



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

Write-off of Unpaid Property Taxes for Apportionment Applications Related to 2002 and Prior Years

Date:	March 21, 2007
To:	Government Management Committee
From:	Treasurer
Wards:	All
Reason for Confidential Information:	This report is about litigation or potential litigation that affects the City.
Reference Number:	P:\2007\Internal Services\Rev\gm07011Rev (AFS#2710)

SUMMARY

This report provides an update on applications filed with the Assessment Review Board (ARB) to apportion unpaid property taxes for 292 property tax accounts where severances or redevelopments have occurred.

Given the difficulty inherent in apportioning older unpaid tax accounts, all of which relate to periods before 2002, to current property owners who may not be aware that taxes are owing, this report also identifies an alternative strategy for dealing with the unpaid taxes for 116 of these accounts by recommending that the taxes be written off and that the applications at the ARB be withdrawn. In total, the amount being recommended for write off is \$1,042,745, consisting of a municipal portion of \$198,050 in levied taxes, a provincial education portion of levied taxes of \$231,907, and an additional \$612,788 in penalty/interest charges. The write-off of these amounts will have no impact on the current year's budget, as these amounts have been provided for in the 2007 Non-Program Tax Provision Account.

In addition to the recommendations below, this report also provides additional confidential recommendations, contained in Attachment 2 to this report.

RECOMMENDATIONS

The Treasurer recommends that:

1. The Director of Revenue Services be authorized to withdraw outstanding apportionment applications in respect of 116 accounts, identified in Attachment 1 of this report, from the Assessment Review Board (ARB), in accordance with the ARB's Rules of Practice and Procedure;
2. The unpaid taxes levied in all years prior to 2003 (including interest and penalties which have accrued on those unpaid taxes) on the 116 tax roll numbers listed in Attachment 1, be written off as uncollectible and removed from the tax rolls;
3. Council adopt the confidential recommendations contained in Attachment 2 to this report;
4. The confidential recommendations contained in Attachment 2 remain confidential, on the advice of the City Solicitor; and
5. The appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.

Financial Impact

The total estimated amount to be written off with the adoption of the recommendations contained in this report is \$1,042,745, consisting of a municipal portion of levied taxes of \$198,050, a provincial education portion of levied taxes of \$231,907, and an additional \$612,787 in penalty/interest charges as at February 28, 2007. This write-off amount is considered to be an estimate since interest accrues on tax accounts on a monthly basis and as such the amount of interest/penalty to be written off will continue to increase until the date the actual write-off is approved and processed.

Given that Council, in July 2003, has previously approved that properties subject to tax apportionment automatically receive a grant to offset any penalty/interest charges associated with the apportioned taxes, the incremental financial impact of the recommended write-off is limited to the \$429,957 in levied taxes, consisting of the municipal portion of \$198,050, and the provincial education portion of \$231,907. There is no financial impact on current year expenditures and revenues from the recommended write-off of the levied tax amounts or the interest/penalty amounts, as these amounts have been provided for within the 2007 Non-Program Tax Provision Account.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At its meeting of April/May 2001, Council adopted a report (February 23, 2001) from the Chief Financial Officer and Treasurer, entitled “Apportionment of Taxes”, recommending a policy for the hearing and disposition of unpaid tax apportionment applications pursuant to section 413 of the *Municipal Act* (which, after January 1, 2003, became section 356 of the *Municipal Act, 2001*) (re: Clause 20 of Report No. 5 of the Administration Committee, as adopted City Council at its regular meeting held on April 23, 24, 25, 26, 27 and its special meeting held on April 30, May 1 and 2, 2001). To view this report online please follow the link:

<http://www.toronto.ca/legdocs/2001/agendas/council/cc010424/adm5rpt/cl020.pdf>

At its meeting in July 2003, Council adopted a report (June 18, 2003) from the Chief Financial Officer and Treasurer, entitled “Apportionment of Taxes”, recommending a grants program to offset any penalty/interest charges that have accrued on accounts prior to the actual apportionment of unpaid taxes (re: Clause 8 of Report No. 7 of the Administration Committee, as adopted by City Council at its meeting held on July 22, 23 and 24, 2003). Council delegated administration of the penalty/interest grants to the Chief Financial Officer and Treasurer or his designate. No application is necessary for the grant; it is automatically approved for the owner upon the apportionment of penalty / interest charges to their property. To view this report online please follow the link:

<http://www.toronto.ca/legdocs/2003/agendas/council/cc030722/adm7rpt/cl008.pdf>

At its meeting of February 2005, Council adopted a report (December 6, 2004) from the Chief Financial Officer and Treasurer authorizing the Treasurer to proceed with applications to apportion taxes for year 2002 and prior pursuant to Ontario Regulation 399/03, and delegating the power to hear and dispose of the applications made under Ontario Regulation 399/03 to the Assessment Review Board (re: Clause 7 of Administration Report 1 entitled “Establishing Processes for Hearing and Disposition of Certain Applications Under Ontario Regulation 399/03 and the Municipal Act, 2001” as adopted by City Council on February 1, 2 and 3, 2005). To view this report online please follow the link:

<http://www.toronto.ca/legdocs/2005/agendas/council/cc050201/adm1rpt/cl007.pdf>

ISSUE BACKGROUND

The *Municipal Act, 2001* and the new *City of Toronto Act, 2006* permits an apportionment of taxes when one parcel of land is split into two (2) or more parcels, as normally occurs through a redevelopment process (for example, when a piece of land is redeveloped into a condominium). The apportionment does not change the total amount of taxes levied before and after the apportionment, but rather splits the taxes based on the new parcels.

In accordance with the *Municipal Act, 2001* Ontario Regulation 399/03, and Council’s decision of February 2005, the City filed apportionment applications with the ARB for

approximately 292 accounts, with unpaid taxes totalling \$1.9 million (including interest/penalty) for taxation years 2002 and prior. In consultation with Legal Services, Revenue Services staff determined that the only legal mechanism available to collect the unpaid taxes was to apportion them pursuant to Regulation 399/03. The *Municipal Act, 2001* did not permit the write-off of unpaid taxes for such accounts without first pursuing a tax sale. However, a tax sale was impossible in respect of these accounts because the property had subsequently been divided into new parcels and new tax accounts had been created.

Apportioning taxes after a property is redeveloped, even when it is done in a timely fashion, is confusing for current owners because they may not have been informed that there were unpaid taxes on the original property. Tax statements, issued at the time of purchase, will reveal unpaid taxes on the original property only if, before issuing the statement, MPAC had provided information to the City advising that the land had been redeveloped and that new accounts had now been created. In addition, the current owner may not be aware that legally “taxes run with the land” and so the obligation to pay them is transferred proportionately to new properties arising from redevelopment.

COMMENTS

In early 2006, the ARB began scheduling pre-hearings for the City’s apportionment applications. Based on the first few pre-hearings, it has become apparent that the process to apportion unpaid taxes for many of these accounts will be highly problematic. As a result, staff have reviewed the 292 applications again and have categorized them as follows:

- (a) MPAC has advised that there is no information for 37 accounts to determine the relative value of the newly created parcels and so the ARB will have no basis upon which to apportion the unpaid taxes.
- (b) For 17 accounts, MPAC has advised that the unpaid taxes subject to the apportionment application arose because of errors on the returned assessment roll. These accounts are for properties that had, in fact, been assessed individually by MPAC after the original property had been redeveloped. In other words, there were no unpaid taxes for these accounts and an apportionment would effectively result in double taxation.
- (c) For 35 accounts, the apportionment applications deal with years before 1998 which the former municipalities had failed to address. Taxpayers are extremely disturbed when the City attempts to apportion taxes to their accounts that have been unpaid for so many years. In addition, in most of these cases, ownership of property has changed hands often several times, and the current owners face difficulty when they attempt to recover, through legal action, the old tax amounts they are required to pay from any previous owners of the property.
- (d) For 27 accounts, the applications relate to apportioning amounts that are between \$50 and \$1,000. Again, since these applications are for a period prior to 2003 and

given that they represent a relatively small amount, Legal and Revenue Services staff are of the view that it is not cost effective to pursue these unpaid taxes.

- (e) For 42 accounts, the unpaid taxes were paid in full after the apportionment applications were filed to the ARB and were subsequently withdrawn by the City.
- (f) For the remaining 134 accounts, the ARB has approved 3 of the City's apportionment applications, and the other 131 applications are pending scheduling. Revenue and Legal Services staff are of the view that the applications have merit on legal and financial grounds, and should be pursued.

The apportionment process is extremely cumbersome and therefore costly for all parties. Staff and taxpayers are often required to attend several pre-hearings for administrative matters before an actual hearing is scheduled. A Statement of Issues describing the reasons for the City's application to the ARB must be prepared by City staff and sent to taxpayers. Taxpayers must prepare a Statement of Response to the City's position. In many instances, taxpayers do not retain legal representation and are unaware of the ARB rules which results in more pre-hearings and increased frustration for all parties.

For an actual hearing to be scheduled, a Certificate of Readiness must be filed by one of the parties (for apportionment applications this has been done by the City) and served on the ARB and the taxpayer. The actual hearing must be attended by the taxpayer and their legal representative, along with staff from Revenue and Legal Services Divisions. The ARB Chair must make a determination and issue a written decision to the City and the affected taxpayers.

Operationally, work is generated when taxpayers call or write Revenue Services, Legal Services and sometimes their Councillor's office to better understand or complain about the process. When the unpaid amount on the original account is relatively small, i.e., less than \$1,000 (meaning the amount apportioned and billed to the affected taxpayers is even smaller), the effort required for that result is not reasonable from an individual taxpayer perspective. In addition, it is abundantly clear that the aggregate costs of the process for the City far outweighs the financial benefits it gains.

Furthermore, the *City of Toronto Act, 2006* provides a new mechanism to write-off unpaid taxes. Under the *Municipal Act, 2001* the City could only write-off taxes as uncollectible after an unsuccessful tax sale had been held. The *City of Toronto Act, 2006* allows taxes to be written off as uncollectible "if the recommendation of the treasurer provides a written explanation of why conducting a tax sale would be ineffective or inappropriate."

In these cases, conducting a tax sale is not appropriate since the unpaid taxes are related to tax accounts/properties that no longer exist. The tax sale process can only be pursued if the taxes remain unpaid after they are apportioned to the new property owners.

Revenue and Legal Services staff met with the Chair of the ARB in October 2006 to determine the best way to proceed with the City's apportionment applications. Through this review and consultation process, staff have concluded that it is best to seek direction from Council to write off the taxes on the accounts listed in Attachment 1 and withdraw those apportionment applications filed with the ARB. To do otherwise and proceed with the applications is considered ineffective and inappropriate by staff of both the City and the ARB.

In summary, if the recommendations proposed in this report are adopted, of the 292 applications filed at the ARB in 2004, a total of 116 will be withdrawn. The reasons for withdrawing these applications are detailed above. Of the remaining 176 applications, 42 applications were previously withdrawn as payments were received in full, 3 have been approved by the ARB and 131 are expected to be apportioned as planned by the ARB.

If Council does not adopt the recommendation to write-off these unpaid taxes, the applications to apportion will not be withdrawn from the ARB and Revenue and Legal Services staff will proceed accordingly.

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SIGNATURE

Cam Weldon
Treasurer

ATTACHMENTS

- Attachment 1: Listing of Tax Apportionment Accounts to be Written-off/ Withdrawn at the ARB
- Attachment 2: Confidential Information