STAFF REPORT
ACTION REQUIRED

Toronto Centre for the Arts – Property Tax Status

Date:	May 20, 2008
To:	Executive Committee
From:	Joseph P. Pennachetti, Deputy City Manager and Chief Financial Officer
Wards:	**Ward 23**
Reference Number:	P:\2008\Internal Services\Cf\Ec08017Cf – et (AFS #7502)

SUMMARY

In seeking to minimize its funding request to the City in 2009 and 2010, Toronto Centre for the Arts has executed a multi-year rental agreement with a production company. Under this agreement, the use of the main stage theatre for commercial productions will likely exceed 183 days per year, with continued access for non-profit and community groups on days not used by the production company and in other parts of the Centre.

The implication of having commercial operations on the main stage theatre in excess of 183 days per year would be the trigger of a property tax liability under provisions of the *Assessment Act*, which would negatively impact the positive gains in revenues arising from the rental agreement.

Additional provisions within the *Assessment Act*, however, allow municipalities to pass a by-law to enable the Centre to deduct the City funding used to support not-for profit or charitable programming in the Centre from the property taxes due to the City.

This report recommends the enacting of a by-law to reduce any tax liability incurred by commercial operations at the Centre, by the amount equivalent to City funding of not-for-profit, charitable operations at the Centre, resulting in no net impact from the current property tax burden at the Toronto Centre for the Arts.

RECOMMENDATIONS

The Deputy City Manager and Chief Financial Officer recommends that:

1. Council enact a by-law, as provided for within Section 27.1 (3) of the Assessment Act that would allow the Toronto Centre for the Arts to reduce any property tax liability arising from commercial use of the facility by deducting amounts of City funding for not-for-profit or charitable uses at the facility.

FINANCIAL IMPACT

The Toronto Centre for the Arts currently is not liable for property taxes, as commercial operations at the theatre do not exceed one-half of the calendar year (183 days), in accordance with provisions in the *Assessment Act*.

If, as likely to occur starting in 2009, commercial operations exceed 183 days per year, property taxes would become liable based on the fraction of the year whereupon commercial for-profit productions will have occurred.

Since the exact number of days of commercial activity cannot be precisely predicted, the following chart illustrates the tax liability impact for various durations beyond 183 days per year.

Chart 1 – Potential Property Taxes for TCA
at Various Commercial Usage Levels

Commercial Usage	Days	Fraction Of Year	Tax Liability *	Tax reduction	Net Impact**
Threshold	183	--	$0	$0	$0
Threshold plus 1 day	184	0.50	$171,500	($171,500)	$0
8 months	243	0.67	$226,500	($226,500)	$0
10 months	304	0.83	$283,400	($283,400)	$0
12 months	365	1.00	$340,200	($340,200)	$0

* Based on TCA Current Value Assessment of $15.8 million and tax rate of 2.151% (2008 rates) for the Large Theatre property tax class.
Note there is no provincial education tax raised for the Large Theatre tax class
** Assuming current level of operating subsidy.

Although revenues at the theatre are proposed to increase under the rental agreement with the commercial production company, the additional costs arising from the imposition of property taxes, at various levels outline above, would have a negative effect on the net gains from those new revenues.

The TCA has been reducing its annual funding requirements under the City's Operating Budget over the past several years, and the desired outcome of the recently executed rental agreement with the production company is to further reduce City funding in the future.

Provisions within the *Assessment Act* would allow the Centre to reduce the property tax liability, at levels noted in Chart 1, by the amount representing all or a portion of City funding used to support not-for-profit or charitable activities at the Centre.
The current level of City funding would exceed any amounts of property taxes liable at the Centre. Consequently, the Centre would be able to reduce any property tax liability to nil, by deducting the amount of City funding from the tax liability. The proposed by-law would provide for this effect. Since the Centre currently does not pay taxes, there are no financial implications arising from pursuing this course of action, and no budget offset is required. Conversely, if the by-law was not adopted, and property taxes for the TCA became payable, then additional pressures on the TCA operating budget would occur.

DECISION HISTORY

During review of the 2008 Operating Budget, Council adopted the budget analyst notes for theatres that particularly noted the impending rental production agreement and the property tax implications for 2009 and beyond. Embedded within the operating budget adopted by Council at its meeting of March 31, 2008, was the recommendation that the Deputy City Manager and Chief Financial Officer report on the adoption of a by-law under Section 27.1 (3) of the *Assessment Act* to enable Toronto Centre for the Arts to manage the realty tax issues arising from commercial programming of the main stage theatre for more than 183 days per year. This report addresses this request.

ISSUE BACKGROUND

The Toronto Centre for the Arts is a first class venue for a full range of performing arts. The Centre encompasses three distinct theatres: the 1,727 seat Main Stage theatre; the 1,032 seat George Weston Recital Hall; and the versatile 200 seat Studio Theatre.

The TCA facility is owned by the City and is governed by a Board of Directors appointed by City Council. While the building is owned by the City, there is a long-term (99 year) ground lease, that commenced in 1988, of the site from the landowner Ontario Hydro (now OPG).

Since the vacancy of Livent as a production operator at the theatre in the late 1990's, the City has been providing annual operating subsidies to the theatre to augment revenues from one-off productions at the theatre. Commercial productions at the TCA have never gone beyond half the year (or 183 days), so provisions under Section 27.1 of the *Assessment Act* that would trigger the payment of property taxes for operations in excess of that length of time have never been invoked.

Over the past few years, the TCA has been seeking to increase revenues from its Main Stage theatre and has recently executed a multi-year rental agreement with a production company. Such an agreement will likely result in commercial programming at the theatre in excess of 183 days per year starting in 2009 and therefore, property taxes would become liable. If the Centre is required to shoulder this property tax burden, future operating budget expenditures will increase, thereby negating the theatre's attempts to raise revenues and reduce its reliance on City funding.

However, further provisions within the *Assessment Act*, would allow the City to pass a by-law that will enable the Centre to deduct the City funding used to support not-for-profit or charitable programming in the Centre from the property taxes due to the City.

COMMENTS

The return of long-running, commercially produced theatrical productions to the Toronto Centre for the Arts is a welcome venture that should enhance the financial viability of the Centre and reduce the reliance on City funding of the facility.

TCA staff are concerned, however, that an unintended consequence of the rental agreement would trigger a property tax liability and a net increase in operating costs to the Centre. Since the Centre is owned by the City, and receives annual operating funds from the City, any future property tax payments would merely be granted on a pass-through basis back to the City.

Staff are recommending that a by-law be enacted that would effectively eliminate the need for the City to increase the Centre's budget to allow for the Centre to, in turn, pay the City property taxes. Such a by-law is permitted under the *Assessment Act* and would allow the amounts the City provides to the TCA for not-for-profit activities at the Centre to be deducted from any property tax liability arising from for-profit commercial use of the Centre.

Since current City funding of the Centre would exceed the anticipated property tax liability incurred by the proposed production rental agreement, the net impact would be future tax payments of nil. As a corollary, if, in the future, City funding of the Centre did not exceed any property taxes due, then the TCA would be liable for the payment of all of portions of such property taxes to the City, under the proposed by-law.

The City Solicitor has reviewed this report.

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SIGNATURE

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