



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

**Write-off of Unpaid Property Taxes for Apportionment
Applications Filed with the Assessment Review Board**

Date:	June 15, 2009
To:	Government Management Committee
From:	Acting Treasurer and City Solicitor
Wards:	All
Reason for Confidential Information:	This report is about litigation or potential litigation that affects the City.
Reference Number:	P:\2009\Internal Services\rev\gm09024rev (AFS# 8962)

SUMMARY

This report advises on the status of the 292 apportionment applications filed with the Assessment Review Board (ARB) in 2005, pursuant to Ontario Regulation 399/03, for taxes related to 2002 and prior years. This report also recommends that authority be delegated to the Acting Director of Revenue Services, in consultation with the City Solicitor, to withdraw certain of the applications based on criteria set out in the confidential attachment to this report.

RECOMMENDATIONS

The Acting Treasurer and City Solicitor recommend that:

1. Council adopt the recommendations contained in Confidential Attachment 1;
2. The Confidential Attachment remain confidential as it contains information subject to solicitor/client and litigation privilege; and,
3. The appropriate City staff be authorized and directed to take the necessary action to give effect thereto.

Financial Impact

Details regarding financial impacts resulting from the recommendations made in this report are disclosed in Confidential Attachment 1.

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 February 2005, Council adopted a report (December 6, 2004) from the Chief Financial Officer and Treasurer, entitled “Establishing Processes for Hearing and Disposition of Certain Applications Under Ontario Regulation 399/03 and the Municipal Act, 2002”, that authorized the Treasurer to proceed with 292 apportionment applications of unpaid taxes from 2002 and older tax years pursuant to Ontario Regulation 399/03 (“the O.Reg. Applications”) (re: Clause 7 of Report 1 of the Administration Committee, as adopted by City Council on February 1, 2 and 3, 2005). At this meeting, Council also passed by-law 131-2005 delegating its power to hear, among others, the O.Reg. applications to the ARB. To view this report online please follow the link:

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

At the April 2007 Council meeting, Council adopted a report (March 21, 2007) from the Treasurer, entitled “Write-off of Unpaid Property Taxes for Apportionment Applications Related to 2002 and Prior Years” which recommended that the Treasurer be authorized to withdraw 116 O.Reg. Applications previously filed to the ARB and that the unpaid taxes be written off as uncollectible (Government Management Report Meeting No. 3, Report GM3.19). To view this report online please follow the online link:

<http://www.toronto.ca/legdocs/mmis/2007/gm/reports/2007-04-12-gm03-cr.pdf>

ISSUE BACKGROUND

The *City of Toronto Act, 2006* (“COTA”) requires the Treasurer to collect property taxes. One of the legislated methods available to the Treasurer to collect taxes is to apportion any unpaid taxes. This method of collection is used when one parcel of land is split into two (2) or more parcels, which is a normal occurrence when land is redeveloped (the most common case among the O.Reg. Applications is new condominium or townhouse properties). The apportionment does not change the total amount of taxes levied before the redevelopment, rather it takes those taxes and redistributes them amongst the new parcels (e.g. amongst the new condominium units or townhouses).

Before COTA and under the *Municipal Act, 2001*, the apportionment of unpaid taxes was limited to the current year and the two preceding years. In 2003, the Province filed O. Reg. 399/03 to permit municipalities to apportion taxes as far back as necessary to deal with unpaid taxes. In February 2005, Council authorized the Treasurer to proceed with 292 applications to apportion

taxes for years 2002 and prior, which applications were filed by the Treasurer pursuant to O.Reg. 399/03 and also delegated the O.Reg. Applications to the ARB pursuant to By-law 131-2005.

COMMENTS

O.Reg. Applications

Table 1 below summarizes and describes the status of the 292 O.Reg Applications filed with the ARB.

Table 1
Status of O. Reg. Applications

	Number of Applications
Heard by the ARB	44
Withdrawn	178
Pending to be Heard (70) or Re-Heard (1) by the ARB	71

The ARB has heard and disposed of 44 O.Reg. Applications. Of these, the ARB has agreed with the City for some of the applications, but it has been inconsistent. For other applications, the ARB has rejected outright the City's application and decided not to apportion any of the unpaid taxes, or, in other cases, the ARB has devised its own basis for apportioning the unpaid taxes. Where the City's proposed apportionment has been rejected by the ARB, the City has either collected no unpaid taxes or less than it had applied to collect.

After filing the 292 O.Reg. Applications with the ARB, there were 60 applications that were subsequently withdrawn because the unpaid taxes were paid either by the developer or another party. Two other applications were withdrawn because they were filed in error. In addition, Council also approved the withdrawal of 116 applications in April 2007.

There are now 70 original applications that remain to be heard and one additional application, that is subject to rehearing because the ARB has reversed its decision on the basis that proper notice of the hearing was not served on several of the affected taxpayers.

ARB Apportionment Process

The process for an apportionment application before the ARB is time consuming and costly for the City and taxpayers. To date, the ARB places these applications in the pre-hearing stream, which requires the exchange of documents between the City and the affected taxpayers as well as attendance at pre-hearings. The full hearing to finally dispose of the application can last an entire day in cases where there are many affected taxpayers who are entitled to cross examine the City's witnesses and make their own submissions.

The City filed the O.Reg. Applications with the ARB in 2005. By doing so, they were also now part of the ARB's entire case load of assessment and tax appeals from across the province, and dependent on the Board's available resources to hear them.

A further delay was also caused by a motion challenging City Council's delegation to the ARB under By-law 131-2005. While the delegation and by-law were ultimately upheld by the ARB, the O.Reg. Applications were not scheduled by the ARB in the interim.

Remaining Applications

There are 70 O.Reg. Applications to be heard by the ARB and one that is subject to rehearing. These applications before the ARB relate to 49 properties. With the experience of the applications that have already been decided by the ARB, staff from Revenue Services and the City Solicitor's Office have developed criteria for use by the Acting Director of Revenue Services, in consultation with the City Solicitor, to determine which of the remaining applications should be withdrawn and for the related unpaid taxes to be written off as uncollectible by the Acting Treasurer.

As these criteria and the rationales for them relate to litigation or pending litigation, they are addressed in Confidential Attachment 1.

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SIGNATURE

Giuliana Carbone
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ATTACHMENTS

Confidential Attachment 1