



STAFF REPORT ACTION REQUIRED

2012 Levy on Railway Roadways and Rights of Way and on Power Utility Transmission and Distribution Corridors

Date:	May 23, 2012
To:	Executive Committee
From:	Treasurer
Wards:	All
Reference Number:	P:\2012\Internal Services\rev\ec12013rev (AFS15276)

SUMMARY

This report seeks Council authority for the introduction of the by-law necessary to levy and collect taxes for the 2012 taxation year on railway roadways and rights of way and on land used as transmission or distribution corridors owned by power utilities, totalling approximately \$7.5 million in taxation revenue, of which the municipal share is \$6.7 million and the provincial education share is \$0.8 million.

RECOMMENDATIONS

The Treasurer recommends that:

1. Council authorize the levy and collection of taxes for the 2012 taxation year on railway roadways and rights of way and on land used as transmission or distribution corridors owned by power utilities, in accordance with subsection 280(1) of the *City of Toronto Act, 2006* and subsection 257.7 (1) the *Education Act*.
2. Authority be granted for the introduction of the necessary bill to give effect thereto.

Financial Impact

The 2012 levy of taxes on railways and rights of way and on power utility transmission or distribution corridors will raise approximately \$7.5 million in taxation revenue, of which the municipal share is \$6.7 million and the provincial share is \$0.8 million. The total

revenue for 2011 was approximately \$7.8 million, of which the municipal portion was \$6.6 million and the provincial education portion was \$1.2 million.

The decrease in the provincial education portion of the levy from \$1.2 million in 2011 to \$0.8 million in 2012 is due to a reduction in the total assessable acreage owned by Canadian National Railway (CN) and Canadian Pacific Railway (CP), as CN and CP have been selling their right-of way (ROW) corridors in Toronto to Metrolinx. As a result, CN and CP's total assessable acreage has decreased by 446.18 acres, while Metrolinx's total assessable acreage has increased by 453.34 acres in 2012. Since properties owned by Metrolinx are exempt from provincial education taxes, a shift in the acreage from CN and CP to Metrolinx has resulted in a reduction in the provincial education portion of taxes.

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

DECISION HISTORY

At its meeting held on July 6, 7 and 8, 2010 City Council, in adopting Executive Committee report EX45.10: "2010 Levy on Railway Roadways and Rights of Way and on Power Utility Transmission and Distribution Corridors," also approved the following:

- "4. City Council approve seeking an amendment to:
 - a. Regulation 387/98 and 392/98 to require an annual inflationary adjustment in the "mature rate".
 - b. the "mature rate" prescribed by Regulation so as to phase in rate changes that more properly reflect the market value of the land over a period of time be reviewed.*
- 5. City Council request the City Manager to actively pursue this matter in concert with other municipalities in Ontario.*
- 6. City Council authorize the Deputy City Manager and Chief Financial Officer and the Acting Treasurer, in consultation with Intergovernmental Relations, to work in conjunction with the Regional Treasurers of Ontario group, the Municipal Finance Officers' Association, the Association of Municipal Clerks and Treasurers and the Association of Municipal Tax Collectors, to advance the position to the Province of Ontario that railway and hydro rights of way should be assessed and taxed on a Current Value Assessment basis.*
- 7. Deputy City Manager and Chief Financial Officer and the Acting Treasurer report on their progress annually."*

The report and decision document of Council can be accessed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2010.EX45.10>

At its meeting held on July 12, 13 and 14, 2011 City Council, in adopting Executive Committee Report EX7.8: "2011 Levy on Railway Roadways and Rights of Way and on Power Utility Transmission and Distribution Corridors," authorized the levy and collection of taxes for the 2011 taxation year on railway roadways and rights of way and on land used as transmission or distribution corridors owned by power utilities in accordance with subsection 280(1) of the *City of Toronto Act*, 2006 and subsection 257.7(1) of the *Education Act*.

The report and decision document of Council can be accessed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.EX7.8>

ISSUE BACKGROUND

Ontario Regulations 387/98 under the *Municipal Act, 2001* and 392/98 under the *Education Act*, as amended, have prescribed the applicable rates for railway and power utility rights of way acreage levies since 1998. Beginning in 1998 and ending in 2005, the Province prescribed what were termed "transition rates" each year, to phase-in changes to the taxation level of these right of way properties, until a uniform rate was reached in 2005 within each of eight geographic regions across the Province. The acreage tax rates established in 2005 are called 'mature rates' and apply to all years beyond 2005.

COMMENTS

Subsection 280(1) of the *City of Toronto Act, 2006* requires the City, in accordance with the regulations, to levy an annual tax for municipal purposes on railway roadways, and rights of way and on land used as transmission or distribution corridors owned by power utilities.

Subsection 257.7(1) of the *Education Act* requires the City to levy and collect taxes based on the rates prescribed for school purposes on the railway and power utility lands described in subsection 280(1) of the *City of Toronto Act, 2006*.

Ontario Regulation 121/07 under the *City of Toronto Act, 2006* and 392/98 under the *Education Act*, (as amended by O. Reg 123/07), prescribe the applicable rates for 2012 for the municipal portion and education portion of taxes respectively, for railway and power utility rights of way acreage levies.

To calculate the taxes payable on acreage properties, the City of Toronto requires the area of each property and the applicable tax rates. The acreage figures are provided to municipalities by the Municipal Property Assessment Corporation (MPAC) on the returned assessment roll each year and are available for 2012. Table 1 below identifies the per-acre tax rates and levy amounts for 2012 for railway roadways and rights of way and power utility transmission and distribution corridors.

Table 1
**Acreage Rates and Levy Amounts for 2012 on Railway Roadways or Rights of Way and on
Power Utility Transmission or Distribution Corridors**

Levy based on the return of the Assessment Roll (ii)

Company	Municipal Tax Rate Per Acre	Education Tax Rate Per Acre	Total Tax Rate Per Acre	2012 Acreage	2012 Total Tax Levy (municipal + education)	2011 Total Tax Levy (municipal + education)
Canadian National Railway	\$611.33	\$822.69	\$1,434.02	493.63	\$707,875.29	\$1,277,009.15
Canadian Pacific Railway	\$611.33	\$822.69	\$1,434.02	535.32	\$767,659.59	\$838,356.77
Power Utility – Hydro One	\$834.02	\$1,208.66	\$2,042.68	2,771.94	\$5,662,186.40	\$5,662,186.40
Metrolinx (i)	\$611.33	\$0.00	\$611.33	532.56	\$325,569.91	\$80,762.81
	\$611.33	\$0.00	\$611.33	52.89	\$32,333.24	
		\$822.69	\$822.69		\$43,512.07 (ii)	
Metrolinx total				585.45	\$401,415.22 (ii)	
Totals:				4,386.34	\$7,539,136.50	\$7,858,315.13

Levy after MPAC corrects the error on the Returned Assessment Roll (ii)

Metrolinx (i)	\$611.33	\$0.00	\$611.33	585.45	\$357,903.15 (ii)	\$80,762.81
Totals:				4,386.34	\$7,495,624.43	\$7,858,315.13

- (i) Metrolinx was known as Greater Toronto Transit Authority (GO Transit). *Greater Toronto Services Board Act, 1998*, exempted the real property owned by Greater Toronto Transit authority from education taxes. Pursuant to the *GO Transit Act, 2001*, as of January 1, 2002, GO Transit became a Crown Agency of the Province. It is exempt from property taxes but subject to payment-in-lieu of taxes.
- (ii) A portion of the railway roadway (52.89 acres) purchased by Metrolinx from CN Railways was erroneously returned on the 2011 assessment roll for taxation in 2012 as eligible for provincial education taxes. Properties owned by Metrolinx are exempt from provincial education taxes. MPAC has been notified of this error, and will be issuing a Post Roll Amended Notice (PRAN) to correct the tax classification of this property. The total levy for Metrolinx shown in Table 1 for 2012 of \$401,415.22 includes a levy amount of \$43,512.07 in education taxes for this parcel. Once the tax classification of this parcel is corrected by MPAC and the erroneous education levy amount reversed, the corrected total levy for Metrolinx will be \$357,903.15, resulting in a total levied amount for 2012 of \$7,495,624.43.

The Municipal Property Assessment Corporation erroneously returned a portion of the railway roadway (52.89 acres) purchased by Metrolinx from CN Railways on the 2011 assessment roll for taxation in 2012 as eligible for provincial education taxes. As identified earlier, properties owned by Metrolinx are exempt from provincial education taxes. MPAC has been notified of this error and will be issuing a Post Roll Amended Notice (PRAN) to correct the error.

Table 1 provides that once the error on the returned assessment roll is corrected, the estimated revenue for 2012 from all the railway and power utility rights of way would be approximately \$7.5 million, of which the municipal share is \$6.7 million and the education share is \$0.8 million. Of the \$6.7 million municipal share, \$357,903.15 will be received in the form of payment-in-lieu of taxes from Metrolinx.

Compared to last year, in 2012, even though the total assessable acreage did not show significant changes in the acreage (increased by only 7.16 acres), the provincial education share of taxes has decreased by approximately 0.4 million, while the municipal share of taxes has increased by \$0.1 million, for a net decrease in the total levy of \$0.3 million over 2011.

Council's Request for Legislative Amendments

City Council, in approving the levy of railway rights of ways and hydro corridors in July 2006, and again in June 2007, June 2008, August 2009 and July 2010, recommended that the Minister of Finance amend regulations 387/98 and 392/98 to require an annual inflationary adjustment in the "mature rate" and the "mature rate" prescribed by Regulation so as to phase in rate changes that more properly reflect the market value of the land over a period of time.

To date, no changes have been made to the legislative or regulatory provisions to incorporate Council's requests for changes to the "mature" rates. Despite Council's resolutions, no legislative authority exists for the City to levy a tax rate other than that permitted by the provincial regulation for 2012.

Council's position on assessment and taxation of railway and hydro corridors was identified to the Province in the City of Toronto's submission on requested changes to the *City of Toronto Act* as part of the two-year review of the Act undertaken in the fall of 2009. No legislative or regulatory changes pertaining to railway and hydro rights of ways were made by the Province as a result of this review.

In May 2010, staff sent a letter outlining the City's position, together with a draft resolution, to the Municipal Finance Officers' Association of Ontario (MFOA), the Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO), and the Association of Municipal Tax Collectors of Ontario (AMTCO), seeking support for the City's position. The City's letter requested that the resolution be circulated to their membership for support. The draft resolution was developed in consultation with the City's Intergovernmental Relations unit.

Staff also made a presentation at the meeting of the Municipal Liaison Group (MLG) of the Municipal Property Assessment Corporation (MPAC) in June 2010 seeking support for the City's position on the taxation of railway and hydro rights of ways, and a further presentation was made in September 2010 at the annual fall conference of the Association of Municipal Tax Collectors of Ontario (AMTCO). To date, the Province has not committed to any review of the legislative or regulatory provisions to incorporate annual inflationary changes to the "mature" rates, or the method of taxation for railway and hydro rights of way.

CONTACT

Casey Brendon, Director, Revenue Services

Phone: (416) 392-8065, Fax: (416) 696-3778, E-mail: cbrendo@toronto.ca

SIGNATURE

Giuliana Carbone
Treasurer