Finance Department
Joseph P. Pennachetti, Chief Financial Officer and Treasurer

City Hall, 7th Floor, East Tower
100 Queen Street West
Toronto, ON M5H 2N2

March 22, 2004

BRIEFING NOTE: Property Tax Exemptions – TTC Bus Terminals

ISSUE:

In 2004, the Municipal Property Assessment Corporation (MPAC) implemented an assessment change that impacted the taxation of certain TTC properties. In the past, certain bus terminals in subway stations were considered integral to the subway stations and therefore were exempt from taxation and payments-in-lieu of taxes (PILs). In 2004 however, MPAC has returned ten (10) of these subway bus terminals as subject to PILs.

BACKGROUND:

- At its meeting held on March 10, 2004, the Budget Advisory Committee had before it a Briefing Note (March 9, 2004), from the Chief Financial Officer and Treasurer regarding a property tax exemption for TTC properties, as well as the issue of certain bus terminals being subject to PILs commencing with the 2004 taxation year, (attached as appendix A).

- In its consideration of this matter, the Committee requested that the Chief Financial Officer and Treasurer provide an update on the property tax exemption for TTC properties.

KEY POINTS

- With respect to the general question of a property tax exemption for TTC properties, the March 9th, 2004 Briefing Note from the Chief Financial Officer and Treasurer Finance provides the most current information on this matter.

- With respect to the issue of certain bus terminal located above the sub-way stations being returned in 2004 as subject to payments-in-lieu of taxes, MPAC has recently provided the City with Minutes of Settlement changing the 2004 assessment for these 10 bus terminals back to "exempt" for the 2004 taxation year, thereby relieving the TTC of any financial burden stemming from this issue in 2004.

- MPAC has advised that their legal advisors are reviewing the assessment issue with respect to these bus terminals to determine an appropriate course of action for 2005 and beyond. Finance staff will continue to work with TTC representatives and MPAC in terms of monitoring this situation and reviewing MPAC's legal opinion. If necessary, staff will report to Committee on MPAC's decision.

Attachment: Appendix 1: Briefing Note: Property Tax Exemption – TTC Properties (March 9th, 2004).

TORONTO

Finance Department
Joseph P. Pennachetti, Chief Financial Officer and Treasurer

City Hall, 7th Floor, East Tower
100 Queen Street West
Toronto, ON M5H 2N2

APPENDIX 1

March 9, 2004

BRIEFING NOTE:
Property Tax Exemption – TTC Properties

ISSUE:

At its meeting held on February 27, 2004, the Budget Advisory Committee, requested the Chief Financial Officer and Treasurer to prepare a briefing note for its wrap-up meetings in March 2004 on the TTC request that the City of Toronto reconsider providing a property tax exemption on all Commission properties.

The Commission has been prompted to table this issue in view of a recent assessment change implemented by the Municipal Property Assessment Corporation (MPAC) for the 2004 taxation year. In the past, certain bus terminals located in subway stations (e.g. Finch, Warden and Kennedy Stations) were considered integral to the subway station and therefore were exempt from taxation and payments-in-lieu of taxes. However, MPAC has deemed that ten (10) of these subway bus terminals are subject to payment-in-lieu of taxes for the 2004 taxation year. TTC staff estimate that the impact of this change will cost an additional $600,000 (based on 2003 tax rates) in 2004.

BACKGROUND:

Existing Provincial Legislation

As a general rule, City owned properties are exempt from taxation under the *Assessment* Act, unless the property is occupied by a tenant who would otherwise be taxable if the tenant owned the property. However, public utilities, as defined under the *Municipal Affairs Act*, are liable for payment-in lieu of taxes (PILs) in an amount equal to the taxes for municipal and school purposes that would be payable, if the land and buildings were taxable and classified in the commercial property class. Public transportation systems are considered public utilities under the *Municipal Affairs Act*.

Notwithstanding the above, the *City of Toronto Act 1997 (No. 2)* exempts from property taxation and PILs all lands owned by the City or the TTC where such lands are used by the TTC for the purpose of a subway or other rapid transit system. A large portion of the TTC's property holdings are considered subway related and as such are exempt from taxation and PILs. The TTC's remaining properties used for purposes such as commuter parking lots and bus loops are subject to payments in-lieu of taxes.

Any City or TTC lands leased to commercial entities, whether on land used for subway purposes or not, are rateable under the *Assessment Act* and subject to property taxation. Such uses include commercial concessions and shops located in transit stations. Similarly, land that the TTC leases from Hydro One for commuter parking purposes at Kipling, Islington and Finch subway stations are rateable and such lands are subject to taxation as parking lots whether or not they are operated by the TTC.

PILs & Taxes Paid by the TTC

Based on a property listing provided by the TTC, Table 1 below summarizes the payments-in-lieu of taxes and taxes paid by the TTC in 2003.

Table 1
PILS and Taxes Levied on TTC Properties for 2003

Property Type	Municipal Levy	Education Levy (Retained by City)	Education Levy (Paid to Province)	Total (Taxes & PILs)
TTC Surface Properties (PILs)	$4,089,552	$4,068,743		$8,158,295
Toronto Coach Terminal (Taxable)	$249,540		$248,270	$497,810
Commuter lots leased by City from Hydro (Taxable)	$439,583		$161,543	$601,126
TOTAL	$4,778,675	$4,068,743	$409,813	$9,257,231

TTC Surface Properties - Payment in Lieu of Taxes (PILs)

Surface properties such as bus loops, bus stations, and commuter parking lots owned and operated by the TTC are subject to payments in lieu of taxes. Pursuant to legislation, payments in lieu-of-taxes made to the City are retained by the City in their entirety and not shared with the school boards.

Toronto Coach Terminal Inc. (TCTI)

Toronto Coach Terminal Inc. (TCTI), formerly Metro Toronto Coach Terminal Inc., is an incorporated entity under the *Ontario Business Corporations Act.* The Toronto Transit Commission is the sole shareholder, and it appoints TCTI's Board of Directors. The TCTI is a self-funding entity and its Board of Directors approves its operating and capital budgets on an annual basis.

The Toronto Coach Terminal is located at 604 Bay Street and 130 Elizabeth Street, and serves as a terminal for intercity transportation. Its primary tenants include Coach Canada and Greyhound Canada. As an incorporated business, TCTI pays commercial property taxes.

Since the TCTI owns the two properties and is a for-profit corporation used for commercial purposes, existing legislation provides that the properties be classified as fully taxable. Total tax revenue received from TCTI in 2003 was $497,810, of which the City portion was $249,540. In any event, property taxes on these properties are recovered through rents.

Commuter Parking Lots/Hydro Corridors

There are twenty-five major commuter parking lots operated by the TTC:

- fourteen of these lots are on lands owned by the City or the TTC and as such are liable for payment-in-lieu of taxes;
- a further five lots are located under road rights-of-way and are therefore exempt from taxes and PILs; and,
- the remaining six of these lots are located on hydro corridors that are owned by the Province of Ontario, formerly by Hydro One Networks Inc. Current legislation dictates that properties leased by the City for the purposes of the TTC for use as a commercial parking lot are subject to taxation.

The lands on which these last five parking lots are located are leased by the City, but operated by the TTC. Given that the City does not "own" these five properties, these particular commuter lots are subject to property taxation (rather than PILs) at the full commercial tax rate, as would be any other parking lot operator on hydro or other lands. However, lease arrangements stipulate that 75% of the annual property taxes shall be paid by the tenant (the City). The taxes on the leased commuter lots for 2003 was $601,126, of which the City portion was $439,583.

Space Leased to Commercial Tenants – Taxable at Full Commercial Rate

Any property or portion of a property that is used for commercial purposes is subject to property taxation at the full commercial tax rate, including those City or TTC owned properties that are leased to commercial tenants. Landowners who offer leased space for commercial purposes, whether they are the City, the TTC or a private entity, are liable for the property taxes, which they ultimately recover from tenants through the rents. Thus, property taxes levied on the TTC for the space that is leased to commercial entities is offset and accounted for by recoveries (rents) from tenants. Accordingly, this should not be a financial issue for the TTC.

KEY POINTS

Providing an Exemption for TTC Properties Subject to Payments-in-Lieu of Taxes (PILs)
(i.e. TTC Surface Properties, including Commuter Parking Lots owned by the City or the TTC)

- Pursuant to section 27 (3) of the *Assessment Act,* TTC properties are required to pay an amount equal to the taxes for municipal and school purposes at the commercial property class rates. In order to exempt the TTC properties from these payments-in-lieu of taxes, a legislative amendment is required to either the *Assessment Act* or the *City of Toronto Act*.

- There would be no benefit to the City and the TTC, if these properties were to be exempt from PILs. An exemption, if possible, would reduce the City's PIL revenue by $8.2 million, but given that the City subsidizes the operations of the TTC, the expectation would be that the TTC would reduce its subsidy requirements by an equal amount to reflect the reduced expense.

- From an administrative point of view, exempting the TTC from PILs would relieve the TTC from the annual exercise of reviewing the assessments, making the required PIL payments, and filing assessment appeals in those cases where the assessed value assigned to the property by MPAC is felt to be incorrect.

Providing an Exemption for TTC Properties Subject to Taxation
(i.e. Toronto Coach Terminals & Computer Parking Lots Leased from Hydro One)

- To exempt these properties from taxation, a legislative amendment is required to either the *Assessment Act* or the *City of Toronto Act*.

- Municipalities have authority to enter into public/private sector partnerships for specified capital facilities. Section 110.1 of the *Municipal Act* allows the council of a municipality to enter into agreements with any person for the provision of municipal capital facilities, and allows the council of a municipality to exempt from taxation for municipal and school purposes, land or a portion of land, on which municipal capital facilities are or will be located, on three conditions as follows:

  - o the land is subject to such an agreement;
  - o the land is owned or leased by a person who has entered into an agreement to provide the facilities; and,
  - o the land is entirely occupied and used or intended for use for a service or function that may be provided by a municipality.

- Staff have explored the feasibility of declaring commuter lots leased by the City for the purposes of the TTC and the Coach Terminal as municipal capital facilities.

- In a report to Committee and Council dated (April 23, 2003) (Re: Clause 10 embodied in Report No. 4 of the Policy and Finance Committee), the Chief Financial Officer and Treasurer advised that leased TTC computer parking lots and the Toronto Coach Terminal do not meet the threshold test to be eligible as municipal capital facilities under section 110 of the *Municipal Act, 2001*. As such, in order to effect tax exempt status for these facilities (i.e. leased commuter parking lots and Toronto Coach Terminal), Council, its meeting held on May 21-23 2003 adopted the following recommendation from the Chief Financial Officer and Treasurer:

  "That the Province be requested to amend the City of Toronto Act, 1997 (No. 2) so as to provide a property tax exemption for leased TTC computer parking lots on hydro corridors and for the Toronto Coach Terminal, and that the Chief Administrative Officer be directed to meet with the appropriate Provincial officials to discuss this request".

- Attached as Appendix A is a copy Clause 10 of Report No. 4 of the Policy and Finance Committee, as adopted by Council at its meeting held on May 21, 22 and 23, 2003.

Bus Platform - Assessment Change in 2004

- On the returned assessment roll for 2004, MPAC has returned ten (10) of the TTC's bus terminals located in subway stations as subject to payment-in-lieu of taxes. In previous years, these structures were exempt from taxation and PILs as they where consider integral to the subway station.

- This change in assessment classification will increase the PIL burden on the TTC by approximately $600,000.

- Finance staff have contacted MPAC in regards to this issue and have been advised that the matter is currently being reviewed by their solicitors. In the event that the review determines that an error has been made by MPAC, it is anticipated that Minutes of Settlement will be issued returning the affected properties back to PILs and tax exempt.

Date: March 9, 2004

Attachment: Appendix A: Clause 10 embodied in Report No. 4 of the Policy and Finance Committee, as adopted by the Council of the City of Toronto at its meeting held on May 21, 22 and 23, 2003.

Appendix A

Clause embodied in Report No. 4 of the Policy and Finance Committee, as adopted by the Council of the City of Toronto at its meeting held on May 21, 22 and 23, 2003.

10

Designation of Certain Toronto Transit Commission (TTC) Commuter Parking Lots and the Toronto Coach Terminal as Municipal Capital Facilities

(City Council on May 21, 22 and 23, 2003, adopted this Clause, without amendment.)

The Policy and Finance Committee recommends the adoption of the following report (April 23, 2003) from the Chief Financial Officer and Treasurer:

Purpose:

To respond to a request to declare leased TTC commuter parking lots on hydro corridors and the Toronto Coach Terminal as municipal capital facilities to eliminate property tax liability thereon and to report on the disposition of resultant savings.

Financial Implications and Impact Statement:

There are no direct financial implications resulting from the adoption of this report.

Recommendations:

It is recommended that the:

(1) Province be requested to amend the *City of Toronto Act, 1997 (No. 2)* so as to provide a property tax exemption for leased TTC commuter parking lots on hydro corridors and for the Toronto Coach Terminal, and that the Chief Administrative Officer be directed to meet with the appropriate Provincial officials to discuss this request.

(2) appropriate City Officials be authorized to take the steps necessary to give effect thereto.

Background:

City Council, at its meeting held on February 24, 25, 26, 27 and 28, 2003 and March 3, 2003, adopted the following motion requesting that:

The Chief Administrative Officer, Chief Financial Officer and Treasurer, City Solicitor, and Chief General Manager of the Toronto Transit Commission be requested to submit a joint report to Council, through the Policy and Finance Committee for its meeting scheduled to be held on April 3, 2003, designed to declare the leased TTC commuter parking lots and the Toronto Coach Terminal to be municipal capital facilities for the purpose of eliminating the need to pay property taxes on these facilities, such report to address the disbursement of the resultant savings, including appropriate savings to be included in the 2004 Operating Budget of the Toronto Transit Commission.

This report responds to the above noted motion.

Comments:

Commuter Parking Lots/Hydro Corridors:

TTC commuter parking lots at the Kipling, Islington and Finch subway stations are located on hydro corridors currently owned by the Province of Ontario, formerly by Hydro One Networks, Inc. (The Province recently regained ownership of all hydro corridors from Hydro One). The lands on which the parking lots are located are leased by the City pursuant to the authority contained in subsection 30(4) of the *City of Toronto Act, 1997 (No. 2)*, but operated by the TTC in accordance with its statutory authority so to do set out in paragraph 3 of subsection 30(3) of the *City of Toronto Act, 1997 (No. 2)*. The lots are taxed at the full commercial rate, as would be any other parking lot operator on hydro or other lands, in accordance with the *Assessment Act*. However, lease arrangements stipulate that 75 percent of the annual property taxes shall be paid by the tenant (the City).

In 2002, the City was liable for $483,000.00 in municipal taxes and $214,000.00 in education taxes, as shown in Table 1, for the five commuter lots located on hydro corridors, as per the lease agreement with the owner (at the time, Hydro One).

Table 1 - TTC Leased Commuter Lots
2002 Taxes

	Owner	City Purposes	Education Purposes	Total Taxes
Com Pkg – Kipling (South)	Hydro One	262,476	-	262,476
Com Pkg – Islington Lomand	Hydro One.	21,260	21,189	42,449
Com Pkg – Kipling (North)	Hydro One	36,411	36,290	72,701
Com Pkg – Finch (East)	Hydro One	82,484	82,208	164,692
Com Pkg – Finch (West)	Hydro One	80,848	74,171	155,019
Total Leased Commuter Lots		483,479	213,858	697,337

Current legislation dictates that properties leased by the City for the purposes of the TTC for use as a commercial parking lot are subject to taxation. This is similar to the tax treatment for parking lots operated by the Toronto Parking Authority on leased land, which would be similarly taxed at the full commercial rate, as is any parking lot operated by a private entity.

Toronto Coach Terminal:

Toronto Coach Terminal Inc., formerly Metro Toronto Coach Terminal Inc., is an incorporated entity under the *Ontario Business Corporations Act.* The Toronto Transit Commission is the sole shareholder, and it appoints TCTI’s Board of Directors. The TCTI is self-funding entity and its Board of Directors approves its operating and capital budgets on an annual basis. The Toronto Coach Terminal is located at 604 Bay Street and 130 Elizabeth Street, and serves as a terminal for intercity transportation. Its primary tenants include Coach Canada and Greyhound Canada. As an incorporated business, TCTI pays business taxes.

The two properties are assessed at $6.8 million, and the TCTI is liable for $500,000.00 in commercial taxes, approximately half of which is for municipal purposes and the other half for school purposes. Since the TCTI owns the properties and is a for-profit corporation used for commercial purposes, existing legislation provides that the properties be classified as fully taxable.

Municipal Capital Facilities:

Municipalities have authority to enter into public/private sector partnerships for specified capital facilities. Section 110.1 of the *Municipal Act* allows the council of a municipality to enter into agreements with any person for the provision of municipal capital facilities, and allows the council of a municipality to exempt from taxation for municipal and school purposes, land or a portion of land, on which municipal capital facilities are or will be located, on three conditions as follows:

(i) the land is subject to such an agreement,

(ii) the land is owned or leased by a person who has entered into an agreement to provide the facilities, and

(iii) the land is entirely occupied and used or intended for use for a service or function that may be provided by a municipality.

Staff have explored the feasibility of declaring commuter lots leased by the City for the purposes of the TTC and the Coach Terminal as municipal capital facilities.

The City Solicitor has advised that municipal facilities related to the provision of transit and transportation systems and parking facilities ancillary to transit and transportation systems may be considered eligible municipal capital facilities. Accordingly, it may initially appear that TTC commuter parking lots and the Toronto Coach Terminal could be eligible to become municipal facilities.

However, before having reference to the Regulation cited above to determine whether the class of facility under consideration is one prescribed as allowable, one need first meet the threshold tests in the *Municipal Act* itself. That is, in order for a facility to be eligible for a tax exemption, clause 110(6)(c) of the Act requires that, among other things, it be “entirely occupied and used or intended for use for a service or function that may be provided by a municipality.”

Pursuant to subsection 30(4) of the *City of Toronto Act, 1997 (No. 2* (the “Act”)*)*, the City has the authority to lease property for TTC purposes, such as it does for the purposes of commuter parking lots. The Act, at clause 30(1)(c), provides that the TTC has “all the powers of a municipal council with respect to local passenger transportation systems” specifically including the powers, pursuant to paragraph 3 of subsection 30(3) to establish, construct, manage, and operate parking lots for the parking of vehicles in connection with its local passenger transportation system. However, subsection 30(2) specifically precludes the City and council from exercising that power with respect to a local public transportation system except with respect to operating ferries to the Toronto Islands. As the Act clearly prohibits the City from exercising that power with respect to a local passenger transportation system, it would appear that the TTC commuter parking lots and the Toronto Coach

Terminal are not eligible for a tax exemption under clause 110(6)(c) due to these facilities not providing a service or function that may be provided by the City, since that is one of the threshold requirements set out in section 110 of the *Municipal Act, 2001.*

Accordingly, this report recommends that legislative amendment be sought to provide a property tax exemption for leased TTC commuter parking lots on hydro corridors and for the Toronto Coach Terminal. Such amendments would most appropriately be made to the *City of Toronto Act, 1997 (No. 2).*

Staff of the Chief Administrative Officer, City Solicitor and the Toronto Transit Commission were consulted in the preparation of this report.

Conclusions:

This report examines the feasibility of designating as municipal capital facilities and thereby exempting the TTC from property taxes on commuter parking lots leased from the Province of Ontario and on the Toronto Coach Terminal. The leased commuter parking lots are subject to property taxation at the commercial rate, as would any other operator of such a lot.

The City Solicitor advises that leased TTC commuter parking lots and the Toronto Coach Terminal do not meet the threshold test to be eligible as municipal capital facilities under section (s. 110) of the *Municipal Act, 2001*. As such, in order to effect tax exempt status for the above noted facilities, changes to legislation would be required and are recommended by this report.