

Vacancy Rebate Program Changes

In 2016, the Province of Ontario signalled its intention to extend flexibility to municipalities to make changes to the Vacancy Rebate Program (“VRP”). The commercial real estate industry has been an active participant in the Ministry consultation process since its inception in 2015. Since that time, we have consistently advocated for the maintaining of the VRP province wide. The elimination or reduction of the program would lead absolutely to a direct tax increase on commercial and industrial properties currently receiving property tax rebates through the program.

Several municipalities, which are participating in the Ministry-organized municipal and business consultation group, are beginning an active consultation schedule with local businesses, to determine the most appropriate policy position with respect to the VRP. Many of our members will be attending the *Invitation Only* session to be held on March 1st and BOMA will be attending the consultation meeting being held on March 3rd.

It is the position of BOMA that we should vigorously oppose changes to the Vacancy Rebate Program, but also to express our concerns as to the lack of transparency in both the formulation of options and the consultation process.

Members can view the [City of Ottawa position](#) on their website. As part of the “consultation” process the City has already called for the elimination of the rebates by offering the following three options on its website when describing the purpose of the consultations.

These consultations will outline and examine various vacancy rebate program options:

- 1. Elimination of the Vacancy Rebate program - Eliminate the program completely.*
- 2. Phase-out of the Vacancy Rebate program - Eliminate the program over three years with a declining benefit each year.*
- 3. Declining Benefit - the program continues, but individual properties would see a year-over-year decline of the rebate until eliminated. Re-entry would only occur with a program eligibility reset through a change to the new construction class or class change triggered by change of use of the property.*

City of Ottawa Website

This paper is meant to provide background on this issue to our members, and we highly recommend that you become engaged in this issue, with your local municipal representatives and with City Staff wherever possible.

Background

The VRP was originally intended as a partial mitigation for landowners when business and realty taxes were combined in the 1990s. Prior to reform, vacant commercial and industrial premises had a lower tax burden than occupied premises. The vacant premises were not subject to Business Occupancy Tax (BOT), and paid property taxes at the residential mill rate which was 15% lower than the commercial rate. The lower tax rate for vacant premises applied for the actual (entire) period of the vacancy.

Under the new system, the BOT was eliminated and the lost revenue was added to the property tax. All property taxes were billed to the property owners. The intent of the VRP program was to partially offset the inclusion of the former BOT into the commercial and industrial realty tax by not imposing higher taxes (sometimes in the vicinity of 25% to 50%) on vacant premises that were historically not collected. There is no further reduction to reflect the 15% differential between the residential and commercial tax rates. The elimination of the BOT removed huge administrative burdens on both MPAC and municipalities and passed collection problems from municipalities to commercial landlords.

Misconceptions about the VRP

- Property owners are intentionally leaving their space vacant. Public discussion of this issue has been somewhat inaccurate and misleading. A number of municipalities have asserted that property owners at times intentionally leave premises vacant in order to collect vacancy rebates that amount to about one third of the property tax on the vacant space. Landlords still pay two thirds of the regular tax burden for their vacant space. The theory that it makes any economic sense to keep premises vacant, in order to collect a 'partial tax break', is counterintuitive.
- The industry is 'double dipping' since vacancy is included in property assessments. The VRP is concerned with the property tax treatment of vacant business property. The valuation treatment is a completely separate issue altogether. Tax reform efforts made in 1998 did not change the methodology for valuing commercial and industrial properties. The assessment methodology is based on the market value of buildings, whether that is measured by income, cost or market comparisons. All three approaches considered normal vacancies expected as part of the general economic churn, and MPAC values vacant premises similarly to occupied premises. Actual vacancy is, therefore, not reflected in MPAC's valuations.

Industry position

Industry advocates find it encouraging that a number of municipalities have agreed with the position of business groups, both large and small, that a one-size-fits-all approach to some of the perceived negative outcomes from the rebate program was not as effective an approach to framing the issue. The program has a significantly different impact for all classes of commercial real estate, and indeed different kinds of municipalities. The nature of vacancy in strip retail environments, for example, is quite different than the office, large retail and industrial sectors. With this in mind, we would caution any municipality that simply patriating the policy position of another municipality might not be the most effective way of treating the VRP.

The commercial real estate industry does not support the elimination of the VRP. Rather, we believe that property owners are supportive generally of the following policy recommendations with respect to the program;

- Execute a fulsome review of the barriers to redevelopment of underperforming assets.
- Self funding of the VRP from commercial real estate tax contributions, thus avoiding residential or other revenue contributions.
- Potential time limits for same space rebates to respond to municipal concerns regarding intentional vacancies but accounting for realities of economic downturns.

In late 2016, the industry suggested an alternative for the VRP; maintaining the program while creating a self funding feature which addresses criticisms from several municipalities that general revenues are being used to offset costs for the business community. Under this system, funds emanating only from commercial property taxes are rebated and the program is maintained. The program would therefore resemble more of an insurance program, and would still achieve its intended goals. The industry has publicly supported potential term limits for same space vacancy, optimally three years, which could prevent abuses of the program. This is another general criticism from municipal policymakers.

Municipal policy makers should carefully consider the effect that elimination of the VRP may have on the economic vitality of cities. Specifically, the de facto property tax increases and escalating operating and carrying costs resulting from VRP elimination could mean that some smaller landlords step back from building ownership, leading to higher vacancy rates or potential property standards issues. We believe that these issues could be prevented by the above-noted solutions.

The need for robust consultation

The commercial real estate industry reminds all municipalities that the Ministry of Finance intends on providing municipalities with a VRP related regulation only after those municipalities engage in robust consultation with local businesses. Any municipal decisions about the long-term life of the VRP should be delayed until such time as municipalities have actively consulted with our industry and the wider business community. We continue to find it disconcerting that some municipalities seem to be assuming that the consistent and flexible approach encouraged by the Ministry of Finance should be interpreted as elimination of the rebate program, or merely even its suggestion. As the VRP serves an important function for commercial property tax payers in each municipality where it is used, it is a main factor of any government's tax fairness mandate. We welcome any efforts to collaborate with our industry moving forward on this file.