Amendments to Chapter 767 of the Municipal Code, Taxation, Property Tax

Date: July 21, 2014
To: Government Management Committee
From: Treasurer
Wards: All
Reference Number: P:\2014\Internal Services\rev\gm14023rev (AFS19898)

SUMMARY

This report seeks Council authority to introduce a series of amendments to Chapter 767, Taxation, Property Tax, of the City of Toronto Municipal Code ("Chapter 767") that will streamline various property tax processes and will clarify and enhance provisions pertaining to some of the City's property tax rebate programs and other property tax matters. Amendments to Chapter 849, Water and Sewage Services and Utility Bill and Chapter 27, Council Procedures, of the City of Toronto Municipal Code are also proposed.

RECOMMENDATIONS

The Treasurer recommends that:

1. City Council delegate to the Government Management Committee the authority to hold meetings at which applicants can make representations to the committee and to make the final decision with respect to various municipal tax applications under sections 300, 322, 323(1)(a), (b), (c), (d), (f), (g), and (h), 325, 326 and 327 of the City of Toronto Act, 2006 (the "Act").

2. City Council delegate to the Treasurer, in his or her sole discretion, and in consultation with the City Solicitor to:

   a. initiate property assessment appeals on behalf of the City by filing the necessary documentation with the applicable tribunal or court, if the Treasurer is satisfied that one or more of the following conditions
approved by City Council at its meeting held on January 31, February 1 and 2, 2006 are met:

i. the Municipal Property Assessment Corporation (MPAC) has acknowledged the error, and has indicated that the problem cannot be resolved through a request for reconsideration, minutes of settlement between the Assessment Review Board, MPAC, the City, and the property owner, or through omitted/supplementary assessments;

ii. the assessed value as returned on the assessment roll is considered to be undervalued by more than 25 percent and a successful appeal decision is likely to result in an increase in the assessed value of $1,000,000 or greater;

iii. the decision to appeal the assessment value is likely to result in revenue to the City of $100,000 or more or have precedent-setting implications on similarly-valued properties or property types; and,

iv. the assessed value or classification is incorrect or inequitable in relation to other similar properties or property types.

b. participate in any assessment appeals initiated by property owners, if the Treasurer is satisfied that one or more of the following conditions approved by City Council at its meeting held on January 31, February 1 and 2, 2006 are met:

i. the assessed value is greater than $100 million;
ii. the potential loss in assessed value is greater than 50 percent of the total assessed value;
iii. the potential tax revenue implications are greater than $1.0 million;
iv. there are precedent-setting implications; and,
v. there are legislative or other implications.

c. initiate a request for reconsideration or review, a motion, an appeal of a decision, and any other adjudicative process that arises out of property assessment matters including an application for Judicial Review and the stating of a case; and

d. take all appropriate measures to deal with any property assessment related matters pursued pursuant to Recommendations 2(a),(b) or (c), including authority to discontinue or settle such matter where it is concluded that it is reasonable to do so, to execute minutes of settlement or any other settlement agreement where warranted.
3. Where the Treasurer, in his or her discretion, has determined that an applicant has made a false or deceptive statement in an application that erroneously qualified the applicant for tax relief under the tax increase cancellation/deferral program for low income seniors or disabled persons, the tax rebate program for ethno-cultural centres, the tax rebate program for registered charities, and the tax rebate program for veteran clubhouses, City Council authorize the Treasurer to:

a. disqualify the property from eligibility for a tax deferral, cancellation, or rebate for the year in respect of which the application was made;

b. require repayment of any tax deferral, cancellation, or rebate paid to the applicant and add the deferred, cancelled or rebated taxes back onto the tax roll from the date that the taxes were originally deferred, cancelled or rebated; and

c. require payment of interest at the rate of 15% per annum on the amount required to be repaid from the date that the taxes were originally deferred, cancelled or rebated.

4. City Council direct that eligibility for ethno-cultural and veteran clubhouse rebates be extended during reconstruction or renovations of property that was used for ethno-cultural or veteran's clubhouse purposes that will result in the property continuing to be used for such purposes, for a period of up to a five (5) years, provided all other eligibility criteria continue to be met;

5. City Council direct that the deadline to apply for a tax rebate for an ethno-cultural centre or a veteran's clubhouse be changed to on or before December 31 of the year following the taxation year for which a tax rebate is first sought, and that such applications be required one time only rather than annually.

6. City Council direct that the various property tax collection and enforcement provisions which are included in the annual tax levy by-law, such as method of payment, late payment charges, and minimum tax be included in Chapter 767.

7. City Council delegate authority to the Treasurer to extend the application deadline for tax rebates for registered charities in the following extenuating circumstances that justify the applicant being unable to make the deadline:

a. to the end of December following the year in respect of which the application is made, and on a one taxation year only basis per registered charity for all properties occupied by the registered charity; and

b. for one year from the date a property first becomes eligible, for property occupied by a registered charity that first becomes eligible when new taxes are first levied as a result of a supplementary or omitted assessment or an assessment or tax appeal.
8. City Council direct that all references to the Deputy City Manager and Chief Financial Officer in Chapter 767 be replaced with reference to the Treasurer.

9. City Council direct that Chapter 767 be amended to reflect all changes recommended by this report, substantially in the form of the draft revised Chapter 767 attached as Appendix A to the report (July 21, 2014) from the Treasurer.

10. City Council direct that Recommendation 3 of the report (July 21, 2014) from the Treasurer, be extended to similarly apply to the water rate rebate program for low-income seniors and disabled persons with the necessary modifications, including replacing the charging of interest with requiring payment of the higher water rate required to be paid if payment is not made by the due date, and that Chapter 849, Water and Sewage Services and Utility Bill, of the City of Toronto Municipal Code be amended to reflect this.

11. City Council direct that Chapter 27, Council Procedures, of the City of Toronto Municipal Code be amended to amend section 27-126C(2)(a) to reflect Recommendation 1 of the report (July 21, 2014) from the Treasurer.

12. City Council grant authority for the City Solicitor to make any further amendments to the City of Toronto Municipal Code as may be required, and to introduce all necessary bills to Council.

**Financial Impact**

There are no financial implications arising from the recommendations in this report.

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

**ISSUE/BACKGROUND**

Chapter 767 of the Municipal Code deals with property taxation matters, including tax rebate, deferral and cancellation programs, and contains various outdated provisions.

In reviewing the Chapter to update it, staff determined that some substantive amendments are necessary to better the administration of tax collection, and of tax rebate, deferral and cancellation programs. Accordingly, this report recommends the necessary substantive amendments to Chapter 767 resulting from staff's review of the Chapter, including the delegation of final decision-making authority to the Government Management Committee in regard to property tax appeals, apportionments and similar applications so as to avoid the need for Council to approve them.
COMMENTS

Delegation of Council's Powers to Make Final Decisions on Tax Applications to Government Management Committee

Currently, Chapter 767 delegates authority to the Government Management Committee to hold meetings and provide an opportunity for applicants to be heard, as required by the Act, in respect of certain tax appeal and apportionment applications. The Committee then makes recommendations to Council and Council makes the final decision in respect to the applications.

Pursuant to section 20 of the Act, Council may delegate not only the power to hold hearings but also final decision-making to a committee of Council.

Currently, from the time that Government Management Committee hears these matters to the time that Council makes its final determination, the process is extended by a minimum of two to three weeks. Council has never altered the recommendations made by the Government Management Committee given that the Government Management Committee has the best information and the most knowledge about the various applications. Applicants who may not agree with the Committee decision will continue to have the right to appeal the decision of the Committee to the Assessment Review Board. Accordingly, it is recommended that Council use its authority under the Act to delegate final decision making in respect of tax appeal and tax apportionment applications to Government Management Committee.

The delegation of final decision making authority recommended by this report does not include the sickness and poverty tax appeals currently delegated by Council to the Assessment Review Board.

However, the delegation recommended by this report does include applications under section 300, 326 and 327 of the Act which deal with errors in the calculation of taxes, and applications for increases in taxes. To date these sections have not been utilized by the City of Toronto, however, should they start to be used, Council would be better served if these complex tax calculation matters were heard and approved by Government Management Committee in a timely fashion.

For these reasons, staff recommend that Government Management Committee be delegated authority to make the final decision with respect to applications under sections 300, 322, 323(1)(a), (b), (c), (d), (f), (g), and (h), 325, 326 and 327 of the Act.

By eliminating the need to bring these items to Council, decisions will be made a minimum of two to three weeks sooner, resulting in faster response times and improved customer satisfaction.
Delegation of Authority to Commence and Participate in Assessment Appeals and Related Litigation

At its meeting of May 17 – 19, 2005 City Council delegated authority to the Treasurer (or a designate) to initiate assessment appeals with the Assessment Review Board (ARB) on behalf of the City by the legislated appeal deadlines, subject to the subsequent approval of Council. The report and decision documents are available at:

At its meeting of January 31, February 1 and 2, 2006, Council approved criteria to be used in determining when the City would initiate appeals before the ARB and when the City would actively participate in appeals filed by taxpayers. The report and decision documents are available at:
http://www.toronto.ca/legdocs/2006/agendas/council/cc060131/pof1rpt/cl003.pdf

Although the Treasurer currently has the authority to initiate the City's assessment appeals, Council must grant approval for the City to be actively involved and to participate in the appeals. Currently, the Treasurer brings forward a report each year that identifies the appeals launched by the City in a given year and those requiring the City's participation.

In an effort to streamline Council's agenda, and given that Council has previously approved clear guidelines /criteria for the City's initiation of and participation in assessment appeals, it is recommended that authority be delegated to the Treasurer, in his or her sole discretion, and in consultation with the City Solicitor to:

(1) Initiate assessment appeals on behalf of the City by filing the necessary documentation with the applicable tribunal or court, if the Treasurer is satisfied that one or more of the conditions set out below for the initiation of assessment appeals are met;

(2) Participate in any assessment appeals initiated by property owners, if the Treasurer is satisfied that one or more of the conditions set out below for the participation in assessment appeals are met;

(3) Initiate a request for reconsideration or review, a motion, an appeal of a decision, and any other adjudicative process that arises out of property and assessment matters including an application for Judicial Review and the stating of a case; and

(4) Take all appropriate measures to deal with any assessment related matters pursued, including authority to discontinue or settle such matter where it is concluded that it is reasonable to do so, to executed minutes of settlement or any other settlement agreement where warranted.
The conditions **for initiating assessment appeals** on behalf of the City as previously approved by Council are as follows:

a) MPAC has acknowledged the error, and has indicated that the problem cannot be resolved through a request of reconsideration, minutes of settlement between the Assessment Review Board, MPAC, the City, and the property owner, or through omitted SUPPLEMENTARY assessments;

b) the assessed value as returned on the assessment roll is considered to be undervalued by more than 25 percent and a successful appeal decision is likely to result in an increase in the assessed value of $1,000,000 or greater;

c) the decision to appeal the assessment value is likely to result in revenue to the City of $100,000 or more or have precedent-setting implications on similarly-valued properties or property types; and

d) the assessed value or classification is incorrect or inequitable in relation to other similar properties or property types.

The conditions **for participating in assessment appeals initiated by property owners** as previously approved are as follows:

a) the assessed value is greater than $100 million;

b) the potential loss in assessed value is greater than 50 percent of the total assessed value;

c) the potential tax revenue implications are greater than $1,000,000;

d) there are precedent-setting implications; and

e) there are legislative or other implications.

**Incorporation of Property Tax Collection Provisions**

This amendment involves incorporating collection provisions into Chapter 767 which are currently included in the annual property tax levy by-law. This will eliminate the need to repeat these provisions each year in the levy by-law. This matter is purely technical and is intended to streamline the reporting of the annual levy by-law. It is recommended that the Code be amended to include the provisions set out in Article III of the attached draft Code Chapter.
False Statements in Applications for Tax Relief

Currently, there are no provisions in Chapter 767 with respect to penalties for false statements made in respect to the Tax Increase Cancellation/Deferral for Low Income Seniors or Disabled Persons, Tax Rebate Program for Ethno-Cultural Centres, Tax Rebate Program for Registered Charities, or the Tax Rebate Program for Veteran’s Clubhouses and Legion Hall. Of particular concern are those cases where a false statement has led to an applicant erroneously qualifying for one of the City's tax relief program.

Accordingly, it is recommended that Chapter 767 be amended to delegate authority to the Treasurer to take the following actions when he or she has determined, in his or her discretion, that an applicant has made a false or deceptive statement in an application under the above-mentioned tax rebate, deferral and cancellation programs, where the false statement has led to an applicant erroneously qualifying for relief:

a) disqualify the property from eligibility for a tax deferral, cancellation, or rebate for the year in respect of which the application was made;

b) require repayment of any tax deferral, cancellation, or rebate paid to the applicant and add the deferred, cancelled or rebated taxes back onto the tax roll from the date that the taxes were originally deferred, cancelled or rebated; and

c) require payment of interest at the rate of 15% per annum on the amount required to be repaid from the date that the taxes were originally deferred, cancelled or rebated.

Since similar provisions to these currently exist in the Municipal Land Transfer Tax by-law (Chapter 760, Taxation, Municipal Land Transfer Tax of the Municipal Code), the proposed change would result in equity across programs. In addition, the change will add further accountability and ensure that only eligible applicants benefit from these types of programs.

This report also recommends that similar authority be delegated to the Treasurer in respect of the water rebate program for low-income seniors and disabled persons with the necessary modifications, and that Chapter 849, Water and Sewage Services and Utility Bill, of the City of Toronto Municipal Code be amended to reflect this. Such modifications would include the requirement to pay the higher water rate that is charged if payment is not made by the due date, rather than requiring the payment of interest. Similar to the authority delegated to the Treasurer in respect of property tax relief programs, the water rebate would be reversed effective from the date it was rebated and the erroneously rebated water rates would become payable in arrears from that date.
Extension of Ethno-Cultural Rebates and Veteran's Clubhouse Rebates for Properties During a Reconstruction Period

Currently, Chapter 767 is unclear as to whether an eligible ethno-cultural centre and/or an eligible veteran's clubhouse continues to qualify for a tax rebate while it is undergoing renovations or reconstruction. If the construction is in respect of a renovation or new construction on the site which is intended to be used for the same purposes as the original building, it would make sense that the property should still qualify for the rebate during the construction period, rather than being penalized by unforeseen tax liability. Accordingly, it is recommended that the Code be amended to extend the period of rebate for up to five (5) years during a reconstruction period if the organization previously benefitted from the program. This amendment would result in a more fair and equitable process with respect to these rebates for worthy organizations by allowing them sufficient time to complete their projects.

New Application Deadline and One Time Application Process for Ethno Cultural Centres and Veteran's Clubhouses

Currently, the Code requires Ethno-Cultural Centres to make an application for their tax rebate on or before December 31 of the year prior to the taxation year for which a tax rebate is sought. This deadline is problematic as a new Ethno-Cultural Centre cannot apply until it begins to be used as an Ethno Cultural Centre and therefore it would be more appropriate to alter the deadline to be on or before December 31 of the year following the taxation year for which a tax rebate is first sought.

In respect of the Veteran's Clubhouse Rebates Program, an annual application is currently required on or before December 31st of the year to which it applies. Given that circumstances for Veteran's Clubhouses do not significantly change from year to year, requiring an annual application is cumbersome for both City staff and the staff of the applying organization. Therefore rather than an annual application, it is recommended that Chapter 767 be amended to permit one-time applications for Veteran's Clubhouses as long as the applicant agrees to annually notify the City of any changes that affect their eligibility and agrees to provide documentation requested by the City for the purpose of demonstrating their continued eligibility under these programs. The deadline for such applications would also be on or before December 31 of the year following the taxation year for which a tax rebate is first sought. This ensures consistency of administration between Veteran's Clubhouse rebate applications and Ethno-Cultural Centre rebate applications.

Delegation of Authority to Treasurer to Extend Charitable Rebate Definitions for Extenuating Circumstances

Currently, Revenue Services staff accept and process late applications from registered charities based on conditions approved by Council at its meeting of February 23 – 25, 2009 (re: EX29.14 “Late Applications under the Property Tax Rebate Program for Registered Charities”) as follows:
1) the application is filed after the deadline set but before the last day of December of the year following the year in respect of which the application is made;

2) the charity must have received a rebate in a previous year; and

3) the Treasurer may only accept a late application under this section from an eligible charity for one (1) taxation year.

Subsequent to Council approving these conditions for late applications, the Act was amended to permit late applications under this program if, in the opinion of the City, extenuating circumstances justify the applicant being unable to make the application by the deadline.

It is recommended that the Code be amended to incorporate the conditions previously approved by Council as extenuating circumstances justifying the applicant being unable to make the application by the deadline with the exception that reference made to being eligible in the previous year be deleted. From time to time, the City receives late applications from charities that had no previous knowledge of the program. To avoid hardship, these applications should be considered.

Furthermore, an additional extenuating circumstance should be added to permit late applications when taxes for which a rebate is being sought are first levied as a result of an assessment or tax appeal or a supplementary/omitted assessment. From time to time, space occupied by a charity that was previously assessed as exempt or residential is reassessed as commercial from an assessment or tax appeal or a supplementary and/or omitted assessment. In these circumstances, the charity is liable to pay property tax or higher taxes then previously levied, and was not previously eligible for a rebate. As the charity could not have contemplated that it would be levied taxes in a year after the deadline has passed, it is unfair to exclude these applications from the rebate process. It is therefore recommended that the parameters be open to allow the Treasurer the discretion to accept late applications from eligible charities that are first levied eligible taxes by way of a supplementary/omitted assessment or an assessment appeal. The deadline for such applications would be 365 calendar days from the date of first eligibility. This exception to the deadline would prevent the exclusion of these worthy organizations from participating in the program.

**Changing Chief Financial Officer (CFO) to Treasurer, or designate**

Current reference in Chapter 767 to the CFO predates the City's creation of the administrative office of Treasurer. This proposed amendment seeks to change reference from CFO to Treasurer, as taxation is more appropriately a matter for the Treasurer. The Treasurer will include his or her designate.
Overall, the intention of the proposed changes noted in this report will clarify and improve transparency for taxpayers and will facilitate operational efficiencies for the City thus enabling improved customer service.

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**SIGNATURE**

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Giuliana Carbone
Treasurer

**ATTACHMENTS**