



AGENDA REPORT
July 10, 2018

**Kane County v. USA class action regarding Payments in Lieu of Taxes for
Federal Property**

SUBJECT:

Class action lawsuit seeking unpaid amount of Payments in Lieu of Taxes regarding federal land.

FISCAL IMPACT:

This action will not have any negative fiscal impact.

DEPT/OFFICE:

County Attorney Office

REQUESTED ACTION:

Authorize the joinder (opt-in) by the County in the pending class action lawsuit seeking unpaid amount of Payments in Lieu of Taxes for federal lands; authorize the County Manager to make decisions and execute documents as necessary to exercise the County's rights/options in the class action litigation process.

SUMMARY EXPLANATION and BACKGROUND:

The general facts which give rise to the case are that Congress did not appropriate sufficient funds for fiscal years 2015, 2016 and 2017 to make full disbursements of Payment in Lieu of taxes (PILT) as required by statute. As a result, a prorated amount was paid.

Kane County, Utah filed an action seeking a ruling that they were entitled to receive additional Payment in Lieu of Taxes (PILT) monies due to them by the federal government. They subsequently sought approval of class certification on behalf of all local governments who received Payment in Lieu of Taxes (PILT) payments for FY 2015, 2016 and 2017. Kane County successfully argued that the federal government was required to pay the full amount and is seeking payment of the difference between the full amount owed and the prorated amount paid. The judge granted summary judgment concluding that, as a matter of law, the federal government is required to pay the full amount and granted class certification of behalf of all local governments that receive PILT payments.

Brevard County is a recipient of PILT payments for federal land located in Brevard County. While specific amounts due do not appear to have been determined by the court

at this point, a review of the Department of Interior's (DOI) annual reports on the PILT program help approximate the potential amount due to Brevard County. According to the DOI's reports, for 2015, 2016 and 2017 combined, there appears to be a difference of approximately \$3288 between the statutory amount due and the prorated amount paid.

According to the notice (**See Exhibit A**), the County must complete and send the Opt-In form (**See Exhibit B**) by September 14, 2018 to become part of the class and be eligible to receive payment of the unpaid amount determined by the Court.

By joining the class, the County would be bound by all rulings, orders, judgments, or settlements approved by the Court, whether favorable or unfavorable. The court has already chosen class counsel, Alan I. Saltman of Currie & Hancock, LLP, and there is no out of pocket fees or costs associated with joining the class. The parties have already agreed upon the amount of underpayments for FY 2015 and 2016 and anticipate reaching agreement on FY 2017 as well so it is unlikely there will be any trial on damages. Class counsel will submit their fees and expenses to the Court, and once those are determined, it could be deducted from the money obtained for the Class and reduce the amount available for distribution and therefore reduce the amount of funds received.

There does not appear to be any downside to joining the class.

Options: [1] Choose not to participate in class action case; or [2] Choose to participate in the class action case by approving the Chair to sign the opt-in notice and authorize the County Manager to make decisions and execute documents as necessary through the class action litigation process.

ATTACHMENTS:

Description

- **Exhibit A - Notice**
- **Exhibit B - Opt-In Form**



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

July 11, 2018

MEMORANDUM

TO: Eden Bentley, County Attorney

RE: Item F.32., Kane County v. USA Class Action Lawsuit for Payments in Lieu of Taxes (PILT) for Federal Property

The Board of County Commissioners, in regular session on July 10, 2018, authorized the Joinder (opt-in) by the County in the pending Kane County v. USA Class Action lawsuit seeking unpaid amount of PILT for Federal lands; and authorized the County Manager to make decisions and execute documents, as necessary to exercise the County's rights/options in the litigation process.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/ds

cc: County Manager
Finance
Budget

United States Court of Federal Claims
Washington, D.C.

OFFICIAL NOTICE

RECEIVED

JUN 22 2018

County Manager's
Office

The United States Court of Federal Claims has certified a **CLASS ACTION** lawsuit regarding your right to recover additional sums under the **PAYMENTS IN LIEU OF TAXES ACT** [PILT Act] for fiscal years 2015, 2016, and 2017.

This is not a solicitation from a lawyer.

The Court of Federal Claims, in the case of *Kane County, Utah v. United States*, Case Nos. 17-739C and 17-1991C (Consolidated) [the Lawsuit], has directed sending this notice to a Class made up of: "All 'unit[s] of general local government,' as defined in 31 U.S.C. § 6901(2), that received payment under 31 U.S.C. § 6902(a) of the Payment in Lieu of Taxes Act [PILT Act] in fiscal years 2015, 2016 and/or 2017."

You are receiving this notice because you are a unit of local government believed (1) to be a member of that Class, and (2) to have been underpaid in those years.

The Lawsuit seeks to recover monies that the Court has determined that the federal government owes each Class Member for the underpayment of its respective PILT Act entitlement in fiscal years 2015, 2016, and/or 2017.

To obtain the money that the federal government owes you, *without having to file your own lawsuit*, you must submit a Class Action Opt-In Notice Form which can be done quickly and securely online at www.PILTPayments.com. You may also complete and return the enclosed copy of the Class Action Opt-In Notice Form by first class mail or pre-paid delivery service.

To participate in the Lawsuit, you must submit your completed Class Action Opt-In Notice no later than September 14, 2018.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

- This Notice has been sent to you by order of a federal court. **Please read this Notice carefully and fully.** It explains the opportunity you now have to join a Class Action Lawsuit currently pending before the Court.
- The Court is neither encouraging nor discouraging you to join the Lawsuit. You have the right to participate in the Lawsuit as a Class Member, or to do nothing and be excluded from the Lawsuit.

RECEIVED BY THE

JUN 22 2018

99836
COUNTY ATTORNEY'S OFFICE

- **Please Note:** This particular Class Action differs from many other class actions in the United States because,
 - if you do nothing, you will not be able to participate in the Lawsuit, and
 - the Court has already ruled that the federal government owes each Class Member for underpayments in fiscal years 2015, 2016, and/or 2017.

SUMMARY OF YOUR RIGHTS AND OPTIONS IN THIS LAWSUIT	
ASK TO BE INCLUDED (OPT INTO THE CLASS ACTION LAWSUIT)	<p>By submitting a Class Action Opt-In Notice Form you are asking to be included in the Lawsuit, receive any PILT Act underpayments recovered in the Lawsuit, and be bound by its results.</p> <ul style="list-style-type: none"> • You acquire rights to any money that the Court determines that you are due as a result of underpayment, in fiscal years 2015 through 2017, of your entitlement under Section 6902 of the PILT Act. • You will be bound by the outcome of the case, whether favorable or unfavorable to you. <p>You will also give up the right to sue the federal government on your own, and at your own expense, for the same legal claims made in the lawsuit.</p> <p>In order to join the Lawsuit, you must submit a completed Class Action Opt-In Notice Form online, by first class mail, or by pre-paid delivery service. The Class Action Opt-In Notice Form must be submitted, postmarked, or delivered no later than September 14, 2018.</p>
DO NOTHING	<p>If you do nothing, you will not be included in the Lawsuit, and you will have no right to any money recovered in the Lawsuit. But you will keep the right to sue the federal government for any alleged PILT Act underpayments in fiscal years 2015 through 2017, on your own and at your own expense.</p>

- Your rights and options, and the deadline to exercise them, are further explained below.
- This Notice may affect your legal rights. Read it carefully.

BASIC INFORMATION

1. Why did I get this Notice?

The federal government's records show that you are a unit of local government that received a payment pursuant to Section 6902 of the PILT Act in fiscal years 2015, 2016, and/or 2017. This Notice advises you that:

- a. The Court has allowed, or "certified," a Class Action Lawsuit against the United States to recover amounts which the Court has determined that the government was required to pay units of local government under 31 U.S.C. § 6902, but did not pay in full in fiscal years 2015, 2016 and 2017.
- b. You are eligible to participate in the Lawsuit by completing and timely submitting a Class Action Opt-In Notice Form. The Form may be completed and submitted online at www.PILTPayments.com. Alternatively, you may complete the enclosed copy of that Class Action Opt-In Notice Form and submit it by first class mail or by pre-paid delivery service.

2. What is this Lawsuit about?

This Lawsuit is about whether the federal government was required to pay in full the amounts due to units of local government under Section 6902 of the PILT Act in fiscal years 2015, 2016, and 2017. The Class Representative (Kane County, Utah) contended that the federal government underpaid units of local government in those years, and that all Class Members are entitled to recover the underpayment amounts. The government denied that any units of local government were entitled to any additional PILT payments beyond the amounts already paid for those years.

3. What has the Court decided?

The Court has ruled that provisions of Section 6902 of the PILT Act obligated the federal government to pay eligible units of local government the full amounts calculated by a formula set forth in the Act even though Congress failed to appropriate sufficient funds to do so in fiscal years 2015 through 2017 (noting that Kane County had not challenged (and the decision did not therefore extend to) the portion the government's reduction of its fiscal year 2015 PILT payments caused by the sequestration of part of the funds appropriated to make FY 2015 PILT payments). The Court granted summary judgment, in favor of the Class, as to the government's liability for underpaying Class Members in those years. The Court has not yet determined the amount by which the Class as a whole, or any individual Class Member, was underpaid in those years. As of the date of this notice, Class Counsel

and counsel for the government have agreed on the amount of the underpayment in fiscal years 2015 and 2016, and anticipate reaching agreement on the amount of the underpayment in fiscal year 2017. The Court's decision is subject to appeal.

4. What is a Class Action and who is involved?

In a class action, one or more Class Representatives (in this case, Kane County, Utah) sues on behalf of all Class Members (in this case, units of local government that receive PILT payments) who have the same or similar claims. Kane County and all other Class Members who choose to participate in the Lawsuit are the "Plaintiffs." The United States is the "Defendant." In a class action at the United States Court of Federal Claims, the Court resolves all issues for all Class Members who choose to participate in the Lawsuit. Here, that includes the Court's decision that the government is liable, described in paragraph 3 above.

5. Why is this lawsuit a Class Action?

The Court has decided that this Lawsuit meets the requirements of Rule 23 of the Rules of the United States Court of Federal Claims, which governs class actions in that Court. Specifically, the Court has ruled that:

- The potential Class is so numerous that joinder of all Class Members is impractical;
- There are legal questions and facts common to each Class Member's claim;
- The Class Representative's claim is typical of the claims of other Class Members;
- The Class Representative, Kane County, Utah, and Class Counsel, Alan I. Saltman, a partner in the Washington, D.C. office of Smith, Currie & Hancock LLP, will fairly and adequately represent the interests of the Class;
- The common legal and factual questions predominate over questions affecting only individual Class Members; and
- This Class Action will be more efficient than having many individual lawsuits.

6. What is requested in this Lawsuit?

The Class Representative seeks, for itself and for all other Class Members who choose to participate in the Lawsuit, payment of the amounts by which each was underpaid in fiscal years 2015 through 2017. Class Counsel will also ask the Court for an award of attorney's fees and expenses.

WHO MAY PARTICIPATE IN THE CLASS ACTION

7. Am I part of this Class Action Lawsuit?

You must decide whether you wish to participate in the Lawsuit. **You cannot participate unless and until you fill out and submit—online, by first class mail, or by pre-paid delivery service—the Class Action Opt-In Notice Form found on the website www.PILTPayments.com.** A copy of the Form is also enclosed. The Rules of the United States Court of Federal Claims require that Class Members choose whether to “opt into” the lawsuit. If you fit the description in the next question—and the government’s records indicate that you do—you may opt into and participate in this Lawsuit. If you do nothing, you will be excluded from the Lawsuit and will forfeit your right to receive any monies recovered in the Lawsuit.

8. Who can participate in the Lawsuit?

The Court has decided that the Class consists of:

“All ‘unit[s] of local government,’ as defined in 31 U.S.C. § 6901(2), that received payment under 31 U.S.C. § 6902(a) of the Payment in Lieu of Taxes Act in fiscal years 2015, 2016, and/or 2017.”

Any unit of local government meeting this definition may participate in this Lawsuit by timely submitting a completed Class Action Opt-In Notice Form.

9. Does participating in the Lawsuit cost any money?

No.

YOUR OPTIONS

10. How can I participate in this Lawsuit?

You can complete and submit your Class Action Opt-In Notice Form online at www.PILTPayments.com.

Alternatively, you can complete the enclosed Class Action Opt-In Notice Form and send it by first class mail to: PILT Payments Class Action, P.O. Box 65876, Washington, D.C. 20035-5876; or by pre-paid delivery service to: PILT Payments Class Action, 1025 Connecticut Avenue NW, Suite 600, Washington, D.C. 20036. However you transmit it, you **must** submit your completed Form **no later than September 14, 2018** if you wish to participate in the Lawsuit. **Do not delay.**

11. What happens once I choose to participate in this Lawsuit?

As a Class Member who chooses to participate in the lawsuit, you will be represented by Class Counsel, who will take all actions necessary to protect your rights. You will receive the benefit of, and be bound by, all rulings, orders, judgments entered, or settlements approved by the Court, whether favorable or unfavorable. You will **not**, however, be asked to make any out-of-pocket payment of attorney's fees or expenses in the case.

12. If I choose to participate in the Lawsuit, what will I be required to do?

After timely submitting a completed Class Action Opt-In Notice Form, the parties currently do not anticipate that you will have to do anything else.

13. What happens if I choose not to participate in the Lawsuit?

If you do not submit a completed Class Action Opt-In Notice Form online **on or before September 14, 2018**; by first class mail **postmarked on or before September 14, 2018**; or by pre-paid delivery service **delivered no later than September 14, 2018**, you will be barred from participating in the Lawsuit and will not be entitled to any portion of any monetary recovery by judgment or settlement of the Lawsuit. You will retain the right to sue the federal government on your own about the same legal claims made in the Lawsuit, and will not be bound by the Court's judgment in the Lawsuit. If you decide to pursue your claim independently, outside of this Lawsuit, you should consult an attorney and do so promptly because certain statutes of limitation may bar or limit your claim. If you choose to hire your own attorney, you will be responsible for paying the full cost of that attorney.

THE LAWYERS REPRESENTING YOU

14. If I choose to participate in the Lawsuit, do I have to hire a lawyer to represent me?

No. The Court has decided that Alan I. Saltman and the firm of Smith, Currie & Hancock LLP are qualified to represent you and all other Class Members who choose to participate. They are called "Class Counsel."

Mr. Saltman is experienced in handling similar cases against the federal government. If you choose to file a Class Action Opt-In Notice Form, you agree to legal representation by Mr. Saltman and his firm.

15. Should I hire my own lawyer?

If you decide to participate in the Lawsuit, you do not need to hire a lawyer because Class Counsel is and will continue working on your behalf. But you are permitted to hire your own lawyer if you would like to do so. For

example, you may have your own lawyer appear in Court if you want someone other than Class Counsel to speak for you. Of course, if you choose to hire your own lawyer, you will be responsible for paying the full cost of that lawyer.

16. How will Class Counsel be paid?

Class Counsel will submit a request for its fees and expenses to the Court. You will not have to pay any fees or expenses directly. The fees and expenses that the Court determines should be paid to Class Counsel, if any, might be deducted from the money obtained for the Class and might reduce the amount available for distribution to Class Members, and therefore reduce the amount of money you receive.

LITIGATION INFORMATION

17. How and when will the Court decide the amount of the underpayments?

Class Counsel and counsel for the government have already agreed on the amount of the underpayments in fiscal years 2015 and 2016, and anticipate that they will also reach agreement on the amount of the underpayment in fiscal year 2017. Should that not occur, Class Counsel will have to prove the amount of the underpayments in fiscal year 2017 at trial. No trial date has been set. The Court has not yet entered judgment in any amounts for any of the years involved in the Lawsuit.

18. If there is a trial on damages, must I attend?

If there is a trial on damages, you do not need to attend. Class Counsel will present the case on behalf of all Class Members participating in the Lawsuit. You and/or your own lawyer are welcome, and entitled, to attend at your own expense.

19. When will I get any money from the lawsuit?

After the Court has determined (a) which Class Members have chosen to participate in the lawsuit, (b) the underpayment amounts, and (c) the fees and expenses that should be paid to Class Counsel, you will be notified about how and when you will receive your payment. At this time, the parties do not know how long that will take, or whether there will be any appeal from the Court's decisions that could impact the entitlement, timing, or amount of any payments.

GETTING MORE INFORMATION

20. Is more information available from the Court?

The pleadings and other records in the Lawsuit may be examined during regular business hours at the Office of the Clerk of the United States Court of Federal Claims. The Court's address is:

United States Court of Federal Claims
717 Madison Place, N.W.
Washington, D.C. 20005

THE COURT HAS INSTRUCTED THAT YOU SHOULD NOT CONTACT THE CLERK'S OFFICE BY TELEPHONE, E-MAIL, OR MAIL FOR INFORMATION ABOUT THIS CASE. Please do not contact the United States Court of Federal Claims with questions or requests for information.

21. Who can I contact if I have a question or need additional information?

Both a copy of the Court's decisions on Kane County's Motions for Summary Judgment, and its Order certifying the Class are also available at www.Smithcurrie.com/PILTPaymentsInfo.

Any questions you have can be submitted at www.Smithcurrie.com/PILTPaymentsInfo and Class Counsel will respond. The answers to Frequently Asked Questions, and to submitted questions of general interest, will also be posted there.

Class Action Opt-In Notice Form

UNITED STATES COURT OF FEDERAL CLAIMS
Kane County, Utah v. United States
Case Nos. 17-739C and 17-1991C (Consolidated)

1. To participate in this lawsuit as a Class Member, please fill out this form completely and legibly. **It must be submitted, postmarked, or delivered no later than September 14, 2018.**

See Paragraph 5 below for the addresses for (a) electronic submission via the internet; (b) first class mail; and (c) delivery by pre-paid delivery service.

2. Please fill in the name of the unit of local government [i.e., County, City, Town, Borough, Parish, etc.] opting into the *Kane County, Utah v. United States* Class Action lawsuit:

Unit of local government

State

3. Please fill in the following information for the unit of local government:

Name of the person who will act as contact for the unit of local government regarding the Class Action lawsuit:

His /Her:

Title _____

Mailing

Address: _____

Telephone number: _____

E-mail address: _____

4. By signing your name in the space below (or filling in an electronic signature in the format /s/ *First name Last name* if submitting via the internet) you are declaring under penalty of perjury under the laws of the United States that:

(a) The unit of local government named above wishes to opt into the Class Action lawsuit: *Kane County, Utah v. United States*, Case Nos. 17-739C and 17-1991-C (Consolidated).

(b) You are authorized by the unit of local government named above to sign this document on its behalf.

Sign Your Name: _____ Date: _____

Print/Type Your Name: _____

Your Position or title with the unit of local government: _____

Your e-mail address: _____

Your phone number: _____

5. Submit this completed form to:

On Line:

by clicking "Submit" at <http://www.PILTpayments.com>

- A copy of this Class Action Opt-In Notice Form may also be downloaded at this website.

By First Class Mail:

PILT Payments Class Action
P. O. Box 65876
Washington, D.C. 20035-5876

Pre-paid Delivery Service:

PILT Payments Class Action
1025 Connecticut Avenue, N.W., Suite 600
Washington, D.C. 20036