

2019 Levy on Railway Roadways and Rights-of-Way and on Power Utility Transmission and Distribution Corridors

Date: June 19, 2019
To: Executive Committee
From: Controller
Wards: All

SUMMARY

This report seeks Council authority for the introduction of the by-law necessary to levy and collect taxes for the 2019 taxation year on railway roadways and rights-of-way and on land used as transmission or distribution corridors owned by power utilities, totalling approximately \$7.1 million in taxation revenue, of which the municipal share is \$6.6 million and the provincial education share is \$0.5 million.

The 2019 levy total remains unchanged from the 2018 levy total of \$7.1 million (with a \$6.6 million municipal share and a provincial education share of \$0.5 million). In May of 2019, the Ministry of Finance announced that, for the 2019 taxation year, the property tax rates for railway rights-of-way will remain unchanged from 2018 levels.

This report also provides information related to the property taxation of railway rights-of-way using the acreage and tonnage systems.

RECOMMENDATIONS

The Controller recommends that:

1. City Council authorize the levy and collection of taxes for the 2019 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*.
2. City Council receive the Acreage and Tonnage Taxation Systems sections of this report for information.

FINANCIAL IMPACT

The 2019 levy of taxes on railway roadways and rights-of-way and on power utility transmission or distribution corridors will raise approximately \$7.1 million in taxation revenue, of which the municipal share is \$6.6 million and the provincial education share is \$0.5 million.

Comparatively, the total revenue for 2018 was approximately \$7.1 million, of which the municipal portion was \$6.6 million and the provincial education portion was \$0.5 million.

Table 1, below, summarizes the acreage rates prescribed by the Province, the total acreage for each group of properties, and the resulting 2019 and 2018 levy on railway roadways or rights-of-way and on power utility transmission or distribution corridors.

Table 1: Levy Amounts for 2019 and 2018 on Railway Roadways or Rights-of-way and on Power Utility Transmission or Distribution Corridors

	Municipal Rate per Acre	Education Rate per Acre	Total Rate per Acre	Acreage	Municipal Levy	Education Levy	Total Levy
2019 Levy							
Canadian National Railway	\$624.33	\$822.69	\$1,447.02	137.05	\$85,564	\$112,750	\$198,314
Canadian Pacific Railway	\$624.33	\$822.69	\$1,447.02	493.99	\$308,413	\$406,401	\$714,814
Power Utility – Hydro One	\$834.02	\$1,208.66	\$2,042.68	2,720.99	\$2,269,360	\$3,288,752	\$5,558,112
Metrolinx	\$624.33	\$0.00	\$624.33	975.14	\$608,809	\$0	\$608,809
Total				4,327.17	\$3,272,146	\$3,807,903	\$7,080,049
Adjusted Total (City retaining Education share of Hydro One levy)¹					\$6,560,898	\$519,151	\$7,080,049
2018 Levy							
Canadian National Railway	\$624.33	\$822.69	\$1,447.02	137.05	\$85,564	\$112,750	\$198,314
Canadian Pacific Railway	\$624.33	\$822.69	\$1,447.02	493.99	\$308,413	\$406,401	\$714,814
Power Utility – Hydro One	\$834.02	\$1,208.66	\$2,042.68	2,720.99	\$2,269,360	\$3,288,752	\$5,558,112
Metrolinx	\$624.33	\$0.00	\$624.33	974.95	\$608,691	\$0	\$608,691
Total				4,326.98	\$3,272,028	\$3,807,903	\$7,079,931
Adjusted Total (City retaining Education share of Hydro One levy)¹					\$6,560,780	\$519,151	\$7,079,931

Notes:

1. For Hydro One properties, the City retains the education portion of taxes. In the rows labelled "Adjusted Total", the education portion for Hydro One properties has been included in the Municipal Portion of taxes. Prior to April 1, 1999, under a revenue sharing arrangement for Ontario Hydro properties, the City retained both the education and municipal portions of taxes. Section 361.1 of the Municipal Act was amended effective April 1, 1999 to establish that the taxes payable were included in the definition of payment-in-lieu (PIL) properties. This allowed the City to continue to retain both the municipal and education portion of taxes, and this has been continued under the City of Toronto Act, 2006.

Table 2 provides a comparison of the change in acreage and levy from 2018 to 2019. For 2019, the per-acre rate for railway roadways and railway rights-of-way will remain at the 2018 levels of \$624.33.

Table 2: Change in Levy from 2018 to 2019

Company Name	Acreage	Municipal Levy	Education Levy	Total Levy
Canadian National Railway	0.00	\$0	\$0	\$0
Canadian Pacific Railway	0.00	\$0	\$0	\$0
Power Utility – Hydro One	0.00	\$0	\$0	\$0
Metrolinx	0.19	\$118	\$0	\$118
Total	0.19	\$118	\$0	\$118
Adjusted Total (City retaining Education share of Hydro One levy)		\$118	\$0	\$118

Overall, the net revenue retained by the City for 2019 has increased by \$118 from 2018. The net revenue is the result of an increase in the total acreage of railway roadways and hydro corridor rights-of-way from 4,326.98 acres in 2018 to 4,327.17 acres in 2019 (representing an increase of 0.19 acres):

- Metrolinx's total assessable acreage has increased by 0.19 acres (974.95 acres to 975.14 acres) due to the acquisition of additional lands.

The increase in the acreage for railway rights-of-way resulted in an increase of \$118 in the municipal portion of the levy (includes the City retaining both the municipal and education levy for Hydro One properties). The increase in the acreage resulted in an increase of \$0 in the provincial education portion of the levy.

Acreage and Tonnage Taxation Systems

There are no financial impacts arising from the Acreage and Tonnage Taxation Systems sections of this report.

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

DECISION HISTORY

At its meeting held on July 12, 13, 14 and 15, 2016 City Council, in adopting Executive Committee Report EX16.23: “2016 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 2016 taxation year. At this meeting, City Council also adopted the recommendations to request the Province of Ontario to enact regulations to prescribe a levy reflecting inflationary increases since 2005 and to adjust the rate annually to reflect an average annual inflationary increase.

The report and decision document of Council can be accessed at: [2016 Levy on Railway Roadways and Rights of Way and on Power Utility Transmission and Distribution Corridors \(EX16.23\)](#)

City Council also adopted the annual levy on railway rights-of-way and hydro corridors in each of 2017-2018, through the reports below:

2017: [2017 Levy on Railway Roadways and Rights of Way and on Power Utility Transmission and Distribution Corridors \(EX26.20\)](#)

2018: [2018 Levy on Railway Roadways and Rights-of-Way and on Power Utility Transmission and Distribution Corridors \(EX35.18\)](#)

The 2016 Ontario Economic Outlook and Fiscal Review announced that the Province had initiated a review of the property taxation of railway rights-of-way in response to municipal requests. As part of the review, the Province held consultations with municipalities and representatives of the railway industry. Based on these consultations, in the 2017 Ontario Budget, the Province announced that it was taking action to address issues related to indexation of rates, variation in rates and implications for shortline railways. For 2018, the Province made further rate adjustments as part of its commitment to modernizing the property taxation of railway rights-of-way. See: [Building Ontario Up for Everyone: Ontario Economic Outlook and Fiscal Review](#)

Acreage and Tonnage Taxation Systems

At its meeting held on December 5, 2017 City Council adopted Item EX29.43: "Municipal Property Taxation for Railway Rights-Of-Way."

The report and decision document of Council can be accessed at: [Municipal Property Taxation for Railway Rights-Of-Way \(EX29.43\)](#)

At its meeting held on April 24, 2018 City Council adopted Item EX33.13: "Acreage and Tonnage Taxation Systems for Railway Rights-of-Way," recommending the following:

1. City Council request the Treasurer to continue to work with the Ministry of Finance and other municipalities to explore the implementation of a taxation formula that incorporates both acreage and tonnage based rates resulting in a taxation rate that is greater than the current annual taxes.
2. City Council request the Treasurer to enter into discussions with the Railway Association of Canada and Railway Companies to explore the implementation of an acreage and tonnage based taxation formula and to report back to the Executive Committee in the first quarter of 2019.

The report and decision document of Council can be accessed at: [Acreage and Tonnage Taxation Systems for Railway Rights-of-Way \(EX33.13\)](#)

ISSUE BACKGROUND

Ontario Regulations 387/98 under the *Municipal Act, 2001* (continued by O.Reg. 121/07 under the *City of Toronto Act, 2006*) and O.Reg. 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. In 2005, a uniform rate of taxation was reached 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.

In the 2017 and 2018 Provincial Budget, the property tax rates on railway rights-of-way was increased by \$6 per acre for 2017 and \$7 per acre for 2018. Through the release of the 2019 Provincial Budget, the property tax rates for railway rights-of-way and hydro corridors will remain at 2018 levels for the 2019 tax year.

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 2019 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 2019.

As provided in Table 1 above, the revenue for 2019 from all the railway and power utility rights-of-way is approximately \$7.1 million, of which the municipal share is \$6.6 million and the education share is \$0.5 million. Of the \$6.6 million municipal share, \$608,809 will be received in the form of payment-in-lieu of taxes from Metrolinx.

Legislative Amendments

At various times since 2006, City Council has made recommendations to the Minister of Finance to amend regulations to require an annual inflationary adjustment in 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. Council's position and requested changes on the assessment and taxation of railway rights-of-way and hydro corridors has been identified to the Province on several occasions by staff.

By way of letter dated April 3, 2018 addressed to all Municipal Treasurers, the Ministry of Finance advised of measures the Province had undertaken to modernize the property taxation of railway rights-of-way for the 2018 taxation year. The Province announced in the 2018 Ontario Budget that it was taking action to address further rate adjustments for railway rights-of-way. Building on progress made in 2017, mainline railway right-of-way property tax rates for 2018 continued to be updated to reflect average annual commercial property tax changes. In Toronto for 2018, this represented an increase of \$7 per acre. The acreage rates for railway roadways and railway rights-of-way changed from \$617.33 in 2017 to \$624.33 in 2018.

By way of letter dated May 24, 2019 addressed to the Municipal Treasurer, the Ministry of Finance advised that the 2019 property tax rates for railway rights-of-way will remain at 2018 levels (Attachment 1). No announcements were made regarding the indexation of tax rates for Hydro corridors.

Acreage and Tonnage Taxation Systems

Beginning in 1998, railway rights-of-way properties have been taxed based on provincially prescribed "acreage rates," where the total property taxes payable are determined by multiplying the acreage of the right-of-way property by the applicable per-acre rate. Acreage rates were prescribed for each of eight geographic regions across the Province, and changes in total railway levies were phased in over the period 1998 to 2005. In 2005, "mature rates" of taxation were reached - these rates applied to all years beyond 2005.

The Ontario Government, through the 2016 Ontario Economic Outlook and Fiscal Review Chapter VII: "A Fair and Sustainable Tax System", held consultations to gather stakeholder input regarding the property taxation of railway rights-of-way. As a result, acreage rates were increased in 2017 for the first time since 2005.

Implications of Tonnage Based Levy for Toronto

Currently railway companies do not report on tonnage and kilometres of railway rights-of-way for any municipality in Ontario. A taxation system that is entirely dependent on industry-supplied data that cannot be independently verified may prove problematic to administer, and carries the risk that data can be manipulated or under-reported, or that companies may change their business model in an effort to avoid taxes. Information received from municipalities in Saskatchewan, Alberta and Manitoba, confirm that relying on the railway companies to provide this data can be quite challenging.

In early 2018 the Ontario Ministry of Finance proposed a high-tonnage rate of \$300.00 per acre, which is substantially lower than the 2018 acreage rate for the City of Toronto of \$624.33 per acre. Municipalities were able to request the high-tonnage rate for railway rights-of-way properties if they believed that the tonnage being moved met the high-tonnage threshold of 70,000,000 gross ton-miles per route mile. It would then be up to the railway companies to provide the tonnage data to either prove or disprove the claim.

The Ontario Government, in their communication dated May 24, 2019, has indicated that no high-tonnage rates are being introduced for railway taxation in 2019.

Ongoing Consultations with Municipal and Industry Stakeholders

City of Toronto staff have met with representatives of Canadian National (CN), Canadian Pacific (CP) and the Railway Association of Canada on February 16, 2018, May 10, 2018, and January 11, 2019. A written response from the Railway Association of Canada, dated April 4, 2019 is included as Attachment 2 to this report.

Industry representatives continue to reiterate that tonnage-based systems could be expected to be administratively complex, labour-intensive and costly for the railway industry. Furthermore, they stressed that as CN and CP are competitors, and that certain information related to tonnage is sensitive and confidential, providing the necessary information required for taxation purposes could be quite problematic from a business stance.

Any change to railway taxation system requires regulatory changes by the Province of Ontario. Currently, the acreage rates for the City of Toronto are the highest in the province. There is no evidence to suggest that changing to a tonnage based levy would provide benefits to Toronto in the form of increased overall levies, and it is unclear how a tonnage-based system would affect the levies on passenger railways (e.g., Metrolinx) that own/operate rights-of-way within Toronto and the GTA.

CONTACT

Casey Brendon, Director, Revenue Services
Phone: (416) 392-8065, Fax: (416) 696-3778, E-mail: Casey.Brendon@toronto.ca

SIGNATURE

Andrew Flynn
Controller

ATTACHMENTS

Attachment 1 - Letter from the Ministry of Finance dated May 24, 2019 regarding property taxation of railway rights-of-way for the 2019 taxation year.

Attachment 2 - Letter from the Railway Association of Canada dated April 4, 2019

ATTACHMENT 1: Letter from the Ministry of Finance dated May 24, 2019



Ministry of Finance
Provincial-Local Finance Division

10th Floor
777 Bay Street
Toronto ON M5G 2C8
Tel.: 416 327-0264
Fax.: 416 325-7644

Ministère des Finances
Division des relations provinciaux-
Municipaux en matière de finances

10^e étage
777, rue Bay
Toronto (Ontario) M5G 2C8
Tél. : 416 327-0264
Télec. : 416 325-7644

May 24, 2019

Dear Municipal Treasurer / Clerk-Treasurer

I am writing to provide you with an update on the property taxation of railway rights-of-way.

For the 2019 tax year, the property tax rates for railway rights-of-way will remain at the 2018 levels. This means that the 2019 rates will be the same as rates communicated to municipalities on April 3, 2018 for the 2018 year. In addition, no high-tonnage rates will be introduced.

If you have questions or would like further information about the railway right-of-way property taxation system, please contact Chris Broughton, Director, Property Tax Policy Branch, at chris.broughton@ontario.ca.

Sincerely,

Original signed by

Allan Doheny
Assistant Deputy Minister
Provincial-Local Finance Division

ATTACHMENT 2: Letter from the Railway Association of Canada dated April 4, 2019



99 Bank Street, Suite 901, Ottawa, ON Canada K1P 6B9
T 613.567.8591 F 613.567.6726 www.railcan.ca
99 rue Bank, bureau 901, Ottawa, ON Canada K1P 6B9
T 613.567.8591 TÉLÉC 613.567.6726 www.railcan.ca/fr

April 4, 2019

Mr. Casey Brendon
Director, Revenue Services
City of Toronto
North York Civic Centre
5100 Yonge Street
Toronto, ON
M2N 5V7
Casey.Brendon@toronto.ca

Subject: Acreage and Tonnage Taxation Systems for Railway Rights-of-Way

Dear Mr. Brendon:

Thank you for the opportunity to meet with you and your staff on January 11, 2019. We appreciate the opportunity to discuss the City of Toronto's review of property tax regimes for railway rights-of-way, including the existing acreage-based system and an alternative tonnage-based taxation system.

The Railway Association of Canada (RAC) and its members agree with the conclusion found in the City's EX33.13 report, which states that there is no evidence to suggest that a change to a tonnage-based system would provide benefits to Toronto. As previously communicated in our correspondence of February 23, 2018, and reinforced at our last meeting, a tonnage-based property tax regime is ill advised, as it would introduce negative consequences for municipal officials, railways, consumers, and commuters.

A form of double-taxation

A property tax regime based on traffic volumes, instead of the current acreage-based regime, would fundamentally alter how tax is assigned to the railway right-of-way. Rather than taxing property, a tonnage-based formula would effectively tax income because it would be based on traffic.

Railways in Ontario already pay substantial property and income taxes to the Governments of Ontario and Canada¹. Thus, a tonnage-based formula for railway rights-of-way property would constitute a form of double-taxation.

¹ Railways paid a record \$158.2 million in taxes in 2017.
Source: <https://www.railcan.ca/wp-content/uploads/2019/07/Provincial-Profiles-2017-ENG.pdf>



Introducing an unnecessary administrative and compliance cost burden to railways and municipalities

A tonnage-based system would require railways to measure and report freight and passenger volumes that transit through the City's geographical boundaries each year. Railways currently track traffic volumes in accordance with pre-defined subdivisions (as required by Transport Canada), which in many cases overlap with municipal property boundaries.

Railways would be required to develop new information tracking systems in order to satisfy the data requirements of a tonnage-based regime. These systems would be complex to develop and administer, labour-intensive, and costly. Additional administrative and compliance costs will undermine the competitiveness of railways and their ability to provide a low-rate service to shippers, consumers and commuters.

Furthermore, municipal officials would have to rely exclusively on railway companies to obtain traffic volume data that they will not be able to verify independently.

Unpredictability in property tax charges to railways and tax revenues for the City

The existing acreage-based system provides a high degree of predictability for both railways and municipalities. Currently, City officials establish and verify railway property tax based on the acreage of the right-of-way and a pre-established rate per acre. Similarly, railways have a clear and predictable approach for determining their municipal property tax.

A tonnage-based system would introduce significant variability and unpredictability, as traffic volumes are a function of market demand. Railway traffic volumes are determined by market conditions, and, in the case of passenger rail, public policy conditions that can result in volumes fluctuating year over year. Relying on volume would create an inconsistent and volatile calculation of property tax for the railway right-of-way, leading to an undesirable situation for railways and the City.

Addressing inter-operability of freight and passenger rail service in Toronto

Toronto benefits from a railway network that supports the movement of freight and inter-city and commuter rail passenger service. Several sections of track within the City's boundaries are used by multiple railway companies under commercial arrangements to ensure the fluid movement of freight and passengers into and out of Toronto.

A tonnage-based approach to calculating property tax for sections of track used by both freight and passenger railways would be complex and will inevitably create challenges for apportioning the tax rate to the owners and users of the track.



Railway Association of Canada Association des chemins de fer du Canada

99 Bank Street, Suite 901, Ottawa, ON Canada K1P 6B9
T 613.567.8591 F 613.567.6726 www.railcan.ca
99 rue Bank, bureau 901, Ottawa, ON Canada K1P 6B9
T 613.567.8591 TÉLÉC 613.567.6726 www.railcan.ca/fr

Given these significant challenges, we recommend that the City of Toronto maintain its support for the existing acreage-based tax policy framework for railway rights-of-way in Ontario.

Please do not hesitate to contact me directly if you have any questions or require additional information. I can be reached at 613 564 8103 or mgullo@railcan.ca. Again, thank you for the opportunity to comment on your review.

Regards,

Michael Gullo
Senior Director, Policy and Public Affairs
Railway Association of Canada