



**STAFF REPORT
ACTION REQUIRED**

Options to Address Outstanding Property Tax Issue and Continuing Eligibility for Ethno-Cultural Property Tax Rebate for the Japanese Canadian Cultural Centre

Date:	August 22, 2016
To:	Government Management Committee
From:	Treasurer
Wards:	26 - Don Valley West
Reference Number:	P:\2016\Internal Services\rev\gm16016rev (AFS23461)

SUMMARY

This report provides information with respect to an outstanding taxation matter involving the Japanese Canadian Cultural Centre (JCCC), located at 6-8 Garamond Drive, Toronto, and the organization's continuing eligibility under the City of Toronto's Ethno-Cultural Rebate Program.

The Japanese Canadian Cultural Centre has qualified to receive a 100% rebate of property taxes under the City's Ethno-Cultural Rebate program from 1999 to 2011. In 2013, the Municipal Property Assessment Corporation (MPAC) determined that portions of the JCCC's premises were occupied by commercial tenants since 2012, and that the tenant-occupied portions of the property were assessable within the commercial tax class and subject to commercial tax rates. The tenant-occupied portions of the property were therefore deemed not eligible to receive a property tax rebate under the ethno-cultural rebate program.

The JCCC disagreed with MPAC as to the nature of some of the commercial tenancies, the tax classification, and the amount of the property deemed commercial. The JCCC filed a Request for Reconsideration with MPAC for the 2013 taxation year. As a result, the property tax account for the JCCC has unpaid tax amounts from 2014 and subsequent taxation years. A condition of eligibility for the ethno-cultural rebate requires that there be no outstanding taxes from any prior year. Therefore, the JCCC's continued eligibility to receive rebates on the portions of the property they occupy is now in question. The JCCC has written to the local Ward Councillor requesting financial relief for unpaid tax

amounts. This report provides a summary of the JCCC's request, and the issues and options available to Council should Council wish to address the JCCC's request.

RECOMMENDATIONS

The Treasurer recommends that:

1. Government Management Committee receive this report for information.

Financial Impact

There are no immediate financial implications arising from the adoption of the recommendation contained in this report.

As of August 4, 2016, the amount outstanding on the JCCC tax account is \$305,408. Table 1 provides a summary of the total taxes, interest and fees billed, rebate amounts applied to the account, payments received to date, and the current outstanding amount for the 2014 to 2016 taxation years.

Table 1
Summary of Property Taxes, Rebate Amounts and Outstanding Amounts 2012 - 2016
Japanese Canadian Cultural Centre - 6-8 Garamond Drive, Toronto

Year	Taxes Billed	Interest & Fees	Total Taxes Interest & Fees	Eligible Rebate Amount	Amounts Paid	Outstanding Amount
2012 ¹	\$167,763	\$0	\$167,763	\$143,464	\$24,299	\$0
2013 ²	\$125,487	\$8,087	\$133,574	\$46,431	\$87,143	\$0
2014 ²	\$120,010	\$14,999	\$135,009	\$45,015	\$33,921	\$56,073
2015	\$115,188	\$20,124	\$135,312			\$135,312
2016	\$111,253	\$2,770	\$114,023			\$114,023
Total	\$639,701	\$45,980	\$685,681	\$234,910	\$145,363	\$305,408

Notes:

1. A rebate totalling \$143,464 for the 2012 taxation year was applied to the account based on data supplied by the JCCC identifying the total square footage of the portions of the property occupied by the JCCC.
2. Rebates of \$46,431 and \$45,015 were applied to the account for 2013 and 2014 respectively based on assessed values returned by MPAC for the eligible space occupied by the JCCC for these years. The rebate amounts were processed in order to reduce the amount of taxes payable, on the understanding that the remaining taxes (for the taxable tenant portions) would be paid by the JCCC to maintain their eligibility for future year rebates.

Should Council choose to provide assistance to the Japanese Canadian Cultural Centre by providing a one-time grant to the JCCC in the amount of approximately \$131,850, such a grant would offset the current tax arrears attributable to the tenant-occupied portions of the property once tax adjustments arising from a settlement of the 2013 Request for

Reconsideration have been applied to the account (reflecting MPAC's final determination of the portions of the property occupied by the JCCC and the taxable tenants), and once all rebate amounts have been applied for tax years 2012 – 2016, as shown in Table 2 below.

The amount of \$131,850 would include relief of approximately \$111,442 for taxes, interest and fees for 2012 and 2013 (\$24,299 + \$87,143), or the amount of taxes already paid by the JCCC that were applied to the 2012 and 2013 taxes. The remainder of \$20,408 would be for an amount equivalent to the taxes and interest and fees that are attributable to the disputed portions of the property occupied by the JCCC's "community partners" for the 2014 and 2015 taxation years (\$10,220 + \$10,188).

Should a grant to the JCCC in the amount of \$131,850 be approved by Council, the JCCC would be required to pay the total remaining taxes payable of approximately \$86,794. If approved, a grant in the amount of \$131,850 would be funded from the City's 2016 Tax Deficiency Account, with no anticipated impact on future year budgets.

Table 2 below illustrates the amounts that would remain payable by the JCCC after all ethno-cultural rebates are processed to the account, including the application of a possible grant.

Table 2
Amounts Remaining Payable if Grant Approved
Japanese Canadian Cultural Centre - 6-8 Garamond Drive, Toronto

	Taxes Billed	Interest/ Fees	Total Taxes, Interest & Fees	Eligible Rebate Amounts	Payments made by JCCC	Outstanding Amounts	Grant Amounts Applied	Balance Owing
2012	\$167,763	-	\$167,763	\$143,464	\$24,299	-	\$24,299	-\$24,299
2013	\$125,487	\$8,087	\$133,574	\$46,431	\$87,143	-	\$87,143	-\$87,143
2014	\$120,010	\$14,999	\$135,009	\$45,015	\$33,921	\$56,073	\$10,220	\$45,853
2015	\$115,188	\$20,124	\$135,312	\$43,931		\$91,381	\$10,188	\$81,193
2016	\$111,253	\$2,770	\$114,023	\$42,833		\$71,190	-	\$71,190
	\$639,701	\$45,980	\$685,681	\$321,674	\$145,363	\$218,644	\$131,850	\$86,794

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

DECISION HISTORY

At its meeting of July 12, 2016, City Council, in its consideration of item MM20.66: *Request for Report on Options to Address Continuing Eligibility for Ethno-Cultural Property Tax Rebate for Japanese Canadian Cultural Centre* - by Councillor Jon Burnside, seconded by Councillor Josh Colle, recommended that:

City Council direct the Treasurer to report to the Government Management Committee on the facts regarding the Japanese Canadian Cultural Centre and options to address continuing eligibility for the City's Ethno-Cultural Centre.

Motion MM20.66 is available at:

<http://www.toronto.ca/legdocs/mmis/2016/mm/bgrd/backgroundfile-95038.pdf>

ISSUE BACKGROUND

Founded in 1963, the Japanese Canadian Cultural Centre (JCCC), located at 6-8 Garamond Drive, Toronto, is one of the largest and most vibrant Japanese cultural centres in the world. Their mandate is to promote Japanese culture and Japanese Canadian heritage. The JCCC offers a broad spectrum of Japanese traditional and contemporary cultural programs, martial arts, festivals, performances, film screenings, art exhibitions and other experiences for its thousands of members and hundreds of thousands of annual visitors. The JCCC is a registered charity and a not-for-profit organization.

The City of Toronto's Property Tax Rebate Program for Ethno-cultural Centres (Article VII of Chapter 767 of the City of Toronto Municipal Code) allows for a 100 percent rebate of property taxes for eligible space occupied by an ethno-cultural centre, provided that the centre is owned, occupied and used by an organization that is a registered charity. Organizations must submit an application annually in order to qualify for the rebate.

An ethno-cultural centre is defined as:

A centre for the promotion of culture within the multi-cultural context of Canadian Society and for the facilitation of communication and understanding of culture, education, arts and trade, the activities of which are accessible to the community as a whole or an appreciable portion thereof at minimal or no cost.

In a letter to Councillor Jon Burnside (Ward 26 - Don Valley West) dated April 29, 2016, the JCCC requests the support of City Council in resolving a property tax issue that has arisen due to a reassessment conducted by the Municipal Property Assessment Corporation (MPAC). The JCCC's letter requests that Council dismiss taxes that were levied on portions of the premises that were occupied by taxable tenants in 2012 and 2013, and dismiss taxes on certain other portions of the property that were occupied by what the JCCC refers to as its "community partners" for taxation years 2014 and 2015. The JCCC's letter is attached as Attachment 1 to this report.

COMMENTS

The Japanese Canadian Cultural Centre has qualified to receive a 100% rebate of property taxes on eligible space occupied by the JCCC from 1999 to 2011.

Premises occupied by and used for the purposes of the JCCC are eligible under the ethno-cultural rebate program. Ontario Regulation 282/98 defines lands *owned and occupied* by a "non-profit cultural organization" as being assessable within the residential tax class. The portions of the property classified within the residential tax class would therefore be eligible under the City's rebate program.

However, where portions of the premises are not occupied by the JCCC, by virtue of a commercial lease or other agreement with a "community partner", these portions would be assessable within the commercial tax class (the default tax classification), and subject to commercial tax rates, and therefore not eligible for a property tax rebate under the ethno-cultural rebate program.

In 2013, the Municipal Property Assessment Corporation determined that portions of the Japanese Canadian Cultural Centre's premises had become occupied by tenants and/or "community partners" in 2012 or earlier, and that these portions were therefore subject to be classified within the commercial tax class. The portions of the property classified as commercial do not qualify to receive a rebate of property taxes, as these portions are deemed to be not occupied by the JCCC. This affected the amount of the rebate payable to the Japanese Canadian Cultural Centre for 2012 and future taxation years.

Chronology of Events

As a routine matter, in January 2012, Revenue Services staff requested that MPAC review the property classification for the JCCC and revise it as necessary. At that point in time, records indicated that the JCCC used and occupied all of the space at 6-8 Garamond Drive, therefore, the classification should have been fully residential. MPAC's 2012 assessment roll incorrectly identified this property to be fully commercial.

In June 2012, the City received a response to the annual request of information from the JCCC confirming on-going eligibility for the 2012 tax year. This response indicated that the JCCC had recently entered into a tenancy agreement with five occupants in the building. A summary included in this response indicate that some of the tenants had been in place since May 2011. The City's forms for the ethno-cultural rebate program have always included wording to advise applicants that any space not occupied for the purposes of an ethno-cultural centre will be not eligible for rebate amounts.

Since the classification of the property was under review by MPAC, Revenue Services advised the JCCC that all future rebates would be on hold until clarification with respect to the classification of the property was settled, and that there would possibly be a recovery of the 2011 rebate based on this new information.

The JCCC has consistently maintained that it has two types of occupancy arrangements in place. Certain premises are subject to typical commercial lease agreements, where the tenants have exclusive use of the space and for which rent is paid to the JCCC. Other portions of the premises are occupied by what the JCCC refers to as "community partners". These spaces are made available by the JCCC under a different form of agreement (non-lease) with the community partners, and where the space is provided on a nominal basis. These community partners were sought out by the JCCC to deliver cultural services to the community consistent with their mandate and the operation of the ethno-cultural centre. The JCCC is of the opinion that agreements in place with their "community partners" are not strictly a commercial relationship, as is the case with their "true" commercial tenants, but rather an extension of the JCCC and therefore should be covered by the ethno-cultural rebate.

The list of community partners include organizations such as Japanese Social Services, the Nikkei Voice (national community newspaper), The National Association of Japanese Canadians, Ikebata Japanese language nursery, and Kaiseki Yu-zen Hashimoto, to showcase food.

In October 2013, MPAC advised that they had concluded their classification review. Their opinion was that 70% of the space was used and occupied by the JCCC and therefore deemed as residential, and 30% was used and occupied by tenants (including the spaces occupied by "community partners") and classified as commercial. The JCCC were not in agreement with this determination and were of the opinion that of this 30%, only 18.25% was occupied by true commercial tenants, and the remaining 11.75% by the JCCC's "community partners".

Since a Request for Reconsideration had been launched by the JCCC in hopes that MPAC would revise their opinion on the allocation of the assessment between residential and commercial for the 2013 taxation year, the City suspended the processing of rebates for 2012 and future years pending resolution of the discussions and finalization of the 2013 Minutes of Settlement. The signed Minutes of Settlement for the 2013 taxation year were only received by the City in August of 2016.

It wasn't until February of 2015 that the City received detailed tenant information pertaining to the JCCC's utilization of the premises for 2012 and future years. In an effort to bring closure to the outstanding dispute, the City processed ethno-cultural rebates for the 2012, 2013 and 2014 taxations years. The City issued a letter to the JCCC on April 8, 2015 explaining its position and urging the JCCC to resolve the 2013 Minutes of Settlement so that further tax relief could be granted. The letter was accompanied by a Property Tax Statement identifying the balances owing for each of the 2012 to 2015 tax years. As a result of the lack of clarity surrounding the tax treatment for this property, the JCCC only became fully aware of the amount of taxes attributable to the commercially-occupied portions of the property for 2012 to 2015 for the first time in April of 2015.

In January 2016, staff from the JCCC, MPAC and City met to review the status of the account. The JCCC again argued that the "community partners" were not true tenants and that they should not be required to pay commercial taxes since the payment of taxes was not included in their lease agreement. Also, they expressed concern that they were required to pay commercial taxes going back to 2012 and 2013 after many of the tenants that had occupied space during this period had since vacated the premises. The JCCC confirmed that they only began collecting property tax from what they deemed to be true commercial tenants in January 2014. MPAC's position remains that the space occupied by both the true commercial tenants (those under lease) and the space occupied by the JCCC's "community partners" are taxable within the commercial tax class, as the JCCC cannot be construed to be occupying these spaces. The City's Legal Services Division concurs with MPAC's interpretation as the occupation of the space.

Options and Implications of Supporting the Japanese Canadian Cultural Centre's Request for Council Support for tax assistance

Staff are of the opinion that three options exist for Council in addressing the JCCC's financial concerns and continuing eligibility to receive the ethno-cultural rebate. Staff are not recommending a particular option.

Option 1: Do nothing

Option 1 would require the JCCC to pay all outstanding amounts based on the tax classifications returned by MPAC for the 2012-2016 taxation years (pending any adjustment to the assessment as a result of the Minutes of Settlement and/or future pending assessment appeals) in order to maintain the JCCC's continued eligibility for the ethno-cultural rebate. No further rebates will be processed until all outstanding tax amounts have been paid.

This option would ensure both accountability and transparency of this program. All ethno-cultural rebate recipients are held accountable to the City of Toronto. Each year a letter is issued to organizations that have applied to receive the rebate requiring the organization to submit certain information that demonstrates their continued eligibility under the program.

Given that staff are currently guided by the City of Toronto's current policies and programs that were adopted by Council to provide an equitable and consistent level of support for all ethno-cultural organizations, regardless of the nature of the charity work carried out, staff cannot support individual efforts or requests to obtain specialized treatment. Further, the ethno-cultural rebate was not intended to be provided for portions of a property that are not used for the purposes of an ethno-cultural centre, and which are occupied by tenants that would otherwise be taxable (as this would confer a financial advantage to businesses occupying these spaces, in contravention of the *City of Toronto Act's* general prohibition on bonusing).

Should Council choose to take no action (i.e., Option 1), the JCCC will be required to clear all taxes owing in order to permit the processing of further rebates. In total, the JCCC would pay approximately \$218,644 (excluding future interest adjustment) after 2013 Minutes of Settlement arising from an Assessment Review Board appeal and all ethno-cultural rebate amounts are applied to the account as taxes owing are cleared.

Option 2: City may provide the full financial assistance requested

In the JCCC's April 29, 2016 letter to Councillor Jon Burnside (Attachment 1), the JCCC states that it entered into arrangements with their "community partners" not realizing that these would be interpreted as commercial arrangements and thus subject to tax. They advise that charging these partners retroactively to 2012 would threaten their continued viability. Additionally, for the agreed tenant occupied spaces, given that some of the original tenants from 2012 have vacated the premises, the JCCC maintains that the obligation of trying to collect older tax payments from these tenants and the contingent liability would result in undue hardship on the JCCC's breakeven operating business.

Finally, the JCCC identifies that they only became fully aware of the amount of taxes attributable to the commercially-occupied portions of the property for 2012 to 2015 for the first time in April of 2015. Having this retroactive obligation enforced against the JCCC now could jeopardize the JCCC's business relationship with these tenants, and in some cases, their financial viability.

Specifically, in terms of tax relief sought, the JCCC's letter makes the following request:

1. The JCCC requests that Council dismiss the taxes applied one time for 2012, 2013 for the 30% of space designated by MPAC as commercial as we are not in the position of being able to pay or collect for those retroactive amounts.
2. The JCCC requests that Council dismiss the tax arrears one time for 2014 and 2015 for the 11.75% of space that was utilized by JCCC's "community partners".

Staff have calculated and identified the financial impact to the City of accommodating the JCCC's request under the "Financial Impact" section of this report. The amounts identified in Table 2 include interest, penalty and fees associated with the unpaid tax amounts.

In summary, if Council so chooses, it may elect to provide a one-time grant to the JCCC of approximately \$131,850, which, when applied to the account, would require that the JCCC pay a further amount of \$86,794 for the outstanding taxes remaining payable for the commercially occupied portions of the property (excluding any future interest that may accumulate pending approval by Council). Such a grant in the amount of \$131,850 would be funded from the City's 2016 Tax Deficiency Account, with no anticipated impact on future year budgets.

Should Council elect to support the efforts of the JCCC by approving a one-time grant to the organization as set out above, the City needs to be assured that going forward, the JCCC will collect and pay taxes on behalf of all tenants occupying portions of the premises at 6-8 Garamond Drive, including the JCCC's "community partners", in order to remain eligible under the Ethno-Cultural Rebate Program.

As a further condition associated with such a one-time grant, staff recommend that the JCCC be required to withdraw 2015 and 2016 assessment appeals that remain pending before the Assessment Review Board.

Option 3: City may provide partial financial assistance

Council may also decide to make a one-time grant to the JCCC in an amount between the amounts set out in Options 1 and 2 above, thereby providing less financial relief to the JCCC than would be provided by Option 2.

Staff will continue to communicate with the JCCC to resolve the outstanding tax arrears in an effort to ensure the JCCC's continued eligibility under the Ethno-Cultural Rebate program.

CONTACT

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SIGNATURE

Mike St. Amant
Treasurer

ATTACHMENTS

Attachment 1: Letter from Japanese Canadian Cultural Centre (April 29, 2016) to
Councillor Jon Burnside, Ward 26 – Don Valley West