



Status of Outstanding Payment in Lieu of Tax Amounts for Federal, Provincial and Municipal Properties

Date: May 24, 2018
To: Government Management Committee
From: Treasurer
Wards: All

SUMMARY

This report provides information on the status of payments in lieu of taxes (PILTs) requested from federal, provincial and municipal properties, and identifies PILT payments from all levels of government that remain outstanding as at December 31, 2017. PILTs are voluntary payments made to the City of Toronto by the federal, provincial and municipal governments and agencies to compensate the City for municipal services it delivers to their properties.

In most cases, government agencies pay the full amount of PILTs that the City requests. There may, however, be outstanding PILT amounts requested from federal, provincial or municipal bodies that the Treasurer has concluded, in consultation with the City Solicitor, to be uncollectible. In these cases, the City of Toronto Municipal Code Chapter 71, Financial Control, provides authority to the Treasurer, in consultation with the City Solicitor, to adjust for accounting purposes any outstanding receivables in respect of payments in lieu of taxes that have been determined unlikely to be paid.

RECOMMENDATIONS

The Treasurer recommends that:

1. City Council receive this report for information.

FINANCIAL IMPACT

The PILT amounts noted within this report in Table 1 and detailed in Attachment 1 have been fully provided for in the City's Non-Program 2018 Operating Budget under the Payments-in-Lieu Provision account. As such, there are no future negative financial implications arising from this report.

The Interim Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At its meeting of September 22-25, 2003 City Council approved the adjustment of outstanding PILT receivables for taxation years 1998 to 2003 inclusive as a result of a reduction in the current value assessment of the property owned by the Canadian Broadcasting Centre located at 250 Front Street West (re: Policy and Finance Committee Report No. 9, Clause 12: Canadian Broadcasting Corporation, 250 Front Street West, Crown Corporation, Reduction in Payment-in Lieu of Taxes). Council's decision and the staff report is available at:

<http://www.toronto.ca/legdocs/2003/agendas/committees/pof/pof030911/it012.pdf>

At its meeting held on July 25-27, 2006 City Council approved adjustments to uncollectible PILTs for taxation years prior to amalgamation (1994-1997 inclusive), totalling approximately \$12.7 million, consisting of approximately \$0.2 million on federal properties, \$12.0 million on provincial properties, and \$0.5 million on municipal and other properties (re: Policy and Finance Committee Report 6, Clause 21: Write-Off of Uncollectible Payment in Lieu (PIL) of Tax Amounts on Federal, Provincial and Municipal Properties). The Council decision and staff report are available at:

<https://www.toronto.ca/legdocs/2006/agendas/council/cc060725/pof6rpt/cl021.pdf>

At its meeting held on October 8-11, 2013, City Council approved adjustments to outstanding PILTs for taxation years 1999 to 2012 for the Billy Bishop Toronto City Airport as part of a PILT settlement adopted by City Council at its October 2013 meeting as Item CC39.1: Payments in Lieu of Taxes for Billy Bishop Toronto City Airport. Council's decision and the staff report are available at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.CC39.1>

At the same meeting, City Council approved adjustments to outstanding PILTs for taxation years 2007 to 2013 for Parc Downsview Park as part of a PILT settlement agreement adopted by City Council as Item GM24.13: Parc Downsview Park - Proposed Agreement on Assessment Values for Payments in Lieu of Taxes. Council's decision and the staff report are available at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.GM24.13>

At its meeting of July 7-9, 2015 City Council approved adjustments to outstanding PILTs for taxation years 1999 to 2015 for the TPA as part of a PILT settlement agreement with Ports Toronto (Toronto Port Authority) for properties owned by the Port Authority as item GM5.7: Payments in Lieu of Taxes for Ports Toronto. Council's decision and the staff report are available at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.GM5.7>

At its meeting held on November 3-4, 2015 City Council approved adjustments to uncollectible PILTs for taxation years 1998-2014 inclusive totalling approximately \$34.1 million. Adjustments were also approved in the amount of \$3.4 million for uncollectible property tax amounts billed to tenants of federally owned properties.

At the same meeting, City Council approved amendments to the City of Toronto Municipal Code Chapter 71, Financial Control to delegate authority to the Treasurer to adjust for accounting purposes, outstanding payment in lieu of taxes receivables that the Treasurer, in consultation with the City Solicitor, determines will not be paid, and to report annually to Council on amounts adjusted. The Council decision and staff report are available at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.GM7.1>

ISSUE BACKGROUND

The City's PILT requests are calculated using the current value assessment (CVA) and tax classifications returned for PILT properties on the assessment roll by the Municipal Property Assessment Corporation (MPAC), multiplied by the applicable tax rates for the property. In most cases, PILTs are paid in the amounts requested.

However, in some cases, the amount of PILT paid for a property by the respective government agency differs from the PILT amount requested by the municipality - this may occur when the government agency has used a different opinion of assessed value than that identified on the assessment roll by MPAC when calculating the PILT for a property. In other cases, a PILT payment may differ from the requested amount where the government agency has applied a tax mitigation measure like capping or rebates, resulting in a lower PILT amount than requested, or where a property has been incorrectly classified by MPAC as being subject to a payment in lieu of tax.

Where it is clear that the government agency has made a PILT payment in an amount less than the PILT requested by the City, and that no further payment is forthcoming, the City of Toronto Municipal Code Chapter 71, Financial Control, provides authority to the Treasurer, in consultation with the City Solicitor, to adjust for accounting purposes any outstanding receivables in respect of payments in lieu of taxes that have been determined unlikely to be paid. This authority allows Revenue Services to remove unpaid PILT receivables where, on a case by case basis, the Treasurer has concluded that the PILT will likely not be paid, and to remove dormant or invalid PILT accounts from the tax billing system.

This report identifies PILT amounts requested from all levels of government that remain outstanding as at December 31, 2017. No adjustments to current PILT receivables (i.e., to identify amounts deemed uncollectible) are proposed at this time, and current outstanding PILT receivable balances will continue to be actively collected from the respective government agency.

Federal Payments in Lieu of Taxes

Section 3 of Ontario's *Assessment Act* states that land owned by Canada is subject to assessment but is exempt from property tax. This exemption from tax is consistent with the constitutional prohibition that one level of government cannot tax another level of government.

The federal *Payments in Lieu of Taxes Act* ("PILT Act") was enacted to compensate municipalities for delivering services to federally owned properties that would be subject to property tax if they were privately owned. Federal crown corporations make PILTs pursuant to the Crown Corporation Payments Regulation ("the Regulation").

Under the PILT Act and the Regulation, the City requests PILTs from federal bodies. PILTs are unlike property taxes in two important ways: PILTs are made voluntarily, and federal bodies have discretion in determining property values and property tax rate for calculating PILTs. Two Supreme Court of Canada judgments have considered the nature of this discretion and have concluded that its purpose is to preserve the constitutional immunity of federal bodies from tax while at the same time providing a mechanism to fairly compensate municipalities for their services.

Taxable Tenants on Properties owned by the Federal Government

Tenants of federal bodies are taxable pursuant to section 18 of the *Assessment Act*. Although Revenue Services attempts to collect taxes from federal tenants by way of collection notices and other collection action, including issuance to a bailiff, in some cases it is no longer feasible to pursue collection as the tenants are no longer carrying on business. Normally unpaid taxes result in a tax sale. However, federal bodies are exempt from property tax, and not subject to normal tax sale provisions that would apply to properties not owned by the Crown. Therefore, pursuant to section 319(4) (a) of the *City of Toronto Act, 2006*, when unpaid taxes are deemed uncollectible, they may be written off without first conducting a tax sale where the property is federally owned.

Under section 3.1 of the PILT Act and section 8.1 of the Regulation, a federal body has the discretion to make a payment to a municipality for a federal tenant that did not pay their property taxes. In deciding whether to make a supplemental payment, the Minister has to conclude that the municipality has made all reasonable efforts to collect the unpaid taxes and that there is no likelihood the municipality will ever be able to collect the amounts owing.

Provincial Payments in Lieu of Taxes

Properties owned by the province are also exempt from property taxes under Section 3 of the *Assessment Act*.

The provincial PILT legislation is the *Municipal Tax Assistance Act* ("MTA Act"). Under Section 4 of the MTA Act, the Minister of Municipal Affairs and Housing may make a voluntary payment for property owned by the province or by a provincial agency equal to the tax for municipal purposes that would be payable if the property were taxable.

However, if a Crown property or a portion of a property is occupied by taxable tenants, the Minister or a Crown Agency that owns the property may pay to the municipality an amount equal to the tax for municipal and school purposes that would be payable if the property or the portion of the property were taxable. The province may also make a payment to the City under Ontario Regulation 6/99 if it or a provincial agency is a tenant of a property not provincially owned.

The majority of provincial properties that are occupied by provincial agencies do not pay the education portion of taxes to the City. Provincial PILTs are calculated using only the municipal general rates that calculate the city portion of taxes only. For tenanted properties (whether residential, commercial or industrial), PILTs are based on both the municipal and education portion of taxes, with the education amounts being remitted to the province.

Municipal Payments in Lieu of Taxes

Under section 27 of the *Assessment Act*, certain municipal bodies are required to make payments equal to taxes for municipal and school purposes to municipalities "if the land and buildings were taxable and classified in the commercial property class". In Toronto, section 27 applies to properties owned by the Toronto Parking Authority, Toronto Hydro, and lands owned by the Toronto Transit Commission (with the exception of certain properties made exempt commencing in 2006).

COMMENTS

PILTs are made by the federal and provincial governments voluntarily. For practical purposes, PILTs are requested from federal, provincial and municipal bodies in the way that private property owners are billed. Revenue Services generates the City's PILT requests through the City's tax billing system. This is practical because the information used to request PILTs is based on the assessment roll returned by MPAC which is then uploaded into the tax billing system.

In general, the City calculates PILT requests in the same way that taxes are calculated: multiplying the current value assessment (CVA) of the property as returned by MPAC for the tax year by the applicable tax rate for the property type. Under the City's accounting practices, and in accordance with generally accepted accounting principles and audit requirements, a PILT receivable is created in the City's tax billing system for properties that the City requests PILTs from. When PILTs are paid to the City that are less than the requested amount, the short payment results in an outstanding receivable balance in the tax billing system.

Revenue Services staff make every attempt to collect outstanding PILT amounts from the relevant level of government. In early stages, the follow up is correspondence by letter, email or phone calls to the relevant PILT "manager" at the government body. Revenue Services will also have meetings which will typically include representatives from MPAC and often lawyers from Legal Services.

There are also appeal/review processes which the City has used to deal with outstanding PILT receivables. The federal Dispute Advisory Panel is the adjudicative body created by the federal PILT Act that permits municipalities to ask for a review of the value or tax rate that a federal body has used to calculate its PILTs. Following a hearing, the Panel makes a recommendation to the federal body on the issue of value or rate. Significantly, the federal body is not bound by the Panel's recommendation and is not required to adjust the PILT that they paid to the municipality. The City applied to the Dispute Advisory Panel in respect of PILTs from three federal bodies: the Canadian Broadcasting Corporation, the Toronto Port Authority, and Parc Downsview Park. The

Panel process reached varying stages for each matter, but ultimately all resulted in favourable PILT settlements for the City.

The appeal processes in the *Assessment Act* that apply to taxable properties are applicable to provincial and municipal bodies. The City is currently a party to appeals brought by Infrastructure Ontario (formerly Ontario Realty Corporation and Management Board Secretariat) for the West Don Lands. Once resolved, those appeals will result in decisions from the Assessment Review Board which will be used to adjust outstanding PILTs for these properties.

Current Status of Payment in Lieu of Tax Amounts

Table 1 below identifies PILTs requested, amounts outstanding as at December 31, 2017, and adjustments to PILT amounts made in 2018, by each level of government.

Table 1 - Payments in Lieu of Taxes - Requested Amounts and Amounts Outstanding - By Level of Government (2017)

Description	Total PILT Levy Billed 1998 to 2017	Outstanding PILT receivables as at Dec. 31, 2017	Refunds, Payments and other adjustments made in 2018 ¹	Revised Municipal Portion of Receivables ²	Revised Education Portion	Revised Total PILT Outstanding Receivable	Outstanding Receivable as % of levy
Federal	526,404,151	11,009,926	-2,803,066	8,203,241	3,619	8,206,860	1.56%
Provincial	707,769,566	11,598,971	-12,311,148	-726,001	13,824	-712,177	-0.10%
Municipal	855,182,975	1,317,127	792,175	2,109,284	18	2,109,302	0.25%
Total PILTs	2,089,356,691	23,926,023	-14,322,038	9,586,524	17,461	9,603,985	0.46%

1. Includes any adjustments processed as at May 11, 2018 and future known transactions to be processed.

2. Includes add-on charges and fees

Table 1 identifies a total outstanding PILT receivable balance as at December 31, 2017 of approximately \$24 million. Further payments, adjustments and refunds processed up to May 11, 2018 on these accounts totalling \$14.3 million have reduced the total outstanding receivable to \$9.6 million. The remaining PILT receivable balance represents 0.46 per cent of all PILT amounts levied over the period 1998 to the end of 2017.

This compares favourably with a similar report considered by the Government Management Committee in April 2017 (Item GM19.4: *Status of Outstanding Payment in Lieu of Tax Amounts for Federal, Provincial and Municipal Properties*), which identified a total outstanding PILT receivable balance of \$12.7 million at that time, representing 0.63 per cent of the total PILT amounts levied over 1998 to the end of 2016, and a reduction in current PILT receivables of \$3.1 million since the April 2017 report. See: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.GM19.4>

Further Reductions to PILT Receivables Expected in 2018

Table 1 identifies a total outstanding PILT receivable of \$9.6 million for all 3 levels of government, including \$8,206,860 relating to federally owned properties; a credit balance of \$712,177 for provincial properties (overpayment or amount to be refunded)

and \$2,109,302 for municipal properties. These totals reflect the amount outstanding as at December 31, 2017, less any payments, refunds or other expected adjustments received or processed up to May 11, 2018.

However, there are further expected reductions to current PILT receivables that are expected to be processed in 2018 but which had not been processed by May 11, 2018. These known and expected reductions, arising as a result of recent regulatory amendments or recent changes to assessments will further decrease the total outstanding PILT receivable once these adjustments have been processed. These are summarized below, with the results presented in Table 2.

1. Billy Bishop Toronto City Centre Airport (Toronto Port Authority)

A 2017 amendment to Ontario Regulation 282/98 (the tax class regulation) prescribed a new method for calculating PILT payments for the Port Authority's Billy Bishop Airport, with PILTs now based on per-passenger counts, rather than an assessed value. This change is retro-active to 2013. The outstanding PILT balance for the Billy Bishop Airport (from Attachment 1, Table 1) is \$4,253,382 - this is the difference between the original PILT levy based on assessed value and the PILT calculated on the now-approved per-passenger basis. The outstanding receivable balance for Billy Bishop Airport will be adjusted in 2018 to reflect this change, resulting in a total reduction of \$4.3 million against the total outstanding PILT receivable.

2. Toronto Parking Authority: 2 properties

a) 94 Northcliffe Blvd. This property, owned by the Toronto Parking Authority (TPA), had a PILT receivable balance of \$11,571 for 2017. Subsequent payments in April 2018 were originally misapplied to the wrong taxation year - this was corrected in May 2018, resulting in the 2017 outstanding balance being paid in full.

b) 50 Cumberland St. This property was previously owned by the Toronto Parking Authority, but in 2015 was severed, and a portion sold to a third party, while the TPA continued to operate a parking lot on this site under a lease agreement with the new owner. To date, a portion of 2016 PILT payments associated with the property of \$1.893 million remain unpaid, and a question has arisen as to whether these lands are appropriately subject to a payment in lieu of tax (similar to other TPA-owned properties) or whether a portion of the lands are appropriately taxable, given that a portion of the property is owned by a taxable third party, albeit operated by the TPA under a lease agreement.

A determination has not yet been made as to the correct status of the property (PILT vs. taxable). If the lands are subject to PILT, it is expected that the outstanding balance will be paid by the Toronto Parking Authority. If it is determined that the lands are taxable (whether payable by the TPA or the property owner), the PILT amount requested will be eliminated (and taxable revenues increased) - in either scenario, a determination is expected to reduce the outstanding PILT balance by \$1.893 million in 2018.

Table 2 below, identifies the potential further reduction in the outstanding PILT receivable for 2018 based on the expected adjustments above.

Table 2: Expected Reductions in PILT Amounts payable in 2018

Total PILT Receivable balance as at May 11, 2018 (from Table 1)		\$9,603,985
Less: Expected further reductions in 2018		
1. Billy Bishop Toronto City Centre Airport (Toronto Port Authority)	- \$4,253,382	
2. Toronto Parking Authority a) 94 Northcliffe Blvd. (\$11,571) b) 50 Cumberland St. (\$1,892,717)	- \$1,904,288	
Total Expected Reductions in PILT amounts payable in 2018	- \$6,157,670	- \$6,157,670
Revised PILT Receivable balance outstanding		\$3,446,315

Table 2 identifies that, subject to the expected reductions in PILT receivable balances anticipated to be processed in 2018 totalling \$6.2 million, the outstanding PILT receivable balance of \$9.6 million will be reduced to \$3.4 million.

Attachment 1 to this report provides a detailed summary of the current status of federal, provincial and municipal PILT properties, broken down by agency, with explanations and details surrounding the reasons for the outstanding PILT amounts or credit balances (and includes those amounts expected to be processed in 2018 that are summarized in the section above).

The remaining outstanding PILT amounts may be attributable to the following factors:

- Collections efforts are active and continuous, however, have been unsuccessful to date, or a response from the agency responsible remains pending;
- Pending appeals that may change the assessment value or the tax classification of the property;
- Differences in the application of capping phase-in or other adjustments;
- Assessment values used to calculate payments differ from that returned by MPAC;
- Supplementary and omitted levies due in 2018.

Revenue Services staff will continue to actively review the remaining PILT accounts for collection. Improvements to internal processes stemming from recommendations made by the City's Auditor General in Item AU4.3: *Improving Controls Over Property Tax Assessments and Payment in Lieu of Taxes (PILTs)* that provide for the early notification of unpaid PILT amounts from federal, provincial and municipal bodies are improving the City's overall collection success rates for PILTs.

(see: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.AU4.3>)

These improved processes and amendments to the City's Financial Control By-law have furthered the City's ability to hold accountable the various federal, provincial and municipal agencies for the payments in lieu of tax amounts made to the City.

CONTACT

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SIGNATURE

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Treasurer

ATTACHMENTS

Attachment 1: Summary of Outstanding Payments in Lieu of Tax Amounts by Level of Government