

Heads and Beds Levy on Institutions

Date:	October 23, 2008
To:	Executive Committee
From:	City Solicitor and Acting Treasurer
Wards:	All Wards
Reference Number:	P:\2008\Internal Services\Rev\ec08024rev (AFS#8338)

SUMMARY

This report provides a review of the legislative base for taxation on Universities and Colleges, Hospitals and Correctional Facilities (Institutions).

Financial Impact

There are no financial impacts associated with this report.

DECISION HISTORY

At its meeting on June 23 and 24, 2008, City Council, while considering the Executive Committee report (EX 21.13), entitled, “2008 Heads and Beds Levy on Institutions”, adopted the following motion of the Executive Committee:

“The City Solicitor and the Treasurer be requested to undertake a review of the legal and the legislative base for the taxing relationship between the City and the Province of Ontario and submit a report to the Executive Committee by December 2008.”

The report and the decision document are available in the following links:

<http://www.toronto.ca/legdocs/mmis/2008/ex/bgrd/backgroundfile-13225.pdf>

<http://www.toronto.ca/legdocs/mmis/2008/cc/decisions/2008-06-23-cc22-dd.pdf>

ISSUE BACKGROUND

This report request arose from consideration of the “2008 Heads and Beds Levy on Institutions” Report, which provided authority for the annual tax levy by the City on hospitals, post-secondary education institutions and correctional institutions (the “Provincial Institutions”). The Provincial Institutions are subject to an annual tax levy of \$75 (the “Heads and Beds Rate”) per provincially determined space, in accordance with

section 285 of the *City of Toronto Act, 2006* (the “COTA”) and Ontario Regulation 121/07 (the “Heads and Beds Levy”).

COMMENTS

Provincial properties, including the Provincial Institutions, are exempt from property taxes pursuant to subsection 3(1) of the *Assessment Act*.

However, the *Municipal Tax Assistance Act* (the “MTAA”) provides authority for the Minister of Municipal Affairs and Housing and for Crown agencies to make payment to a municipality in respect of provincial land located within the municipality in an amount equivalent to the amount of taxes for municipal purposes which would have been payable in respect of the property if the property were taxable. Such payments are referred to as “payments in lieu of taxes.”

The MTAA does not apply to the Provincial Institutions (subsection 3(1) of MTTA). Rather, these properties are subject to section 285 of COTA, which allows the City to levy (by levy due no earlier than July 1st of the year) an amount no greater than the amount prescribed by regulation on each hospital bed, correction institution space and post-secondary student space within the City, as determined by the Minister. The amount of \$75 per space has been prescribed by Ontario Regulation 121/07.

COTA does not provide broad authority to the City in determining the method of calculating the Heads and Beds Levy. Section 13 of COTA expressly states that sections 7 (natural person powers) and 8 of COTA (power to provide things that the City considers necessary or desirable for the public) do not authorize the City to impose any type of tax. The City must have express authority under COTA to impose any type of tax, including all property taxes.

Accordingly, while the City is not required to levy taxes on the Provincial Institutions, if it chooses to do so, the City must do so in compliance with section 285 of COTA and the Ontario Regulation 121/07.

It should be noted, however, that the MTAA (subsections 3(3) and 4(4)) provides authority for the Minister of Finance to make regulations in relation to Provincial Institutions authorizing the Minister of Municipal Affairs and Housing to make payment to a municipality in which the property is situated provided such payment does not exceed that amount of taxes for municipal purposes which would be payable in respect of the property if the property were taxable. This would appear to contemplate regulations requiring payments in addition to those required by section 285 of COTA. No such regulations have been filed.

Previous studies on institutions undertaken by City staff have indicated that the Heads and Beds Levy generates 2.7 times less revenue to the City than a levy on the Provincial Institutions calculated using a standard “assessed value X tax rate” method.

Starting as early as 1998, Council has been requesting the Province to amend the current method of calculating the payments from the Provincial Institutions to reflect what these properties would pay if they were taxed based on current value assessment (CVA) and applicable tax rates. In 1998, Council requested the Province to approve legislation to increase the Heads and Beds Rate from \$75.00 to \$208.50. In 2001, and again in 2004, 2005 and 2006, Council further recommended that the Heads and Beds Rates be increased annually to reflect inflation, and that increases to the Heads and Beds Rate be phased-in over time until these institutions pay the equivalent of property taxes.

Council has also made related submissions to the Province on the matter of the Heads and Beds Levy, including Toronto's response to MPP Marcel Beaubien's review of Ontario's assessment and taxation system in 2001, and in the City's recommendations to the Province in establishing a new *City of Toronto Act*. This issue has again been identified by Finance staff for submission as part of the two year COTA review.

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SIGNATURE

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