

TALKING POINTS - Payment in Lieu of Taxes 101

***Points are based upon discussions with the PILT Specialist from DOI/BLM's Budget Office and Congressional Research Service's Somewhat Simplified Report on PILT

What are "Payments in Lieu of Taxes"?

Recognizing the inability of local governments to collect property taxes on federally-owned land, Congress enacted the Payment in Lieu of Taxes Act (Public Law 94-565) in 1976. The Act provides for payments to local governments containing certain federally-owned lands. The payments serve to supplement other Federal land receipt sharing payments such as timber sale receipt payments and attempts to compensate the county for lost tax revenue.

PILT was passed at a time when US policy was shifting from one of disposal of federal lands to one of retention. With that shift, Congress agreed with recommendations of a federal commission that if these federal lands were never to become part of the local tax base, then some compensation should be offered to federal governments to make up for the presence of non-taxable lands within their jurisdictions.

Congress has amended the PILT Act to address issues such as reducing the erosion of payments due to inflation and refining the definition of local government.

What is the statutory authority for the payments?

The key law is Public Law 94-565, commonly known as the Payments in Lieu of Taxes Act. It is codified in Chapter 69 of Title 31 of the United State Code. Applicable regulations are in Subpart 1881, Title 43 of the Code of Federal Regulations.

Who administers the PILT program?

The program is administered by the Department of the Interior through the Bureau of Land Management which is responsible for calculating the payments according to the formulas established by the law and to distribute the funds appropriated by Congress. In response to intense lobbying from counties through the National Association of Counties, the program was moved from the BLM to the Department of the Interior to provide for higher priority and greater visibility of the program.

What entities are eligible for payments?

Local governments, usually counties, that provide services such as public safety, environment, housing, social services and transportation and have non-taxed federal land within their jurisdiction.

Payments are made directly to the counties unless the state government concerned chooses to receive the payments and, in turn, pass the money on to other smaller governmental units such as a township or city (Wisconsin is the only state currently employing this option).

What can PILT payments be used for?

PILT payments may be used for any governmental purpose.

What lands are considered in calculating the payments?

The Act defines three categories of entitlement lands:

1. Federal lands in the National Forest System and the National Park System, lands administered by the Bureau of Land Management, lands in federal water resource projects, dredge areas maintained by the Corps of Engineers, inactive and semi-active Army installations, and some lands donated to the federal government (Section 6902).

2. Federal lands acquired after December 30, 1970 as additions to lands in the National Park System or National Forest Wilderness Areas. (Section 6904)

3. Federal lands in the Redwood National Park or lands acquired in the Lake Tahoe Basin near Lake Tahoe under the Act of December 23, 1980 (Section 6905).

****While I mention Section 6904 & 6905 payments, our focus is on the familiar Section 6902 PILT payments. Sections 6904 & 6905 are for informational purposes only.*

CALCULATING A COUNTY'S PILT PAYMENT REQUIRES FIRST ANSWERING THESE QUESTIONS---

1. How many acres of eligible land are in the county?
2. What is the population of the county?
3. What are the previous year's payments for eligible land, if any under other payment programs of federal agencies?

4. Does the state have any laws requiring the payments from other federal agencies to be passed through to other local government entities such as school districts rather than staying with the county government
5. After Sept. 30, 1999, what was the increase in the CPI

How many acres of eligible lands?

- Lands in NPS
- Lands in National Forest System
- BLM administered lands
- Lands dedicated to the use of Federal water resources development projects
- Dredge disposal areas under the US Army Corps of Engineers jurisdiction
- National Wildlife Reserve Areas withdrawn from the public domain
- Land located in the vicinity of Purgatory River Canyon and Pinon Canyon, CO that was acquired after Dec. 31, 1981 to expand Ft. Carson military reservation
- Semi-active or inactive Army installations used for mobilization and for reserve component training
- Land acquired a private party to be donated to the US within 8 years
- Eligible Federal land acquired by a State through an exchange, and
- Lands in UT acquired by the US if they were eligible for payment in lieu of taxes from that State

Only these lands are eligible for PILT payments; other federal lands such as military bases, federal office buildings and such are not part of this program.

How are amounts computed?

Payments under each section of the Act are calculated as follows:

Section 6902 payments are computed using the higher of the following two alternatives:

1. \$2.23 (in Fiscal Year 2007) times the number of acres of qualified federal land in the county, reduced by the amount of funds received by the county in the prior fiscal year under certain other federal programs.

$(\$2.23 \times [\text{number of acres of qualified federal land}]) - [\text{prior year funds received}]$

OR

2. Thirty-one cents (in Fiscal Year 2007) times the number of acres of qualified federal land in the county, with no deduction for prior-year payments.

\$.31 X [number of qualified acres]

***Payments under either alternative are subject to population payment limitations.

One question that may come to mind is why \$2.23 and \$.31?

► From 1995 - 1999, Congress provided in the Act specific values already adjusted for inflation. For 2000, they said take the 1999 per acre values and adjust them for inflation using the Consumer Price Index. So the formula takes the 2006 per acre values and multiplies them by the CPI inflation factor of 1.0222% to come up with the adjusted values used for 2007.

Also worth noting—only the amount of Federal land payments actually received by the local governments in the prior year are deducted. If a unit receives a Federal land payment, but it required by State law to pass all or part of that payment along to a financially and politically independent school district or other single or special purpose district, those redistributed payments are considered “not received” by the unit of local government and therefore, not deducted from section 6902 payments.

You may ask why are there population caps? I don't know. I would venture to guess Congress wanted to place some controls and limits on the amount of funds distributed under the PILT program and this was an easy way of doing it.

Population Caps---

The law restricts the payments a county may receive based on population. These payment ceilings are on a sliding scale ranging from \$149.61 per capita for populations of 5000 or \$59.85 per capita for counties with a population between 49,001 and 50,000.

The kicker is, with the population cap in place, no county will receive PILT payments greater than this amount (\$2,883,000) for 2007.

Section 6904 and 6905 payments, that is payments on Federal lands acquired after December 30, 1970 as additions to lands in the National Park System or

National Forest Wilderness Areas. (Section 6904) and payments on Federal lands in the Redwood National Park or lands acquired in the Lake Tahoe Basin near Lake Tahoe under the Act of December 23, 1980 (Section 6905) are computed by taking one percent of the fair market value of the purchased land and comparing the results to the amount of property taxes paid on the land in the year prior to federal acquisition. The payment to the county is the lesser of the two.

Section 6904 Payments are made for a period of five years following each acquisition.

Section 6905 Payments are made each year from the date the land was purchased by the federal government until an amount equal to 5% of the fair market value at the time of acquisition is fully paid. However, the yearly payment may not exceed the lesser of one percent of the fair market value or the property taxes assessed prior to federal acquisition.

What are "prior-year payments"?

As all of you know Federal land varies greatly in revenue production ranging from large volumes of timber sales to recreation concessions such as ski resorts to some having no payment programs at all.

To prevent disparities and attempt to even out payments across the board, Congress provided that the previous year's on eligible federal lands from other agencies' programs would be subtracted from the PILT payment the following year. (Standard rate).

By the same token, Congress wanted to ensure each county got some PILT payment, however small, even if the eligible lands produced a substantial county payment from other agencies. So, if for example applying the standard rate formula produces a negative amount, in that case, the county can apply the flat \$.30 rate on eligible federal lands.

Prior-year payments include those made under:

- the Refuge Revenue Sharing Fund,
- the National Forest Fund,
- the Taylor Grazing Act,
- the Mineral Leasing Act for acquired lands,

· the Federal Power Act.

- the Bankhead Jones Farm Act
- the Material Disposal Act
- the Secure Rural Schools Act (Title I)

The PILT Act requires each state to report these payments to BLM each year.

Do the payments take inflation into account?

The law, as amended in 1994, uses the consumer price index to adjust the population limitation and the per acre dollar amounts used to calculate alternative "A" and "B" under Section 6902. However, an individual county's payment from one year to the next may not necessarily increase since the total amount of money available under the PILT program is set by Congress each year in the Department of the Interior and Related Agencies Appropriations Bill. Payments also vary with changes in "prior-year" payments.

By now you may be thinking, after all that, I know my county's PILT payments should be much higher than we are receiving. The Feds are shortchanging us...again. Why?

REMEMBER: The actual payments are based on:
the formulas established in the Act, and
the total amount appropriated by Congress each year.

Under the current formula, the 2007 payments are funded at 64.7 percent of the authorized level of \$358.3 million. PILT payments for 2007 total \$232.1 million.

Things I know are still on your mind...

What is the soonest a county can know how much it will receive? Historically, counties haven't been able to know the amount of the check until they receive it. Why is that? Is there any way to know it sooner?

Payment computations are quite cumbersome and can take until June to accurately compute payments. Last minute data changes or adjustments can significantly alter the payments. Hence, it would not be to anyone's advantage for the BLM provide inaccurate payment information before the actual payment date only to have it increased or decreased at the time of disbursement.

PILT disbursement time also provides a press opportunity for the Secretary, local BLM offices, Congressmen, and the Governor of each State. Therefore, disbursement announcements are not made until the day PILT payments actually go out.

In 2003, the PILT payment schedule was adjusted to coincide with most local government fiscal years. Hence, payments are now made via electronic transfer by July 1 of each year. FY2007 payments were disbursed on June 15, 2007.

The BLM is acquiring land left and right in my county. And I know we're losing compensation. That land is no longer taxed and because it is acquired, we won't even receive PILT funds.

Remember PILT is based on the prior year's data. So if a federal land acquisition occurs in this fiscal year, you're correct, you will not see monies for that transaction reflected in this year's PILT payment. However, it should show up in the following year's disbursement.

Of course, one of the biggest problems with PILT is the discrepancy between the authorized and appropriated amounts. BLM shares your frustration and is looking for a viable fix that would disengage this yearly effort from BLM's budget process while providing counties with maximum allowable benefits under the program.

Putting It All Together—

PILT is a series of choices.

EX #1 --- Doggone County, USA has 92,000 acres of eligible Federal land within its boundaries. Prior year payments amount to \$38,950. The county's population has reached 7,316.

$$\text{Population Ceiling: } 8,000 \times \underline{\$122.42} = \underline{\$ 979,360}$$

$$\frac{\underline{92,000}}{\text{(Eligible Acreage)}} \times \$2.23 = \underline{\$ 205,160}$$

$$\text{Payment to County (Alternative A)} \quad \underline{\$ 205,160} - \$38,950 = \underline{\$166,210}$$

OR

$$\text{Alternative B} \quad \frac{\underline{92,000}}{\text{(Remember there are no deductions under this alternative.)}} \times \$0.31 = \underline{\$ 28,520}$$

**The County is authorized to receive whichever of the two calculations is greater.

EX #2 --- Dadblame County, USA has 83,000 acres of eligible Federal land within its boundaries. The county has substantial timber harvest and other federal revenue sharing programs so prior year payments amount to \$190,000. The county's population is 11,000.

$$\text{Population Ceiling: } 11,000 \times \underline{\$102.03} = \underline{\$1,122,330}$$

$$\frac{\underline{83,000}}{\text{(Eligible Acreage)}} \times \$2.23 = \underline{\$ 185,090}$$

$$\text{Payment to County (Alternative A)} \quad \underline{\$185,090} - \$190,000 = \underline{\$ 0} \quad (-4,910)$$

OR

$$\text{Alternative B} \quad \frac{\underline{83,000}}{\text{(Remember there are no deductions under this alternative.)}} \times \$0.31 = \underline{\$ 25,730}$$

**Once again, the County is authorized to receive whichever of the two calculations is greater.

EX #3 --- Allgone County, USA has 1,875,000 acres of eligible Federal land within its boundaries. The county also receives significant federal revenue sharing funds so prior year payments totaled \$800,000. The population hovers around 3001.

Population Ceiling: $5000 \times \$149.61 = \$748,050$

$\frac{1,875,000}{\text{(Eligible Acres)}} \times \$2.23 = \$4,181,250$

Alternative A

Payment to County $\frac{*\$4,181,250 - \$800,000 = \$3,381,250***}{\text{amount by population ceiling}}$ (\$748,050 Limited to this amount by population ceiling)

*REMEMBER: If the amount of payment based on acreage exceeds the population ceiling (in this case, \$72,065) you must use the population ceiling calculation for your payment.

OR

Alternative B $\frac{1,875,000}{\text{}} \times \$0.30 = \$562,500$

***Although Alternative A and Alternative B yield higher amounts, because of the population ceiling, Allgone County would be limited to receiving \$72,065.