



Department Source: City Utilities - Water and Light

To: City Council

From: City Manager & Staff

Council Meeting Date: November 4, 2024

Re: Report: Payment in Lieu of Tax by the Water and Light Utilities

## Executive Summary

The City Charter in Section 102 requires the rates, fees or charges for water and electricity be sufficient to pay into the general revenue fund annually an amount substantially equivalent to the sum which would be paid in taxes if the utility were privately owned. This is commonly referred to as "payment in lieu of tax" or PILOT. Recently, there have been questions about the methodology of calculating the payment in lieu of taxes. This report was written to provide additional clarification on how the current method for calculating PILOT's was established.

The method of calculating the PILOT has been challenged in the past and was litigated in the early 1960s. In January 1964 the Circuit Court of Boone County ruled in favor of the City.

## Discussion

The Columbia City Charter Section 102, in part, as follows:

"Section 102. Rates and Finances.

The city council shall from time to time fix, establish, maintain and provide for the collection of such rates, fees or charges for water and electricity and water and electric service furnished by or through the water and electric light works of the city as will produce revenues sufficient to pay the cost of operation and the maintenance of said works in good repair and working order; to pay the principal of and interest on all revenue bonds of the city payable from the revenues of said works; to provide and maintain an adequate depreciation fund for the purpose of making renewals and replacements; to provide a fund for the extension, improvement, enlargement and betterment of said works; to pay the interest on and principal of any general obligation bonds issued by the city to extend or improve said works; and to pay into the general revenue fund of the city annually an amount substantially equivalent to that sum which would be paid in taxes if the water and electric light works were privately owned. Such revenues so produced shall be devoted to the purposes so enumerated. The provisions hereof shall be subject at all times to the performance by the city of all covenants and agreements made by it in connection with the issuance, sale or delivery of any revenue bonds of the city payable out of the revenues derived by the city from the operation of its water and electric light works, whether such revenue bonds be heretofore or hereafter issued."



# City of Columbia

701 East Broadway, Columbia, Missouri 65201

This section of the Charter was interpreted by the Circuit Court of Boone County in the case of Richard McDonnell, et al., vs. City of Columbia, Missouri, et al., #44597 decided on January 18, 1964. In the case the plaintiffs challenged that the City was violating Section 102 of the Charter due to the method used to calculate the in lieu of tax payment. Specifically, plaintiffs believed that including the equivalent payment of federal and state income taxes, and county, state and school district property taxes should not be included. This was addressed by the Courts. A copy of the Judgement and Court's Memorandum is attached. It includes, in part the following, emphasis added:

"Therefore, whatever amount of money is necessary to pay the cost of operation and maintenance of the utility, to pay the principal and interest on revenue bonds, to provide a depreciation fund, to provide for extension, improvement, enlargement and betterments of the utility, to pay principal and interest on certain general obligation bonds, and to pay "an amount substantially equivalent to that sum which would be paid in taxes" if the utility were privately owned, MUST be provided by the City Council, and they must set the "rates, fees and charges" at such an amount that will provide the money necessary for ALL of these funds.

It is clear, therefore, that the amount "substantially equivalent to that sum which would be paid in taxes" if the utility were privately owned is merely a figure to be determined by the City Council, and whether it includes an amount equivalent to federal and state income taxes and state, county and school district taxes, or whether it be limited solely to city taxes that private utility would pay is irrelevant. Whichever amount the City determines must be raised by the operation of the utility. If it is the position of the City that the "amount substantially equivalent to that sum which would be paid in taxes" by a private utility should include federal and state income taxes, etc., then the Council will simply have to set the rates, fees and charges for the services of the utility at an amount as will provide such funds."

This decision shows that the Council has the authority to determine how PILOTs are calculated. Different municipal utilities use different methods to calculate how it will support general cities operations. PILOTs are one of the most common. PILOTs can include an amount equivalent to many different taxes including gross receipts tax, federal and state income taxes, state, county and school district taxes, etc. The current method that the City of Columbia utilizes to calculate PILOT was established by the City Council in 1975. This included a revision to the Code of Ordinances related to the in lieu of gross receipts payment portion of the PILOT. A copy of Ordinance #6559 is attached. This is still the current method of calculating the gross receipts portion of the PILOT. The other change in 1975 was adoption of a resolution that defined the payment in-lieu of taxes. A copy of Council Bill 327-75 is attached. This change reduced the amount of the transfer by eliminating the state and federal income tax equivalent from the calculation. This method has not been modified and has remained the same since 1975.

Columbia's current PILOT transfer to the general revenue fund includes an amount equivalent to all of the following taxes: gross receipts tax, city property tax, county property



# City of Columbia

701 East Broadway, Columbia, Missouri 65201

tax, school district property tax, library property tax and state property tax. The City Council has the authority to change the method of calculation and increase or reduce the annual PILOT transfer to the general revenue fund.

## Fiscal Impact

Short-Term Impact: None with this report.

Long-Term Impact: None with this report.

## Strategic & Comprehensive Plan Impact

### Strategic Plan Impacts:

Primary Impact: Not Applicable, Secondary Impact: Not Applicable, Tertiary Impact: Not Applicable

### Comprehensive Plan Impacts:

Primary Impact: Not Applicable, Secondary Impact: Not applicable, Tertiary Impact: Not Applicable

## Legislative History

Date	Action
08/19/2024	REP58-24 Annexation of the Water Treatment Plant and the utilization of Payment in Lieu of Taxes (PILOT).

## Suggested Council Action

Report is for information only.