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PROPERTY TAX CAPPING OPTIONS FOR BUSINESS PROPERTIES

The Finance and Administration Committee recommends the adoption of the recommendations contained in the following report dated April 20, 2009, from the Commissioner of Finance.

1. RECOMMENDATIONS

It is recommended that:

1. The following additional tax protection options be adopted for properties in the Commercial, Industrial and Multi-Residential classes for the 2009 and future taxation years:

   a) Properties that were at their full current value level taxes in the prior taxation year remain at their full current value level taxes in the current taxation year;
   b) Properties, that were changing from being capped (protected) to clawed back from the prior taxation year, are instead excluded from the capping calculation and would be set equal to its uncapped full current value taxes; and
   c) Properties, that were changing from being clawed back to capped (protected) from the prior taxation year, are instead excluded from the capping calculation and would be set equal to its uncapped full current value taxes.

2. The Regional Treasurer be authorized to determine, for the 2009 taxation year, the percentage of property tax decreases that must be withheld to fund the capping protection on reassessment related tax increases for each of the Commercial, Industrial and Multi-Residential classes;

3. Should the amount of property tax decreases available from any of the protected property classes be insufficient to fund its capping requirement, the Region’s share of the resulting shortfall be funded from the Tax Stabilization Reserve Fund; and

4. The Regional Solicitor be authorized to prepare the necessary by-law to give effect to the above noted recommendations.

2. PURPOSE

This report recommends new tax protection options be adopted starting for the 2009 taxation year. It also recommends that the Regional Treasurer be authorized to determine the percentage of tax decreases to be withheld for the 2009 taxation year (“clawback rate”) in order that local municipalities may issue their tax bills for the business property classes on a timely basis. This report provides the most current analyses of the adopted capping options as well as the new options available to the Region for 2009.

3. BACKGROUND

Property tax protection has been required for business properties in Ontario since 1998. The *Municipal Act, 2001* was revised again in 2005 in order to provide that reassessment related property tax increases for the Commercial, Industrial and Multi-Residential property classes could be limited to either 5% of the previous year's taxes (the "default option"), or an amount determined by other property tax options introduced by the Province. At that time Council adopted all the available capping options for the 2005 and subsequent taxation years as a means to accelerate the progress of protected properties towards their full current value assessment (CVA) level of taxation.

Therefore, the following capping tools were for the 2005 and subsequent taxation years:

1. Assessment-related property tax increases are limited to an amount which is the greater of 10% of the previous year's annualized capped taxes, or 5% of the previous year's annualized full CVA taxes;
2. Properties, for which tax increases are capped (protected) but are within $250 of their full CVA taxes, are moved to the CVA tax level within the current taxation year;
3. Properties, for which tax decreases are clawed back but are within $250 of their full CVA taxes, are moved to the CVA tax level within the current taxation year; and
4. Eligible new construction/new-to-class properties within the meaning of subsection 331(20) of the Act, are taxed at 100% of their full CVA tax value for the 2008 and subsequent taxation years.

Council also has maintained a long-standing policy of funding the cost of capping protection by withholding of an equivalent amount of available tax decreases within each of the protected classes. As a result, the Region must annually determine a clawback percentage for each of the protected property classes prior to the issuance of final property tax bills by local municipalities.

The table below illustrates the approved clawback percentages over the last five years.

Table 1
Approved Clawback Percentages 2004 to 2008

Year	Commercial clawback Percentage	Industrial clawback Percentage	Multi-Residential clawback Percentage
2004	84.03	81.56	100.00
2005	73.59	81.13	99.05
2006	69.24	61.90	42.71
2007	74.20	72.27	30.40
2008	64.30	69.40	44.80

Phase-In of Reassessment Starting in 2009

The Province has established a date of January 1, 2008 for the revaluation of all properties in Ontario for the period 2009 through to 2012. The Province mandated the phase-in program to all property classes on assessment increases due to reassessment for the same period. The phase-in for assessment increases will be 25%, for each year starting 2009, of the total destination increase that will be reached by 2012. However, assessment decreases are fully realized in 2009.

New Options Permit Properties at CVA Level Taxes to be Maintained at CVA

The Region had advocated for ending property tax capping in the Report of the Commissioner of Finance received by Council on January 24, 2008 and through the correspondence from the Regional Chair to the Premier of Ontario. The Region has long held that capping entrenched taxpayer unfairness.

As a result of the Region's advocacy, as well as that from other municipalities and municipal associations, beginning in 2009, the Region will have the option to remove a property from the capping and clawback system once the property has reached its CVA level taxes or has crossed its CVA level taxes as elaborated below. These options may prove to assist in achieving the objectives set out in the recommendations:

Option 1: Reaching their CVA level taxes
A property that reached its CVA tax level in 2008 can be excluded from the capping program in 2009. The exclusion option may be put in place for any or all of the capped classes. Retaining properties at CVA level taxes once the CVA level is achieved will mitigate the effect of reassessments and act as a transition step in phasing out capping.

Option 2a: Crossing their CVA level tax position from capped to clawed back
A property that was in a capped position in 2008 and as a result of reassessment would have been in a clawed back position in 2009 can be excluded from the capping program in 2009. The exclusion option may be put in place for any or all of the capped classes. Retaining properties moving from a capped to clawed back position would no longer allow them to be eligible for future capping protection.

Option 2b: Crossing their CVA level tax position from clawed back to capped
A property that was in a clawed back position in 2008 and as a result of reassessment would have been in a capped position in 2009 can no longer be eligible for the protection program starting in 2009. The exclusion option may be put in place for any or all of the clawed back classes. Retaining properties from a clawed back to capped position will transition these properties to CVA level of taxes rather than expose them to fluctuation in assessed value due to reassessment. A further benefit of this option is that a portion of the future pool of increasers is eliminated thus mitigating a potential shortfall.

On April 20, the Ministry of Finance passed new property tax regulations that permit municipalities to adopt any or all of the tax protection options.

Province's Online Property Tax Analysis (OPTA) is used to determine clawback percentages

The Region uses the OPTA system provided by the Province in order to calculate the appropriate clawback percentages. Local municipalities also use OPTA to prepare the property tax billings for the protected classes. In order to allow the local municipalities to prepare the most accurate property tax billings, the Region annually requests that OPTA process prior year adjustments such as Assessment Review Board decisions, and supplementary and omitted assessments from the Municipal Property Assessment Corporation (MPAC) up to and including a predetermined cut-off date. Including this information in the OPTA system before the commencement of billing will allow for fewer post-billing adjustments required by the local municipalities.

In consultation with the local municipal treasurers, a cut off date of June 1, 2009 has been requested of OPTA which will result in the final information on clawback percentages being available to the Region in late June or early July.

4. ANALYSIS AND OPTIONS

2009 Clawback Rates Requires Delegation of Authority

The final data will not be available to the Region until after the cut off date of June 1, 2009. Therefore, in order for local municipalities to proceed with 2009 property tax billings for the protected classes prior to the Fall, it is recommended that Council delegate to the Regional Treasurer the authority to determine the final clawback rates on property tax decreases to be withheld to fund the cost of capping protection for each of the Commercial, Industrial and Multi-Residential classes based on the tax protection options recommended in this report.

Preliminary OPTA Generated 2009 Clawback Percentages

Using the capping options and the recommended tax protection options, Table 2 indicates the estimated clawback percentages for each of the protected property classes as at the time of this report. The current clawback percentages at this point in time serve primarily as a snapshot in time.

Table 2
2009 Preliminary Clawback Percentages

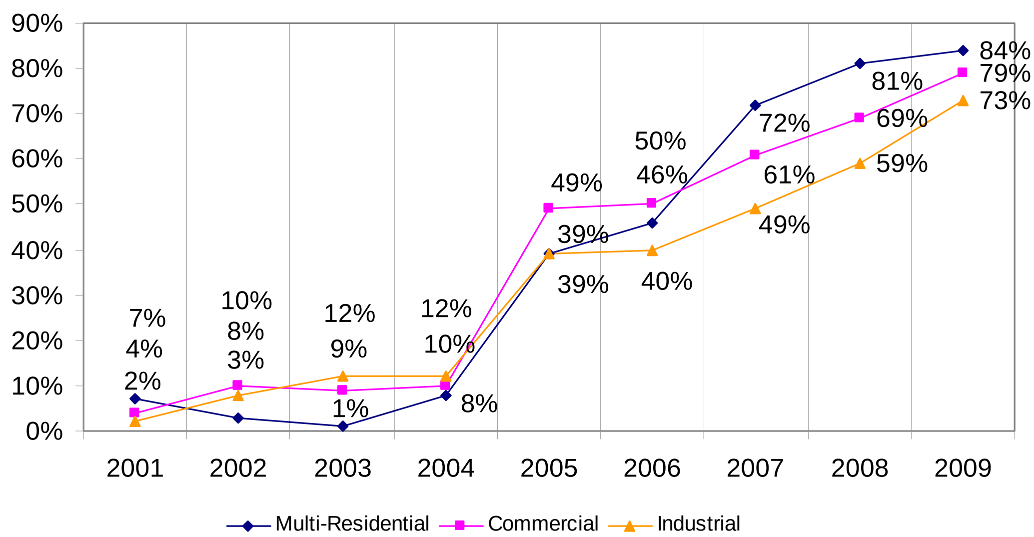
Commercial Clawback Percentage	Industrial Clawback Percentage	Multi-Residential Clawback Percentage
80.16%	69.44%	14.46%

Source: OPTA, April 28, 2009

Using all Capping Options and New CVA Options Currently Results in No Shortfall in 2009 and Maximizes the Properties Moving to CVA

The following chart is shown for only illustrative purposes and is captured at a point in time to reflect their status prior to the cut off date of June 1, 2009. The analyses demonstrates that for each of the protected classes as of April 28th, 2009, using the Council approved capping options as well as the recommended tax protection options results in the most number of properties reaching CVA while minimizing the cost of capping protection. Chart 1 captures the estimated percentage of properties at CVA in 2009 using all available options in comparison to historical results:

Chart 1
Percentage of Properties at CVA



Tables 3 to 5 below demonstrate, for each of the business classes, the results of the status quo option and of the new options mentioned in section 3.2 of this report. Each of the new options can be applied independently or in combination to provide the optimal result. The greatest benefit of the options projected at the time of this report is using all available options to achieve the three objectives of no shortfall, maximizing properties at CVA and minimizing capping protection.

Table 3
Summary of Tax Options for Commercial Properties

Commercial	Currently Approved Options (a)	**Option 1 -** Properties reaching their CVA option (b)	**Options 2a and 2b –** Properties reaching CVA with crossover option (c)	**Recommended using all available options (a) + (b) + (c)**
Number of properties at CVA	10,232	1,334	182	**11,748**
Capping Protection ($)	$7,406,196	$(1,280,256)	$(516,347)	**$5,609,593**
Number of decreasers used	2,346	(1,008)	(80)	**1,258**
Expected Clawback as a result of each option (%)*	80.44%	84.86%	76.73%	**80.16%**
Expected Shortfall as a result of each option ($)*	$0	$0	$0	**$0**

Source: OPTA, April 28, 2009
***** These rows do not add due to the nature of the calculations

Table 4
Summary of Tax Options for Industrial Properties

Industrial	Currently Approved Options (a)	**Option 1 -** Properties reaching their CVA option (b)	**Options 2a and 2b –** Properties reaching CVA with crossover option (c)	**Recommended using all available options (a) + (b) + (c)**
Number of properties at CVA	1,555	573	100	**2,228**
Capping Protection ($)	$2,701,828	$(546,006)	$(679,088)	**$1,476,734**
Number of decreasers used	923	(506)	(65)	**352**
Expected Clawback as a result of each option (%)*	90.74%	100%	68.47%	**69.44%**
Expected Shortfall as a result of each option ($)*	$0	$(13,278)	$0	**$0**

Source: OPTA, April 28, 2009
***** These rows do not add due to the nature of the calculations

Table 5
Summary of Tax Options for Multi-Residential Properties

Multi-Residential	Currently Approved Options (a)	**Option 1 -** Properties reaching their CVA option (b)	**Options 2a and 2b –** Properties reaching CVA with crossover option (c)	**Recommended using all available options (a) + (b) + (c)**
Number of properties at CVA	182	23	0	**205**
Capping Protection ($)	$10,654	$(8,020)	$0	**$2,634**
Number of decreasers used	21	(14)	0	**7**
Expected Clawback as a result of each option (%)*	16.80%	14.46%	16.80%	**14.46%**
Expected Shortfall as a result of each option ($)*	$(120)	$0	$(120)	**$0**

Source: OPTA, April 28, 2009
***** These rows do not add due to the nature of the calculations

The Region and Local Municipalities Would Fund a Capping Shortfall
A shortfall arises when the total capping protection afforded to a property class exceeds the decreases available for clawback in the property class. While we currently do not project a shortfall, should further adjustments to the assessment data result in insufficient tax decreases available for clawback to cover the cost of capping protection in the 2009 taxation year, this report also recommends authorizing the Regional Treasurer to fund the Region's portion of the resulting shortfall from the Tax Stabilization Reserve Fund.
The Region and local municipalities share the cost of the capping protection in the same ratio as property tax revenues are shared for the class. The proportionate share of a shortfall would be approximately shared at 65% by the Region and 35% by the local municipalities. The Province does not participate in the funding of the shortfall.

5. FINANCIAL IMPLICATIONS

There are no projected financial implications for the Region. By continuing with the application of capping tools and the use of newly recommended tax protection options, a shortfall is not expected at this time. Staff will report to Council in the Fall with respect to the amount of capping protection afforded to the business class properties and the associated clawback rates.

6. LOCAL MUNICIPAL IMPACT

There is no current projected requirement for the local municipalities to fund a capping shortfall. However, if a shortfall occurs, local municipalities and the Region are required to fund a shortfall in the same proportion that they receive taxes for the property class(es) in which a shortfall occurs.

The *Municipal Act* requires that the Region act as a “banker” to balance out shortfalls of decreases in one municipality with surpluses of decreases in another municipality. The net effect of bankering is that taxpayers eligible for refunds in one municipality may be required to give up a portion in order to fund tax protection in other municipalities. While there is no cost to the Region, when an overall shortfall exists in a property class, the Region and local municipalities share the shortfall proportionately. The actual results will be included in the Fall report.

7. CONCLUSION

As a result of the timing of this report, it is recommended that the Regional Treasurer be authorized to withhold a percentage of property tax decreases to fund the capping protection. The Province’s introduction of the recommended tax protection options provides results that demonstrate a further progression of business properties to CVA level taxes as of April 28th, 2009 thus meeting the objectives of optimizing the combination of moving properties to CVA level taxes while minimizing the total funding of capping protection. Although there are unresolved properties currently, a shortfall is not expected by the cut off date of June 1, 2009. Should further adjustments lead to a shortfall, it is recommended that the Regional Treasurer fund the Region’s portion from the Tax Stabilization Reserve Fund. Staff will report to Council in the Fall with a full analysis of the impact of the assessment phase in and the use of the recommended tax protections options.

For more information on this report, please contact Brian Parrott, Manager, Fiscal Policy at Ext. 1667.

The Senior Management Group has reviewed this report.