

**Canadian Air & Space Museum – 65 Carl Hall Road –
Request for Property Tax Exemption**

Date:	February 24, 2010
To:	Government Management Committee
From:	Treasurer
Wards:	Ward 9 – York Centre
Reference Number:	P:\2010\Internal Services\rev\gm10005rev (AFS 11208)

SUMMARY

This report seeks Council's consent to exempt the premises occupied by the Canadian Air & Space Museum (previously known as Toronto Aerospace Museum) located at 65 Carl Hall Road from property taxation effective January 1, 2010 in accordance with paragraph 16 of subsection 3(1) of the *Assessment Act* (re: Exhibition Buildings). In addition, this report recommends the cancellation of property taxes and accrued interest for the period from March 1, 1997 to December 31, 2009.

RECOMMENDATIONS

The Treasurer recommends that:

1. Council consent to provide an exemption from property taxes under paragraph 16 of subsection 3(1) of the *Assessment Act* for the premises occupied by the Canadian Air & Space Museum;
2. in consideration of the fact that as a tenant of the federal government the Canadian Air & Space Museum is separately assessed and directly liable to taxation as if it were an owner, Council waive the requirement for a 99 year (or longer) lease or ownership identified in Attachment 1 to this report as a condition for providing a property tax exemption, as long as the space is occupied by the Canadian Air & Space Museum;
3. Council write off the property taxes and interest that have accrued against the premises occupied by the Canadian Air & Space Museum for the period from March 1, 1997 to December 31, 2009;

4. the City Clerk be requested to inform the Canadian Air & Space Museum and the Municipal Property Assessment Corporation of Council's decision with respect to Recommendation 1 above; and,
5. the appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.

Implementation Points

Consistent with the process previously approved by Council in 2000 for consenting to property tax exemptions under paragraph 16 of subsection 3(1) of the *Assessment Act*, reproduced in Attachment 1 to this report, the Canadian Air & Space Museum has been advised that in parallel to their application for an exemption under this section, they should appeal their current property assessment within the appeal period allowed by the Minister of Finance. This will ensure that the assessment roll, as returned, can be amended to reflect the exemption approved retroactive to January 1, 2010. Failure to appeal could result in limiting the exemption to subsequent years.

Provided that the recommendations in this report are adopted, a resolution of support by Council will be provided to the Municipal Property Assessment Corporation (MPAC) to implement the exemption.

Financial Impact

As of January 31, 2010, the outstanding property taxes for the premises occupied by the Canadian Air & Space Museum at 65 Carl Hall Road for the period of March 1, 1997 to December 31, 2009 are \$339,810.

Of the total outstanding property taxes of \$339,810 recommended for write-off, \$228,327 of this amount represents the City portion, comprising \$72,269 in municipal taxes and \$156,058 in interest charges (as at January 31, 2010). The write-off of the municipal portion of taxes of \$72,269 will be funded from the City's Non-Program Tax Deficiency account. The accrued interest/penalty and fees, which total \$156,058 as at January 31, 2010 but will continue to accumulate on the account pending the finalization of this process, will be funded from the Non-Program Tax Penalties account. The education portion of the recommended write off amount, which is \$111,483, will be fully recovered from the school boards/province following the write-off. The amounts recommended for write off are summarized in Table 1 below.

**Table 1: Amounts Recommended for Write off – Canadian Air & Space Museum
(From March 1, 1997 to December 31, 2009 - as at January 31, 2010)**

Municipal Taxes	Accrued Interest	City Portion (Mun. Taxes + Interest)	Education Taxes	Total
\$72,269	\$156,058	\$228,327	\$111,483	\$339,810

Once exempt, the property tax revenue forgone each year will be approximately \$19,110, of which \$9,996 is City portion of taxes and \$9,114 is the education portion of taxes. This estimate is based on 2009 Current Value Assessment and tax rates.

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

DECISION HISTORY

At its meeting on July 4, 5 and 6, 2000, while considering a report entitled, “Criteria for Property Tax Exemption Under Section 3(16) of the Assessment Act – Request for Tax Exemption for 260 Adelaide Street East, Toronto’s First Post Office and Request for Tax Exemption of 78-80 Gerrard Street Street East, Gallery Arcturus” (Report No. 9; Clause No. 12 of the Policy and Finance Committee), City Council adopted a process and criteria for consenting to property tax exemptions under paragraph 16 of subsection 3(1) of the *Assessment Act, R.S.O. 1990, (Exhibition Buildings)*. The report can be accessed at:

<http://www.toronto.ca/legdocs/2000/agendas/council/cc/cc000704/pof9rpt/cl012.pdf>

The criteria adopted by Council in 2000 was set out in Appendix A to the above report. It is reproduced here as Attachment 1 to this report.

ISSUE BACKGROUND

Subsection 3(1) of the *Assessment Act, R.S.O. 1990*, provides that:

“All real property in Ontario is liable to assessment and taxation, subject to the following exemptions from taxation [...]:

16. The land of every company formed for the erection of exhibition buildings to the extent to which the council of the municipality in which the land is situated consents that it shall be exempt.”

Council, in July of 2000, adopted a process and criteria for consenting to property tax exemptions for exhibition buildings, as provided for in the *Assessment Act* under paragraph 16 of subsection 3(1) of the Act. Council’s approved criteria is reproduced here as Attachment 1 to this report.

Council has previously exercised its powers under this section of the *Assessment Act* to provide an exemption for taxes for buildings used for exhibition purposes. These include the:

- a. Canadian Museum for Textiles located at 55 Centre Street, which was granted a property tax exemption on May 25, 1992, by the former City of Toronto;
- b. Hockey Hall of Fame located at 30 Yonge Street which was granted an exemption in October 1993;

- c. Bata Shoe Museum at 327 Bloor Street West which was granted an exemption in June 1995; and,
- d. Canada's First Post Office located at 260 Adelaide Street East which was granted an exemption in July 2000. In granting the exemption for Canada's First Post Office, Council waived the requirement that the property be owned or leased for a period of 99 or more years (see Council reference cited under *Decision History* section above).

Canadian Air & Space Museum

The Canadian Air & Space Museum located at 65 Carl Hall Road (formerly the Toronto Aerospace Museum) is an aviation museum featuring artifacts and exhibits illustrating a century of Canadian aviation heritage and achievements. The museum is situated within Parc Downsview Park (PDP), and is housed in what was the original factory for the De Havilland Aircraft Company of Canada. It is the oldest surviving aircraft factory building in Canada. The institution is largely run by volunteers, and has the goal of educating visitors on the Canadian aerospace industry and technology.

The Canadian Air & Space Museum occupies premises that are leased from the Federal Government at Parc Downsview Park. As a tenant of federal lands, the museum is separately assessed and directly liable to taxation as if it were the owner of the lands, consistent with clause 18(1)(a) of the *Assessment Act*.

The Museum first approached the City seeking assistance with respect to their taxes in 2000. Revenue Services staff suggested that relief could be obtained if the organization qualified for a property tax exemption under paragraph 16 of subsection 3(1) of the *Assessment Act*. This section specifies that lands of any company formed for the erection of exhibition buildings can be exempted from taxation, subject to the consent of the local municipal council. However, since the organization did not meet the ownership criteria set out in the Council adopted policy on exemptions under this section (i.e., they did not own the land outright or hold a lease of 99 years or longer), it appeared that the organization was not eligible for an exemption under this section.

Renewed efforts by the Air & Space Museum to obtain a property tax exemption and the involvement of the local ward Councillor led staff to re-initiate discussions with the Municipal Property Assessment Corporation (MPAC) in 2009, to determine whether the museum could meet the *Assessment Act*'s eligibility requirements for exhibition buildings, and to request that MPAC undertake the necessary space utilization report that would allow Council to consent to an exemption. The process to gather the relevant documentation was completed in January 2010.

COMMENTS

MPAC's Role

Council's approved process requires that the Municipal Property Assessment Corporation determine whether the space under review is an exhibition building and could be considered for tax exemption under paragraph 16 of subsection 3(1) of the *Assessment Act*. The process also requires that MPAC complete a space utilization report for the exhibition building that clearly identifies the area of the subject property to be used as an exhibition building, as well as any space directly required to support the exhibition. The report also identifies the estimated assessed value of the space used as an exhibition building, and the ownership. MPAC is responsible to make determinations as to assessed value and ownership, and in the case of an application under paragraph 16 of subsection 3(1), Council can only act on MPAC's recommendations.

In January 2010, MPAC completed a space utilization report which indicates that the entire premises (the hangar) is used either as exhibition space or space directly required to support the exhibition. The total ground floor area of the property is 35,453 square feet. The majority of the exhibition space occupies 27,464 square feet on the ground floor. A small section of the exhibition area (2,242 square feet) is located on the 2nd floor Mezzanine. The remaining ground floor is the entrance to the lobby, administration, library and gift shop. An active restoration of 4,312 square feet on the ground floor is underway, which is not accessible by museum patrons. Table 2 below provides the breakdown of the space utilization of the subject property as provided by MPAC.

Table 2: Breakdown of Space Utilization - Canadian Air & Space Museum

Floor	Use	Area (sq. ft)	Area (%)	2009 CVA
Ground	Exhibition Area	27,464	77.5	\$379,824
2 nd Floor Mezzanine	Exhibition Area	2,242 ¹	n/a ¹	\$15,164
Ground	Restoration	4,312	12.2	\$59,634
Ground	Entrance Lobby	1,407	4.0	\$19,459
Ground	Administration	1,155	3.2	\$15,974
Ground	Library	609	1.7	\$8,422
Ground	Gift Shop	506	1.4	\$6,998
Total	Museum	35,453	100.0	\$505,475

1. Mezzanine structure assessed on cost approach and not included in the total ground floor area

In respect of ownership, MPAC reports that the museum has been leasing space from Parc Downsview Park on a term to term basis since 1997, and is currently in a three-year lease expiring March 31, 2012, with an option to renew for an additional 2 years to March 31, 2014. Under Council's previously approved criteria set out in Attachment 1, property ownership is determined through either outright ownership or through long-term tenancy agreements (i.e., 99 years or more) which may be deemed ownership. However,

MPAC has provided that as a tenant of the Federal Government, the Canadian Air & Space Museum is separately assessed and directly liable to taxation as if it were an owner, as provided for under subsection 18(1) of *the Assessment Act*.

Council's Role

Following the submission of MPAC's space utilization report, Council must then determine whether it wishes to consent to the request for exemption. Council has previously approved that the following criteria be met:

1. The applicant must be providing an exhibition (such as arts, culture, history or any other display considered by Council as appropriate) available to all residents of the City of Toronto and if an entrance fee is charged to the exhibit or exhibit space, it must be a reasonable fee;
2. The applicant must be a non-profit organization;
3. The applicant must be providing a major, one-of-a kind exhibit which provides cultural, educational, and/or historical benefits to the community as a whole; and
4. Each application is unique and should be considered on its own merits.

Does the Canadian Air & Space Museum Meet the Criteria for Exemption?

The following paragraphs provide information related to each of the criteria identified above.

1. The Canadian Air & Space Museum provides an exhibition of the history of commercial aircraft manufacturing in Canada and aerospace science and technology, and the stories of people connected to these innovations. The entrance fee to the museum is \$10.00 for adults 18 years or older, \$8.00 for seniors, students and military, \$25.00 for a family (2 adults, 2 students) and children under 6 are free.
2. The museum is a registered non-profit organization with a charity registration number.
3. The Canadian Air & Space Museum is one-of-a kind exhibit, being Toronto's first and only aerospace museum. The museum's displays include Canadian-made aircraft from the 1920s to the space age, flight training simulators from the 1940s and 1950s, and exhibits illustrating a century of Canadian aviation heritage and achievements. The museum provides educational and historical benefits to the community by conducting educational tours to the public and school programs. The museum also houses a reference library providing valuable historical information on the Canadian aviation industry.
4. The application by the Canadian Air & Space Museum can be said to be unique, in that the museum is a tenant of federal lands, but provides cultural, educational and historical benefits to the community on a not-for-profit basis.

Although the museum fails to meet Council's requirement that it own the land or hold a long-term lease, the *Assessment Act* provides that tenants of federal lands are assessed separately and directly liable to taxation, as though they were owners. In this sense, the museum may be deemed to be an owner for the purposes of Council's previously approved criteria.

Based on the above points, it can be concluded that the application for exemption for the Canadian Air & Space Museum meets the criteria previously approved by Council for exhibition buildings. With the space utilization report completed by the Municipal Property Assessment Corporation confirming that the entirety of the leased premises are used as an exhibition building, it is appropriate for City Council to consent to the exemption request. To address the particular circumstances surrounding the lease of federal lands in this case, it is recommended that Council waive the ownership requirement identified in Attachment 1 to this report as a condition for providing a property tax exemption.

It is further recommended that Council write off the property taxes and interest charges that have accrued on this property for the period from March 1, 1997 through to December 31, 2009, during which the property has been used for the purposes of the Canadian Air & Space Museum. Assuming that Council consents to the exemption for the museum as an exhibition building as recommended herein, and given that the museum has been used for the same purpose over this entire past timeframe, Council may write off the taxes that were levied during this period and the accrued interest and penalty charges on the basis that the property should have been exempt from taxes for this period. Additionally, in recommending that property taxes be written off for the period from 1997 to 2009, it should be noted that the City was first approached by the Air & Space Museum seeking an exemption in 2000, but they did not meet Council's approved criteria for exemption. It was only in 2009, in a renewed examination of this issue, that MPAC confirmed that, as a tenant of federal crown lands, that the organization could be treated as though they owned the premises, following amendments made to the *Assessment Act*.

The *City of Toronto Act, 2006* provides that Council may, on the recommendation of the treasurer, write off taxes as uncollectible. The Act also provides that taxes can be written off without first conducting a sale of land for tax arrears if the property is owned by the federal government, or a Crown agency, and where the recommendation of the treasurer includes a written explanation as to why conducting a tax sale would be ineffective or inappropriate. In this circumstance, it would be inappropriate to conduct a tax sale, because the lands occupied by the museum, although leased, remain under federal ownership, and the City is statute-barred from exercising powers under the Sale of Land for Tax Arrears for federal property. On this basis, it is recommended that Council write off the taxes for the period of time during which the museum has occupied these premises.

Provided that the recommendations in this report are adopted, a resolution of support by Council will be provided to MPAC to implement the exemption.

CONTACT

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SIGNATURE

Giuliana Carbone
Treasurer

Attachment 1: Process and Criteria for Property Tax Exemptions under Subsection 3(16) of the *Assessment Act* (Exhibition Buildings)

ATTACHMENT 1

Process and Criteria for Property Tax Exemptions under Paragraph 16 of subsection 3(1) of the *Assessment Act* (Exhibition Buildings)

As adopted by Council at its meeting of July 4, 5 and 6, 2000 (re: Report No. 9; Clause No. 12 of the Policy and Finance Committee)

1. Since responsibility for property assessment in Ontario rests with the Municipal Property Assessment Corporation through its representatives, any request for tax exemption under this section of the Act must be evaluated by the representative. The evaluation by the representative will determine whether the space under review is an exhibition building and could be considered for tax exemption under Section 3(16) of the Assessment Act, subject to consent by Council.
2. The representative will complete a space utilization report of the exhibition building that would clearly identify the area of the subject property to be used as an exhibition building as well as any space directly required to support the exhibition. An estimated assessed value would be included. The report would also include a determination of ownership of the space. Property ownership is determined through either outright ownership or through long-term tenancy agreements (i.e. 99 years or more) which may be deemed ownership. In both of these situations, the representative is responsible for their determination and in the case of a Section 3(16) application, Council only acts on his/her recommendation.
3. The Municipal Property Assessment Corporation's representative's report will be forwarded to the Treasurer who will then complete a report for City Council's consideration which would be based on the following criteria:
 - a. The applicant must be providing an exhibition (such as arts, culture, history or any other display considered by Council as appropriate) available to all residents of the City of Toronto and if an entrance fee is charged to the exhibit or exhibit space, it must be a reasonable fee;
 - b. The applicant must be a non-profit organization.
 - c. The applicant must be providing a major, one-of-a kind exhibit which provides cultural, educational, and/or historical benefits to the community as a whole.
 - d. Each application is unique and should be considered on its own merits
4. City Council would determine whether or not to consent to the exemption request, including whether to exempt part or all of the space under review that was

included in the Municipal Property Assessment Corporation's representative's report. If Council supports the exemption request, a resolution of support by council will be provided to the representative to implement the exemption.

5. Applicants will be advised that in parallel to their application under Section 3(16) of the *Assessment Act*, they should appeal their current property assessment within the appeal period allowed by the Minister of Finance. This will ensure that the assessment roll, as returned, can be amended to reflect the approved retroactive to January 1st of the year of the application. Failure to appeal could result in limiting the exemption to subsequent years.