

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

Date: August 26, 2024

To: General Government Committee

From: Executive Director, Finance Shared Services

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 receivables from all levels of government that remain outstanding as at July 31, 2024 for the taxation year ending December 31, 2023. 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 PILT receivables that the Controller has determined are unlikely to be paid. 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.

Through this delegated authority, the Controller, in consultation with the City Solicitor, has authorized adjustments to federal, provincial, and municipal PILT receivable accounts totaling \$4,314,397 in August 2024 to reflect that these amounts are unlikely to be paid. 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 2024 Non-Program Operating Budget.

RECOMMENDATIONS

The Executive Director, Finance Shared Services recommends that:

1. City Council receive this report for information.

FINANCIAL IMPACT

The PILT amounts noted within this report in Table 1 have been fully provided for in the City's 2024 Non-Program Operating Budget. 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

At its meeting held on November 3-4, 2015, City Council adopted Item GM7.1: Outstanding Payment in Lieu of Tax and Property Tax Amounts for Federal, Provincial and Municipal Properties and Amendment to Chapter 71, Financial Control By-law, which 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 Toronto Municipal Code Chapter 71, Financial Control, whereby it delegated 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 are unlikely to be paid, and to report annually to Council on amounts adjusted.

Most recently, at its meeting held on October 11 and 12, 2023, City Council received for information Item GG 6.24 - Status of Outstanding Payments in Lieu of Tax Amounts for Federal, Provincial and Municipal Properties, which identified a total outstanding PILT receivable balance of \$10.6 million at that time, representing 1.32 per cent of the total PILT amounts levied over 2015 to the end of 2022.

COMMENTS

Issue Background

The City's PILT requests are calculated using the current value assessment (CVA) and tax classifications returned for Payment In Lieu of Taxable 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 body differs from the PILT amount requested by the City. This may occur when the senior level of government or its agency has used an assessed value that differs from the assessed value returned on the assessment roll by MPAC. In other cases, a PILT may differ from the requested amount where the senior level of government or its 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 returned by MPAC as being subject to PILTs.

Where a government body or agency has made a PILT in an amount less than the PILT requested by the City, and it is clear that no further payment is forthcoming, Toronto Municipal Code Chapter 71, Financial Control, provides authority to the Controller, in consultation with the City Solicitor, to adjust for accounting purposes, outstanding amounts of receivables in respect of payments in lieu of taxes which amounts the Controller determines are unlikely to be paid. This authority allows Revenue Services to remove unpaid PILT receivables where, on a case by case basis, the Controller has determined that the PILT is unlikely to 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 July 31, 2024 for the taxation year ending December 31, 2023. No adjustments to 2024 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 level of government.

Federal Payments in Lieu of Taxes

Section 3 of Ontario's Assessment Act provides that land owned by Canada or any Province is subject to assessment but is exempt from taxation. This exemption from taxation 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 taxing authorities 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 taxation, and not subject to normal tax sale provisions that 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 PILT to a taxing authority for a federal tenant that did not pay their property taxes. In deciding whether to make a PILT, the Minister has to conclude that the taxing authority has made all reasonable efforts to collect the unpaid taxes and that there is no likelihood the taxing authority will ever be able to collect the amounts owing.

Provincial Payments in Lieu of Taxes

Properties owned by the province are also exempt from taxation 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 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 municipality under Ontario Regulation 6/99 if the province or an agency is a tenant of a property that is exempt from tax (e.g., a tenant of a City-owned property).

Municipal Payments in Lieu of Taxes

Under section 27 of the Assessment Act, certain municipal bodies are required to make annual payments to municipalities equal to taxes for municipal and school purposes "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).

Billing and Collection of PILT Amounts

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.

The City generally calculates PILT requests in the same way that taxes are calculated, by 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. 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 and amounts outstanding as at July 31, 2024 for the taxation year ending December 31, 2023, and adjustments to PILT amounts already made or expected to be made in 2024 by each level of government.

Table 1 - Payments in Lieu of Taxes - Requested Amounts and Amounts Outstanding - By Level of Government (2023)

Description	Federal	Provincial	Municipal	Total PILTS
Total PILT Levy Billed 2019 to 2023	99,045,401	226,284,637	177,015,820	502,345,858
Outstanding PILT receivables/ (payables) as at Dec. 31, 2023	5,402,940	7,217,493	-1,561,259	11,059,174
Refunds, Payments and other adjustments made or expected to be made in 2024 ¹	-3,851,080	-5,129,170	1,649,722	-7,330,528
Revised Total PILT Outstanding Receivable as at July. 31, 2024 ³	1,551,860	2,088,323	88,463	3,728,646
Revised Municipal Portion of Receivables ²	1,536,948	2,081,856	88,331	3,707,135
Revised Education Portion	14,912	6,467	132	21,511
Outstanding Receivable as % of levy	1.57%	0.92%	0.05%	0.74%

1. Includes any adjustments processed as at December 31, 2023 and future known transactions to be processed.

2. Includes add-on charges and fees.

3. Includes aggregated numbers that include credits.

Table 1 identifies a total outstanding PILT receivable as at December 31, 2023 of \$11,059,174. Additional payments, refunds and adjustments expected to be processed in the future on these receivables total -\$7,330,528, resulting in a net outstanding receivable balance of \$3,728,646 as at July 31, 2024. This remaining PILT receivable balance represents 0.74 per cent of the PILT amounts levied over the period 2019 to the end of 2023.

The total outstanding receivable of \$3,728,646 identified in Table 1 represents a decrease of \$6,885,601 over a similar report considered by the General Government Committee in September 2023 (Item GG6.24 - Status of Outstanding Payments in Lieu of Tax Amounts for Federal, Provincial and Municipal Properties), which identified a total outstanding PILT receivable balance of \$10,614,247 at that time. The decrease in total PILT receivable is largely attributable to timely collection efforts, older credits being applied to newer balances, as well as the approved adjustment of uncollectible federal PILT receivables totaling \$3,928,395 which was completed in August 2023 through delegated authority.

Adjustment of Uncollectible PILT Receivables

Section 17.2 of Chapter 71 of the Toronto Municipal Code authorizes the Controller, in consultation with the City Solicitor, to adjust for accounting purposes, outstanding amounts of receivables in respect of PILTs which amounts the Controller determines are unlikely to be paid.

Through this delegated authority, the adjustment of uncollectible federal, provincial, and municipal PILT receivables totaling \$4,314,397 was approved in August 2024. The breakdown by level of government is as follows: federal (\$3,885,466) and provincial (\$428,931). The agencies affected are outlined in Table 2 below along with the reason for the adjustments.

Table 2: Federal, Provincial and Municipal PILT Amounts Adjusted

	Total PILT Amounts Adjusted	Reason for Adjustment
Federal PILTs		
Public Works Canada	\$ 3,610,988	Unpaid PILT amounts resulted from change in ownership that changed PILT payable, property change from PILT to taxable and property not being used by Public Works Canada.
Parks Canada Agency	\$ 1,344	Property sold to Parks Canada and as per PILT Act, they are not eligible for PILTS in the year of acquisition.
Transport Canada	\$ 273,134	Unpaid PILT amount is calculated based on returned CVA x tax rate, and the correct PILT payable prescribed in O. Reg. 282/98 on per passenger basis.
Federal Total	\$ 3,885,466	
Provincial PILTs		
Infrastructure Ontario	\$ 399,912	One property changed from PILT to taxable and Province paid pro-rated share as other properties sold.
Ontario Realty Corporation	\$ 29,019	Collection efforts have been unsuccessful despite best efforts.
Provincial Total	\$ 428,931	

Further Reductions to PILT Receivables Expected in 2024

Table 1 identifies a total outstanding adjusted PILT receivables in the amount of \$3,728,646 for all 3 levels of government, including \$1,551,860 relating to federal properties, \$2,088,323 for provincial properties and \$88,463 for municipal properties. These totals reflect the amount outstanding as at July 31, 2024, including any payments, refunds or other expected adjustments processed in 2024.

Attachment 1 to this report provides a detailed summary of the current status of unpaid federal, provincial and municipal PILT properties broken down by level of government,

with explanations and details surrounding the reasons for the outstanding PILT amounts.

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

- Collection efforts are active and continuous yet have been unsuccessful to date, or a response from the body responsible remains pending;
- Unresolved 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.

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