York Region

Clause 10 in Report No. 16 of Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on November 16, 2017.

10
Property Tax Treatment for Regional Transit Facilities

Committee of the Whole recommends adoption of the following recommendations contained in the report dated October 25, 2017 from the Commissioner of Finance:

1. The Regional Chair request that the Minister of Municipal Affairs make the necessary regulatory change(s) to exempt municipal transit facilities from property taxes.

2. The Regional Clerk circulate this report to the local municipalities and to the Municipal Property Assessment Corporation (MPAC).

Report dated October 25, 2017 from the Commissioner of Finance now follows:

1. Recommendations

It is recommended that:

1. The Regional Chair request that the Minister of Municipal Affairs make the necessary regulatory change(s) to exempt municipal transit facilities from property taxes.

2. The Regional Clerk circulate this report to the local municipalities and to the Municipal Property Assessment Corporation (MPAC).

2. Purpose

This report details the current property tax status of transit facilities owned or leased by the Region. The report also discusses the need for a provincial regulatory change to allow property tax exemptions for transit facilities through the use of a Municipal Capital Facilities Agreement.

3. Background and Previous Council Direction

Provincial legislation requires that the Region pay property taxes on its transit facilities

Section 27(3) of the *Assessment Act, 1990,* requires municipalities to pay property taxes on any owned or leased properties being used as a public utility.

In defining a public utility, the *Assessment Act*, *1990* refers to the *Municipal Affairs Act, 1990*, which defines a ‘public utility’ as including, among other things, “a bus or transportation system”. The *Assessment Act*, *1990* further specifies that the applicable property tax class for a public utility is the commercial class. The Municipal Property Assessment Corporation considers a transit garage/facility part of “a bus or transportation system” and assesses it as a public utility for property tax purposes.

The Region owns four transit facilities

The Region currently owns four transit maintenance facilities, which are located in the Towns of Newmarket and East Gwillimbury (one transit facility straddles both municipalities), the Town of Richmond Hill and the City of Vaughan, as shown in Table 1.

Table 1
Transit facilities owned by the Region

Transit Facility	Address	Status
North Division Garage – Site 1	18110 Yonge Street Newmarket and East Gwillimbury	Taxable starting with the 2015 tax year
North Division Garage – Site 2	18106 Yonge Street Newmarket	Not currently on assessment roll
Southwest Division Garage	8300 Keele Street Vaughan	Not currently assessed as taxable
Viva - Operations, Management and Storage Facility	55 Orlando Avenue Richmond Hill	Taxable starting with the 2015 tax year

The Region received property tax bills for the transit facility at 18110 Yonge Street

Property tax bills totalling $344,916 were recently received for the transit facility at 18110 Yonge Street for the 2015 to 2017 taxation years (Table 2).

Table 2
Property tax bill for 18110 Yonge Street

	2015 ($)	2016 ($)	2017 ($)	Total ($)
Region	25,282	27,035	30,054	**82,371**
Local and Education	86,675	86,860	89,190	**262,545**
Total	**111,957**	**113,715**	**119,244**	**344,916**

The Region has not previously received property tax bills for any of its transit facilities as they were either deemed to be exempt by the Municipal Property Assessment Corporation or had not yet been assessed. Prior to the Region acquiring the property at 18110 Yonge Street, it was owned and operated by Metrolinx as a GO transit repair facility and Metrolinx had paid property taxes.

The Region will likely receive property tax bills for other transit facilities within the next couple of years

Two additional transit maintenance facilities will likely receive property tax bills in the near future (Table 3).

The Municipal Property Assessment Corporation has recently assessed the transit facility at 55 Orlando Avenue in the Town of Richmond Hill as taxable effective July 21, 2015. Staff estimate that the total property taxes payable up to 2017 (2015 to 2017) will be approximately $1.87 million. In addition, it is estimated that the annual property tax for this property, starting in 2018 will be approximately $817,000.

So far, Municipal Property Assessment Corporation has not assessed the transit facility located at 8300 Keele Street in the City of Vaughan. It is anticipated that this property will be assessed in 2018, which would result in property tax payable for the taxation years 2016, 2017 and 2018 (current taxation year and two previous years). Staff estimate that the total property tax for this facility period 2016 and 2017 will be about $709,000 and $356,000 per year starting with the 2018 taxation year.

Table 3 summarizes the potential property tax bills for 55 Orlando Avenue and 8300 Keele Street from 2015 to 2018.

Table 3
Potential property tax bills for 8300 Keele Street and 55 Orlando Avenue

	2015 ($)	2016 ($)	2017 ($)	2018 (estimated) ($)	Total ($)
55 Orlando Avenue					
Region	87,359	196,854	204,563	214,210	702,986
Local and Education*	245,407	559,487	576,324	603,505	1,984,724
Total	**332,766**	**756,341**	**780,887**	**817,715**	**2,687,710**
8300 Keele Street**					
Region	Not applicable	92,169	92,291	93,321	277,781
Local and Education*	Not applicable	263,109	261,653	262,917	787,679
Total	Not applicable	**355,278**	**353,944**	**356,238**	**1,065,460**
Grand Total	**332,766.72**	**1,111,619**	**1,134,831**	**1,173,953**	**3,753,170**

*55 Orlando Avenue is assessed as commercial payment-in-lieus and therefore the education portion of the taxes is retained by the local municipality. Staff assumed similar treatment for 8300 Keele Street.
**Assessed value estimated using the insured value since MPAC has not yet assessed the location as taxable.

4. Analysis and Implications

Unlike many other Regional services, transit facilities are not eligible for property tax exemptions through the use of a Municipal Capital Facilities Agreement

For facilities that it owns or leases, a municipality can, subject to section 110(1) and (6) of the *Municipal Act, 2001* and section 2(1) of Ontario Regulation 603/06, enter into a Municipal Capital Facilities Agreement. This agreement and the corresponding bylaw would exempt the facility from paying property taxes. Exempted properties are excluded from the returned roll for the purpose of calculating both municipal and education tax rates.

York Region has actively pursued Municipal Capital Facilities Agreements for many of its services and associated properties, including Community and Health Services, Environmental Services, Corporate Services and York Region Police. In addition, Corporate Services staff continue to pursue a Municipal Capital Facilities Agreement for Markham Health Services at 4261 Highway 7 East in the City of Markham.

While section 2(1) of Ontario Regulation 603/06 clearly identifies “transit and transportation systems” as eligible for Municipal Capital Facilities Agreements, the Region does not have the power to exempt transit facilities from property taxes because they are deemed to be public utilities. Consequently, any exemptions under section 110(1) and (6) of the *Municipal Act, 2001* would not alter the requirement to pay property taxes under the *Assessment Act, 1990*.

Municipally owned or leased transit facilities could be exempt through a regulatory change

As indicated previously, while the *Municipal Act, 2001* and Ontario Regulation 603/06 have established a mechanism to exempt property taxes for transit facilities, the *Assessment Act, 1990* requires the payment of taxes for all public utilities, including transit facilities.

Staff informed provincial officials at the Ministry of Municipal Affairs of the challenges caused by the conflicting pieces of legislation. Provincial officials indicated that they would be willing to review relevant pieces of legislation, and if warranted, make the necessary amendment. Furthermore, ministry staff indicated that the preferred route for amendment would be through regulation. In addition regulatory amendments are quicker and could address the Region’s concerns in a timelier manner. Finally, provincial staff also indicated that a Council-endorsed letter requesting a review would initiate a review of the legislation.

There is strong policy rationale for exempting transit facilities from property taxation

Municipalities do not currently pay property taxes for any of their services other than those deemed to be utilities, such as waste diversion facilities or water and wastewater treatment plants. While transit is deemed to be a public utility under the *Municipal Affairs Act, 1990,* it is primarily funded through the general tax levy like many other municipal services that are exempt from property taxation.

Table 4 provides a summary of policy rationale for exempting transit from paying property taxes.

Table 4
Rationale for a property tax exemption for transit facilities

Rationale	Detail
Other municipal services already enjoy property tax exempt status by way of Municipal Capital Facilities Agreements	In January 2013, Council approved property tax exemptions on most of its current leased facilities, through Municipal Capital Facility Agreements including for: • Community and Health Services • Environmental Services • Corporate Services
Transit fare box revenue does not recover the full cost of services	Unlike other public utilities such as water and wastewater, transit-related costs are not fully recovered through fare revenue and are subsidized by property taxes.
A number of federal and provincial statutes do not treat transit as a public utility	These include: • *Statistics Act, 1985* (Canada) • *Public Utilities Act, 2006* (Ontario) • *Utilities Commission Act, 1996* (British Columbia) • *Water and Sewerage Act* (Prince Edward Island)
Tax treatment on transit facilities is inconsistent in Ontario	The City of Toronto and City of Ottawa are exempt from property tax payments under section 27 of the *Assessment Act, 1990*.

5. Financial Considerations

Without the ability to exempt transit facilities, the annual property tax will total approximately $1.3 million starting in 2018

It is estimated that the earliest the Region could have Municipal Capital Facilities Agreements in place for transit facilities would be in September 2018, which is after the 2018 property tax bills have been issued. A Municipal Capital Facilities Agreement cannot be retroactive.

Table 5 summarizes the estimated 2018 property taxes for the three assessed transit facilities.

Table 5

Estimated annual fiscal impact of property taxes for transit facilities starting in 2018

Transit Facility	Region ($)	Local and Education ($)	Total ($)
18110 Yonge Street	30,000	88,000	118,000
18106 Yonge Street*	N/A	N/A	N/A
8300 Keele Street	93,300	262,700	356,000
55 Orlando Avenue	214,200	603,800	818,000
Total	**337,500**	**954,500**	**1,292,000**

*Note: No analysis was done for 18106 Yonge Street as it has not been added to the tax roll or assessed.

While the province has indicated a willingness to review the relevant legislation, there is no guarantee any changes will be made. If transit facilities are not exempted from property taxes, the Region could address the associated fiscal impact through higher tax levy or decreased service levels.

There are retroactive property tax bills estimated to total approximately $2.6 million

As shown in Table 3, the facilities at 55 Orlando Avenue and 8300 Keele Street could have approximately $2.6 million in retroactive property tax payments (2015 to 2017 tax years).

In addition, approximately $345,000 of current and retroactive property tax payments (2015 to 2017 tax years) remain outstanding for the transit facility located at 18110 Yonge Street. This amount will be paid shortly.

6. Local Municipal Impact

Property tax exemption would have no fiscal impact on local municipalities

Tax exemption would result in the property taxes for these facilities being redistributed across the rest of the general assessment base.

7. Conclusion

The requirement to pay property taxes to its local municipalities for transit facilities creates a significant fiscal impact for the Region.

Currently, the *Municipal Act, 2001* and Ontario Regulation 603/06 have established a mechanism to exempt property taxes for transit facilities. Despite this, the *Assessment Act, 1990* requires the payment of taxes for all public utilities, including transit facilities.

It is recommended that the Region request the Minister of Municipal Affairs make the necessary regulatory change(s) to exempt municipal transit facilities from property taxes.

For more information on this report, please contact Edward Hankins, Director, Treasury Office, at 1-877-464-9675 ext. 71644.

The Senior Management Group has reviewed this report.

October 25, 2017

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