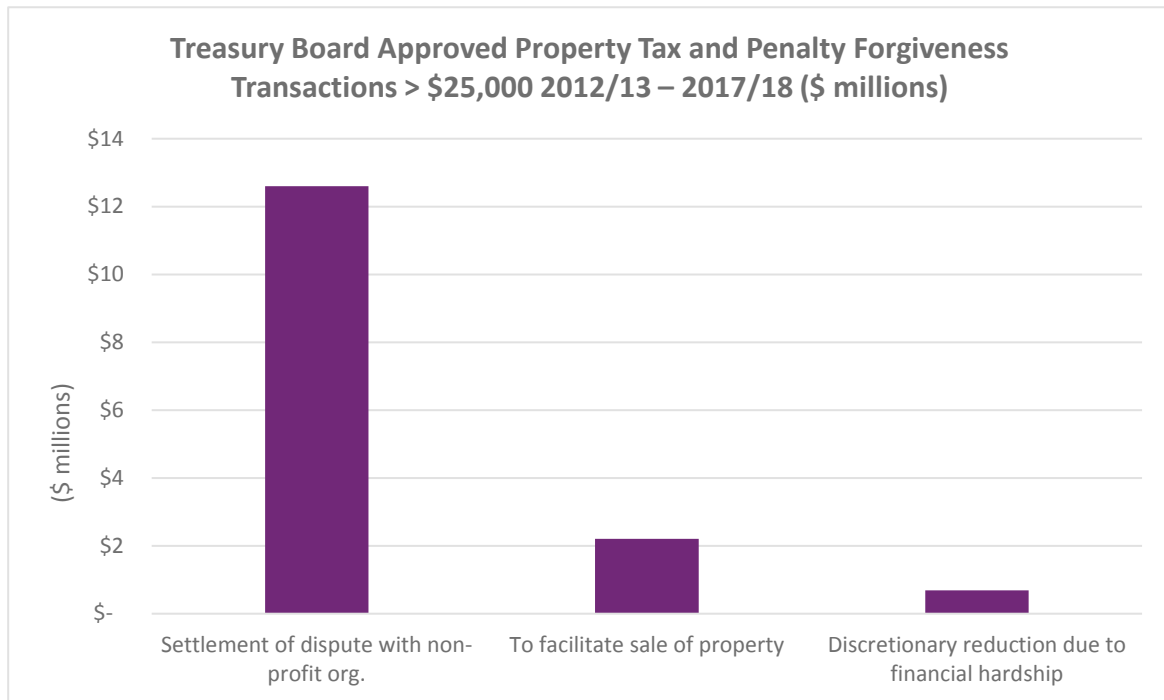
4.44 We tested a sample of property accounts where the transaction value was less than \$25,000. Of the 30 accounts tested, we found six for which the Department had processed bankruptcy claims twice in error. The total of duplicate entries was approximately \$2,500. While the total dollar value of these transactions was low, processing these claims twice allowed double the benefit intended to these particular property tax accounts.

The Department did not have control mechanisms to detect errors

4.45 We found the Department did not have control mechanisms in place to detect such errors. Further, the Office of the Comptroller had not performed recurring internal audits to ensure system controls are functioning within the Department. As such, the Department was not aware of the duplication issue. The Department provided an explanation that the duplication was in part due to a backlog of bankruptcy transactions related to a migration to new software, stating: “During the course of entering the backlog there were a couple of cases of duplication of write offs that weren’t noticed.” The Department indicated that recent changes to their processes will prevent similar duplication in the future. We provided the Department with our analysis which identified the duplication issue and it intends to investigate whether any further duplicate transactions exist.

The Department had not received recurring internal audits to ensure system controls are functioning

Exhibit 4.7 - Treasury Board Approved Property Tax and Penalty Forgiveness Transactions > \$25,000 2012/13 – 2017/18 (\$ millions)



Source: Information provided by the Department

Non-profit organizations accounted for \$12.6 million, 39% of government approved forgiveness

4.46 We reviewed a sample of Treasury Board approved forgiveness. Of the 13 approvals we reviewed four involved settlement of tax disputes with non-profit organizations. Totalling \$12.6 million, these four settlements alone represent 39% of the total value of property tax and penalty forgiveness during the period audited. Seven of the 13 approvals were to facilitate the sale of commercial property, totalling \$2.21 million. This involved commercial property no longer in use and prospective buyers submitted a plan for redeveloping and utilizing the parcels of land. In these cases, the proceeds of sale would reduce the taxes owing and any remaining taxes and penalties were forgiven.

Property tax and penalties forgiven in response to proposals from taxpayers due to financial hardship

4.47 In two cases, Treasury Board approved forgiveness in response to proposals received from commercial taxpayers totalling \$680,000. In these cases, consideration was given to significant financial hardship, economic conditions and in recognition of efforts to pay down tax owing. Without policies and procedures in place for the use of discretionary forgiveness, such transactions are considered based on their individual merit. These cases highlight the need for defined criteria of eligibility for property tax forgiveness.

4.48 Currently, proposals are received by the Department and are evaluated by the Tax Commissioner. Based on the facts of each individual case, the Tax Commissioner either rejects the proposal or prepares options with a recommendation to Treasury Board for approval. The Tax Commissioner has authority to approve forgiveness transactions of \$25,000 or less without Treasury Board approval.

The Department did not respond to 2014 Treasury Board directive to review the Real Property Tax Act

4.49 As part of our review of properties with forgiveness transactions greater than \$25,000, we obtained records of Treasury Board approvals of property tax and penalty forgiveness. We noted that, on February 11, 2014, Treasury Board directed the Department to “review the *Real Property Tax Act* to explore potential options in order to recover unpaid property taxes in similar situations in the future”¹. We asked the Department for its response to this directive and found it had not prepared one.

4.50 The Department indicated it did not respond to the directive because responsibility for collections had shifted to SNB and various centralized collection models were being reviewed and considered at that time. The *Real Property Tax Act*, however, clearly states that the Minister of Finance is responsible for collections of property tax. In our view, delegating the collections process does not absolve the Department of its responsibility.

Recommendations

4.51 We recommend the Department of Finance set detailed eligibility criteria for property tax forgiveness to ensure consistency of forgiveness decisions.

4.52 We recommend the Department of Finance request the Office of the Comptroller internal audit group perform periodic reviews of system controls.

4.53 We recommend the Department of Finance consult with Treasury Board to determine whether the 2014 directive to review the *Real Property Tax Act* is still appropriate.

¹ BOM minute 14.0013 dated February 11, 2014

Appendix I – Audit Objectives and Criteria

The objective and criteria for our audit of the Department of Finance property tax forgiveness are presented below. The Department of Finance Tax Commissioner and senior management reviewed and agreed with the objective and associated criteria.

Objective 1	To determine if the Department of Finance collects overdue property tax in accordance with the <i>Real Property Tax Act</i>
Criterion 1	Property Tax Collections processes should align with the <i>Real Property Tax Act</i>
Criterion 2	The Department of Finance should monitor collections of overdue property tax by Service New Brunswick, in accordance with predetermined performance expectations
Objective 2	To determine if the Department of Finance makes property tax forgiveness decisions or recommendations in accordance with applicable policies and legislation
Criterion 1	The Department of Finance should have documented policies and procedures for property tax forgiveness which align with the <i>Financial Administration Act</i>
Criterion 2	The Department of Finance should document the rationale for each discretionary property tax forgiveness decision
Criterion 3	The Department of Finance should evaluate all collections options before overdue property tax is considered for forgiveness

Source of Criteria: Developed by AGNB based on review of legislation, best practices and reports by other jurisdictions' Auditors General

Appendix II – About the Audit

This independent assurance report was prepared by the Office of the Auditor General of New Brunswick on the Department of Finance on property tax collections and forgiveness practices. Our responsibility was to provide objective information, advice, and assurance to assist the Legislative Assembly in its scrutiny of the Department of Finance on property tax collections and forgiveness practices.

All work in this audit was performed to a reasonable level of assurance in accordance with the Canadian Standard on Assurance Engagements (CSAE) 3001 – Direct Engagements set out by the Chartered Professional Accountants of Canada (CPA Canada) in the CPA Canada Handbook – Assurance.

AGNB applies Canadian Standard on Quality Control 1 and, accordingly, maintains a comprehensive system of quality control, including documented policies and procedures regarding compliance with ethical requirements, professional standards, and applicable legal and regulatory requirements.

In conducting the audit work, we have complied with the independence and other ethical requirements of the Rules of Professional Conduct of Chartered Professional Accountants of New Brunswick and the Code Professional Conduct of the Office of the Auditor General of New Brunswick. Both the Rules of Professional Conduct and the Code are founded on fundamental principles of integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour.

In accordance with our regular audit process, we obtained the following from management:

- confirmation of management’s responsibility for the subject under audit;
- acknowledgement of the suitability of the criteria used in the audit;
- confirmation that all known information that has been requested, or that could affect the findings or audit conclusion, has been provided; and
- confirmation that the findings in this report are factually based.

Period covered by the audit:

The audit covered the period between April 1, 2012 and March 31, 2018. This is the period to which the audit conclusion applies. However, to gain a more complete understanding of the subject matter of the audit, we also examined certain matters that preceded the starting date of the audit.

Date of the report:

We obtained sufficient and appropriate audit evidence on which to base our conclusion on May 31, 2019, in Fredericton, New Brunswick.

Subsequent Event:

At the time of our work, the Department was known as the Department of Finance. Subsequently, the New Brunswick government announced its intent to merge the Department of Finance and the Treasury Board into one combined department.

Appendix III – Excerpts from *Real Property Tax Act*

The following excerpt was taken from the *Real Property Tax Act*. Section 12 of the *Real Property Tax Act* details the requirements for communications and notifications before proceeding with a property tax sale.

12(1) Repealed: 2010, c.2, s.8

12(1.001) Repealed: 2010, c.2, s.8

12(1.01) Repealed: 2010, c.2, s.8

12(1.02) The Minister shall not send a notice under subsection (2) unless penalties have been added to the taxes imposed in the last assessment and tax notice sent under subsection 7(2).

12(1.03) Repealed: 2010, c.2, s.8

12(1.04) Repealed: 2010, c.2, s.8

12(1.05) Repealed: 2010, c.2, s.8

12(1.06) Repealed: 2010, c.2, s.8

12(1.1) Where taxes or penalties on real property registered under the farm land identification program are due and unpaid two months after the sending of the notice under subsection (2), the Minister may at any time after that date, after consultation with the Minister of Agriculture, Aquaculture and Fisheries and in accordance with the regulations, cause the deregistration of the real property under the program.

12(1.2) Subsection 5(7) applies, with the necessary modifications, in respect of real property that ceases to be registered under the farm land identification program in accordance with subsection (1.1).

12(2) Subject to subsection (20), where taxes or penalties on real property are due and unpaid on the first day of January in the year following the year in which the taxes were imposed, the Minister shall, on or after that date, mail a notice to the following persons stating that the real property will be sold in accordance with the regulations:

- (a) the person in whose name the real property is assessed; and
- (b) the owner of the real property, if the real property was assessed under subsection 14(7.3) of the *Assessment Act*.

12(2.1) A notice mailed to a person under subsection (2) shall be deemed to have been received by the person to whom it was addressed not later than the fifth day after the day of mailing.

12(2.2) Proof of the mailing of a notice under subsection (2) may be made by a certificate purporting to be signed by the Minister naming the person to whom the notice was mailed and specifying the time, place and manner of the mailing of the notice.

12(2.3) A document that purports to be a certificate of the Minister under subsection (2.2) may be adduced in evidence in any court and when so adduced is, in the absence of evidence to the contrary, proof of the facts stated in the notice without proof of the appointment, signature or authority of the Minister.

12(3) Subject to subsection (5), where taxes or penalties on real property are due and unpaid one month after the mailing of the notice under paragraph (2)(a) or (b), whichever is the later, the Minister shall, on or after the expiration of that month, serve

- (a) the person in whose name the real property is assessed, and
- (b) the owner of the real property, if the real property was assessed pursuant to subsection 14(7.3) of the *Assessment Act*,

with a notice stating that the real property will be sold and may at any time after the service of the notice or notices or after the posting and publication of an Expression of Interest Notice, as the case may be, institute proceedings to sell the real property in accordance with this Act and the regulations.

12(3.1) Service of a notice under subsection (3) shall be effected by

(a) personal service in accordance with the Rules of Court if the mailing address of the person in whose name the real property is assessed is in New Brunswick, or

(b) registered mail if the mailing address of the person in whose name the real property is assessed is outside New Brunswick.

12(3.2) A notice served on a person under subsection (3) by registered mail shall be deemed to have been received by the person to whom it was addressed not later than the fifth day after the day of mailing.

12(3.3) Proof of the serving of a notice under subsection (3) by registered mail may be made by a certificate purporting to be signed by the Minister naming the person on whom the notice was served and specifying the time, place and manner of the serving of the notice.

12(3.4) A document that purports to be a certificate of the Minister under subsection (3.3) may be adduced in evidence in any court and when so adduced is, in the absence of evidence to the contrary, proof of the facts stated therein without proof of the appointment, signature or authority of the Minister.

12(3.5) If the Minister is not able to serve the notice referred to in subsection (3) by personal service under paragraph (3.1)(a) because the person in whose name the real property is assessed or the owner of the real property cannot be found or dies intestate or if the Minister determines that all reasonable efforts to personally serve the notice under subsection (3) have been exhausted, the Minister shall post an Expression of Interest Notice on the real property for six consecutive weeks and publish it in accordance with subsection (3.7).

12(3.6) An Expression of Interest Notice shall contain the following information:

- (a) a statement indicating that the Minister is interested in locating any of the following persons:
 - (i) the person in whose name the real property was last assessed;
 - (ii) the owner of the real property, if the real property was assessed under subsection 14(7.3) of the *Assessment Act*;
 - (iii) the executor or administrator of the owner of the real property; or
 - (iv) the attorney appointed by a power of attorney of the owner of the real property;
- (b) the name of the person in whose name the real property was last assessed;
- (c) the location and description of the real property as set out in the assessment and tax roll;
 - (d) the property account number by which the real property is identified on the assessment and taxation roll; and
- (e) the property identification number.

12(3.7) An Expression of Interest Notice shall be published

- (a) at least once in each of two consecutive weeks in a newspaper having general circulation in the area where the real property is located,
- (b) in one regular issue of *The Royal Gazette*, and
- (c) for six consecutive weeks on the website of the Department of Finance.

12(3.8) Proof of the posting and publication of an Expression of Interest Notice under subsection (3.5) may be made by a certificate purporting to be signed by the Minister specifying the location and description of the real property on which the notice was posted, the date of posting and the particulars of the publication of the notice.

12(3.9) A document that purports to be a certificate of the Minister under subsection (3.8) may be adduced in evidence in any court and when so adduced is, in the absence of evidence to the contrary, proof of the facts stated in it without proof of the appointment, signature or authority of the Minister.

12(4) No sale of real property is to be held under this Act unless notice thereof containing

- (a) the time, date and place of sale,
- (b) the name of the person in whose name the real property was last assessed,
- (b.1) the name of the owner of the real property, if the real property was assessed pursuant to subsection 14(7.3) of the *Assessment Act*,
- (c) the location and description of the real property as set out in the assessment and tax roll, and
- (d) Repealed: 2014, c.17, s.3
- (e) the property account number by which the real property is identified on the assessment and tax roll

has been published

- (f) at least once in each of two consecutive weeks in a newspaper having general circulation in the area where the real property is located, and
- (g) in one regular issue of *The Royal Gazette*.

12(4.001) The Minister may publish on the website of the Department of Finance a notice of the sale of real property.

12(4.01) Where a notice in respect of real property has been served under subsection (3), whether before or after the commencement of this subsection, but no sale of the real property as a result of that notice has been held, and where the taxes and penalties referred to in any notice mailed under subsection (2), whether mailed before or after that notice served under subsection (3), or any portion of them, remain due and unpaid, the Minister may at any time, without further notices under subsections (2) and (3), proceed with the sale of the real property by giving notice as required under subsection (4).

12(4.1) Where notice has been given under subsection (4), the Minister may, at any time prior to the sale of the real property under subsection (3), postpone the sale, but the liens on the real property under subsections 11(1), (1.01), (1.1) and (1.2) shall not be discharged by such postponement.

12(4.2) Where a sale has been postponed under subsection (4.1), the Minister may at any time reinstitute proceedings to sell the real property by giving notice as required under subsection (4) and the sale may proceed in accordance with this Act and the regulations.

12(4.3) If a sale referred to in subsection (4.01), (4.02) or (4.2) is held, all taxes and penalties on the real property in respect of which the sale is held that are due and unpaid on the date of the sale, shall be recovered from the proceeds of that sale without further notices under subsections (2), (3) and (3.5).

12(5) Where taxes and penalties mentioned in subsection (3) or, in respect of real property referred to in subsection (4.01), (4.02) or (4.2), taxes and penalties on the real property that are due and unpaid immediately before payment under this subsection, any amount of payments under subsection 5(13) and any interest on that amount under subsection 5(15) that are due and unpaid and all costs of any sale proceedings to the date of payment are paid to the Minister at any time prior to the sale under subsection (3), the sale is not to be held.

12(5.1) The Minister may enter into an agreement with any person to carry out on behalf of the Minister any proceedings in relation to the sale of real property under this section.

12(5.2) Subject to subsection (5.3), a person who has entered into an agreement under subsection (5.1) shall carry out any proceedings in relation to the sale of real property under this section in accordance with the agreement, this Act and the regulations and this Act and the regulations apply with the necessary modifications to such proceedings.

12(5.3) Where there is a conflict between an agreement under subsection (5.1) and this Act and the regulations, this Act and the regulations prevail.

12(5.4) The Minister may terminate an agreement under subsection (5.1) if the person who entered into the agreement with the Minister does not carry out any proceedings in relation to the sale of real property under this section in accordance with the agreement, this Act or the regulations.

12(5.5) The Minister may publish, in a newspaper having general circulation in the area where the real property to be sold is located, a notice indicating that a person who has entered into an agreement under subsection (5.1) will be carrying out the sale of the real property and the notice may contain the name of the person in whose name the real property was last assessed, the name of the owner of the real property, if the real property was assessed pursuant to subsection 14(7.3) of the *Assessment Act*, and the location and description of the real property as set out in the assessment and tax roll.

12(5.6) A person who has entered into an agreement under subsection (5.1) shall not sell real property for less than the total of

- (a) the costs associated with the tax sale proceedings;
 - (b) subject to subsection (20), all taxes and penalties due and unpaid,
 - (b.1) the amount of payments under subsection 5(13) and any interest on that amount under subsection 5(15) that are due and unpaid, and
 - (c) unpaid taxes imposed on the real property before January 1, 1967.

12(5.7) The Minister is discharged of any responsibility and liability in respect of any matter relating to the sale of real property for which an agreement has been entered into under subsection (5.1).

12(6) When the real property is sold under this section, the Minister shall deliver to the purchaser at the sale a certificate in the form prescribed by regulation describing the real property and the sum for which it was sold.

12(7) The Minister shall maintain in his records a duplicate of the certificate mentioned in subsection (6) and any person may inspect the certificate during business hours.

12(8) Within thirty days of any sale under this section the Minister shall file a duplicate of the certificate mentioned in subsection (6) with the registrar of deeds of the county in which the real property lies.

12(9) On receipt of the certificate mentioned in sub-section (6) the purchaser is the owner of the real property described therein so far as is necessary to enable him to protect the real property until the expiration of the redemption period under section 13, and may collect rents on the real property and use it but shall not commit waste.

12(10) The purchaser is not liable for damage done to the real property without his knowledge during the time the certificate is in force.

12(11) All money received as the proceeds of any sale of real property under this Act is to be disbursed in the following order or priority:

- (a) first, in payment of the costs associated with the tax sale proceedings;
- (b) second, in pro rata payment of all
 - (i) subject to subsection (20), tax arrears and penalties,

(i.1) debt remaining unpaid with respect to the amount of the payments under subsection 5(13) and any interest on that amount payable under subsection 5(15), and

(ii) Repealed: 1982, c.56, s.9

(iii) unpaid taxes imposed on the real property prior to January 1, 1967; and

(iv) third, to the person in whose name the real property is assessed.

12(12) Where, in relation to the disbursement of money under paragraph (11)(c), there are adverse claimants, the whereabouts of the person in whose name the real property is assessed is unknown or there is, in the opinion of the Minister, no person capable of giving and authorized to give a valid discharge, the Minister may, without an order, pay the money into The Court of Queen's Bench of New Brunswick.

12(13) Where the Minister pays money into The Court of Queen's Bench of New Brunswick under subsection (12), the Minister is discharged of the Minister's responsibilities under paragraph (11)(c) and the money shall be dealt with as The Court of Queen's Bench of New Brunswick may order on application by any person claiming an interest in the money.

12(14) Notwithstanding subsection (12), money received as the proceeds of any sale of real property under this Act that is required to be disbursed in accordance with paragraph (11)(c) but has not been so disbursed within five years after the date of the sale and has not been paid into The Court of Queen's Bench of New Brunswick under subsection (12) shall, subject to subsections (15) and (16), be forfeited to the Crown in right

12(15) In any case in which the money subject to forfeiture under subsection (14) exceeds the amount prescribed by regulation, that money shall not be forfeited to the Crown in right of the Province under that subsection unless notice of the intended forfeiture has been published

(a) at least once in a newspaper having general circulation in the area where the real property is located, and

(b) in one regular issue of *The Royal Gazette*.

12(16) If within thirty days after notice has been published under subsection (15) an application is made to the Minister by a person claiming an interest in money referred to in that notice, the Minister shall

(a) if satisfied that the person is entitled to the money, disburse the money to that person, or

(b) without an order, pay the money into The Court of Queen's Bench of New Brunswick.

12(17) Before money referred to in a notice published under subsection (15) is

(a) forfeited under subsection (14),

(b) disbursed in accordance with paragraph (16)(a), or

(c) paid into The Court of Queen's Bench of New Brunswick in accordance with paragraph (16)(b),

the Minister may deduct from that money the expenses incurred in respect of the publication of the notice.

12(17.1) Where the Minister pays money into The Court of Queen's Bench of New Brunswick under paragraph (16)(b), the Minister is discharged of any and all liability in respect of that money and the money shall be dealt with as The Court of Queen's Bench of New Brunswick may order on application by any person claiming an interest in the money.

12(18) Where money is forfeited to the Crown in right of the Province under subsection (14), the Minister is discharged of any and all liability in respect of that money.

12(19) No interest is payable on money paid to a person under paragraph (11)(c) or (16)(a) or paid into The Court of Queen's Bench of New Brunswick under subsection (12) or paragraph (16)(b).

12(20) Subsection (2), paragraph (5.6)(b) and subparagraph (11)(b)(i) do not apply to the tax imposed by a municipality under paragraph 5(2)(a) or the tax imposed by a rural community under paragraph 5(2)(a.1) and the penalties on such taxes unless the Minister approved a request by the municipality or rural community under section 12.1 or 12.2, as the case may be, before a tax sale proceeding was instituted under this section.

1966, c.151, s.12; 1969, c.67, s.2; 1972, c.60, s.2; 1980, c.46, s.2; 1982, c.56, s.9; 1983, c.76, s.3; 1986, c.68, s.4; 1987, c.51, s.1; 1989, c.35, s.2; 1990, c.52, s.1; 1993, c.11, s.7; 1994, c.43, s.1; 1996, c.25, s.31; 1996, c.46, s.9; 1998, c.16, s.4; 1999, c.34, s.1; 2000, c.26, s.257; 2000, c.20, s.3; 2004, c.28, s.2; 2007, c.10, s.83; 2010, c.2, s.8; 2010, c.31, s.117; 2014, c.17, s.3,

12.1(1) Section 12 does not apply to the tax imposed by a municipality under paragraph 5(2)(a) and any penalties with respect to such tax where the municipality collects such tax and penalties under subsection 6(2).

12.1(2) Notwithstanding subsection (1), a municipality referred to in subsection (1) may request the Minister to institute any proceeding under section 12 for and on behalf of the municipality and upon approval of the request by the Minister and payment of such fee as the Minister considers appropriate, the Minister shall institute such proceeding for and on behalf of the municipality in accordance with section 12. 1996, c.46, s.10

12.2 Section 12.1 applies with the necessary modifications to a rural community.

2010, c.2, s.9