



## **Proposed Change to Tax Policy: Vacancy Rebates**

The County of Lambton is proposing that as part of Council's 2018 update to its Tax Policy, that Vacancy Rebates be eliminated. While the County of Lambton has been responsible for the administration of tax policy since the Province introduced Current Value Assessment almost 20 years ago, the authority to change or eliminate vacancy rebates only became an option in 2017 as a result of a change in Provincial policy.

Since the Province introduced this authority a large number of jurisdictions have already moved to review the availability of Vacancy Rebates by their constituent Municipalities. In virtually every instance, this review led to the conclusion that the program should be ended. The only variable has been whether this elimination will be gradual or immediate.

The County of Lambton is now looking to act upon this issue as well. To ensure that commercial/industrial class property owners and ratepayers in general understand why staff is proposing a change to this policy, this Briefing Note has been created. Its intent is to explain why the Province of Ontario changed its policies and gave Municipalities the option to eliminate and no longer provide Vacancy Rebates. Therefore this paper examines why the Province created these rebates in the first place and what has changed since they were created to make the provision of these reductions no longer the imperative it once was.

### **Why Were Vacancy Rebates Created?**

Before the introduction of Current Value Assessment (CVA) in the early 1990's, property taxation policies in Ontario were much more opaque than they are now. The Province administered this policy and provided Municipalities with assessment values against which there were 2 basic rates - a residential and a commercial. Assessed values reflected the policy objectives of the Government and were provided without explanation.

In addition, businesses paid a separate levy called the *Business Occupancy Tax* or BOT. The BOT was assessed directly against any commercial or industrial entity that occupied a taxable property. Business owners were billed directly and were responsible for paying the BOT. Property owners had no responsibility for payment or collection of this tax from business owners who were tenants.

This all changed when the Harris Government introduced the concept of CVA to Ontario's property tax system. Under CVA, assessment values are based on and intended to reflect the realizable value that an owner could obtain from selling their property in an "arms' length" transaction. As a result, assessment values as issued by

the Municipal Property Assessment Corporation (MPAC) were no longer adjusted to account for Provincial priorities and policy objectives. Instead, the Government directed that the Council for the responsible Municipality in each jurisdiction (usually the County or Region) be responsible for administering Tax Policy - what portion of the municipal tax burden should be borne by what type of property. And while this change resulted in greatly increased transparency of how tax liabilities were calculated, Municipalities were still restricted in what policy options their Councils could employ. For example, the Province directed that as part of these new rules, the portion of property tax that was previously recovered in the form of the BOT would be rolled into the regular property tax payable on commercial and industrial properties.

However, this change created a problem: it shifted the responsibility for paying the BOT away from business owners and onto property owners. Therefore, in order to compensate for this, the Province introduced the concept of "Vacancy Rebates". This program stipulated that whenever a commercial or industrial property became vacant for an extended period of time, the property owners could then apply to their Municipalities to temporarily reduce the amount of property tax they needed to pay until such time as the property became occupied again.

The intent of this policy was to replicate the previous practice, where the BOT would not be paid if there was no active business operating. As property owners became use to these new practices, their practices changed as well. In fact, many property owners began to actively manage the assessment and taxation of their properties.

## **Why Eliminate this Rebate Program Now?**

When the Vacancy Rebate Program was introduced, it was the practice of MPAC to set assessment values on the basis that the property was fully occupied. This is why rebating or reducing the taxes payable when the property was not fully occupied made sense. However, over the past two decades, this valuation practice has changed.

It changed predominately as a result of property owners actively managing the assessment of their properties. They filed appeals, and multiple property owners across the Province were able to argue successfully that assuming properties would be 100% occupied all the time was wrong, that it is normal for any business to have vacancies, and that the value of their properties should reflect this fact. These successful appeals led MPAC to gradually change its valuation practices and to factor in what portion of a property would on average be vacant. As a result, the assessment value of commercial and industrial properties with tenants began to be decreased to reflect what portion of them was normally unoccupied. In other words, property owners were seeing their taxes reduced from what they had been paying without the need to apply for Vacancy Rebates.

But even though property owners were now having their "base amount" of taxation reduced automatically to reflect occupancy levels, the Province continued to require Municipalities to provide the Vacancy Rebate program. As a result, commercial/

industrial property owners could obtain reductions and tax savings far in excess of what had originally been intended (e.g. two reductions for the same vacancy). Municipalities brought this anomaly to the attention of the Ministry of Finance and it responded by initiating a review of the Vacancy Rebate program in 2015.

This review was conducted through the formation of two separate Working Groups (WGs). One WG was comprised of representatives from Municipalities, the other of representatives from commercial and industrial property owners. Individual and independent input was then provided by each WG as to what issues, concerns and recommendations they had with regards to the Vacancy Rebate Program.

The Ministry of Finance accepted the contention that circumstances have changed, that "base" assessment values now factor in the regular, average vacancy of properties and that adjusting this factor to account for changing business circumstances is now understood as being a reasonable basis for adjustment, meaning that the purpose and function of the Vacancy Rebate program has been largely replaced by these changes in valuation practice. It then presented these conclusions to a joint meeting of the two WGs in 2016.

That Ministry of Finance position was accepted by both municipal and industry representatives, meaning that there was no significant opposition from either WG to Municipalities being given the ability to end the practice of providing Vacancy Rebates. In part, this was because in order to ensure that any such change did not happen without the knowledge of the local business community, the Province stipulated that the local Municipality with responsibility for Tax Policy in the jurisdiction considering a change must first notify the local business community of its intentions to change its policies.

However, once this notification has occurred, the Municipality would then be able to request that the Minister of Finance have the Ontario Government pass a Regulation enacting the local Municipality's decision. The first of these Regulations was issued in Spring 2017.

## **The Plans for Lambton County Municipalities**

Essentially every Municipality that has reviewed the Vacancy Rebate program and its use in its jurisdiction has concluded that the program should be terminated as it no longer serves the purpose for which it was created. The only variable has been as to when the Program is terminating.

Lambton County is no different, and is proposing that its constituent Municipalities no longer offer Vacancy Rebates for any vacancy occurring after December 31, 2017. This date was selected because January 1, 2018 is the start of the municipal fiscal year and it allows property owners to exercise their right of appeal to MPAC and the Assessment Review Board should they believe the "vacancy adjustment" applied to the value of their properties for 2018 should be adjusted.

To fulfill the notice and advisory requirements stipulated by the Ministry of Finance, the County of Lambton is doing the following:

1. Meeting with the Chamber of Commerce and its members on January 24, 2018
2. Placing of an advertisement in local newspapers to notify commercial and industrial property owners of its intent to terminate its Vacancy Rebate Program
3. Posting details of this proposal on the County's website and social media platforms
4. Circulating this notice to Area Municipalities with a request that it be placed as correspondence on the Agenda for a meeting of their Councils

In this way it is believed that a majority of commercial and industrial property owners in Lambton County will be informed of this change, the reasons for it and what it means to the taxation of their properties. Further, it also means that should they so desire, property owners will have an opportunity to express their concerns and provide their comments to their local Councillors before County Council is asked to approve this change as part of its 2018 Tax Policy determinations, which are scheduled to occur in February.

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