



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

**Canada Revenue Agency (CRA) – Employer Compliance
Audit**

Date:	November 22, 2011
To:	City Council
From:	Deputy City Manager and Chief Financial Officer City Solicitor City Manager
Wards:	All
Reason for Confidential Information:	This report contains communications about litigation or potential litigation that affects the City. This report is subject to solicitor/client privilege. This report contains communications about labour relations or employment-related matters.
Reference Number:	

SUMMARY

The purpose of this report is to provide City Council with an update on the actions taken with respect to the CRA’s Employer Compliance Audit, which was completed on April 16, 2010, and to provide recommendations on a potential settlement of this matter.

RECOMMENDATIONS

The Deputy City Manager and Chief Financial Officer, City Solicitor and the City Manager recommend that:

1. City Council adopt the recommendations and instructions to staff contained in Confidential Attachment 1.
2. City Council authorize the payment of funds required to carry out the instructions contained in Confidential Attachment 1 from the Employee Benefits Reserve Fund.

3. City Council authorize the public release of the confidential instructions approved by City Council and the balance of confidential attachment 1, as determined by the City Solicitor.
4. City Council authorize the release of the Financial Impact arising from this report at the conclusion of the objection and appeal process, as determined by the City Solicitor.

Financial Impact

The financial impact of this report is set out 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 held on May 11 and 12, 2010, City Council adopted the following recommendations with respect to report CC49.2 titled “Canada Revenue Agency (CRA) – Employer Compliance Audit”:

1. City Council authorize the City Manager or his designates to file a Notice of Objection with the Canada Revenue Agency in respect of the April 16, 2010 Employer Compliance Audit, in keeping with the legal advice provided in this confidential attachment.
2. City Council authorize the City Manager to enter into any agreements with the CRA, employees or employee groups required to carry out the instructions to staff contained in Confidential Attachment 1.
3. City Council authorize the City Manager to establish a program for affected employees on the following terms and conditions, at an estimated total cost of \$8.0 million, to be funded through the Benefits Reserve Fund:
 - a. The City to provide payment (either directly to the CRA or to the employee), for the tax cost and interest owing for the tax years 2006 to 2010 inclusive, from the impact of the CRA’s decision that parking access at six (6) controlled parking garages is a taxable benefit;
 - b. The City to pay the tax cost for any payments made to or on behalf of employees in accordance with Part 3a above, in order to mitigate the effect of such payments being recognized as a taxable benefit;
 - c. All impacted employees to file a Notice of Objection by June 30, 2010, as a precondition to the employee receiving the benefit from Part 3a above;
 - d. All impacted employees must provide the City with a copy of their Notices of reassessments and the signed Notice of Objection;

- e. All impacted employees must sign an agreement that they will cooperate in proceeding with the objections and they will reimburse the City if the objection is successful;
 - f. The City's Union must agree to a Memorandum of Agreement providing that the unionized employees will reimburse the City if the objection is successful in order for unionized employees to be indemnified;
 - g. The City to be reimbursed for any amount paid by the City to an affected employee, or on an affected employee's behalf, should an objection result in a reduction of the employee's tax obligation.
4. City Council authorize the City Manager and City Solicitor to proceed with further appeals, if necessary, to the Tax Court of Canada and Federal Court of Appeal.
 5. City Council authorize the City Manager to retain on a sole source basis such experts as, in his opinion, are necessary to proceed with the filing of the Notice of Objection and subsequent proceedings including external legal counsel to a upset limit of \$0.850 million, to be funded through the Benefits Reserve Fund.
 6. Council instruct the City Manager to advise affected employees and employee groups that the City will treat parking in controlled lots as a taxable benefit effective January 1, 2011.

Following are links to the Council decision and staff report:

<http://www.toronto.ca/legdocs/mmis/2010/cc/bgrd/backgroundfile-29804.pdf>

(May 10, 2010) report from the City Manager, the Deputy City Manager and Chief Financial Officer and the City Solicitor (CC49.2)

<http://www.toronto.ca/legdocs/mmis/2010/cc/bgrd/backgroundfile-30063.pdf>

(May 10, 2010) Public Attachment 2 - Federal Tax Procedure - Employer Compliance Audit - from Audit to Appeal

<http://www.toronto.ca/legdocs/mmis/2010/cc/bgrd/backgroundfile-30065.pdf>

(May 10, 2010) Part III of Confidential Attachment 1 to CC49.2 made public by City Council on May 14, 2010

<http://www.toronto.ca/legdocs/mmis/2010/cc/bgrd/backgroundfile-30064.pdf>

ISSUE BACKGROUND

The Canada Revenue Agency (CRA) conducted an employer compliance audit of the City of Toronto (the "City"), with a main focus on the taxation of controlled parking access for the period of 2006-2010. The CRA issued a final letter on April 16, 2010. The letter confirmed that the CRA would be assessing certain City employees for a taxable benefit for parking access at six controlled lots for the period of 2006-2010 and subsequent years.

Following the April 16, 2010 letter, the CRA issued Notices of Reassessment for all impacted employees for years 2006 and 2007 only, resulting in retroactive taxes and interest owing. Years 2008-2010 remain outstanding.

In response, the City took the following actions:

- Reported to Council on May 11 and 12, 2010 and received Council direction on how to proceed on this matter;
- Implemented the Employee Reimbursement Program for years 2006 and 2007;
- Co-ordinated the filing of Notices of Objection to the Appeals Division of the CRA on behalf of 1622 impacted employees who participated in the Employee Reimbursement Program and filed appeals on behalf of the City of Toronto for tax assessments for additional CPP and EI contributions owing;
- Implemented a new Parking Policy, which clarified that the City would assess a taxable benefit for those employees who elected to retain “commuter parking access” from January 1, 2011 and subsequent years;
- Wrote to the CRA on several occasions requesting clarification with respect to the issue of pro-ration and requested that the CRA approve the City's pro-rating an employee's taxable benefit where the employee used his/her personal vehicle for business purposes less than 3 days per week; and
- Engaged in consultation with the CRA through the fall of 2010 to prepare the list of employees to be assessed a parking taxable benefit for the years 2008, 2009 and 2010 and the criteria that will govern the re-assessment.

Status of the Appeal (2006 and 2007) and future years (2008, 2009, 2010):

In accordance with Council direction, on August 5, 2010, the City filed appeals against the City's tax assessments for Canada Pension Plan (CPP) and Employment Insurance (EI) contributions on the additional taxable benefits received by City employees and coordinated the filing of Notices of Objection for 1622 employees who participated in the Employee Reimbursement Program.

The City's appeals and the employees' objections have been filed with the Appeals Division and remain outstanding. The City continues to pursue these objections and provide information in support of its position.

On October 12, 2011 the City met with the CRA to discuss a potential settlement of the audit for years 2008, 2009 and 2010. Details regarding this meeting are included in Confidential Attachment 1.

CONTACTS

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SIGNATURE

Cam Weldon
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ATTACHMENTS

Confidential Attachment 1: Canada Revenue Agency (CRA) Employer Compliance Audit