

Question: What are payments in lieu of taxes (PILT)?

Answer: Payments in lieu of taxes compensate a local government for some or all of the tax revenue that it loses due to the tax-exempt status of another governmental entity or a nonprofit organization. The exemptions usually apply to taxes on real property, equipment, and sales. These taxes support local education, police/fire protection, trash collection, and sewage treatment, and the tax-exempt entities usually enjoy the same level of service as the rest of the residents of the local jurisdiction. Some States are required by their statutes to make payments in lieu of real property taxes. Some nonprofits voluntarily make a negotiated payment in lieu of taxes to the local tax authorities to offset the impact on local services funded by residents of the local jurisdiction.

Question: Are payments in lieu of taxes allowable costs in a financially assisted project?

Answer: Yes. Payments in lieu of taxes are allowable costs in a financially assisted project if the costs are eligible in the financial assistance program in question. The allowability of such payments does not depend on whether the land was acquired with financial assistance from the program funding the payments in lieu of taxes or any other Federal financial assistance program.

The following regulations and statutes apply:

- 200.470(b) states: “(b) For nonprofit organizations and institutions of higher education: (1) In general, taxes which the non-Federal entity is required to pay...and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable ...”

Comment: Payments in lieu of taxes for nonprofits are generally allowable.

- 200 CFR 200.470(a) states: “(a) For States, local governments, and Indian tribes: (1) Taxes that a government unit is legally required to pay are allowable...”

Comment: section 200.470(a) does not mention payments in lieu of taxes as being either allowable or unallowable, but see 200 CFR 200.420 below.

- 200 CFR 200.420 states: “Failure to mention a particular item of cost is not intended to imply that it is either allowable or unallowable; rather determination as to allowability in each case should be based on the treatment provided for similar or related items of cost, and based on the principles described in §§200.402 ... through 200.411...”

Comment: Based on the similarity principle in 200 CFR 200.420, payments in lieu of taxes are allowable for States just as they are for nonprofit organizations and institutions of higher education.

- 200 CFR 403 states: "...costs must meet the following general criteria in order to be allowable under Federal awards: ... (c) Be consistent with policies and procedures that apply uniformly to both federally financed and other activities of the non-Federal entity."

Comment: Payments in lieu of taxes are an allowable cost in an award to a State as long as these payments are required for all State lands including those acquired with Federal funds and those acquired with non-Federal funds.

- 50 CFR 80.50(a)(7) "The following activities are eligible for funding under the PR-WR Act: Operate or maintain: (i) Projects that the State fish and wildlife agency completed under PR-WR Act; or (ii) facilities that the agency acquired or constructed with funds other than those authorized by the PR-WR Act."

Comment: If payments in lieu of taxes are required by State law, then such payments are part of the cost of operating these lands for their authorized purposes in the Wildlife Restoration program. Notice that operation and maintenance of facilities are eligible for funding under PR and DJ even if the agency acquired or constructed them with funds other than those authorized by the PR-WR Act. A wildlife management area is a "facility" because it was acquired and established to serve a certain purpose, which is part of Webster's definition of a facility. Therefore, payments in lieu of taxes are eligible for funding for State fish and wildlife agency lands even if they were not acquired under a Wildlife or Sport Fish Restoration award.

- 50 CFR 80.51(a)(10) "Operate or maintain: (i) Projects that the State fish and wildlife agency completed under the DJ-SFR Act; or (ii) Facilities that the agency acquired or constructed with funds other than those authorized by DJ-SFR Act."

Comment: If payments in lieu of taxes are required by State law, then such payments are part of the cost of operating these lands for their authorized purposes in the Sport Fish Restoration program.

- WILDLIFE RESTORATION, 16 U.S.C. 669g(a) "...[F]unds apportioned to a State under this chapter may be expended by the State for management (exclusive of law enforcement and public relations) of wildlife areas and resources."

Comment: This is the establishing authority for the Wildlife Restoration Program. It authorizes management as an allowable cost. If payments in lieu of taxes are required by State law, then such payments are part of the cost of managing these lands for their authorized purposes, and should be an allowable cost in the Wildlife Restoration program.

- 2 CFR 200.420 “...These principles [for selected items of cost] apply whether or not a particular item of cost is properly treated as direct cost or indirect cost. ...”

Comment: Payments in lieu of taxes may be included in the indirect cost pool. If they were included in an indirect cost pool, they cannot be reimbursed as direct costs.

Question: Have payments in lieu of taxes always been considered allowable in WSFR programs?

Answer: Before April 17, 2009, payments in lieu of taxes were considered allowable only in proportion to the amount contributed by a WSFR award to the total cost of acquisition. This policy was stated in FA Policy memorandum 84-3, dated Dec.12, 1983, which no longer has any official status as policy. The Policy Branch reinterpreted this issue on April 17, 2009, in a response to an April 13, 2009 inquiry by R6’s Dave Hamm. His inquiry was the result of Colorado’s challenge of an audit finding that payments in lieu of taxes are unallowable if the lands in question had not been acquired under a Federal award. The 2009 reinterpretation was consistent with the revision of 50 CFR 80 in August 2011 and the implementation of 2 CFR 200 on Dec. 26, 2014 (see above citations).

Question: Should the allowability of payments in lieu of taxes be addressed in 50 CFR 75, 50 CFR 80, or both? Where in the regulations should the issue be addressed?

Answer: It is very unlikely that any grant program other than Wildlife Restoration and Sport Fish Restoration would fund payments in lieu of taxes. Therefore, payments in lieu of taxes should be included as an eligible activity in 50 CFR 80.50 and 80.51. There is no need to list it in 50 CFR 75.