



Research Summary (July 2016)

Potential Application of Federal PILTs to First Nation Lands

What are PILTs?

Payments or Grants In Lieu of Taxation (PILTs) are a way for government departments or Crown Corporations to assist with the cost of services for the local government related to crown properties, as governments and government agencies are exempt from taxation by other orders of government by virtue of s.125¹ of the *Constitution Act*. This was affirmed to apply to First Nation property taxation in *Westbank First Nation v. British Columbia Hydro and Power Authority*, [1999] 3 S.C.R. 134.

Public Works and Government Services Canada explains its rationale for paying PILTs on its web page: "*Most federal properties benefit from the services provided by Canadian municipalities and the Government of Canada firmly supports the principle that, as a property owner, even though it is exempt from taxation, it should share the cost of local government equitably with other property owners in the community.*"²

PILT programs are established by the government property owners, rather than the taxing jurisdictions. There is significant variation among federal and provincial jurisdictions regarding the details of the PILT programs and methods of administration. PILTs by federal departments are managed by the Minister of Public Works and Government Services under the *Payments in Lieu of Taxes Act*. PWGSC issued \$544,885,957.82 in PILTs in 2014. Independent of PWGSC, each Crown corporation is fully responsible for its own payments in lieu of taxes program. PILTs from federal Crown corporations total over \$200 million per year.

Implications for First Nations

The PILT Act, and its regulations, sets out a system where a "taxing authority" as defined in s.2(1) can apply to the Minister for a payment equal to the property taxes or frontage/area taxes that would have applied to "federal property" (as defined in s.2(1), modified by s.2(3), and/or listed in Schedules 1,3 &4). First Nations that levy property taxes are included in the definition of "taxing authority".

The *First Nations Fiscal Management Act*, which provides authority for First Nations to enact property tax laws, was amended in 2015 to include PILTs in the definition of local revenues.

Some PILTs are being collected by First Nations. However, other First Nations tax authorities are not collecting PILTs from federal government properties on their lands.

This means that other First Nation taxpayers, as well as the First Nation, are subsidizing the services those properties receive.

¹ S.125: "No Lands or Property belonging to Canada or any Province shall be liable to Taxation."

² Payments in Lieu of Taxation web page <http://www.tpsgc-pwgsc.gc.ca/biens-property/peri-pilt/index-eng.html>



A total of 146 federal properties have been identified as likely located on reserve. BC had the most federal government properties on reserve at 41, followed by Saskatchewan with 31, and Manitoba with 27.

However, not all federal properties are eligible for PILTs. Police detachments and post offices will likely be eligible under their Crown Corporation's PILT program. Federal properties that are listed in Schedule II will not be eligible, such as wharfs; fish-rearing ponds and fishways; light standards and unenclosed lighthouses; and waterlines.

There are potentially 78 federal properties on reserves that are occupied by federal Crown Corporations, and of those, 76 might be eligible for PILTs.

Number of Federal Properties on Reserve Occupied by Federal Crown Corporations	Total	PILT Potential
Canada Post Corporation (Sched 3 Part 2 FAA)	11	11
Canada Border Services Agency (Sched 4 FAA)	1	1
Correctional Service Canada (Sched 4 FAA)	3	3
Freshwater Fish Marketing Corporation	1	1
Parks Canada Agency (Sched 2 FAA)	3	1
RCMP (Sched 4 FAA)	59	59
Total	78	76

There are potentially 68 federal properties located on reserves that are occupied by seven federal departments, but only 24 of those properties might be eligible for PILTs.

Number of Federal Properties on Reserve Occupied by Federal Departments	Total	PILT Potential
INAC	9	5
Environment Canada	2	2
Fisheries and Oceans Canada	46	8
Health Canada (First Nations and Inuit Health)	3	3
Natural Resources Canada	1	1
Public Works and Government Services Canada	5	5
Transport Canada	2	0
Total	68	24

Before applying for PILTs in respect of these federal properties, the underlying document which gives rise to the occupation of the property by the government department or Crown Corporation (lease, MOU, rental agreement etc.) should be examined. The document may assign responsibility for taxes to one of the parties to the agreement, or the government entity may be a tenant of another leaseholder who is responsible for paying the property taxes.

First Nations with property tax laws or by-laws in place and potential federal government or federal Crown Corporation properties should contact the FNTC for additional information and assistance with researching the PILT potential and submitting the annual PILT application. 🌱