EX33.13

TORONTO

REPORT FOR ACTION

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

Date: March 5, 2018
To: Executive Committee
From: Treasurer
Wards: All

SUMMARY

This report provides information related to the property taxation of railway rights-of-way using the acreage and tonnage systems and the financial implications for the City of Toronto if Ontario were to switch to a taxation system based on tonnage.

RECOMMENDATIONS

The Treasurer recommends that:

1. The Executive Committee receive this report for information.

FINANCIAL IMPACT

There are no financial impacts arising from this report.

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

DECISION HISTORY

The Ontario Government, through the 2016 Ontario Economic Outlook and Fiscal Review Chapter VII: "A Fair and Sustainable Tax System", initiated a number of consultations in response to stakeholder input, including a review of the property taxation of railway rights-of-way. The 2017 Ontario Budget can be accessed at:

2017 Ontario Budget

At its meeting held on November 28, 2017 the Executive Committee adopted Item EX29.43: “Municipal Property Taxation for Railway Rights-Of-Way," recommending the following:

1. City Council request the Provincial Government to amend Regulation 387/98 Tax Matters - Taxation of Certain Railway, Power Utility Lands, such that a new system of municipal property taxation for railway rights-of-way is based on an assessed value, which is to include tonnage.

The Executive Committee requested the following:

1. The City Treasurer to report to the Executive Committee on January 24, 2018 on the potential revenue the City could raise if the Province were to implement a modified taxation system based on tonnage, along with comparison data from other municipalities in Provinces where this taxation policy is already in place.

The report and decision document of Council can be accessed at: EX29.43

COMMENTS

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 through annually prescribed "transition rates". In 2005, "mature rates" of taxation were reached - these rates applied to all years beyond 2005, and rates remained unchanged until 2017.

Since 2006, City Council has made recommendations to the Minister of Finance to amend regulations to require an annual inflationary adjustment in the "mature rates", such that acreage rates reflect the increase in assessed values that have occurred for all properties over time.

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, the acreage rates for railway rights-of-way were changed from $611.33 in 2016 to $617.33 in 2017, the first change in the mature rates since 2005.

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. Ontario Regulation 387/98 under the *Municipal Act, 2001* (continued by Ontario Regulation 121/07 under the *City of Toronto Act, 2006*) and

Ontario Regulation 392/98 under the *Education Act*, as amended, have prescribed the applicable rates for railway rights-of-way acreage levies.

If prescribed railway acreage rates were based on an average per-acre rate reflective of the actual current value assessment of the property, based on an average acreage rate that currently applies to vacant industrial land, it is estimated that per-acre railway rates would be on the order of $7,700 per acre. This represents more than a tenfold increase in the currently prescribed provincial acreage rate of $617.33 per acre. Any change to the current railway acreage rates would have to be enacted by provincial regulation, and would have province-wide implications, both on the railway industry and on municipal revenues.

Railway Taxation in Other Jurisdictions

Other provinces such as Saskatchewan, Alberta and Manitoba have levied property tax on railroad rights-of-way using methods where the total levy is based on a formula that uses total tonnage and a per-kilometre factor applied to the length of the right-of-way within the municipality to determine an assessed value. To calculate the taxes payable, the assessment values once determined are then multiplied by each municipality's applicable tax rates.

As a general requirement, railway companies must annually report the type and length of railway line in each municipality and total tonnage transported to the local assessor. The railway property is then assessed by the local assessor using prescribed rates.

Saskatchewan

The legislation in Saskatchewan (The Cities Act) sets out how railways are assessed and the Saskatchewan Assessment Management Agency (SAMA) establishes the rates for the railway rights-of-way. Railway rights-of-way in Saskatchewan are defined as a continuous strip of land not exceeding 31 metres in width. Any railway land over 31 meters wide is assessed similar to industrial and commercial land and is taxed at the railway rate.

The assessment rates as determined by SAMA are based on the value of the railway rights-of-way on a per tonne basis. There are five tonnage-based rate classifications ranging from less than 1 million tonnes to greater than or equal to 15 million tonnes, with rates ranging from $18,900 per mile to $609,500 per mile.

Alberta

The legislation in Alberta (Municipal Government Act) sets out how railways are assessed and the Alberta Government establishes assessment rates for railway rights-of-way currently in the "2016 Alberta Railway Assessment Minister's Guidelines". Alberta defines railways as the associated rights-of-way and structures.

The regulated assessment rates as determined by the provincial government have a base rate that is increased yearly by an assessment year modifier, then adjusted for tonnage by the annual traffic factor. According to an Edmonton assessor, the right-of-way subject to the regulated rate is the straight mainline track only, any track that flows off the mainline and all other railway property is assessed at market value.

The current base rate is $453,173 per kilometer and the 2016 assessment year modifier is 1.34. There are eight types of tonnage-based rates ranging from zero tonnes to more than 25 million tonnes with rates ranging from $6,073 per kilometre to $242,901 per kilometre. Alberta also has factors in a tonnage based rate for superstructures at $12,145 per kilometre.

Manitoba

The legislation in Manitoba (The Municipal Assessment Act) sets out how railways are assessed and Manitoba Regulation 166/2015 establishes the regulated rates for railway rights-of-way. Railway rights-of-way in Manitoba are defined as a continuous strip of land not exceeding 100 feet in width that are used as a roadway and includes the rails, grading, ballast, embankments, ties, etc., used in the operation of a railway and does not include land and improvements such as stations, warehouses, repair shops, etc. whether or not situated on the right-of-way.

The regulated rates are based on the gross tonnage carried on the tracks, the miles of track and the land value (average assessed value of all land in the municipality on the reference date). There are eight tonnage-based classifications ranging from 0 tonnes to 30 million tonnes or more with rates ranging from $0 per mile to $634,100 per mile. Railway land used for purposes other than rights-of-way is assessed at market value. Railway rights-of-way that have more than one track will have the full rate applied to one track and 50% of the rate applied to each additional track.

Implications of Tonnage Based Levy for Toronto

The acreage figures currently used to calculate property tax for railway rights-of-way are provided to municipalities by the Municipal Property Assessment Corporation (MPAC) each year. Currently railway companies do not report out on tonnage and kilometres of railway rights-of-way for the City of Toronto. Although contact was made with the Canadian National Railway, the Canadian Pacific Railway and Metrolinx, no data was provided. Likewise, information received from municipalities in Saskatchewan, Alberta and Manitoba, confirm that relying on the railway companies to provide this data can be quite problematic

In general, any taxation methodology 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.

Table 1 below provides a comparison of Toronto's current acreage-based levy vs. estimated tonnage-based levies using rates from Saskatchewan, Alberta and Manitoba. The figures in Table 1 are based on the assumption that total track length within the City of Toronto is approximately 210 kilometres which was extrapolated from the known acreage. There has been no suggested tonnage rate for Ontario, therefore the tonnage rates for Saskatchewan, Alberta and Manitoba were used for comparison. The tonnage levy amounts do not factor in land used for purposes other than rights-of-way. As the actual railway tonnage for the City of Toronto is not known, kilometres of railway rights-of-way were equally divided over each tonnage classification for each province. As Toronto does not have a tax rate for railways, the full commercial rate was used to calculate the estimates for the tonnage-based scenarios in Table 1 where a tax rate was required for the calculation.

Table 1: Acreage versus Tonnage Levy

Description	**Total Levy (acreage based on 2017 actual, tonnage based on 2016 rates)**
City of Toronto Property Tax Based on Acreage Rate	$1,511,621
City of Toronto Property Tax Based on Saskatchewan Tonnage Rate	$1,016,793
City of Toronto Property Tax base on Alberta Tonnage Rate	$364,408
City of Toronto Property Tax Based on Manitoba Tonnage Rate	$966,297

Table 1 indicates that, for Toronto, the current acreage-based levy is substantially higher than the estimated levy that would be generated using 2016 tonnage-based rates in place in Saskatchewan, Alberta or Manitoba. While this conclusion was based on broad assumptions, given the lack of available tonnage data for Toronto, it suggests that adopting a tonnage-based levy system would not result in an increase in the total annual railway levy, unless tonnage-based rates in Ontario were substantially higher than those currently in place in the western provinces. It can also be expected that any change to the current taxation methodology for railways that resulted in an increase in the total province-wide levy would be strongly opposed by the railway companies.

Ongoing Consultations with Municipal and Industry Stakeholders

The Ontario Ministry of Finance is continuing to consult with municipalities and industry regarding options for railway taxation. City staff participated in a teleconference with the Ministry and other municipalities on February 15, 2018 to discuss various options under consideration, including an annual inflationary adjustment to per-acre rates, and options for tonnage-based approaches. Some municipalities voiced support for moving to a tonnage-based system, in the belief that this would increase their total levies, given the substantial tonnage that passes through their municipality. Again, unless the total province-wide levy on the railway industry was increased, any tonnage-based system that saw increases to certain municipalities would necessarily result in other municipalities experiencing decreases in their levy, i.e., a shifting of burdens amongst and between municipalities, with the same net total levy. Other municipalities voiced support for annual inflationary increases in prescribed rates, while maintaining the current acreage-based levy.

City of Toronto staff also met with representatives of Canadian National, Canadian Pacific and the Railway Association of Canada on February 16, 2018. Industry representatives provided a written response, dated February 23, 2018 (included as Attachment 1 to this report) that identified that tonnage-based systems could be expected to be administratively complex, labour-intensive and costly for the railway industry.

The Association's letter also cautioned that, if the total provincial railway levy were to remain unchanged, a change to a tonnage-based system would see some municipalities receiving more revenue, while others would receive less. And in the event that the overall provincial levy on railways was increased as a result of a new valuation model, that such increases could be expected to be passed on to users of the rail system: shippers, consumers, and commuters, in the case of passenger rail.

The Association also suggests that a volume or tonnage based formula applied to railways would essentially constitute a tax on gross revenues, or profitability - and that this would be inconsistent with property taxation that is intended to be based on property value, and a form of double taxation given the corporate income taxes already paid by the railway industry to the governments of Ontario and Canada.

In summary, any change to the methodology for railway taxation, including a move to a tonnage-based system, would require regulatory and possibly legislative changes, and further consultation with municipalities and industry. 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. As such, this report is provided for information only until further clarity can be provided on proposed changes to railway taxation.

CONTACT

Casey Brendon, Director Revenue Services
Phone: (416) 392-8065, Fax: (416) 696-4230, E-mail: Casey.Brendon@toronto.ca

SIGNATURE

Mike St. Amant
Treasurer

ATTACHMENTS

Attachment 1: Letter from the Railway Association of Canada dated February 23, 2018