

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

Date: May 27, 2022

To: General Government and Licensing Committee

From: Controller

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, 2021. The status of outstanding payments in lieu of taxes is reported to Council annually in accordance with a recommendation from the Auditor General in 2015.

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 Controller 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 Controller, in consultation with the City Solicitor, to adjust for accounting purposes any outstanding receivables in respect of PILTs that have been determined unlikely to be paid.

Through this delegated authority, the Controller has approved and made adjustments to three federal PILT receivable accounts totaling \$13,485,624 in December 2021 to reflect that these amounts are not collectible. As a result, the City's outstanding PILT receivable balance has been reduced by \$13.5 million, from a net PILT receivable of \$20.9 million at the end of 2020, to a net PILT receivable of \$7.1 million by the end of 2021, a reduction of 66 per cent. The amounts approved for adjustments will not have a negative financial impact for the City since these amounts have been included in the City's Non-Program 2021 Operating Budget under the Payments-in-Lieu Provision account.

RECOMMENDATIONS

The Controller 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 2022 Operating Budget under the Payments-in-Lieu Provision account. As such, there will be no impact on the current year's budget.

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

DECISION HISTORY

In 2015 City Council approved amendments to the City of Toronto Municipal Code Chapter 71, Financial Control to delegate authority to the Controller to adjust for accounting purposes, outstanding payment in lieu of taxes receivables that the Controller, in consultation with the City Solicitor, determines will not be paid, and to report annually to Council on amounts adjusted.

Most recently, at its meeting held on December 15-17, 2021, City Council received for information Item GL27.3: Status of Outstanding Payments in Lieu of Tax Amounts for Federal, Provincial and Municipal Properties, which identified a total outstanding PILT receivable balance of \$20.9 million at that time, representing 0.88 per cent of the total PILT amounts levied over 1998 to the end of 2021.

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 an assessed value that differs from the assessed value returned 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 Controller, 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 Controller 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, 2021. No adjustments to 2022 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 judgements 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 for property taxes. 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 with representatives of various government agencies.

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 appeal process in the Assessment Act that apply to taxable properties are applicable to provincial and municipal bodies.

Current Status of Payment in Lieu of Tax Amounts

Table 1 below identifies PILTs requested, amounts outstanding as at December 31, 2021, and adjustments to PILT amounts already made or expected to be made after December 31, 2021, by each level of government.

Table 1 - Payments in Lieu of Taxes - Requested Amounts and Amounts Outstanding - By Level of Government (2021)

Description	Federal	Provincial	Municipal	Total PILTS
Total PILT Levy Billed 1998 to 2021	601,617,168	865,148,330	993,995,654	2,460,761,152
Outstanding PILT receivables/ (payables) as at Dec. 31, 2021	5,172,164	8,300,564	-1,103,962	12,368,766
Refunds, Payments and other adjustments made or expected to be made in 2022¹	-385,999	-6,339,403	1,436,625	-5,288,777
Revised Municipal Portion of Receivables²	4,781,583	1,883,215	332,531	6,997,329
Revised Education Portion	4,582	77,946	132	82,660
Revised Total PILT Outstanding Receivable	4,786,165	1,961,161	332,663	7,079,989
Outstanding Receivable as % of levy	0.80%	0.23%	0.03%	0.29%

1. Includes any adjustments processed as at December 31, 2021 and future known transactions to be processed.

2. Includes add-on charges and fees.

Table 1 identifies a total outstanding PILT receivable as at December 31, 2021 as a balance of approximately \$12.4 million. Additional payments and refunds expected to be processed in the future on these receivables total -\$5.3 million, resulting in a net outstanding receivable balance of \$7.1 million. The remaining PILT receivable balance represents 0.29% per cent of all PILT amounts levied over the period 1998 to the end of 2021.

The total outstanding receivable of \$7.1 million identified in Table 1 represents a decrease of approximately \$13.8 million over a similar report considered by the General Government and Licensing Committee in December 2021 (Item GL27.3: Status of Outstanding Payment in Lieu of Tax Amounts for Federal, Provincial and Municipal Properties), which identified a total outstanding PILT gross receivable balance of \$24.8 million, and a net PILT receivable of \$20.9 million at the end of 2020.

In 2021, the Controller, exercising delegated authority, approved and made adjustments to three federal PILT receivable accounts totaling \$13,485,624 to reflect that these amounts are not collectible. As a result, the City's outstanding PILT receivable balance has been reduced by \$13.8 million, from a net PILT receivable of \$20.9 million at the end of 2020, to a net PILT receivable of \$7.1 million by the end of 2021, a reduction of 66 per cent.

Adjustment of Uncollectible PILT Receivables

Chapter 71-17.2 of the Financial Control By-law authorizes the Controller, in consultation with the City Solicitor, to adjust for accounting purposes, outstanding amounts of receivables in respect of PILTs that the Controller determines are unlikely to be paid.

In December 2021, through delegated authority, the adjustment of uncollectible federal PILT receivables totaling \$13,485,624 was approved for three federal PILT agencies. The agencies affected by the adjustment are Ports Toronto, Canadian Broadcasting Corporation (CBC) and Canada Post Corporation and the total amount adjusted for each agency is \$1,791,205, \$11,320,501 and \$373,918 respectively.

Ports Toronto

In 2017, Ontario Regulation 282/98 was amended to include the Billy Bishop Toronto City Airport to the per passenger PILT regime. Since that time, Ports Toronto has paid PILTs for the airport on a per passenger basis, however, MPAC is still required to assess the Billy Bishop Toronto City Airport lands and return the current values on the assessment roll. For administrative purposes, the City's tax billing system generates the PILTs receivables for these assessments but they are uncollectible. Given that the PILT amounts based on the assessments are uncollectible, a total of \$1,791,205 was adjusted.

Canadian Broadcasting Corporation (CBC)

The assessment returned by MPAC for the 2016 assessment cycle was incorrect for the portion of the CBC's Canadian Broadcast Centre subject to PILTs. In 2018 and 2019, the CBC, MPAC and the City reached an agreement on the correct PILTable value, reducing it from the original value provided. The City and CBC entered into Minutes of Settlement at the end of 2020 which addressed the 2017-2020 tax years. MPAC returned the agreed upon PILTable value for the first time in 2021 and it will be used for the City's PILT requests for this property until the end of the 2016 CVA cycle. CBC has made full payment for 2017 to 2020 based on the new agreed PILT value, however, this has left a balance due to the difference between the original assessment provided and the revised assessment. The difference in the unpaid PILT receivable has been deemed uncollectible and as a result, a total of \$11,320,501 has been adjusted.

Canada Post Corporation

The federal Dispute Advisory Panel (DAP) is the adjudicative body created by the federal PILT Act that permits municipalities to ask for a review of the value that a federal body has used to calculate its PILTs. In 2016 (the last tax year of the prior 2012 CVA cycle), the City appealed three Canada Post Corporation properties to the DAP on the basis that the PILTable value used by Canada Post was not correct.

These appeals lead to discussions among the City, Canada Post and MPAC and ultimately an agreement on the correct PILTable value for these properties. As a result of these discussions, the DAP appeals were withdrawn and an agreement was reached at the end of 2016 leaving MPAC no time to use the agreement parameters for updating the 2016 CVAs for these properties for 2017. MPAC corrected this in 2019 and starting that year, the City's PILT requested by the City and payments made by Canada Post for reflected the correct PILTable values.

In addition, in 2019 the City, Canada Post and MPAC reached an agreement on correct PILTable values for two other properties owned by Canada Post.

For 2017 and 2018, Canada Post's payments for these five properties were calculated using the correct PILTable values. The outstanding uncollectible amounts for these five properties are the cumulative differences between the City's requested amounts for 2017 and 2018 based on the returned assessments and the PILTs Canada Post made for each property. Given that this difference has been deemed uncollectible, a total of \$373,918 has been adjusted.

Further Reductions to PILT Receivables Expected in 2022

Table 1 identifies a total outstanding adjusted PILT receivable of \$7.1 million for all 3 levels of government, including \$4.8 million relating to federally owned properties; a balance of \$1.9 million for provincial properties and \$0.3 million for municipal properties. These totals reflect the amount outstanding as at December 31, 2021, less any payments, refunds or other expected adjustments processed in 2022.

Attachment 1 to this report provides a detailed summary of the current status of federal, provincial and municipal PILT properties broken down by entity, with explanations and details surrounding the reasons for the outstanding PILT amounts or credit balances (and includes those amounts expected to be processed in 2022 that are summarized in the section above).

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

- Collection efforts are active and continuous, however, have been unsuccessful to date, or a response from the entity responsible remains pending;
- Pending appeals that may change the assessment value or the tax classification of the property;
- The property may not be subject to federal, provincial or municipal PILTs;
- Differences in the application of capping phase-in or other adjustments;
- Assessment values used to calculate payments differ from those returned by MPAC.

No PILT receivables are being recommended for adjustment at this time.

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.

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.

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SIGNATURE

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ATTACHMENTS

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