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PILT Counties: Feds May Owe You Money.

Counties receiving PILT payments may be due reimbursements for underpayment from 2015-2017

In 2008, Congress significantly amended the Payments In-Lieu of Taxes (PILT) statute by mandating full funding through 2014. Congress also repealed the original statute language that made the program discretionary and subject to the annual congressional appropriations process. Due to insufficient appropriations for 2015–2017, PILT recipients did not receive the full amount to which they were entitled under the PILT statute based on the Department of the Interior's full payment calculation.

As a result, Kane County, Utah filed a lawsuit in the U.S. Court of Federal Claims in June 2017, seeking to recover its own underpayments and the underpayments of all other PILT recipients nationwide for those years. In December, the court ruled in Kane County's favor for FY2015 and 2016 underpayments and issued a similar ruling on FY2017 underpayments in March 2018.

How to Join the Class Action Suit

To participate in the class action lawsuit and collect possible amounts due them, each underpaid PILT recipient must complete and submit a form "opting into" the lawsuit. If a county does not elect to join the class, they will not be included in the class action lawsuit—and will not receive any recovered funds. Counties will have until mid-September to opt into the class. Click here for more information and to access the opt-in form.

The federal government argued in court that despite Congress' removal of the original statute language treating PILT as a discretionary program, Congress placed the 2008–2014 timeline limitation on the current statute language making PILT mandatory. Federal Judge Elaine Kaplan disagreed, calling the government's argument "untenable."

In her December 2017 ruling, Judge Kaplan elaborated that the federal government "is urging the Court to read the current statute as though it still contained the limiting language that Congress repealed in October of 2008; in other words, the government asks the Court to find that Congress resurrected a repealed provision of law by implication…The government does not cite a single case that supports the resurrection of a repealed provision of law by implication."

The court also certified the lawsuit as a class action, and ordered that an official notice of the formation of a class be sent to each underpaid PILT recipient. That notice of the class formation will be mailed on June 19. Smith, Currie and Hancock, LLP will serve as class counsel.

The exact amount each county may receive from Interior and the length of the legal of time before issuing of payments remain unsettled issues. It is also unclear if the government will appeal the rulings.

National Association of Counties

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