



RESUBMITTED

TO:	CHAIR AND MEMBERS BOARD OF CONTROL MEETING ON FEBRUARY 13, 2008
FROM:	JAMES P. BARBER, CITY SOLICITOR and GRANT HOPCROFT, DIRECTOR, INTERGOVERNMENTAL AND COMMUNITY LIAISON
SUBJECT:	HOTEL ROOM TAX

RECOMMENDATION

That, on the recommendation of the City Solicitor and Director, Intergovernmental and Community Liaison, this report be received for information only.

BACKGROUND

The Province of Ontario imposes what is in effect a 5% room tax on hotel and motel accommodation pursuant to its legislative authority¹. This kind of direct tax is quite common in many jurisdictions. The revenues from this kind of tax can be earmarked for tourism and culture and the direct tax may be imposed by municipalities pursuant to local ordinances enacted under their Charters or relevant statutory authority in many jurisdictions other than Ontario.

A 2003 study of Canadian municipalities was undertaken which identified a variety of new revenue sources for municipalities including an additional hotel room tax². The impact of a

1 Subsection 2(4) – Retail Sales Tax Act

(4) Every purchaser of a taxable service described in clause (b) of the definition of “taxable service” in subsection 1 (1) shall pay to Her Majesty in right of Ontario a tax in respect thereof computed at the rate of 5 per cent of the fair value thereof. R.S.O. 1990, c. R.31, s. 2 (4).

“taxable service” means,

...

(b) transient accommodation.

“transient accommodation” means the provision of,

- (a) lodging in a hotel, motel, hostel, apartment house, lodging house, boarding house, club or other similar accommodation, whether or not a membership is required for the lodging,
- (b) prepared food products provided pursuant to the American plan, modified American plan or other arrangement that combines the provision of lodging and prepared food products at a single price, or
- (c) lodging or lodging and prepared food products provided as a right or privilege of membership in an organization, whether or not a specific charge for the lodging and prepared food products is made,

but does not include the provision of lodging let for a continuous period of one month or more or lodging in a lodging house, rooming house or boarding house that has accommodation for fewer than four tenants; (“logement temporaire”)

2 <http://www.fcf-ctf.ca/ctfweb/Documents/PDF/2003ctj/2003ctj6-kitchen.pdf>



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hotel room tax in Ontario municipalities including London was examined by the study.

British Columbia enacted the *Hotel Room Tax Act*³ in 1996 which enables municipalities by by-law to request a regulation imposing a hotel room tax additional to the provincial tax which is collected at the same time as the provincial tax and is paid to the municipality⁴. The revenues from the tax are earmarked for tourism and cultural activities in each municipality which are identified in the regulation pertaining to that municipality. While this Act has since been repealed by the *Provincial Sales Tax Transitional Provisions and Amendments Act*, section 53 deems the *Hotel Room Tax Act* and its regulations to be still in effect.⁵

Ontario has enacted legislation which renders the imposition of an additional hotel tax by municipalities more difficult. The *Taxpayer Protection Act* requires a referendum as defined in the Act for new or increased taxes. However, this provision does not apply to “a bill that gives a municipality the authority to levy a new tax”⁶. It could be argued that a bill along the lines of the British Columbia legislation to permit an additional hotel room tax to be collected for and paid to municipalities falls within the exception to the *Taxpayer Protection Act* for new municipal taxes.

Under the *City of Toronto Act, 2006*, the City of Toronto is not authorized to impose a tax on a person in respect of lodging in or the use of the rooms or other facilities of a hotel, motel, hostel, apartment house, lodging house, boarding house, club or other similar type of accommodation, including a tax in respect of services provided by the owner of the accommodation that are related to the lodging or that are related to the use of the rooms or other facilities. *The Municipal Act, 2001*, as amended, does not authorize the imposition of direct taxes in the same manner as does the *City of Toronto Act, 2006* and to writer’s knowledge, no municipality including Toronto has been authorized by legislation to impose a direct tax on lodging in Ontario.

The City of Ottawa in 2004 received a report recommending that its City Solicitor be instructed to seek special legislation for a direct tax on lodging in Ottawa which included a draft bill. The report indicated that there had been extensive public consultation and

3 <http://www.canlii.org/en/bc/laws/stat/rsbc-1996-c-207/latest/rsbc-1996-c-207.html>

4 A guide for British Columbia municipalities using the tax can be found at: http://www.cscd.gov.bc.ca/lgd/gov_structure/library/Additional_Hotel_Room_Tax_Guidelines.doc.

5 http://www.leg.bc.ca/39th5th/3rd_read/gov02-3.htm

53 (1) Despite section 77 [repeal of *Hotel Room Tax Act*] of this Act, the *Hotel Room Tax Act* and the regulations under that Act, as they read on March 31, 2013, continue to apply in relation to accommodation purchased before April 1, 2013 except in respect of any consideration for the purchase of the accommodation that

(a) becomes due on or after April 1, 2013, and

(b) is not paid before April 1, 2013 without having become due.

(2) The following sections of the *Provincial Sales Tax Act* apply for the purposes of this section:

(a) section 28 (9) [deposit is not consideration];

(b) section 33 [when consideration becomes due].



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there was support in the hotel industry in Ottawa for some form of legislation imposing a direct hotel tax. Based upon a motion from Ottawa city councillors in 2007, Ottawa City Council adopted the following resolution on December 7, 2007 and circulated it to other municipalities:

WHEREAS the tourism and hotel industry create new economic activity for the city of Ottawa which is appreciated but at the same time creates new infrastructure and servicing for the City of Ottawa;

WHEREAS this increased economic activity does not generate much in the way of new income to the city because the PST, GST and corporate taxes which result from tourism and hotel activity are not available to the city; the only tax that is available to the city is the property tax,

BE IT RESOLVED the council petition the provincial government for the authority to create a hotel room tax such that some of the municipal costs created by the tourism and hotel industries can be recouped;

BE IT FURTHER RESOLVED this petition be forwarded to the FCM and the AMO for distribution to their members.

The Province of Ontario appears to have three options with respect to requests from municipalities to permit them to impose direct hotel room taxes. The Province can continue to limit this source of revenue to itself. It can enact a general provision in the *Municipal Act, 2001* enabling all municipalities to collect such an additional tax (despite the apparent reluctance to do so for Toronto). It can enact specific enabling legislation for each municipality on a piecemeal basis based upon applications by each municipality.

If Board of Control wishes to pursue general legislation, a resolution along the lines of the Ottawa resolution endorsing a hotel room tax for municipalities generally could be adopted.

If Board of Control wishes to pursue special legislation for the City of London despite the apparent legislative obstacles to doing so in Ontario, Board of Control may recommend that the City Solicitor be directed to prepare an application for special legislation to enable the City to impose by by-law a direct hotel room tax on those types of lodging and accommodation identified in the legislation with revenues to be earmarked as set out in the legislation following such further consultation with provincial legislative counsel and stakeholders as may be advisable. It would be desirable for the Board of Control to engage in public consultation and to conduct a public meeting with stakeholders to determine the degree of local support for such a measure in advance of providing the direction to proceed with a bill.

PREPARED AND RECOMMENDED BY:



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JAMES P. BARBER, CITY SOLICITOR
GRANT HOPCROFT, DIRECTOR, INTERGOVERNMENTAL AND COMMUNITY LIAISON

cc. M. St. Amant, City Treasurer