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# Compensating State and Local Governments for the Tax-Exempt Status of Federal Lands: What Is Fair and Consistent?

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# Summary

The federal government owns significant amounts of land and resources that are exempt from state and local taxation. State and local governments provide a wide variety of services—education, social services, public safety, transportation facilities, utilities, and much more. These services are funded through intergovernmental transfers (federal grants to state governments and federal and state grants to local governments), user fees, and state and local levied taxation—property taxes, income taxes, sales and use taxes, excise taxes, severance taxes, and more.

Congress has established programs to compensate state and local governments for the tax-exempt status of federal lands. Some propose that "fair" compensation would provide payments that are equivalent to the taxes that would be paid if the lands were privately owned. Assessing such tax equivalency, however, is difficult because of the substantial variability in state and local reliance on and rates for the various types of taxes. Others suggest that "fair" compensation would provide payments that offset the costs imposed on state and local governments from the federal lands, although this would exclude payments for governmental services that are not paid by the beneficiaries (e.g., social services). Providing consistent payments is a challenge; permanent appropriations are the most stable, but are difficult to establish and create permanent obligations. Finally, which lands to include for federal payments may seem straightforward, but lack of precise data on the federal lands might compromise accuracy of payments, and federal responsibility for tax-exempt Indian lands is unclear.

A plethora of federal payment programs exist, enacted at various times and for various reasons over the past century. Some payment programs are based on numbers of Indian children or children of federal employees (about $1.3 billion annually), some on federal receipts (about $0.5 billion annually), and some on federal acreage (about $0.4 billion annually). Some of the receipt- and acreage-based payments are broad, covering many federal lands, while others are quite narrow (e.g., based on sales of a particular resource within a limited area). Some are permanently authorized, and have mandatory spending authority (payments without annual action by Congress). Others require periodic reauthorization, annual appropriations, or both.

Although most of the federal payment programs were justified as compensation for the tax-exempt status of federal lands, the programs poorly reflect state and local tax equivalency or state and local costs of providing governmental services. In some places, the payments probably exceed what a private landowner would pay; in others, the payments fall short of what many might consider "fair" compensation. These possibly inequitable results likely occur from differences in the congressional committees of jurisdiction over various lands and programs and over time, and because only some programs were established with mandatory spending authority.

The mandatory spending authority for two relatively large payment programs—the Secure Rural Schools and Community Self-Determination Act (SRS Act) program and the Payments in Lieu of Taxes (PILT) program—expired at the end of FY2011 and will expire at the end of FY2012, respectively. As Congress debates the reauthorization of the SRS Act, the mandatory spending authority of the PILT program, and other payment programs, it might consider the broader questions of what is fair and consistent compensation to state and local governments for the tax-exempt status of federal lands.

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The federal government owns significant amounts of land and resources. These assets are exempt from state and local taxation. Congress has established a plethora of payments as compensation for this tax-exempt status. Some payment programs are based on the number of Indian children or children of federal employees, some on federal receipts, and some on federal acreage. In addition, some of the payments are permanently authorized and have mandatory spending authority, while others require periodic reauthorization and/or annual appropriations. The mandatory spending authority for the Secure Rural Schools and Community Self-Determination Act (SRS Act) program expired at the end of FY2011, and that for the Payments in Lieu of Taxes (PILT) program will expire at the end of FY2012. As Congress debates reauthorization of the SRS Act, the mandatory spending authority of the PILT program, and other payment programs, it might consider the broader questions of what is fair and consistent compensation to state and local governments for the tax-exempt status of federal lands.

# Background[1]

The U.S. Constitution generally prohibits state and local governments from imposing any tax on the federal government, absent Congress's clear consent.[2] This prohibition is rooted in the Supremacy Clause, which states that the Constitution and federal laws are "the supreme Law of the Land."[3] While the clause does not expressly declare that the federal government is immune from state and local taxation, the U.S. Supreme Court has long recognized that it implicitly provides for such protection.[4] As the Court explained in one of its earliest decisions, "the power to tax involves the power to destroy,"[5] and therefore state taxation of the federal government is inconsistent with the theory of federal supremacy required by the clause.[6] This immunity is implicated when the tax's legal incidence (who must pay) falls on the U.S. government.[7]

While some argue that the federal government cannot and/or should not own land, the federal government does, in fact, own about 640 million acres of land in the United States, about 28% of all land in the country.[8] If these lands were privately owned, the states and local governments would receive tax payments of various sorts from the lands and the economic activity that is generated from the lands—property taxes, sales taxes, income taxes, and more. The question is:

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[1] This constitutional background was provided by Erika Lunder, Legislative Attorney, American Law Division, CRS.

[2] See, e.g., *Kern-Limerick, Inc. v. Scurlock*, 347 U.S. 110, 122 (1954). "The doctrine of sovereign immunity is so embedded in constitutional history and practice that this Court cannot subject the Government or its official agencies to state taxation without a clear congressional mandate."

[3] U.S. Constitution, Article VI, clause 2. "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; … shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby; any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

[4] See *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819), striking down a state tax imposed on a branch of the Bank of the United States; see also *Kern-Limerick*, 347 U.S. at 117: "This recognition of the constitutional immunity of the Federal Government from state exactions rests, of course, upon unquestioned authority" (citing to *McCulloch* and other cases).

[5] *McCulloch* at 431.

[6] See *McCulloch* at 426-427, 436-437.

[7] See, e.g., *Kern-Limerick*, 347 U.S. at 120-122, striking down imposition of a state sales tax when its legal incidence fell on the federal government as purchaser of the goods; *Alabama v. King & Boozer*, 314 U.S. 1 (1941), upholding imposition of state sales tax on purchases made by a federal contractor when the legal incidence of the tax fell on the contractor, even though the economic burden fell on the government; *Curry v. United States*, 314 U.S. 14, 18 (1941), noting that "the Constitution, without implementation by Congressional legislation, does not prohibit a tax upon Government contractors because its burden is passed on economically by the terms of the contract or otherwise as a part of the construction cost to the Government."

[8] See CRS Report R42346, *Federal Land Ownership: Overview and Data*, by Ross W. Gorte et al.

does the federal government have a responsibility to compensate state and local governments for the tax-exempt status of its lands and resources? This report describes existing state and local taxation, presents basic information on issues of fairness and consistency for possible federal compensation, and summarizes existing federal payment programs.

**Payment Terminology**

Federal payments to state and local governments for the tax-exempt status of federal lands are often described as "returning" receipts to state and local governments, sometimes as "granting" receipts or "compensating" state and local governments. All are somewhat pejorative. "Returned" implies that the receipts belonged to the state or locality prior to federal receipt collection, and thus is technically incorrect. "Grants" imply federal largesse to the states and localities, while "compensation" implies a federal responsibility. None is a completely fair implication, since the federal tax-exempt status "costs" possible taxes for states and localities, but any federal payment is a choice, not a legal obligation. In this report, "payment" is generally used, to the extent feasible.

# What Payment Is "Fair"?

## Provision of Goods and Services by State and Local Governments[9]

State and local governments provide a wide variety of services—education, social services, public safety, transportation facilities, utilities, and much more.[10] In 2008, total state and local government expenditures exceeded $2.8 trillion, divided nearly equally between state and local expenditures.[11] The various levels of government emphasize different services. State governments spent the most on public welfare (20.4%), higher education (10.8%), and highways (5.2%). In contrast, local governments emphasized elementary and secondary education (35.0%), utilities (electricity, water, sewerage, and solid waste; 10.3%), and public safety (police, fire, and correctional facilities; 9.0%).[12]

State and local governments fund these services in many ways. The federal government provides significant funding—$481 billion (nearly 20%) in 2008.[13] Other funding is from various fees and other charges, such as college tuition, utility revenues, and more. Half of total state and local government funding (50.01% in 2008) comes from taxes—property taxes, sales taxes, income taxes, and other taxes. In 2008, property taxes provided 72.3% of local government tax revenues. In contrast, individual income taxes provided 35.6% of state tax revenues, while general sales

[9] Much of this section was provided by Steven Maguire, CRS Specialist in Public Finance, Government and Finance Division. For more information on state and local government financing generally, see R. C. Fisher, *State & Local Public Finance*, 3rd ed. (Thomson South-Western, 2007).

[10] In this report, the term "local governments" is used for the array of general purpose and special purpose governmental organizations at a geographic level smaller than states. This includes counties, municipalities, townships, school districts, and other governmental organizations, each with particular roles and responsibilities for providing services and financing. (See National League of Cities, *Local U.S. Governments*, http://www.nlc.org/build-skills-networks/resources/cities-101/local-u-s--governments.) This report does not try to distinguish services provided or financing among these various governmental organizations, although such distinctions could be significant in assessing the economic and political impacts of program choices.

[11] U.S. Census Bureau, *State and Local Government Finances Summary: 2008*, April 2011, Table A-1, http://www2.census.gov/govs/estimate/08statesummaryreport.pdf.

[12] U.S. Census Bureau, *State and Local Government Finances Summary: 2008*, Table A-1.

[13] U.S. Census Bureau, *2008 Annual Surveys of State and Local Government Finances*, US Summary spreadsheet, http://www.census.gov/govs/estimate/.

taxes provided 30.8% of state tax revenues. For a discussion of the various types of state and local taxes, see **Appendix A**.

State and local taxation patterns vary widely across the country, as shown in **Table 1**. Property taxes are the most important in aggregate, but vary widely, ranging from 11% of state and local taxes collected in Alaska to more than 61% of state and local taxes collected in New Hampshire. General sales taxes and income taxes each provided nearly 23% of state and local taxes collected in 2008, but their importance in each state differs substantially. Four states (Delaware, Montana, New Hampshire, and Oregon) have no general sales taxes, while 48% of state and local taxes in Washington were from general sales taxes. Similarly, seven states (Alaska, Florida, Nevada, South Dakota, Texas, Washington, and Wyoming) have no income taxes, while more than 40% of state and local taxes collected in Maryland are from income taxes. Other taxes, including excise and severance taxes, also vary widely, accounting for less than 20% of taxes collected in many states, but nearly 87% of taxes collected in Alaska.

**Table 1. State and Local Taxes, and Proportion of Collections by Tax Type, 2008**

| State | Total State and Local Taxes (in millions) | Portion of Total Taxes | | | |
|---|---|---|---|---|---|
| | | Property Taxes | General Sales Taxes | Income Taxes | Other Taxes |
| **U.S. Total/Average** | **$1,330,411.8** | **30.8%** | **22.9%** | **22.9%** | **23.4%** |
| Alabama | $14,040.8 | 16.4% | 29.5% | 22.7% | 31.3% |
| Alaska | $9,735.1 | 11.0% | 2.2% | 0.0% | 86.8% |
| Arizona | $22,992.4 | 29.2% | 39.6% | 14.8% | 16.4% |
| Arkansas | $9,405.7 | 15.5% | 39.5% | 24.9% | 20.0% |
| California | $186,014.9 | 28.4% | 22.1% | 30.0% | 19.6% |
| Colorado | $19,636.2 | 31.2% | 26.8% | 25.8% | 16.2% |
| Connecticut | $23,115.3 | 36.0% | 15.3% | 32.5% | 16.2% |
| Delaware | $3,712.4 | 16.3% | 0.0% | 28.7% | 55.1% |
| District of Columbia | $5,398.0 | 32.0% | 16.6% | 25.1% | 26.3% |
| Florida | $73,351.4 | 41.3% | 31.2% | 0.0% | 27.6% |
| Georgia | $33,632.5 | 30.4% | 29.1% | 26.3% | 14.3% |
| Hawaii | $6,736.8 | 18.6% | 38.9% | 22.9% | 19.6% |
| Idaho | $4,939.7 | 23.9% | 27.3% | 29.1% | 19.7% |
| Illinois | $57,834.0 | 36.8% | 16.1% | 17.8% | 29.2% |
| Indiana | $22,954.4 | 30.2% | 25.0% | 23.5% | 21.3% |
| Iowa | $11,541.2 | 32.2% | 21.1% | 25.4% | 21.3% |
| Kansas | $11,877.3 | 31.0% | 25.8% | 24.8% | 18.4% |
| Kentucky | $14,156.7 | 19.6% | 20.3% | 32.0% | 28.0% |
| Louisiana | $17,950.5 | 15.8% | 39.6% | 17.7% | 26.9% |
| Maine | $5,932.8 | 36.4% | 17.9% | 26.3% | 19.4% |
| Maryland | $27,651.1 | 23.9% | 13.6% | 40.4% | 22.1% |
| Massachusetts | $33,997.3 | 34.3% | 12.1% | 36.8% | 16.9% |

| State | Total State and Local Taxes (in millions) | Portion of Total Taxes | | | |
|---|---|---|---|---|---|
| | | Property Taxes | General Sales Taxes | Income Taxes | Other Taxes |
| Michigan | $37,649.9 | 37.5% | 21.8% | 20.3% | 20.3% |
| Minnesota | $24,723.9 | 26.8% | 18.9% | 31.5% | 22.8% |
| Mississippi | $9,212.8 | 25.0% | 34.0% | 16.8% | 24.2% |
| Missouri | $19,872.5 | 27.6% | 25.4% | 27.5% | 19.4% |
| Montana | $3,448.0 | 34.1% | 0.0% | 25.2% | 40.7% |
| Nebraska | $7,508.0 | 33.1% | 25.0% | 23.0% | 18.9% |
| Nevada | $10,587.7 | 30.4% | 31.9% | 0.0% | 37.8% |
| New Hampshire | $4,962.8 | 61.6% | 0.0% | 2.4% | 36.0% |
| New Jersey | $53,790.9 | 42.2% | 16.6% | 23.4% | 17.8% |
| New Mexico | $7,746.7 | 14.5% | 35.7% | 15.7% | 34.1% |
| New York | $138,287.9 | 28.3% | 16.7% | 33.6% | 21.5% |
| North Carolina | $33,207.9 | 23.7% | 21.8% | 33.1% | 21.4% |
| North Dakota | $3,174.0 | 23.3% | 19.6% | 10.0% | 47.1% |
| Ohio | $46,660.2 | 29.1% | 20.4% | 30.0% | 20.5% |
| Oklahoma | $12,314.5 | 17.2% | 29.3% | 22.6% | 30.9% |
| Oregon | $12,531.6 | 34.0% | 0.0% | 39.7% | 26.3% |
| Pennsylvania | $54,109.6 | 28.7% | 17.0% | 26.5% | 27.8% |
| Rhode Island | $4,873.8 | 42.3% | 17.4% | 22.4% | 17.9% |
| South Carolina | $13,162.7 | 32.7% | 24.1% | 21.8% | 21.5% |
| South Dakota | $2,499.9 | 34.3% | 40.1% | 0.0% | 25.5% |
| Tennessee | $18,999.6 | 24.6% | 46.3% | 1.5% | 27.6% |
| Texas | $86,382.7 | 38.8% | 31.3% | 0.0% | 29.8% |
| Utah | $9,371.5 | 23.7% | 27.9% | 27.7% | 20.8% |
| Vermont | $2,935.6 | 40.1% | 11.7% | 21.2% | 26.9% |
| Virginia | $32,706.6 | 32.3% | 14.5% | 30.9% | 22.3% |
| Washington | $28,589.6 | 27.3% | 48.0% | 0.0% | 24.7% |
| West Virginia | $6,428.1 | 19.3% | 17.3% | 23.6% | 39.9% |
| Wisconsin | $24,372.3 | 36.2% | 18.7% | 27.2% | 17.8% |
| Wyoming | $3,693.8 | 34.1% | 32.9% | 0.0% | 33.0% |

**Source:** U.S. Census Bureau, *2008 Annual Surveys of State and Local Government Finances*, U.S. Summary spreadsheet, http://www.census.gov/govs/estimate/.

State and local tax rates also vary widely across the country, as shown in **Table 2**. Property taxes are the most important for local governments, but rates vary widely, ranging from 0.40% of assessed value in Hawaii to 2.57% in Texas. Similarly, state and local sales taxes vary substantially, with four states (Delaware, Montana, New Hampshire, and Oregon) having no general sales taxes, and Tennessee's rate the highest at 9.43%; in most states, the average general sales tax rate is between 6% and 9%. State income tax rates also vary, with seven states (Alaska, Florida, Nevada, South Dakota, Texas, Washington, and Wyoming) having no income taxes, and the highest marginal income tax rate at 11% in Hawaii and Oregon.

**Table 2. State and Local Tax Rates by Tax Type**

| State | Average Property Tax Rate 2007[a] | Average General State and Local Sales Tax Rate 2011[b] | Highest Marginal Income Tax Rate (single taxpayer) 2009[c] |
|---|---|---|---|
| Alabama | 0.65% | 8.64% | 5.0% |
| Alaska | 1.80% | 1.74% | none |
| Arizona | 1.21% | 9.12% | 4.54% |
| Arkansas | 0.88% | 8.50% | 7.0% |
| California | 0.68% | 8.13% | 10.55% |
| Colorado | 1.08% | 7.48% | 4.63%[c] |
| Connecticut | 1.72% | 6.35% | 5.0% |
| Delaware | 0.68% | none | 6.95% |
| Dist. of Columbia | 1.31% | 6.00% | 8.5% |
| Florida | 1.20% | 6.65% | none |
| Georgia | 1.52% | 6.87% | 6.0% |
| Hawaii | 0.40% | 4.35% | 11.0% |
| Idaho | 1.42% | 6.02% | 7.8% |
| Illinois | 1.79% | 8.27% | 3.0%[c] |
| Indiana | 2.12% | 7.00% | 3.4%[c] |
| Iowa | 2.15% | 6.81% | 8.98% |
| Kansas | 2.09% | 8.26% | 6.45% |
| Kentucky | 0.96% | 6.00% | 6.0% |
| Louisiana | 1.02% | 8.84% | 6.0% |
| Maine | 1.75% | 5.00% | 8.5% |
| Maryland | 1.06% | 6.00% | 6.25% |
| Massachusetts | 1.07% | 6.25% | 5.3% |
| Michigan | 1.91% | 6.00% | 4.35%[c] |
| Minnesota | 1.27% | 7.18% | 7.85% |
| Mississippi | 1.44% | 7.00% | 5.0% |
| Missouri | 1.42% | 7.67% | 6.0% |
| Montana | 1.65% | none | 6.9% |

| State | Average Property Tax Rate 2007[a] | Average General State and Local Sales Tax Rate 2011[b] | Highest Marginal Income Tax Rate (single taxpayer) 2009[c] |
|---|---|---|---|
| Nebraska | 2.15% | 6.77% | 6.84% |
| Nevada | 0.83% | 7.93% | none |
| New Hampshire | 2.21% | none | 5.0% |
| New Jersey | 1.78% | 7.03% | 10.75% |
| New Mexico | 0.72% | 7.23% | 4.9% |
| New York | 1.76% | 8.48% | 8.97% |
| North Carolina | 1.10% | 6.85% | 7.75% |
| North Dakota | 1.84% | 6.38% | 4.86% |
| Ohio | 1.81% | 6.78% | 5.925% |
| Oklahoma | 1.03% | 8.66% | 5.5% |
| Oregon | 1.22% | none | 11.0% |
| Pennsylvania | 1.70% | 6.34% | 3.07% |
| Rhode Island | 1.52% | 7.00% | 9.9% |
| South Carolina | 1.38% | 7.14% | 7.0% |
| South Dakota | 1.96% | 5.81% | none |
| Tennessee | 1.07% | 9.43% | 6.0% |
| Texas | 2.57% | 8.14% | none |
| Utah | 1.31% | 6.68% | 5.0% |
| Vermont | 2.06% | 6.14% | 9.4% |
| Virginia | 1.12% | 5.00% | 5.75% |
| Washington | 1.13% | 8.79% | none |
| West Virginia | 0.95% | 6.00% | 6.5% |
| Wisconsin | 2.09% | 5.43% | 7.75% |
| Wyoming | 2.18% | 5.34% | none |

**Notes:**

a. Average property tax rates. Source: data from Moody's Economy.com, reported in *New York Times*, April 10, 2007, http://www.nytimes.com/2007/04/10/business/11leonhardt-avgproptaxrates.html.

b. Includes state sales tax rate plus average local sales tax rate, as of July 1, 2011. Average local sales tax rates exceed state sales tax rate in five states: Alabama, Alaska (which has no state sales tax), Colorado. Louisiana, and New York. In 14 states, there are no local sales taxes. Source: Tax Foundation, "Combined State & Local Sales Tax Rates (As of July 1, 2011)," http://www.taxfoundation.org/taxdata/show/26269.html.

c. This is the highest marginal tax rate for a single taxpayer, as of July 1, 2009. In Colorado, the tax rate applies to federal taxable income. In Illinois, Indiana, and Michigan, the tax rate applies to federal adjusted gross income. Source: Tax Foundation, "State Individual Income Tax Rates, 2009," http://www.taxfoundation.org/files/state_ind_income_rates-20090710.pdf.

## The Basis for Federal Payments to State and Local Governments

Many have discussed whether the federal government should compensate state and local governments for the tax-exempt status of federal lands, and if so, how. Two primary approaches have been proposed: (1) tax equivalency, and (2) cost basis. Private lands owned by some nonprofit organizations are also exempt from state and local taxation,[14] raising questions about the need and legitimacy of federal compensation for the tax-exempt status of federal lands. Two additional issues affecting federal payments also are discussed in this section: consistency in payments, and the lands for which payments might be made.

## Tax Equivalency

Many have suggested that federal payments should approximate what private landowners would have paid in taxes. Most of the suggestions focus exclusively on property taxation. In 1979, the U.S. General Accounting Office (GAO, now the Government Accountability Office) reviewed the existing federal land payment programs and concluded that the then-existing payments were inconsistent and inequitable, and provided payments significantly greater than equivalent tax payments.[15] GAO then recommended tax equivalency to replace the existing payment programs.[16] Another study was conducted in 1999 by U.S. Forest Service researchers at the request of the Department of the Interior.[17] This study reported that federal payments were significantly less than equivalent property taxes overall, although the payments equaled property taxes in 62% of the counties examined. In 2010, an independent research group offered tax equivalency as an option for replacing expiring federal payment programs; it found that total property tax-equivalent payments would increase total payments, but that two-thirds of the counties would actually receive lower payments.[18]

Under a complete tax equivalency system, federal payments would replace the state and local taxes that a private landowner would have made. This would best reflect the theoretical economic opportunity costs to state and local governments of federal, as opposed to private, ownership of lands. However, there are four major, interrelated difficulties or limitations to providing federal tax-equivalent payments to state and local governments.

### *Multiplicity of Taxes*

One difficulty in determining tax equivalency is the multiplicity and variability in taxes among jurisdictions. Property taxes seem most relevant for federal lands, since income and sales are not particularly relevant to federal government operations, and tax equivalency recommendations have typically focused on property taxes. However, as shown in **Table 1** and **Table 2**, property tax rates and collections vary greatly, with tax rates ranging from 0.4% (HI) to 2.57% (TX) and tax collections ranging from 11.0% of total taxation (AK) to 61.6% of total taxation (NH).

[14] See D. A. Kenyon and A. H. Langley, *Payments in Lieu of Taxes: Balancing Municipal and Nonprofit Interests*, Lincoln Institute of Land Policy, Policy Focus Report/Code PF028, Cambridge, MA, 2010, https://www.lincolninst.edu/pubs/dl/1853_1174_PILOTs%20PFR%20final.pdf.

[15] U.S. General Accounting Office, *Alternatives for Achieving Greater Equities in Federal Land Payment Programs*, PAD-79-64, September 25, 1979, http://www.gao.gov/assets/130/128187.pdf.

[16] GAO, PAD-79-64, p. ii.

[17] E. G. Schuster et al., *An Analysis of PILT-Related Payments and Likely Property Tax Liability of Federal Resource Management Lands*, USDA Forest Service, RMRS-GTR-36WWW, Ft. Collins, CO, September 1999, http://www.fs.fed.us/rm/pubs/rmrs_gtr036.pdf. The Department of the Interior was directed to conduct the study in the House committee report on the FY1996 Interior appropriations act (H.Rept. 104-173, p. 20).

[18] M. Haggerty et al., County Payments, Jobs, and Forest Health: Ideas for Reforming the Secure Rural Schools and Community Self-Determinations Act (SRS) and Payments in Lieu of Taxes (PILT), Headwaters Economics, Bozeman, MT, December 2010, http://headwaterseconomics.org/wphw/wp-content/uploads/ Reform_County_Payments_WhitePaper_LowRes.pdf.

Furthermore, the method of valuing property for tax purposes varies. The three most common valuation approaches are replacement cost, sales comparison, and income, and some lands are taxed under current use (e.g., agricultural lands), while others are taxed at their current market value (e.g., residential property), and still others are taxed at their "highest and best" potential use (e.g., development properties). Thus, determining property tax equivalency is difficult, and calculating complete tax equivalency is substantially more complicated.

### *"Fiscal Blood Pressure"*

A related difficulty in determining tax equivalency is called the "fiscal blood pressure."[19] This idea captures two variable aspects of taxation: tax capacity and tax tolerance. One aspect is the variability among the citizens of different states and localities in their tolerance of higher taxes to provide for more public goods and services. Citizen demands for public goods and services vary among the states, and in some places, citizens are willing to bear higher taxation to provide those goods and services. In addition, the types of taxes citizens are willing to bear vary, depending on perceptions of fairness.

The second aspect of fiscal blood pressure is that the different states and localities vary in their capacity to collect taxes that are based on the personal income of their citizens and in their ability to "export" taxes to other states through special situations (e.g., significant oil production or other conditions that allow for special uses, such as desirable tourist destinations or certain agricultural products). States and localities where incomes are low or without "exportable" taxes have less capacity to impose and collect taxes. This second aspect of fiscal blood pressure raises a question for tax equivalency: Is it "fair" that states with less tax capacity (lower incomes) be compensated at lower levels—comparable to their lower capacity—than "richer" states with greater tax capacity?

### *Private Value of Federal Lands*

Another related difficulty is estimating what state and local tax collections would be if the federal lands were privately owned. This is especially difficult for income, general sales, and excise taxes, since private landowner sales and income from the lands would be highly uncertain. Even for property and severance taxes, this approach is problematic, because the federal lands often do not reasonably approximate private lands. Some federal lands were reserved from transfer to the private sector because they are unique and irreplaceable; the potential private value of Yellowstone National Park, for example, would be difficult to calculate. Many other federal lands are the lands left over after private investors or settlers chose other lands. For example, the 1897 law governing use of lands reserved for the national forests directed that the lands "found better adapted for mining or for agricultural purposes may be" available for homesteading and other disposal to private landowners.[20] Similarly, most eastern national forests were established on cut-over forest land that was abandoned because of private landowner tax delinquency.[21] In addition, management of the federal lands often emphasizes ecological services that are not traded in markets and that private landowners generally cannot sell or otherwise profit from.[22] Thus, it is

[19] Advisory Commission on Intergovernmental Relations, *Measuring the Fiscal "Blood Pressure" of the States—1964-1975*, M-111, Washington, DC, February 1977.

[20] Act of June 4, 1897 (ch. 2, 30 Stat. 11), Sundry Civil Expenses Appropriations Act for FY1898, § 1, 16th unnumbered paragraph under "Surveying the Public Lands."

[21] W. E. Shands, *The Lands Nobody Wanted: Policy for National Forests in the Eastern United States* (Washington: Conservation Foundation, 1977), 282 p.

[22] See CRS Report RL34042, *Provisions Supporting Ecosystem Services Markets in U.S. Farm Bill Legislation*, by

not clear whether private land values or resource disposals would appropriately approximate taxable values of federal lands.

### *Federal Land Assessment*

Finally, a limitation to using property tax equivalency is that assessing federal lands would be a major, costly undertaking. The federal government owns about 640 million acres of land, about 28% of all land in the United States.[23] While in some areas, federal land assessments would be a modest increase in local government tax assessment costs, in other areas the cost would likely be substantial: in California, Oregon, and Wyoming, the total area being assessed would double, while nearly tripling in Alaska, Idaho, and Utah, and quintupling in Nevada. In addition, local tax assessors would have an incentive to produce relatively high values for federal lands, to increase local payments at the expense of federal taxpayers. Alternatively, federal tax assessors would have an incentive to estimate relatively low values for federal lands; GAO has issued numerous reports over the past decade on the undervaluation of federal lands and properties for land acquisition and exchanges, mineral royalties, and fees for special use permits (e.g., ski areas telecommunication sites).[24]

## Cost Basis

Some argue that federal payments to state and local governments should be based on the out-of-pocket costs imposed on or avoided by state and local governments due to the presence of federal lands. For example, federal employee housing on agency lands may require local public utility services (power, water, solid waste disposal, wastewater treatment) and employees may have children in public schools. Some costs, such as utility operating costs, might be captured through user fees or charges, rather than through local taxation. Alternatively, federal lands may allow local governments to avoid the investment costs of providing roads, utilities, and educational services to distant parts of the county, because there are no private landowners who must be served. The 1999 Forest Service research study discussed earlier found that local government officials noted higher costs for search and rescue, law enforcement, and road maintenance associated with federal lands, but also benefits from the use of federal lands, fire protection, and road construction, as well as federal payments to the county.[25] The study also found that local officials assessed that, with some exceptions, the additional costs and the cost savings directly associated with federal lands were generally small. The local officials also noted moderate indirect benefits of having federal lands: places to hunt and fish, recreational facilities, watershed protection, and more. Others, however, have reported that many federal lands harm local economies.[26]

The cost basis approach typically relies on actual state and local governmental expenses or savings, in contrast to tax equivalency, which estimates the opportunity costs associated with federal lands. The principal advantage of the cost approach to payments is that it reimburses the actual operating and investment costs paid by state and local governments. For direct services, such as utilities and roads, this approach is precise. It sometimes could be implemented through more site-specific user fees, or possibly through local agreements/memoranda of understanding

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Renée Johnson.

[23] See CRS Report R42346, *Federal Land Ownership: Overview and Data*, by Ross W. Gorte et al.

[24] See http://www.gao.gov/search?q=federal+land+valuation&search_type=Solr&o=40.

[25] Schuster et al., *An Analysis of PILT-Related Payments*, pp. 15-19.

[26] Testimony of Dr. Ryan M. Yonk, Assistant Professor, Southern Utah University, before the House Natural Resources Subcommittee on National Parks, Forest and Public Lands, October 14, 2011.

on appropriate federal payments for state and local services provided. An alternative for implementing this approach might be to apportion state and local governmental costs on some type of pro rata basis. Apportionment could be based on property acreage (federal lands as a percent of total land in the county), property value (the value of federal lands as a percent of total land value or total property value in the county), population (federal workers and dependents as a percent of county population), or some other basis. However, apportionment has some of the same difficulties as tax equivalency.

The primary difficulty with the cost approach is that many state and local services apply generally, benefitting everybody or providing special assistance to those who cannot pay; examples include police and fire protection, public education, and many social services. The tax systems of state and local governments arguably reflect their decisions about how the citizenry should pay for general social goods and services, including how the relatively well-to-do should support the needy (i.e., how progressive the state and local tax systems are).

## Consistency in Payments

State and local governments generally seek consistency and predictability in their revenue programs, both from taxes and from inter-governmental payments. Counter-cyclical revenues (rising revenues during poor economic times) are generally preferred, because many state and local assistance programs expand during recessions, although stable revenues (constant revenues, regardless of economic conditions) are also desirable, since tax revenues (especially sales and income taxes) decline during recessionary periods. Property taxes are more likely to be relatively stable, unless a recession is sufficiently prolonged to lower property values for tax assessments.

For federal payment programs, consistency and predictability have usually meant fixed, annual payments. The only mechanism for guaranteeing this is mandatory spending authority/permanent appropriation. A statute with such a provision means that the payment is made, based on the guidance in the law (e.g., at a fixed level or as a percent of specified federal receipts), without any further action by Congress.[27] Payments made under such an authority are only modified if Congress acts to amend the payment authority.

There are two problems for establishing payments with mandatory spending authority. One is that mandatory spending programs are often labeled with a potentially pejorative term: "entitlement." Those receiving such payments typically believe they are, or should be, entitled to the payments; others suggest that payments should be earned or deserved, and that payments should be balanced against other federal spending priorities annually.[28]

The second and more significant problem is that enacting new programs with mandatory spending authority faces significant congressional hurdles. In general, new mandatory spending programs require a budget offset (typically within the same committee's jurisdiction) to fund the guaranteed payments. Issues include finding a source of the money, and determining how much money is needed.

[27] As discussed below, some the mandatory spending authority for some existing payment programs has been enacted for a limited period, after which the program terminates or spending returns to annual appropriations.

[28] The term "entitlement" has been a particular problem for one program, Payments in Lieu of Taxes (PILT), that is described in more detail in a later section and in the appendix. The law defines the lands eligible for PILT payments as "entitlement lands," creating a sense of entitlement to the authorized payments. However, the law also established that the authorized payments were to be made from annual appropriations.

### Federal Lands Included for Payments to State and Local Governments

Another issue for federal payments to state and local governments is what lands to include for the payment program. Federal lands are administered by a broad array of agencies for a wide variety of purposes.[29] The vast majority of federal lands—about 615 million acres, about 95% of the total—are administered by the four land management agencies: the National Park Service (NPS), Fish and Wildlife Service (FWS), and Bureau of Land Management (BLM) in the Department of the Interior (DOI), and the Forest Service (USFS) in the Department of Agriculture (USDA). Department of Defense (DOD) agencies—Army, Navy, Air Force, and Marines—also administer substantial lands, about 19 million acres, in both active and inactive bases, ranges, and other units. Various other agencies administer modest amounts of land, although these can be significant locally; these include the DOI Bureau of Reclamation, the U.S. Department of Energy, the National Aeronautics and Space Administration, other USDA agencies, the U.S. Postal Service, and a host of federal sites administered by the General Services Administration.

It would be easiest to simply include all federal lands in a payment program. However, this is not as easy as it might appear. In many instances, the federal government has less than fee simple ownership of the land—having only a partial ownership interest in the lands (e.g., lands administered under easements; surface lands owned, lacking mineral rights, or vice versa). While each agency has data on the lands it administers, the data sets do not always match precisely. In some situations, multiple agencies have jurisdiction over some lands, and each may report these as the agency's lands, leading to double counting. Another example is the current Payments in Lieu of Taxes (PILT) program, which provides payments to counties for certain federal agency lands—the acreage reported in PILT documents[30] often differs (typically by modest amounts) from the data of those agencies for the same lands.[31] Some have observed that the federal government lacks a coordinated system of property records—a land parcel database describing the location, acreage, rights, interests, and value of federal and other property.[32] Thus, data on the total federal area and the specific location of federal lands are not as accurate as might be needed for a comprehensive payment system.

One particular classification of lands leads to additional complications: Indian lands. There are multiple categories of Indian lands, some individually owned and other collectively owned, and many exempt from state and local taxation. Some Indian lands are administered by the DOI Bureau of Indian Affairs as trust lands for the tribes. None of the lands are federally owned and administered, but the U.S. government established many of these lands by treaty. Some suggest that, because of the treaties, the federal government should be responsible for payments from these lands, which can be significant in many locations. Others argue that the Indians themselves, either individually or by tribes, should be responsible for any state and local payment programs.

## Existing Payment Programs

Beginning more than a century ago, Congress has created numerous programs to provide funds to state and local governments because of the tax-exempt status of federal lands and resources. Impact aid payments are made to local educational agencies because of the financial burdens

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[29] See CRS Report R42346, *Federal Land Ownership: Overview and Data*, by Ross W. Gorte et al.

[30] See http://www.doi.gov/pilt/summary.html.

[31] For example, for calculating PILT payments, the FWS reports 4 million acres of refuge lands in Alaska more than its own annual realty reports show.

[32] National Research Council, *National Land Parcel Data: A Vision for the Future*, Washington, DC, 2007. See also CRS Report R40717, *Issues Regarding a National Land Parcel Database*, by Peter Folger.

resulting from federal activities (e.g., educating children residing on tax-exempt federal lands). Many programs were funded with receipts from the sale or lease of federal resources. Others have been based on the acreage of federal lands, on some tax-like arrangement, or some combination of options.

## Impact Aid[33]

Impact Aid compensates local educational agencies (LEAs) for the "substantial and continuing financial burden" resulting from federal activities. These activities include federal ownership of certain lands, as well as the enrollments in LEAs of children whose parents work or live on federal land (e.g., children of parents in the military and children living on Indian lands). The federal government provides compensation because these activities deprive LEAs of the ability to collect property or other taxes from these individuals (e.g., members of the Armed Forces living on military bases) or their employers, even though the LEAs are obligated to provide free public education to their children. Thus Impact Aid is intended to compensate LEAs for the resulting loss of tax revenue available to the schools.

Administered by the U.S. Department of Education (ED), the Impact Aid program is one of the oldest federal education programs, dating from 1950. The program is currently authorized under Title VIII of the Elementary and Secondary Education Act (ESEA). Annual discretionary appropriations are provided through the Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act. In recent years, total annual funding for the program has been about $1.3 billion.

Several types of payments to LEAs authorized under the Impact Aid program are relevant for this report. Section 8002 provides payments to LEAs for certain federal land ownership. Section 8003 provides payments to LEAs for enrolling "federally connected" children—children who reside with a parent who is a member of the Armed Forces living on or off federal property; reside with a parent who is an accredited foreign military officer living on federal property; reside on Indian lands; reside in low-rent public housing; or reside with a parent who is a civilian working or living on federal land. Section 8003(b) payments are "basic support payments" for federally connected children, and Section 8003(d) payments are for certain federally connected children with disabilities. Section 8007 provides funds for construction and facilities upgrading to certain LEAs with high percentages of children living on Indian lands or children of military parents, partly by formula and partly by competitive grants. **Appendix B** provides more details on Impact Aid payments.

## Receipt-Based Payments

The earliest payment programs were created before the establishment of federal income taxes, and thus needed a source of funds. Typically these programs were based on a share of receipts from selling or leasing federal resources, since this provided funds for the payments. Moreover, because this was a continuing source of funds, these receipt-based payment programs were almost always created with mandatory spending authority for a portion of the receipts.

Federal receipt-sharing payments to state and local governments from federal lands and resources vary widely. Certain federal lands and/or resources provide no receipt-based payments to state and local governments—notably, National Park System lands and hardrock/locatable minerals. For many other federal lands and resources, the federal government pays state and/or local

[33] This section was provided by Rebecca R. Skinner, CRS Specialist in Education Policy, Domestic Social Policy Division.

governments a portion of receipts. In some instances, this is a portion of gross receipts; in others, the portion is of net receipts (after deducting administrative costs). **Table B-1** in **Appendix B** identifies the payment shares under 13 receipt-sharing programs; also, as explained in detail in the table notes, there are several modifications in these 13 programs for specific sites and/or resources. The payment rates vary widely—from 4% in many cases to as much as 90% for oil and gas leasing in Alaska. Some are geographically quite narrow (e.g., 37½% of oil royalties from the south half of the Red River Indian reservation in Oklahoma), others quite broad (e.g., 25% of gross revenues from all national forest lands). Furthermore, some payments are made to the states (e.g., mineral leasing payments) while others are made directly to counties (e.g., USFS national grassland payments) or other recipients. All of the payments shown in **Table B-1** in **Appendix B** were originally created with mandatory spending authority, since there was a natural source of funds for the payments.[34]

Two particular payment programs have historically accounted for the majority of the receipt-based payments: USFS payments to states, and BLM payments to certain counties. The USFS payments have been 25% of gross receipts to the states for roads and schools in the counties where the national forests are located; the states cannot keep any of the funds, but can decide which road and schools programs are to be funded. The BLM payments are 50% of gross receipts to the counties for the O&C lands—about 2.6 million acres of forest in western Oregon that were granted for railroad construction, but returned to federal ownership for failure to fulfill the terms of the grant.[35] The USFS payments exceeded $300 million annually at their peak, while the O&C payments were more than $100 million annually. However, both were based largely on timber receipts, and USFS and BLM timber harvests declined substantially since about 1990. Thus, these programs have been supplanted temporarily with the Secure Rural Schools and Community Self-Determination Act, discussed below under "Other/Combination Payments." With the expiration of that legislation at the end of FY2011, the historic receipt-sharing programs will become effective again, albeit with substantially lower payments in many areas.

## Acreage-Based Payments—PILT

The one payment program based solely on federal acreage is the Payments in Lieu of Taxes (PILT) program, enacted in 1976[36] and administered by the Department of the Interior. Two other programs include acreage as a component in determining payments; these are discussed below under "Other/Combination Payments."

PILT authorizes payments per acre of eligible lands (called "entitlement" lands in the statute), they are specifically identified in the statute and listed in "Payments in Lieu of Taxes" in **Appendix B**.[37] PILT specifies a fixed payment per acre for eligible lands—$2.42 per acre in FY2011—adjusted annually for inflation. It also contains a complex formula to reduce the authorized payments in counties with low populations and in counties receiving certain other federal land payments (some of the payments shown in **Table B-1** of **Appendix B**). PILT also

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[34] For background information on mandatory spending authority and on these accounts, see CRS Report RL30335, *Federal Land Management Agencies' Mandatory Spending Authorities*, coordinated by Ross W. Gorte.

[35] The O&C lands were granted to the Oregon & California Railroad Company for constructing the Oregon portion of a railroad from Portland, OR, to Sacramento, CA. The lands were returned to federal ownership (called "revested") for failure of the company to fulfill the terms of the grant (disposal of the lands for local economic development) under a 1915 U.S. Supreme Court decision (Oregon & California Railroad Co. v. United States, 238 U.S. 393 (1915)).

[36] P.L. 94-565; 31 U.S.C. §§6901-6907.

[37] For a more complete description of PILT, see CRS Report RL31392, *PILT (Payments in Lieu of Taxes): Somewhat Simplified*, by M. Lynne Corn.

includes a minimum payment per acre for eligible lands—$0.33 per acre in FY2011—adjusted annually for inflation and subject to the population ceilings.

In contrast to the receipt-based payments described above, as enacted, PILT required annual appropriations. In the early years, the annual appropriations were generally sufficient to cover the calculated payments. However, the PILT act was amended in 1994 (P.L. 103-397) to adjust the fixed and minimum authorized payments for 18 years of inflation and to index them for future inflation. From FY1995 through FY2007, the differences between each year's authorized payment and its appropriations were substantial—appropriations averaged about 60% of the authorized levels, ranging from 41% (FY1999) to 77% (FY1995).

Congress enacted mandatory spending authority of 100% of the authorized level for PILT for FY2008-FY2012.[38] Thus, total PILT payments increased by more than $100 million in FY2008, and have remained at these higher levels. If the mandatory spending authority is not extended, future (FY2013 and beyond) PILT payments will again depend on annual appropriations.

## Tax-Like Payments

There are two payment programs that provide tax-like payments for the counties containing certain federal lands: the Coos Bay Wagon Road lands (OR), and certain forest lands in the Boundary Waters Canoe Area (MN). A third, the National Wildlife Refuge Fund (originally called Refuge Revenue Sharing Payments), includes tax-like payments as one of the options for county payments. (These payments are discussed below, under "Other/Combination Payments.")

The Coos Bay Wagon Road (CBWR) lands are an 1869 grant for building a military wagon road between Coos Bay and Roseburg, OR. Years later, the builder was sued for violating the terms of the grant, and in 1919, Congress enacted a law terminating the litigation and "reconveying" the lands to federal ownership. These CBWR lands are commonly included with the O&C lands, because the more extensive O&C lands surround them,[39] and both the CBWR and O&C lands are generally administered under the 1937 O&C Act.[40] However, the CBWR lands were not included in the receipt-sharing provision of the 1937 act. In 1939, Congress enacted a separate payment program for the CBWR lands.[41] The program paralleled the O&C payments (shown in **Table B-1** of **Appendix B**): the counties effectively receive 50% of receipts. However, the 1939 act also directed that the payments "be computed by applying the same rates of taxation as are applied to privately owned property of similar character in such counties." Thus, the actual payments are the county tax bills, up to 50% of the receipts from the CBWR lands.

In 1948, Congress enacted a special payment for certain USFS lands in Minnesota. The lands in question were to be acquired for the Superior National Forest. A sizable portion of the forest had been established as a wilderness administratively in 1926.[42] Because of concerns about potential resort-style developments on private lands within the wilderness (later named the Boundary

[38] This provision was enacted in §601(c) of Division C of P.L. 110-343 (the Emergency Economic Stabilization Act of 2008). Because it was enacted 3 days after the FY2008 payment had been made, FY2008 required a second, supplemental payment to fulfill the 100% payment.

[39] The O&C lands total 2,577,217 acres, while the CBWR lands total 74,547 acres. (U.S. Dept. of the Interior, BLM, *Public Land Statistics, 2010*, Table 1-5, http://www.blm.gov/public_land_statistics/pls10/pls10_combined.pdf.)

[40] Act of August 28, 1937, ch. 876; 43 U.S.C. §§1181a-j.

[41] Act of May 4, 1939, ch. 144.

[42] Wilderness areas are certain federal lands, originally designated administratively, but only designated by Congress since 1964. They are generally managed to preclude commercial activities, as well as motorized access and infrastructure developments. See CRS Report RL31447, *Wilderness: Overview and Statistics*, by Ross W. Gorte.

Waters Canoe Area Wilderness), in 1948 Congress enacted the Thye-Blatnik Act to authorize the acquisition of the private lands within the area. The prohibition on logging in wilderness areas led to concerns about receipts for the 25% USFS payments to the states for county roads and schools (discussed above and shown in **Table B-1** of **Appendix B**). Congress chose to include a provision recommended by USDA to pay the counties 0.75% of appraised value of the lands, based on local private farm land tax rates.[43]

## Other/Combination Payments

Two payment programs combine two or more of the payment bases discussed above for calculating their payments: National Wildlife Refuge Fund payments, and payments under the Secure Rural Schools and Community Self-Determination Act of 2000.

The National Wildlife Refuge Fund (NWRF; originally the Refuge Revenue Sharing Program) includes several different payment options. For FWS lands reserved from the public domain,[44] the payments are 25% of net receipts (shown in **Table B-1** of **Appendix B**); these lands are also eligible for PILT payments. For acquired refuge lands, NWRF pays counties the highest of three alternative payment approaches: 25% of net receipts; $0.75 per acre of FWS land (equal to the original PILT fixed payment); or 0.75% of the fair market value of the land.[45] Acquired FWS lands are not eligible for PILT payments. The NWRF program (for both public domain and acquired lands) has mandatory spending authority to the extent of receipts, and annual appropriations are authorized to supplement the calculated payments. Since 2000, receipts plus annual appropriations have fallen from 58% of the authorized total payment to 22% of the payment in 2010.

The Secure Rural Schools and Community Self-Determination Act of 2000 (SRS; P.L. 106-393), as originally enacted, was a temporary (six-year), optional payment program for the USFS national forests (not all USFS lands) and the O&C lands based exclusively on historic payments.[46] (Counties could choose to continue payments under the current 25% or 50% receipts-sharing, shown in **Table B-1** of **Appendix B**.) Counties receiving payments greater than $100,000 were required to use 15%-20% of the payments for projects (called "reinvestment") on the federal lands, rather than for roads and schools (national forests) or for county purposes (O&C lands). Some additional funds were also authorized for the counties to use for other, specified purposes. As it was reauthorized for four additional years in 2008, these optional payments were calculated using a complex formula that was half based on historic payments and half based on national forest and O&C land acreage, both as a proportion of the total of all counties opting for the SRS payments, and both adjusted for per capita personal income in the county relative to per capita income for all counties opting for the SRS payments. The reauthorization also included three years of optional transition payments for eight states. The multiple steps in the formula are

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[43] See U.S. Congress, House Agriculture, *Safeguarding and Consolidating Certain Areas of Exceptional Public Value Within the Superior National Forest, State of Minnesota*, report to accompany S. 1090, 80th Cong., 2nd sess., June 3, 1948, H.Rept. No. 2186.

[44] Public domain lands are those ceded to the federal government by the original 13 states or obtained from a foreign sovereign via purchase, treaty, or other means. This contrasts with "acquired lands" which were acquired by the federal government from a private landowner.

[45] There is actually a fourth option. For counties with refuge land acquired before 1977, the payment cannot be less than ¾ of 1% of the original purchase price; in those rare instances where the current fair market value is below the original purchase price, the purchase price is used in lieu of the fair market value for the calculations.

[46] See CRS Report R41303, *Reauthorizing the Secure Rural Schools and Community Self-Determination Act of 2000*, by Ross W. Gorte.

shown under "Secure Rural Schools and Community Self-Determination Act" in **Appendix B**. The SRS Act has expired, with the last payments made for FY2011.

# State and Local Taxation vs. Current Payment Programs: Comparison and Discussion

When established, most of the federal payment programs were justified as compensation for the tax-exempt status of federal lands. However, comparing existing payment programs with state and local taxation is a difficult task, at best. One difficulty is deciding whether the comparison should assess tax equivalency or cost recovery. As discussed above, each approach has advantages and limitations. Each has theoretical justifications and advocates, but neither is clearly superior or preferable.

The plethora of federal payment programs were enacted by various congressional committees over the past century. The differences and distinctions among the programs, as well as the complicated formulae used in some programs, has led to confusion, inconsistency, and probably inequality, among recipients. As shown in the few comparative studies over the years, some counties have probably been "compensated" at levels greater than private taxation would have yielded, while others doubtless have received less than would have been paid by private landowners.

The perpetuation of these inconsistent and probably inequitable programs is likely the result of two factors. One is differences in committees of jurisdiction over the various programs. Many of the programs were reported by the House Committee on Natural Resources and Senate Committee on Energy and Natural Resources, or their predecessors, the Committees on Interior and Insular Affairs (and possibly all the way back to the Committees on Public Lands). However, programs enacted at any particular point are likely a reflection of the leadership and membership of these committees, which has shifted over time. Some significant programs, such as Forest Service 25% Payments to States and Impact Aid, were reported by other committees—notably the Committees on Agriculture for the Forest Service payments, and the Committees with jurisdiction over education programs.

The second reason for the perpetuation of the plethora of programs is that many, especially the vast number of revenue-sharing payments, were enacted with mandatory spending authority. Thus, the payments continue to be made, year after year, without any additional action by Congress. Such payments are only stopped or modified if Congress acts to change the payments. Hence, the inertia of ongoing permanent programs may be a cause for many of the programs being continued.

The other principal difficulty in comparing federal payment programs with state and local taxation is the plethora of state and local taxes—both types and levels. As described above, state and local governments pay for the variety of goods and services they provide to their citizenry with many types of taxation, including income taxes, sales taxes, property taxes, excise and severance taxes, and more. Different states rely on different taxation approaches—some have no sales taxes, others have no income taxes, and the tax rates used in different states and localities vary widely. Furthermore, local governments typically rely heavily on property taxes, although the importance of property taxation also varies widely. Finally, states and localities differ in their "fiscal blood pressure"—the ability and willingness of their citizens to tax themselves to provide the desired government goods and services.

Impact aid, the largest of the federal payment programs, pays local educational agencies for students associated with tax-exempt lands. It is unclear whether the annual appropriations for Impact Aid provide payments that approximate the tax payments for education that would have been obtained from such lands if they were taxable. It is also unclear how the payments compare to the cost of providing education to those students. These uncertainties reflect both the wide variation in property tax rates—the principal tax source of local education funding—and differences in local educational costs per pupil. For example, the highest average state property tax rate (Texas) is more than 6 times higher than the lowest average state property tax rate (Hawaii).

Many federal programs provide payments to state and local governments from a share of revenues from some federal activity. Revenue-sharing payments are probably most closely akin to severance or yield taxes, but as noted above, both severance/yield tax rates and revenue-sharing proportions vary widely, making it exceedingly difficult to compare. Furthermore, severance and yield taxes are typically state taxes, while most revenue-sharing programs provide funding for county-provided services.

Some payment programs are based on acreage or on appraised land value. These programs are probably most similar to property taxes. The acreage-based PILT payments are specified amounts per acre, regardless of the value or use of the land, and thus have no real parallel among state and local taxes. PILT payments are reduced by revenue-sharing payments, which is similar to the effect on property taxes of severance or yield tax payments in many places. For two of the three tax-like federal payment programs, the rate is a fixed 0.75% of appraised values; this is relatively low, but within the range of the average property tax rates shown in **Table 2**, above.

The mandatory spending authority for two relatively large payment programs—the Secure Rural Schools and Community Self-Determination Act (SRS) Program and the Payments In Lieu of Taxes (PILT) Program—expire at the end of FY2011 and FY2012, respectively. These two programs have provided payments of about $750 million annually for hundreds of counties throughout the country. As Congress debates the reauthorization of the SRS Act and the mandatory spending authority of the PILT Program, and possibly of other payment programs, it might consider the broader questions of what is fair and consistent compensation to state and local governments for the tax-exempt status of federal lands.

# Appendix A. Details on State and Local Taxation

As described briefly in the text, there are several types of state and local taxes imposed in the various states. These are discussed in more depth below.

## Property Taxes

Property taxes are one of the few taxes based on wealth—the value of assets at a given point in time.[47] Other taxes are almost always linked to a flow of income or are triggered by a market transaction within a given time frame, usually one year. Many observers suggest that property taxes are intended to reflect the property owner's benefit received from government services. A common measure of the benefit received at the local level is the value of property at its highest and best use, not necessarily current use. For example, the "market value" of property is defined by the State of New Jersey as:

> The highest price in terms of money which a property will bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus.[48]

Relevant market transactions, such as a recent sale or exchange of the property, are generally preferred for assessing property values. Absent recent transactions, various jurisdictions typically use one of three valuation methods to establish market value: (1) the replacement cost approach; (2) a sales comparison approach; or (3) an income approach. The replacement cost method is uniquely suited for structures, whereas the sales and income methods can be adapted for many different types of property.

Typically, local governments separately assess farm land, residential property, and commercial property. That valuation is then split between the land and the improvements to that land (e.g., structures). In many jurisdictions, different rates (or assessment ratios) apply to land and structures and to residential and commercial property. Farmland, in contrast to other types of property, is usually valued at current agricultural use and not its potential "highest and best" use.

As depicted in **Table 1**, above, the importance and collections of property taxes vary considerably among the states. Although not shown in the table, property taxes are much more important for local governments than for state governments; property taxes accounted for $397 billion (72.3%) of local tax collections in 2008, but only $13 billion (1.6%) of state tax collections.[49] The multiple base definitions, rates, exemptions, administration, assessment practices, and state specific constraints all contribute to wide variation in the collection of property taxes. As shown in **Table 2**, these variations in implementation result in significant differences in average property tax rates. **Table 2** shows the average property tax rates ranging from 0.4% in Hawaii to 2.57% in Texas.

[47] The federal estate tax is another tax that is based on a stock wealth at a point in time.

[48] State of New Jersey, Division of Taxation, Property Administration, "How Property is Valued for Property Tax Purposes," revised January 2008. The brochure is available at the following: http://www.state.nj.us/treasury/taxation/pdf/lpt/ptassessment.pdf, visited July 1, 2011.

[49] U.S. Census Bureau, *State and Local Government Finances Summary: 2008*, April 2011, Table A-1.

## Sales and Use Taxes

Sales and use taxes are collected when a business sells a product to a consumer or another business. All but four states levy a sales tax and local governments in 35 states levy a separate local sales tax.[50] (One state—Alaska—has no state sales tax, but has average local sales taxes of 1.74%.) The average state statutory rate is 5.05%,[51] and for those states with sales taxes, average state and local sales taxes range from 4.35% in Hawaii to 9.43% in Tennessee, as shown in **Table 2**.[52] Further complicating discussions of state and local sales taxation is that some items (e.g., prescription drugs) are exempt from many state sales, for other items (e.g., food) are exempt or taxed at a lower rate.[53] General sales taxes are generally more significant for state governments than for local governments, accounting for $241 billion (30.8%) of state tax collections and for $63 billion (11.6%) of local tax collections in 2008.[54] Mail-order, catalog, and internet sales raise questions and issues over the collection of state and local sales taxation.[55] In addition, some jurisdictions have use taxes—taxes determined and received by the jurisdiction where the products will be used (e.g., building materials), rather than at the point of sale (prior to transport for use). This differs from a user fee, such as is common for utilities, where the user pays for the good or service (e.g., water, sewage, or solid waste disposal) actually provided by the state or local government.

## Income Taxes

Income taxes are collected on income earned in the state. Generally, the state where the taxpayer works, not the taxpayer's home state, is entitled to tax that income. Many states, however, enter into so-called reciprocal agreements whereby the states agree not to levy state income taxes on nonresidents (commuters) from a neighboring state. As of 2011, 44 states and the District of Columbia levied income taxes; two—New Hampshire and Tennessee—levy taxes on dividend and interest income, but not wage and salary income. As shown in **Table 2**, the highest marginal income tax rate for individual taxpayers varies widely among states that levy income taxes, ranging from 4.54% in Arizona to 11.0% in Hawaii and Oregon.[56] Individual and corporate income taxes accounted for $278 billion (35.6%) and $51 billion (6.5%), respectively, of state tax collections in FY2008; local income tax collections were only $26 billion (4.8%) from individuals and $7 billion (1.3%) from corporations in 2008.[57]

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[50] For more on sales tax rates, see http://www.salestaxinstitute.com/Sales_Tax_Rates.

[51] For a history and analysis of sales and use taxes, see CRS Report R41853, *State Taxation of Internet Transactions*, by Steven Maguire.

[52] Tax Foundation, "Combined State & Local Sales Tax Rates (As of July 1, 2011)," http://www.taxfoundation.org/taxdata/show/26269.html.

[53] Federation of Tax Administrators, "State Sales Tax Rates and Food & Drug Exemptions (As of January 1, 2012)," http://www.taxadmin.org/fta/rate/sales.pdf.

[54] U.S. Census Bureau, *State and Local Government Finances Summary: 2008*, April 2011, Table A-1.

[55] See CRS Report R41853, *State Taxation of Internet Transactions*, by Steven Maguire.

[56] Tax Foundation, "State Individual Income Tax Rates, 2009," http://www.taxfoundation.org/files/state_ind_income_rates-20090710.pdf. Lower rates are shown in Illinois, Indiana, and Michigan, but the tax rate applies to federal adjusted gross income, while the rate in Colorado applies to federal taxable income.

[57] U.S. Census Bureau, *State and Local Government Finances Summary: 2008*, April 2011, Table A-1. Deductions claimed by individuals on federal income tax forms for state and local income taxes in the 2008 tax year totaled $271 billion, less than the $304 billion collected, because of taxpayers who did not itemize deductions and individuals who were not required to file federal returns.

## Other Taxes

As shown in **Table 1**, other state and local taxes are quite significant, accounting for 23.4% of all state and local tax collections.[58] The primary other state and local taxes are excise taxes and severance taxes, although a variety of other taxes and fees can be significant.

Excise taxes are essentially sales taxes on particular products. States, and sometimes local governments, commonly impose excise on several products—gasoline, tobacco products, alcoholic beverages, hotel and motel accommodations, restaurant meals, and more. Because excise taxes are sometimes used to deter consumption of particular goods (notably tobacco and alcohol), they are occasionally referred to as "sin taxes" or "sumptuary taxes." Some excise taxes are used to generate revenues for particular purposes, such as gasoline taxes for maintaining roads and highways. While some excise taxes (e.g., tobacco and gasoline) are imposed in most states, the rates vary widely; for example, in 2010, cigarette excise tax rates ranged from $0.07 per pack in South Carolina to $3.46 per pack in Rhode Island, while gasoline taxes varied from 8¢ per gallon in Alaska to 46.6¢ per gallon in California.[59] In 2008, sales of motor fuel, alcoholic beverages, and tobacco products accounted for $58 billion (7.4%) of state tax collections and for $2 billion (0.4%) of local tax collections.[60] Other selective sales taxes accounted for another $60 billion (7.6%) of state tax collections and another $24 billion (4.4%) of local tax collections.

Severance taxes are excise taxes based on natural resource extraction. Severance taxes are almost exclusively state taxes and are most commonly collected on minerals, oil and gas (or petroleum), coal, and timber.[61] The tax can be levied on a per-unit basis or as a percentage of the market value (ad valorem) of the extracted resource. Severance taxes are relatively insignificant in most states. Twelve do not levy a severance tax, and collections are less than 1% of total state taxation in another 22 states.[62] On the other hand, severance taxes can be substantial in resource rich states, especially those with extensive oil or natural gas deposits. In 2007, severance taxes accounted for 64% of state tax collections in Alaska and 40% in Wyoming, and generated more than $2 billion in collections in Texas.[63] Because some severance taxes are per-unit and others are ad valorem, and because different resources may be taxed differently even in the same state, it is not possible to summarize the nature and average levels of severance taxes.

## Charges and Fees

State and local governments also rely on various charges and fees to fund the goods and services they provide. In 2008, charges and fees provided more than 30% of state and local revenues (excluding intergovernmental transfers from the federal government and from states to local governments).[64] These charges, which commonly cover a portion of the cost, are for a broad array of goods and services, such as hospital services, higher education institutions (e.g., college

[58] U.S. Census Bureau, *2008 Annual Surveys of State and Local Government Finances*, US Summary spreadsheet.

[59] Tax Foundation, "Tax Data: State Sale, Gasoline, Cigarette, and Alcohol Tax Rates by State, 2000-2010," http://www.taxfoundation.org/news/show/245.html.

[60] U.S. Census Bureau, *State and Local Government Finances Summary: 2008*, April 2011, Table A-1.

[61] Yield taxes are commonly used for timber, but in practice, they are essentially severance taxes, and are determined in much the same ways.

[62] National Conference of State Legislatures, "State Energy Revenue Update," http://www.ncsl.org/default.aspx?tabid=12674.

[63] National Conference of State Legislatures, "State Energy Revenue Update."

[64] *2008 Annual Surveys of State and Local Government Finances*, US Summary.

tuition), publicly owned utilities (e.g., electricity, water supply, sewage treatment, solid waste disposal), and transportation (e.g., highways, airports, port facilities, parking).

# Appendix B. Details on Existing Federal Payments to State and Local Governments

As summarized above in "Existing Payment Programs," there are many federal programs that provide payments to state and local governments associated with federal lands. Some payments are based on numbers of children associated with tax-exempt lands, many on receipts from selling or using federal lands and resources, others on federal acreage, while a few are tax-like payments, and some combine these approaches. This appendix provides details on the Impact Aid program, on the many receipt-based programs, and on two complicated programs that either are due to expire (at the end of FY2012) or have expired (at the end of FY2011): one is the acreage-based PILT program, and the other is a combination program under the Secure Rural Schools and Community Self-Determination Act of 2000.

## Impact Aid[65]

Impact Aid compensates local educational agencies (LEAs) for the "financial burden" resulting from tax-exempt federal land ownership and the enrollment of certain individuals (e.g., children of parents in the military and children living on Indian lands). The Impact Aid program dates from 1950, and is administered by the U.S. Department of Education (ED), under Title VIII of the Elementary and Secondary Education Act (ESEA). Several types of payments to LEAs are authorized, and each receives a separate annual discretionary appropriation. For the purposes of this report, the most relevant payments are those made under Section 8002, Section 8003(b), Section 8003(d), and Section 8007.[66] The majority of Impact Aid funds are provided to LEAs through the Section 8003(b) payments.

### Section 8002

Section 8002 compensates LEAs for the federal ownership of certain property. To qualify for compensation, the federal government must have acquired the property, in general, after 1938, and the property had an assessed value at the time it was acquired of at least 10% or more of (1) all real property in the LEA at the time the federal property was acquired, or (2) the greater of all real property as assessed in the first year preceding or succeeding the acquisition of the property, if the property was not assessed at the time it was acquired and state law requires an assessment of property acquired. Payments are generally used by LEAs for general operating expenses (e.g., teacher salaries, books, supplies, and utilities).[67]

### Section 8003(b) and (d)

Section 8003 compensates LEAs for enrolling "federally connected" children. These are children who reside with a parent who is a member of the Armed Forces living on or off federal property; reside with a parent who is an accredited foreign military officer living on federal property; reside on Indian lands; reside in low-rent public housing; or reside with a parent who is a civilian

[65] This information was provided by Rebecca R. Skinner, Specialist in Education Policy, Domestic Social Policy Division, CRS.

[66] §8008 payments provide funds for emergency repairs and comprehensive capital improvements to schools that ED currently owns but LEAs use to serve federally connected military dependent children.

[67] U.S. Dept. of Education, "Impact Aid Section 8002 Payments for Federal Property-Awards," http://www.ed.gov/programs/8002/awards.html.

working or living on federal land. Two payments are made under Section 8003: (1) "basic support payments" for federally connected children (§8003(b)) and (2) payments for certain federally connected children with disabilities (§8003(d)).

Section 8003(b) authorizes "basic support payments" for federally connected children.[68] To be eligible for an 8003(b) payment, an LEA must have at least 400 federally connected children, or such children must represent at least 3% of an LEA's average daily attendance (ADA).[69] Impact Aid funds provided under Section 8003(b) are not limited to specified uses (such as improving the educational achievement of disadvantaged students). While funds are generally used for current local education expenditures,[70] they may also be used for capital expenditures.[71] In addition, the funds provided under Section 8003(b) need not be spent just on federally connected children. Finally, because Impact Aid payments are not aimed at specific educational goals, accountability requirements for the use of funds or for specific outcomes are minimal.

Section 8003(d) authorizes additional payments to LEAs based on the number of certain federally connected children with disabilities who are eligible to receive services under the Individuals with Disabilities Education Act (IDEA). More specifically, payments are limited to IDEA-eligible children, whose parents are members of the Armed Forces (residing on or off military bases) or who reside on Indian lands. Unlike basic support payments, LEAs receiving 8003(d) payments must use the funds to meet the needs of the federally connected children with disabilities for whom they received the payments. In addition, the funds must be used to provide a free appropriate public education to these children in accordance with the provisions of IDEA.[72]

### Section 8007

Section 8007 provides funds for construction and facilities upgrading to certain LEAs with high percentages of children living on Indian lands or children of military parents. These funds are used to make formula and competitive grants.[73] Under current law, 40% of the funds appropriated under Section 8007 are used to make construction payments by formula to LEAs receiving Section 8003 payments and in which either students living on Indian land constitute at least 50% of the LEA's total student enrollment or military students living on or off base constitute at least 50% of the LEA's total student enrollment. The funds available for construction payments are divided equally between these two groups of LEAs (20% of the total §8007 appropriation going to each group).

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[68] Prior to the 2000 reauthorization, §8003(f) provided additional payments for about 30 "heavily impacted LEAs"—those that enroll large numbers or high proportions of federally connected children. P.L. 106-398 repealed Subsection (f) and incorporated payments for these LEAs in the basic payments under §8003(b)(2).

[69] In addition, to receive payments for children of parents employed, but not residing, on federal property or certain children residing on federal property, an LEA must serve 1,000 or more of such children or such children must represent at least 10% of the LEA's total ADA.

[70] Current local education expenditures means expenditures for free public education, such as expenditures for administration, instruction, attendance and health services, transportation, and operation and maintenance of plant. These may be contrasted with capital expenditures for construction and related debt service.

[71] U.S. Dept. of Education, "Impact Aid Section 8003 Payments for Federally Connected Students—Frequently Asked Questions," http://www.ed.gov/programs/8003/faq.html.

[72] For more information about the requirements of IDEA, see CRS Report R41833, *The Individuals with Disabilities Education Act (IDEA), Part B: Key Statutory and Regulatory Provisions*, by Ann Lordeman.

[73] In recent years, Congress has specified that funds be used either for formula or competitive grants through the annual Labor, Health and Human Services, and Education and Related Agencies appropriations acts.

The remaining 60% of Section 8007 appropriations are used to make school facility emergency and modernization competitive grants. Emergency grants must be used to repair, renovate, or alter a K-12 public school facility to ensure the health and safety of students and staff. Modernization grants may be used to relieve overcrowding or upgrade facilities to support a "contemporary educational program."[74] Statutory language requires that emergency grants be given higher priority than modernization grants in the grant competition.

## Receipt-Based Payment Programs

**Table B-1** provides a list of existing federal payments to state and local governments from federal receipts derived from the sale or use of federal lands and resources. Certain federal lands and/or resources provide no receipt-based payments to state and local governments—notably, National Park System lands and hardrock/locatable minerals.[75] For most other federal lands and resources, the federal government pays state and/or local governments a portion of receipts. The payment rates vary widely—from 4% in many cases to as much as 90% for oil and gas leasing in Alaska. Some are geographically quite narrow (e.g., 37½% of oil royalties from the south half of the Red River Indian reservation in Oklahoma), others quite broad (e.g., 25% of gross revenues from all national forest lands). All of the payments shown in **Table B-1** were created with mandatory spending authority, since there was a natural source of funds for the payments.[76]

**Table B-1. Current Payments to State or Local Governments Associated With Federal Land or Resource Sales or Leases**

| Agency/Land Designation | Resource Sold or Leased | Authority | Share[a] | Recipient |
|---|---|---|---|---|
| **All Fish and Wildlife Service lands** | many resources (timber, grazing, special uses; not recreation or minerals) | Refuge Revenue Sharing Act, P.L. 95-469 (16 U.S.C. §715s) | 25% of net[b] | counties |
| **Forest Service—national forests generally** | many resources (timber, grazing, special uses; not recreation or minerals) | FY1909 Agriculture Appropriations Act of May 23, 1908 (16 U.S.C. §500) | 25%[c] | states for local schools and roads |
| **Forest Service—national grasslands** | many resources (timber, grazing, special uses; not recreation or minerals) | Bankhead-Jones Farm Tenant Act of 1937 (7 U.S.C. §1010-1012) | 25% of net | states for local schools and roads |
| **Forest Service—Quinault Special Management Area** | timber | P.L. 100-668 | 45% | Quinault Tribe for certain purposes |

[74] U.S. Department of Education, Purpose of the Impact Aid §8007B Discretionary Construction Grant Program, available online at http://www.ed.gov/programs/8007b/index.html.

[75] There is no general definition of hardrock or locatable minerals. In general, all minerals are considered hardrock or locatable and are available under the 1872 General Mining Law, unless otherwise specified in law (as in the Mineral Leasing Act of 1920 or the Mineral Materials Act of 1947). For more information, see CRS Report RL33908, *Mining on Federal Lands: Hardrock Minerals*, by Marc Humphries.

[76] For background information on mandatory spending authority and on these accounts, see CRS Report RL30335, *Federal Land Management Agencies' Mandatory Spending Authorities*, coordinated by Ross W. Gorte.

| Agency/Land Designation | Resource Sold or Leased | Authority | Share[a] | Recipient |
|---|---|---|---|---|
| | | | 45% | State of Washington |
| **Forest Service—Ouachita N.F.** | quartz | P.L. 100-446 (FY1989 Interior appropriations act), §423 | 50% | State of Arkansas for local schools and roads |
| **Bureau of Land Management (BLM)—federal lands generally**[d] | leasable minerals[e] | Mineral Leasing Act of 1920 (30 U.S.C. §181) and the Mineral Leasing Act for Acquired Lands (31 U.S.C. §§351 et seq.) | generally 50%[f] | states |
| **BLM—federal lands in Alaska**[d] | leasable minerals[e] | Mineral Leasing Act of 1920 (30 U.S.C. §181) as amended by the Alaska Statehood Act of 1958 | 90% | State of Alaska |
| **BLM—federal lands generally**[d] | geothermal leases | Geothermal Steam Leasing Act, P.L. 91-581 (30 U.S.C. §1019) | 50% | states |
| | | | 25% | counties |
| **BLM—public domain lands**[g] | land sales, timber | multiple authorities, dating from Act of March 6, 1820 | generally 5% of net in law; 4% in practice[h] | states |
| **BLM—public domain lands in Nevada** | land sales | multiple authorities, beginning with the Southern Nevada Public Land Management Act of 1998, P.L. 105-263, §4(e)[i] | 5% | State of Nevada for general education programs |
| | | | 10% | Southern NV Water Auth., or counties for specified purposes |
| **BLM—§3 public domain lands, within grazing districts** | grazing | Taylor Grazing Act of 1934, §3 (43 U.S.C. §315i) | generally 12½%[j] | states, for the benefit of the counties |
| **BLM—§15 public domain lands, outside grazing districts** | grazing | Taylor Grazing Act of 1934, §15 (43 U.S.C. §315i) | generally 50%[j] | states, for the benefit of the counties |
| **BLM—Oregon & California (O&C) grant lands**[k] | timber, land sales, grazing[l] | The O&C Act of 1937 (43 U.S.C. §1181f) | 75% (effectively 50%)[m] | counties |

**Sources:** CRS Report RL30335, *Federal Land Management Agencies' Mandatory Spending Authorities*, coordinated by Ross W. Gorte; CRS Report R41770, *Leasing and Selling Federal Lands and Resources: Receipts and Their Disposition*, coordinated by Ross W. Gorte*; and* BLM, *Public Land Statistics, 2009*, http://www.blm.gov/public_land_statistics/pls09/tablecontents_09.pdf.

**Notes:**

a. Share is a percentage of the gross receipts collected, unless otherwise specified. In those instances where net is specified, the costs that can be deducted from gross receipts are not specified in the statutes.

b. For acquired lands, the counties also have the option of $0.75 per acre or 0.75% of fair market value of the land (although for lands acquired before Sept. 30, 1977, the fair market value cannot be less than the purchase price of the land).

c. The Secure Rural Schools and Community Self Determination Act of 2000, as amended (P.L. 106-393; 16 U.S.C. §500 note), provided a temporary (through FY2011) payment program based on historical receipts, rather than current receipts, at the option of each county. This program is described in more detail later in this **Appendix**. In addition, as of FY2008, the payments are based on a seven-year rolling average of receipts, rather than current year receipts, to reduce annual fluctuations in the payments.

d. The BLM administers mineral and geothermal leasing on all federal lands available for leasing, regardless of which agency is responsible for administering the lands.

e. Leasable minerals include "coal, phosphate, sodium, potassium [potash], oil, oil shale, gilsonite (including all vein-type solid hydrocarbons), or oil" under all federal lands. For more information, see CRS Report R40806, *Energy Projects on Federal Lands: Leasing and Authorization*, by Adam Vann.

f. This is more complicated than it appears. Based on Executive Orders, Comptroller General decisions, and Solicitor's Opinions, payments for certain Land Utilization Project lands may provide a different payment (12½% or 25%). Also, certain lands provide alternative payments to Indian tribes—100% for Choctaw-Chickasaw lands in Oklahoma (Act of June 28, 1944) and for Shoshone-Arapaho tribes in Wyoming (Act of May 19, 1947), and 37½% for certain lands in Oklahoma (Kiowa, Comanche, and Apache) for roads and schools (Act of June 12, 1926). Finally, the Naval Petroleum Reserve (Alaska) had provided 50% to the State of Alaska, but this was changed to 0% in P.L. 105-85.

g. Public domain lands are the lands originally acquired by the U.S. Government via purchase or treaty from a foreign sovereign (e.g., the Louisiana Purchase and the Mexican Cession).

h. The 4% of gross is presumed to equal the 5% of net specified in most laws. For certain lands withdrawn for irrigation projects, the states receive 5% of gross (Act of April 16, 1906), but for other Reclamation lands, the states receive 0% (Act of July 19, 1919).

i. Other authorities include the Lincoln County Conservation, Recreation, and Development Act of 2004 (P.L. 108-424, §103), the White Pine County Conservation, Recreation, and Development Act of 2006 (P.L. 109-432, Div. C, §312), and §2601 of the Omnibus Public Land Management Act of 2009 (P.L. 111-11). The latter statute does not include 10% for local purposes.

j. Based on Executive Orders and a Solicitor's Opinion, payments for certain Land Utilization Project lands may provide a different payment (25%). Also, on lands withdrawn for irrigation projects (Act of July 19, 1919) and lands leased to conserve resources (Pierce Act, Act of June 23, 1938), the states receive 0%.

k. These were lands granted to the Oregon & California Railroad Company for constructing the Oregon portion of a railroad from Portland, OR, to Sacramento, CA. The lands were returned to federal ownership (called "revested") for failure of the company to fulfill the terms of the grant (disposal of the lands for local economic development) under a U.S. Supreme Court Decision in 1915 (Oregon & California Railroad Co. v. United States, 238 U.S. 393 (1915)).

l. A DOI Solicitor's Opinion of Dec. 9, 1985, states that the 50% allocation to states in the Mineral Leasing Act of 1920 also applies to the O&C lands.

m. The 1937 O&C Act allocated 50% directly to the counties, 25% for administering the O&C lands (with any remainder returned to the Treasury), and 25% to pay the counties for accrued tax liabilities through March 1, 1938; after the accrued tax liabilities were paid, the 25% was to be used for administering the O&C lands, with any remainder provided to the counties. In practice, after the tax liabilities were paid (in the 1950s), all of the 25% has been used for O&C land administration. Thus, the counties effectively receive 50% of receipts.

## Payments in Lieu of Taxes

The Payments in Lieu of Taxes (PILT) program was enacted in 1976[77] and is administered by the Department of the Interior. PILT authorizes payments per acre of "entitlement" (also called eligible or qualifying) lands identified in the statute. The authorized payments are based on a complicated formula that reflects eligible acreage, fixed payments per acre that are offset by

[77] P.L. 94-565; 31 U.S.C. §§6901-6907.

specified receipt-sharing payments (some of the payments shown in **Table B-1**, above), minimum fixed payments per acre, and a population-based ceiling on total PILT payments to a county.[78]

The lands eligible for PILT payments are the majority of federal lands, but do not include all federal lands. As presented in 31 U.S.C. §6901(1), "entitlement" lands include federal land:

- (A) that is in the National Park System or the National Forest System, including wilderness areas and lands described in §2 of the Act of June 22, 1948 (16 U.S.C. §577d), and §1 of the Act of June 22, 1956 (16 U.S.C. §577d-1) [specified acquired national forest lands in Minnesota];
- (B) that the Secretary of the Interior administers through the BLM [Bureau of Land Management];
- (C) that is dedicated to the use of the government for water resource development projects [i.e., Bureau of Reclamation and U.S. Army Corps of Engineers lands];
- (D) on which are located semi-active or inactive installations (except industrial installations) that the Secretary of the Army keeps for mobilization and for reserve component training;
- (E) that is a dredge disposal area under the jurisdiction of the Secretary of the Army [Corps of Engineers];
- (F) that is located in the vicinity of Purgatory River Canyon and Piñon Canyon, CO, and acquired after December 23, 1981, by the U.S. Government to expand the Fort Carson military installation;
- (G) that is a reserve area (as defined in §401(g)(3) of the Act of June 15, 1935 (16 U.S.C. §715s(g)(3))) [i.e., National Wildlife Refuge System lands reserved from the public domain[79]]; or
- (H) acquired by the Secretary of the Interior or the Secretary of Agriculture under §5 of the Southern Nevada Public Land Management Act of 1998 [P.L. 105-263] that is not otherwise described in subparagraphs (A) through (G).

Lands not eligible for PILT payments include acquired lands in the National Wildlife Refuge System, active military installations, and lands administered by other agencies (e.g., NASA, Department of Energy).

As originally enacted, PILT payments required annual appropriations. In 2008, Congress provided mandatory spending authority for the PILT Program for five years—FY2008-FY2012.[80] Unless this provision is reauthorized, the last mandatory PILT payments will be for FY2012, and payments for FY2013 will require annual appropriations in the Interior, Environment, and Related Agencies appropriations act.

[78] For a more complete description of PILT, see CRS Report RL31392, *PILT (Payments in Lieu of Taxes): Somewhat Simplified*, by M. Lynne Corn.

[79] Public domain lands are the lands originally acquired by the U.S. Government via purchase or treaty from a foreign sovereign (e.g., the Louisiana Purchase and the Mexican Cession).

[80] §601 of Title VI—Other Provisions in Division C—Tax Extenders and Alternative Minimum Tax Relief of P.L. 110-343, the Emergency Economic Stabilization Act of 2008.

## Secure Rural Schools and Community Self-Determination Act

The Secure Rural Schools and Community Self-Determination Act of 2000 (SRS) was reauthorized in 2008.[81] These optional payments were based on a complex formula that included each county's share, among all the counties opting for SRS payments, of historic payments and of Forest Service (USFS) and O&C land acreage and adjusted for relative per-capita personal income in the county. The specific steps were:

- Step 1. Determine the three highest revenue-sharing payments between FY1986 and FY1999 for each eligible county, and calculate the average of the three.
- Step 2. Calculate the proportion of these payments in each county (divide each county's three-highest average [Step 1] by the total of three-highest average in all eligible counties, with separate calculations for USFS lands and O&C lands).
- Step 3. Calculate the proportion of USFS and O&C lands in each eligible county (divide each county's USFS and O&C acreage by the total USFS and O&C acreage in all eligible counties, with separate calculations for USFS lands and O&C lands).
- Step 4. Average these two proportions (add the payment proportion [Step 2] and the acreage proportion [Step 3] and divide by 2, with separate calculations for USFS lands and O&C lands). This is the base share for counties with USFS lands and the 50% base share for counties with O&C lands.
- Step 5. Calculate each county's income adjustment by dividing the per capita personal income in each county by the median per capita personal income in all eligible counties.
- Step 6. Adjust each county's base share [Step 4] by its relative income (divide each county's base share or 50% base share by its income adjustment [Step 5]).
- Step 7. Calculate each county's adjusted share or 50% adjusted share as the county's proportion of its base share adjusted by its relative income [Step 6] from the total adjusted shares in all eligible counties (divide each county's result from Step 6 by the total for all eligible counties [USFS and O&C combined]).

The reauthorization included a total ("full funding") payment, declining by 10% annually over four years (FY2008-FY2011), to be allocated among the counties opting for the SRS payments under the formula. (Counties could choose payments under the historic USFS 25% payments to states or O&C 50% payments to counties, shown above in **Table B-1**.) In addition, counties in eight states—California, Louisiana, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, and Washington—could receive a transition payment (higher than the calculated payments) for the first three years of the reauthorization (FY2008-FY2010).[82] The reauthorization also continued the requirement to spend ("reinvest") 15%-20% of the payments on the federal lands and the authority to use some of the payments for other, specified purposes.

The payments under this program expired at the end of FY2011 (i.e., the final payment was for FY2011). At this time, unless the SRS Act is reauthorized, USFS payments will revert to 25% of gross receipts and O&C payments to 50% of gross receipts for FY2012 and beyond.

[81] Originally, P.L. 106-393; supplanted with new language in §601 of Title VI—Other Provisions in Division C—Tax Extenders and Alternative Minimum Tax Relief of P.L. 110-343, the Emergency Economic Stabilization Act of 2008.

[82] The result of these transition payments was that total funding exceeded the "full funding" specified in the act.

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## Disclaimer