

INTRODUCTION TO THE PAYMENT IN LIEU OF TAX PROGRAM

The city receives PILOT contributions from educational, medical and cultural institutions which have entered into agreements to help cover costs of municipal services rendered to medical facilities, college dormitories, ambulatory buildings, performing arts centers and a myriad of other properties owned by tax exempt institutions where police, fire, sanitation and emergency medical response services are regularly rendered. Without PILOT contributions, the cost of such essential services would otherwise be borne exclusively by Boston's residential and commercial taxpayers. While the city faces continuing fiscal challenges, and with nearly 52% of Boston real estate currently owned by tax-exempt organizations, the City of Boston views PILOTs as an important revenue source.

GETTING STARTED

The City of Boston Assessing Department typically initiates discussions regarding a PILOT agreement at the time a tax-exempt organization contemplates either expanding its real estate holdings or begins new construction on its existing property. Organizations filing project notification material with the Boston Redevelopment Authority may contemplate PILOT agreements at the early project development stage. In such instances, the BRA notifies the Assessing Department of the organization's intention to expand its property holdings, the Assessors contact the organization and request a PILOT, and the organization responds. Additionally, organizations that do not seek BRA project approval enter PILOT discussions with the Assessing Department when the organization acquires property from a for-profit owner and subsequently applies for statutory tax abatement.

The city's policy is to focus on the expansion of tax-exempt land and the replacement of previously taxable property. The city does not generally seek payments on existing non-profit owned facilities. This policy has the pragmatic advantage of allowing exempt institutions to include the cost of any PILOT payment in the financial planning of new facilities. For instance, a PILOT agreement could take the form of a campus-wide agreement with provisions allowing for PILOT contribution increases in the event of campus alterations. This type of agreement allows for a predetermined formula to be applied to future property acquisitions or expansions and avoids duplicating the entire PILOT process each time a new project is undertaken.

THE AGREEMENT PROCESS

When an organization demonstrates its intention to expand, improve, replace or acquire a facility, the institution is sent a PILOT New Project Profile Form by the Assessing Department. The organization is asked to provide on the form data regarding its property, revenue raising capability, intended use of the property, and other related information. The institution is also asked to submit its Project Master Plan.

Once the Assessing Department reviews the New Project Profile, representatives of both the tax-exempt institution and the Assessing Department begin discussions about the property expansion or development, an appropriate contribution amount, and various other terms to be incorporated into the PILOT agreement.

Once a preliminary PILOT agreement is reached, the Assessing Department makes an initial draft of the PILOT agreement. The draft agreement is then forwarded to the organization for further review.

After the PILOT agreement is approved by the organization, the Assessing and Law Departments, and the Mayor's Office, the contract is finalized and executed by all parties.

ESTABLISHING THE ANNUAL PILOT AMOUNT

PILOT payments are based upon the value of the project in terms of property value and the revenue the municipal government forgoes because of the project's tax exempt status. The City utilizes the following guidelines according to the character of the institution's development.

Estimating Value

The appropriate value of a facility is determined by using one of the following value methodologies:

- **Cost Approach to Value**

When an institution undertakes a large construction and/or renovation project, the cost involved in the construction provides a basis for determining its value. The Assessing Department establishes a price per square foot based on the cost information provided by the institution.

- **Replacement of Tax Revenue Lost Approach**

In situations where the exempt institution purchases property that was previously taxable and makes no renovation to the property, the assessed property value is used as the basis for the PILOT.

Where possible, the value of a facility is based on the assessed value of comparable buildings in the same or comparable neighborhood and occupied for a similar purpose.

Calculating the PILOT Amount

The "tax value" of a project is determined by multiplying the project value by the current tax rate. The commercial or residential tax rate is used, depending on the intended use of the property. Size of the project, construction cost of the project development, comparable taxable buildings, and square feet occupied are among the points considered. The "base PILOT" is determined by multiplying the tax value of the project by 25%. This percentage is used because it reflects the percentage of the city's operating budget that is devoted to basic service, e.g., fire protection, police protection, and public works, for which the city feels tax-exempt institutions should contribute. This percentage may be adjusted depending on the anticipated consumption of city services or neighborhood impact of the project.

Escalator Clause

In order to mitigate the effects of inflation on service costs, PILOT agreements contain an escalator clause which provides that the agreed upon base PILOT amount increase annually by an appropriate measure of inflation. For an inflation index the city uses the Implicit Price Deflator (IPD) for State and Local Government produced by the Bureau of Economic Analysis at the U.S. Department of Commerce. The IPD measures the purchasing power of state and local governments and is therefore the most accurate measure of inflation affecting PILOT values.

ADDITIONAL PROVISIONS

Credits for Extraordinary Community Services Provided by Tax-Exempt Institutions

Several institutions make contributions to Boston charitable organizations, missions, or city sponsored community programs in the form of direct community services or monetary donations. Examples of contributions include academic scholarships, volunteer classes or workshops for community based non-profits or public school programs, as well as the operation of free emergency medical clinics. The City will consider a credit for money spent on such contributions for up to 25% of the institution's then current PILOT obligation. In order to qualify as a credit, the community service must be a new service or contribution performed above and beyond any service or contribution the institution was providing prior to the execution of the PILOT agreement. BRA negotiated community benefits are not considered community service credits for PILOT community service credit purposes, and thus will not reduce the annual PILOT contribution. The city annually evaluates and may approve requests for community service credits on a case-by-case basis. Institutions should be aware that services that support the priorities of the Menino administration - promoting education and health, alleviating the fear of crime, expanding jobs and economic development - are preferred.

The City of Boston recognizes and appreciates those institutions that support the PILOT program. City government and exempt institutions must maintain a cooperative partnership to ensure Boston's fiscal and economic health. These guidelines aim to provide an open and equitable process for the effective fiscal management of Boston's tax base.

SAMPLE AGREEMENT TO MAKE PAYMENTS IN LIEU OF TAXES

AGREEMENT, made this ___ day of _____, 200__ at Boston, Massachusetts by and among (*name of tax-exempt institution*), a non-profit corporation duly organized under Chapter 180 of the General Laws of the Commonwealth of Massachusetts having a usual place of business at (*location of tax-exempt institution*), Boston, Massachusetts, and the City of Boston (the "City"), a municipal corporation in the Commonwealth of Massachusetts.

WITNESSETH THAT

(*The tax--exempt institution*), while currently entitled to exemption from obligations to pay local real and personal property taxes on its property pursuant to Massachusetts General Laws C. 59, § 5, Clause Third, as a matter of use and occupancy, recognizes that the existence of this property requires the City to furnish municipal services and is willing voluntarily to make certain payments to the City in the form of a payment in lieu of taxes ("PILOT").

(*The tax-exempt institution*) acknowledges that it intends to develop (*address and or ward and parcel number of project*) ("*the project*"). The said project may be exempt under the laws of the Commonwealth from local real property taxes provided that the uses of such property remain consistent with the tax laws relative to exemption, and (*the tax-exempt institution*) intends to file appropriate papers required by law to obtain and maintain such exemption.

(The tax-exempt institution) and the City further acknowledge and agree that other real and personal property owned by the tax-exempt institution which is now entitled to exemption from taxation shall continue to remain so entitled, subject to applicable law relative to exemption from real property taxation; and consistent with the above, that the above referenced project which is the subject of this agreement shall be granted exemption upon timely application for exemption and preservation of statutory rights of appeal, insofar as may be necessary, in the event that any or all of the property is taxed by the City in any particular fiscal year.

NOW, THEREFORE, in consideration of the municipal services to be furnished by the City and the mutual agreements herein contained, the parties hereto hereby agree as follows:

1. The payment due for each fiscal year after the first fiscal year in which payment shall be due pursuant to the terms of this Agreement shall be subject to a further adjustment as provided in the Inflation Adjustment Clause attached hereto as Exhibit A.
2. Notwithstanding the foregoing, if a certificate of occupancy is issued during the course of a fiscal year, the amount calculated according to Sections One and Two above shall be prorated in accordance with the portion of the fiscal year remaining.
3. Twenty-five percent (25%) of the total amount due in each fiscal year according to any or all of Sections One, Two and Three above shall be credited, contingent upon (*the exempt institution's*) documentation of community services being provided or funded and the City's approval of any such community services documented. The services must be over-and- above what (*the tax-exempt institution*) was providing prior to signing this agreement. In no event shall approved community service credits exceed 25% of the total amount due in the fiscal year the credits are claimed, and in no event shall any community services rendered by (*the tax-exempt institution*) be prorated to future fiscal years. Eligible services shall include, but not be limited to, (list of contemplated service).
4. It is the intention of the City, through its Assessing Department, to recognize the development as exempt pursuant to M.G.L. c. 59, § 5, Clause Third in future fiscal years so long as and provided that (a) exemption is warranted as a matter of ownership, use and occupancy and (b) Form 3 ABC is timely filed with the Assessing Department for each fiscal year.
5. In the event a real estate tax bill is issued for such property, however, it is the exclusive responsibility of (*the tax-exempt institution*) to do all things necessary to preserve the jurisdiction of the City's Assessing Department to grant abatement relief on the basis of exemption, overvaluation, misclassification and/or disproportion, including timely filing of application(s) for abatement, supporting documentation and appeal(s) to the Appellate Tax Board, as may be necessary, and timely payment of the deemed tax due as defined in M.G.L. c. 59, § 64.
6. If at any time hereafter, due to a change in the laws applicable to exemptions from real property taxation any tax payment is made pursuant to a M.G.L. c 59 tax assessment in a particular year for any property which is a subject of this agreement, such payment will be credited against the PILOT obligation as calculated above. Any overpayment made in a fiscal year by reason of this provision shall be credited against future PILOT obligations.

7. Pursuant to applicable law, the City may assess, and require that an otherwise tax-exempt institution pay real estate taxes based upon any commercial operation or uses of said property which are not exempt from taxation. Said tax payment would be made in addition to the PILOT payments made under this Agreement

8. If the Commonwealth of Massachusetts hereafter reimburses the City for property taxes lost as a result of exemptions and said reimbursement is based in part on valuation of property held by (*the tax-exempt institution*) which is the subject of this Agreement, there shall be a reduction of the amounts payable thereafter under this Agreement. Such reduction shall be in an amount equal to the percentage which the valuation of (*the tax-exempt institution's*) property under this Agreement constitutes the valuation of all exempt buildings on which the reimbursement is based. Such reduction shall be credited against the payment due under this Agreement in each fiscal year in which the City receives the state reimbursement.

9. The provisions of this Agreement shall be binding and inure to the benefit of the parties hereto and their respective legal representatives, successors in office or interests, and assigns and may be amended only by an agreement in writing duly executed by the parties hereto or their successors.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed as a sealed instrument by its officers duly authorized as of the day and year first above written.

SIGNATURES

ATTACHMENT A

Inflation Adjustment Clause

The payment adjustment shall be the percentage by which the "State and Local Government" component of the Implicit Price Deflator for Gross National Product ("IPD") for the quarter preceding the start of the then current fiscal year exceeds or is less than the "State and Local Government" component of the IPD in effect for the quarter preceding the start of the fiscal year in which this agreement is executed.

Thus, the payment due shall be adjusted annually by taking the amount payable pursuant to Paragraph 1 of this Agreement, multiplying it by the percentage adjustment defined above, and adding the result from the amount payable pursuant to Paragraph 1.