



STAFF REPORT ACTION REQUIRED

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

Date:	September 21, 2015
To:	Government Management Committee
From:	Treasurer
Wards:	All
Reference Number:	P:\2015\Internal Services\rev\gm15021rev (AFS20180)

SUMMARY

This report provides information on payments in lieu of taxes (PILTs) requested from federal, provincial and municipal properties since 1998. PILTs are voluntary payments made to the City of Toronto by the federal and provincial governments to compensate the City for municipal services it delivers to their properties. In most cases, the federal and provincial governments pay the full amount of PILTs that the City requests. However, there are outstanding PILTs requested from federal and provincial bodies for the years 1998 to 2014 inclusive that the Treasurer has concluded will not be paid and seeks to adjust these amounts in the City's accounting records. Reporting on these amounts is appropriate at this time, as uncertainty regarding certain major amounts between the City and the other levels of government has been resolved.

Outstanding PILT receivables arise because:

- The property was incorrectly assessed, e.g. wrong ownership after the sale of the property; property not subject to PILTs; or
- The payment made by the federal or provincial government was lower than the PILT amount requested by the City.

Under provincial assessment legislation, tenants of federal and provincial property are taxable as if they were the assessed owner of the property. The Treasurer seeks approval to write off unpaid tenant property taxes on federal properties.

The property tax amounts recommended for write-off are amounts billed to former federal tenants for which:

- Collection was unsuccessful; and
- The federal body that owns the property has refused to make PILTs for the unpaid former tenants' taxes.

Unpaid PILTs for certain municipal bodies are also recommended to be adjusted because these properties:

- Are owned by the City and were incorrectly assessed as PILTable rather than exempt from PILTs;
- Relate to PILT requests from 1998 where there is inadequate information to confirm the accuracy of PILT requested by the City.

This Staff Report also seeks that Council amend the Financial Control By-law to delegate to the Treasurer, in consultation with the City Solicitor, the authority to adjust for outstanding PILT receivables for accounting purposes, and to report on these amounts annually.

RECOMMENDATIONS

The Treasurer recommends that:

1. City Council authorize the Treasurer to adjust for accounting purposes \$34.1 million in PILT requests (for taxation years 1998 to 2014 inclusive) as identified in Attachments 1, 2 and 3 because these requests will not be paid and to remove these receivables from the respective PILT accounts.
2. City Council authorize the Treasurer to write off \$3.4 million in property tax amounts billed to tenants of federally owned properties (for taxation years 1997 to 2005) as identified in Attachment 4 of this report as uncollectible.
3. City Council amend *City of Toronto Municipal Code Chapter 71, Financial Control* to delegate to the Treasurer the authority to adjust for accounting purposes outstanding PILT receivables that the Treasurer, in consultation with the City Solicitor, determines will not be paid and to report annually to Council on amounts adjusted.

Financial Impact

The recommendations in this report will result in the Treasurer:

- a) Making adjustments for accounting purposes to remove outstanding PILT receivables requested from federal, provincial, and municipal bodies for taxation years 1998 to 2014 inclusive, totalling approximately \$34.1 million (representing 2.8% of PILTS requested during this period). The City's portion of this adjustment of \$33.7 million is fully provided for in the City's Non-Program Payments-in-Lieu Provision account,

while the \$0.46 million education portion is recoverable from the province/school boards (See Table 1);

- b) Writing off unpaid taxes billed to tenants of federal properties for taxation years 1997 to 2005, of approximately \$3.4 million. The City's portion, \$2.8 million, is fully provided for in the City's Non-Program Tax Provision account, while the \$0.61 million education portion is recoverable from the province/school boards (See Table 2).

As these amounts were fully provided for in the City's accounts in prior years, there is no financial impact in the current year's operating budget.

The Deputy City Manager & 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 8: *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/council/cc030922/pof9rpt/cl008.pdf>

At its meeting held on July 25 – 27, 2006 City Council approved adjustments to uncollectible PILTs for taxation years prior to amalgamation (1994 to 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:

<http://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>

Recently, City Council at its meeting of July 7 - 9, 2015, approved adjustments to outstanding PILTs for taxation years 1999 to 2015 for the TPA as part of a PILT settlement agreement with PortsToronto (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>

ISSUE BACKGROUND

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 judgments¹ 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.

The City's PILT requests are calculated using the values and classifications returned for the PILTable properties on the assessment roll by the Municipal Property Assessment Corporation (MPAC) multiplied by the tax rates approved by City Council. In most cases, the PILTs are paid as requested. However, the Treasurer has concluded that the outstanding PILT amounts requested from federal bodies in Attachment 1 will not be paid. In some cases, the City's PILT request was for a property incorrectly assessed by MPAC as federal PILTable. For others, the federal body applied a tax mitigation measure like capping or rebates resulting in a lower PILT amount than requested. Another reason that a federal PILT may be lower than requested is that the federal body had a different opinion of the value of the federal property than had been returned for it on the assessment roll by MPAC.

¹ *Halifax (Regional Municipality) v. Canada (Public Works and Government Services)*, [2012] 2 SCR 108. The City of Toronto intervened in support of Halifax in this case where the Court considered the nature of the discretion that the federal body has to determine value. The City was also an intervener in support of the position taken by Montreal before the Supreme Court of Canada in *Montréal (City) v. Montreal Port Authority* [2010] S.C.J. No. 14 which considered the nature of the discretion that federal bodies have under the *PILT Act* in determining the tax rates used to calculate PILTs.

Taxable Tenants on Properties owned by the Federal Government

Tenants of federal bodies are taxable pursuant to section 18 of the *Assessment Act*. The Treasurer seeks to write off outstanding property taxes in this report owed by former federal tenants who were billed directly for their property taxes but did not pay. Although Revenue Services made attempts to collect taxes from the tenants by way of collection notices and other collection action, including in some cases issuance to a bailiff, as the tenants were no longer carrying on business, it was not feasible to pursue collection. Normally unpaid taxes result in a tax sale. However, federal bodies are exempt from property tax. Therefore, pursuant to paragraph 319(4)(a) of the *City of Toronto Act, 2006* when unpaid taxes are deemed uncollectible, they may be written off without a tax sale if 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 the supplemental payment, the Minister will have 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 it. The federal bodies listed in Attachment 3 have chosen not to exercise their discretion under the federal *PILT Act* and the Regulation to make a PILT for the unpaid tenant property taxes.

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 requests 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 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. If resolved, those appeals will result in decisions from the Assessment Review Board which will be used to adjust outstanding PILTs for these properties.

The outstanding PILT receivable amounts identified in this report do not include PILT receivables for which Council has previously approved settlements or provided authority to settle (e.g. properties owned by the Toronto Port Authority and the CBC), or where assessment appeals are pending that will reduce the PILT receivable once resolved (e.g., West Don Lands).

Recommended Adjustments to Payment in Lieu of Tax Amounts

Table 1 below identifies PILTs requested, amounts outstanding, and PILT amounts being recommended for adjustment, by each level of government for the period 1998 to 2014, as at September 2, 2015.

Table 1
Payments in Lieu of Taxes – Requested Amounts, Amounts Outstanding and Amounts Recommended for Adjustment - By Level of Government (1998 - 2014)

Description	Original Amount Requested (\$)	Total Outstanding Balance (\$)	Amounts Recommended for Adjustment			
			Municipal Portion (\$)	Education Portion (\$)	Total Adjustment (\$)	Adjustment as %age of Levy
Federal (excluding Toronto Port Authority and CBC properties)	325,379,349	22,042,655	21,663,057	379,598	22,042,655	6.8%
Provincial (excluding West Don Lands properties)	329,061,294	2,853,498	2,774,730	78,768	2,853,498	0.9%
Municipal	563,701,494	4,690,826	4,690,826	0	4,690,826	0.8%
Other ¹	8,764,817	4,533,032	4,530,660	2,372	4,533,032	51.7%
Total PILTs	1,226,906,954	34,120,011	33,659,273	460,738	34,120,011	2.8%

1. "Other" includes PILT receivable amounts which were requested in 1998 using different tax billing systems by the former City of Toronto for which no records exist to substantiate the amount requested, the government body responsible for making the PILT, and/or any amounts paid.

Table 1 identifies that, for PILT amounts billed prior to 2015, the total amount of PILT receivables to be adjusted totals \$34.1 million, representing 2.8 per cent of the applicable PILTs billed for this period.

Approximately \$4.5 million (or 13% of the outstanding \$34.1 million recommended for adjustment) in Table 1 relates to outstanding PILT receivables from tax year 1998. These amounts reflect PILT receivables that were billed offline in 1998, for which Revenue Services has only incomplete billing records inherited from pre-amalgamation municipalities. It appears that these amounts were calculated and requested manually. The lack of documentation for these receivables makes it impossible to substantiate the original PILT amount requested, the government agency responsible for making the PILT, and/or any amounts paid for these requests. As such, these amounts cannot be reconciled and are recommended to be adjusted to eliminate the outstanding receivable balance. For tax years 1999 and onward, the City harmonized its PILTs requests by recording and tracking PILT receivables in the tax billing system. Attachments 1 and 2 to this report provide a detailed summary of the PILT amounts recommended for adjustment by federal and provincial bodies. Attachment 3 details the PILT amounts to be adjusted that were requested from municipal bodies.

Write off of Property Tax Amounts for Former Federal Tenants

This report recommends the write-off of unpaid property taxes for former tenants of federally-owned properties. These properties and unpaid tax amounts are shown in Table 2 below.

Table 2
Property Tax Amounts Recommended for Write off for Tenants of Federal Properties

Property	Originally Billed Amount (\$)	Outstanding Amount (\$)	Amounts Recommended for Write off					
			Municipal Portion (\$)				Education (\$)	Total (\$)
			Property Taxes	Interest	Fees	Total Municipal		
1133 Sheppard Avenue West Owner: National Defence Canada (Public Works Canada) (Ward 9) Roll No. 19-08-031-580-00151-0000	683,287	1,801,893	156,860	1,301,469	757	1,459,086	342,807	1,801,893
75 Sheppard Avenue West Owner: National Defence Canada (Public Works Canada and tenant: FG Soccer Enterprises Inc. (Ward 9) Roll No. 19-08-031-580-00151-0360	205,580	637,486	91,978	431,858	48	523,885	113,601	637,486
39 John St Owner: Canadian Broadcasting Corp. (Former Tenant: Movel Restaurants Limited) (Ward 20) Roll No. 19-04-062-070-00150-0000	453,928	929,964	206,793	572,547	48	779,388	150,576	929,964
Total:	1,342,794	3,369,343	455,632	2,305,874	854	2,762,359	606,984	3,369,343

Attachment 4 to this report provides a detailed summary of the tenant property tax amounts to be written off, the years to which the arrears apply, and the reason for the write off of these tenant amounts. Since 2009, the City has been forwarding information on tenant arrears, as they arise each year, to the applicable government agency.

Changes to the City's Procedures for Payments in Lieu of Taxes

This report recommends that City Council amend *City of Toronto Municipal Code Chapter 71, Financial Control* the Financial Control By-law to delegate to the Treasurer the authority to adjust for accounting purposes, outstanding PILT receivables that the Treasurer, in consultation with the City Solicitor, determines will not be paid, and to report annually to Council on amounts adjusted.

This authority will allow Revenue Services to remove unpaid PILT receivables where, on a case by case basis, the Treasurer concludes that the PILT will not be paid; the authority will also allow Revenue Services to remove dormant or invalid PILT accounts from the tax billing system.

Obtaining this authority to amend the financial control by-law will allow for annual amendments and updates to Council, which form a part of changes that Revenue Services will be implementing to improve issues reviewed with the City's Auditor General Office. These planned changes include the development of improved internal processes to monitor, collect and report on PILT accounts. Improvements made to-date include processes that provide for the early notification of unpaid tenant tax accounts to federal or provincial bodies (implemented in 2009), and active resolution of long outstanding PILT accounts with the federal bodies responsible for payment (ongoing since 2006), in consultation with the responsible government body, MPAC and City staff from Revenue Services and Legal Services.

Anticipated further changes include procedures to annually review and identify under-valued PILT properties, and to initiate proceedings before the federal Dispute Advisory Panel for federal properties, or the Assessment Review Board for provincially-owned properties. Revenue Services also intends to develop processes to address cases where the payment of federal PILTs has been unreasonably delayed, and to identify such amounts and request supplementary payments (similar to interest payable on overdue tax amounts) from the federal body responsible.

These procedural changes are expected to improve the City's overall collection success rate for PILTs, while the annual reporting to Council of outstanding PILTs or tenant tax amounts will improve 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.

CONTACTS

Casey Brendon Director, Revenue Services, 416-392-8065, cbrendo@toronto.ca

Angus MacKay, Lawyer, Legal Services Division, 416-392-4019, amackay2@toronto.ca

SIGNATURE

Mike St. Amant
Treasurer

ATTACHMENTS

Attachment 1: Summary of Payment in Lieu of Tax Amounts Recommended for Adjustment, 1998 – 2014 – Federal Properties

Attachment 2: Summary of Payment in Lieu of Tax Amounts Recommended for Adjustment, 1998 – 2014 – Provincial Properties

Attachment 3: Summary of Payment in Lieu of Tax Amounts Recommended for Adjustment, 1998 – 2014 – Municipal Properties

Attachment 4: Property Tax Amounts Recommended for Write off for Tenants of Federal Properties