

DOE 2100.12A
6-9-92

This page must be kept with DOE 2100.12A, PAYMENTS FOR SPECIAL BURDENS AND IN LIEU OF TAXES. DOE 2100.12A revises DOE 2100.12 to reflect organizational titles, routing symbols, and other editorial revisions required by SEN-6. No substantive changes have been made.

U.S. Department of Energy
Washington, D.C.

ORDER

DOE 2100.12A

6-9-92

This directive was reviewed and certified as current and necessary by (Enter Name), (Enter Title) Director, Office of Management, Budget and Evaluation/Chief Financial Officer, XX-XX-XXXX.

SUBJECT: PAYMENTS FOR SPECIAL BURDENS AND IN LIEU OF TAXES

1. PURPOSE. To establish the Department of Energy policy for making payments in lieu of taxes to certain State and local governments under the provisions of Title 42, United States Code (U.S.C.), Section 2201 et. seq., and Section 2208 of the Atomic Energy Act of 1954, as amended.
2. CANCELLATION. DOE 2100.12, PAYMENTS FOR SPECIAL BURDENS AND IN LIEU OF TAXES, of 11-16-87.
3. EXCLUSIONS. This Order does not apply to sites: where payments are made to State and local governments under the Atomic Energy Community Act of 1955, as amended; the Uranium Mill Tailings Radiation Act of 1978, as amended; or the Nuclear Waste Policy Act of 1982.
4. REFERENCES.
 - a. Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201 et. seq., and 2208, which provides for payments in lieu of taxes to State and local governments.
 - b. Atomic Energy Community Act of 1955, as amended, 42 U.S.C. 2301 et. seq., and 2391, which provides for payments to communities to facilitate an orderly transition from Federal to local control.
 - c. Nuclear Waste Policy Act of 1982, 42 U.S.C. 10199, which provides for payments equal to taxes to jurisdictions affected by proposed or selected nuclear waste sites.
 - d. Uranium Mill Tailings Control Act of 1978, as amended (Public Law 95-604), 42 U.S.C. 7901 et. seq., and 7942 which authorizes a program of assessment and remedial action at inactive uranium mill tailings sites.
 - e. Public Law 81-874, 20 U.S.C. 631-647, which provides for payments to Federally impacted school districts.
 - f. Office of Management and Budget Circular A-34, "Instructions on Budget Execution," of 8-26-85, which contains instructions relating to apportionments and reports on budget execution.

DISTRIBUTION:
All Departmental Elements

INITIATED BY:
Office of Chief Financial Officer

5. DEFINITIONS.

- a. Any Benefit is used in determining eligibility for payments in lieu of taxes and the amount to be paid based on special burdens incurred by a State or local government. Any benefit includes all benefits accruing to the State or local government by reason of the Department's activities at the site being considered under a request for payment based on special burdens. The benefits and burdens used to determine payments based on claims of special burdens will be determined on a case-by-case basis.
- b. Payments in Lieu of Taxes are discretionary payments made to render financial assistance to those States and local governments in which the Department or one of its predecessor agencies has acquired property previously subject to State or local taxation and on which the Department carries on activities authorized by the Atomic Energy Act of 1954, as amended.
- c. Property in the Condition it was Acquired is the physical description/definition and classification of the subject real property used to determine the real property's assessed valuation the last year the property was on the tax rolls prior to being acquired by the Government.
- d. Property Eligible for Payments in Lieu of Taxes are real properties that are currently used for activities authorized by the Atomic Energy Act of 1954, as amended, that were on the tax rolls immediately prior to being acquired by the government. In cases where activities are carried on that may create payments to State and local governments, based on legislation other than the Atomic Energy Act, such as the Nuclear Waste Policy Act, those parcels of land used for such other purposes shall be excluded from the computation of a payment in lieu of taxes, as prescribed by Section 168 of the Atomic Energy Act of 1954, as amended.
- e. Property Tax Loss to State or local government is considered to be taxes that would have been payable on such real property, based on the condition of the property when acquired by the Government.
- f. Revised Payments are proposed changes in payments that are based on a reclassification of the land to a new tax category, an increase or decrease in the amount of the land used to compute the payment, or other major changes in the method of computing the payments. Changes in the amounts to be paid that are based on jurisdiction wide adjustments to tax assessments or tax rates are not considered to be revised payments.
- g. Special Burdens are unusual or substantial burdens placed on a State or local government by Atomic Energy Act related activities of the Department. Special burdens are incurred by extraordinary services that are not normally required by a community on a

routine basis. The mere fact that a State or local government is burdened by the activities of the Department does not constitute a special burden.

- h. Taxing Authority is an entity empowered to render a separate tax bill based on the value of real property.
6. BACKGROUND. The Atomic Energy Act of 1954 gives the Secretary of Energy (S-1) broad authority in making payments in lieu of taxes. The amount, the timing, and the terms of the payments are at the discretion of the Secretary. The only limits contained in the Act are that the Department shall be guided by the policy of not making payments in excess of the taxes that would have been payable for such property in the condition in which it was acquired, except in cases where special burdens have been cast upon the State or local government by reason of activities of the Department or its agents. In such cases, any benefit accruing to the State or local government by reason of such activities shall be considered in determining the amount of the payment.
7. POLICY.
 - a. Only designated properties are eligible for support payments in lieu of taxes. To be eligible, the property must currently be used for activities authorized by the Atomic Energy Act of 1954, as amended, and must have been on tax rolls immediately prior to being acquired by the Government.
 - b. If it is demonstrated that the imputed tax loss is greater than the benefits derived from the Department's activities, the amount of the payment to be made in lieu of taxes shall be calculated by applying the current tax rate to the current assessed valuation of the property in the condition in which it was acquired and reducing the result of that calculation by the value of direct tax benefits that accrue to the community as a result of the Department's activities. The direct tax benefits that accrue to a community as a result of the Department's activities include payments to federally impacted school districts under Public Law 81-874, and sales, franchise, inventory use, or other taxes levied on the Department or its contractors by State or local taxing jurisdictions. This test and calculation of amounts to be paid are required only for new or revised payments. They are not required for continuing payments approved in prior years.
 - c. The Department shall not make retroactive payments in lieu of taxes.
 - d. Payments that have been approved will begin when funds have been appropriated for that purpose and are contingent on funds being available for such purposes. Furthermore, the amounts available

for such payments are subject to the same reductions or other budgetary restrictions that may be applied to other Departmental programs.

- e. New or revised payments in lieu of taxes and payments based on special burdens require the advance approval of the Chief Financial Officer (CR-1).
- f. Payments in lieu of taxes being made at the time this Order is approved shall continue under the existing terms and conditions until a specific request to change the basis of the payment is received. Such requests shall be considered the same as new requests.
- g. Payments in lieu of taxes shall be made only after a valid and binding release or settlement of claims for payments related to the Department's land or property is obtained from the taxing authority.
- h. Payments shall be suspended when a taxing authority asserts a claim through the courts for real property taxes or their equivalent. If the courts rule in favor of the plaintiff, payments will be made in accordance with the terms set by the court, but no retroactive payment will be made for the period during which the tax was contested unless so directed by the court.
- i. Nothing in this Order modifies the discretionary authority given to the Secretary by Section 168 of the Atomic Energy Act of 1954, as amended, and such payments are not construed as entitlements.
- j. All payments in lieu of taxes must be supported by a duly executed intergovernmental agreement. This agreement serves as the obligating document.
- k. This Order does not affect existing agreements between DOE and State and local governments that preclude payments in lieu of taxes on all or part of real property owed by the Department.
- l. Payments in lieu of taxes made by the Department shall not exceed the tax payment had the real property remained on the tax rolls in the condition it was acquired unless the payment is based on a special burden.
- m. Payments in lieu of taxes will not be made where other, direct or indirect, Federal payments are made to the taxing jurisdiction that are based on the activities of the Department or other Federal agencies carried out on DOE property, e.g., payments levied on DOE contractors that are tantamount to property taxes.

- n. Once authorized, payments shall continue subject to the availability of funds or modifications by intergovernmental agreement.

8. RESPONSIBILITIES

a. Chief Financial Officer (CR-1) shall:

- (1) Authorize, for the Secretary, new and revised payments in lieu of taxes;
- (2) Develop and update, as required, Departmental policies and procedures related to making payments in lieu of taxes;
- (3) Ensure that funding for approved payments in lieu of taxes, as requested by the cognizant Program Secretarial Officer (PSO), is included in the Department's budget submission to OMB and to Congress; and
- (4) Ensure that appropriated and apportioned funds for payments in lieu of taxes are properly allotted.

b. Director of Administration and Human Resource Management (AD-1), through the Office of Organization, Resources and Facilities Management (AD-10), shall:

- (1) Maintain an inventory and description of Departmental real estate that is subject to the provisions of Section 168;
- (2) Independently review requests for new and revised payments in lieu of taxes for accuracy, completeness, and reasonableness and recommend concurrence or nonconcurrence to CR-1; and
- (3) Provide advice and consultation to CR-1 based on the independent review of new and revised payment requests and recommendations received from PSOs.

c. General Counsel and Field Counsel shall:

- (1) Review and concur or nonconcur on the eligibility of the State or local government or taxing authority requesting payments in lieu of taxes to receive such payments; and
- (2) Provide legal advice on other matters that should arise relating to payments in lieu of taxes.

d. Managers of DOE Field Offices shall:

- (1) Manage the administration of existing payments;
- (2) Analyze requests for new or revised payments;

- (3) Prepare recommendations on new or revised payments and submit the recommendations to the cognizant PSO which is responsible for budgeting for the payment; and
 - (4) Ensure that payments in lieu of taxes are made in accordance with duly executed intergovernmental agreements.
- e. Cognizant Program Secretarial Officers shall:
- (1) Review and forward recommendations regarding applications for new and revised payments in lieu of taxes to CR-1; and
 - (2) Ensure that funding for approved payments is included in their budget submissions.

9. PROCEDURES.

- a. Requests for revised or new payments in lieu of taxes, not based on an analysis of special burdens versus any benefits, are handled as follows:
- (1) The cognizant DOE Field Office will review these requests to ensure that the requests comply with Departmental policy. The requests should describe the basis for computing amounts claimed and at least contain the following information:
 - (a) Description of property, including non-Federal government improvements at the time of acquisition and which still exist (initial requests only);
 - (b) Date removed from tax rolls (initial requests only);
 - (c) Federal agency initially acquiring property (initial requests only);
 - (d) Classification of property by taxing authority (if applicable) and zoning of property the last year it was on the tax rolls (initial requests only);
 - (e) Tax rate, assessment, and total payment in lieu of tax proposed;
 - (f) Current assessment placed on property of the same zoning and/or class, as reported under 9a(l)(d) above, by the taxing authority;
 - (g) Current tax rate applicable to the same class and/or zoning of property as reported under paragraph 9a(l)(d) above;

- (h) The tax rate and assessment applied to similar properties elsewhere in the same tax jurisdiction;
 - (i) A description and valuation of all the benefits accruing to the community as a result of the Department's activities; and
 - (j) Information about payments received by the taxing jurisdiction(s) from the Federal governmental organizations that are based on the Department's property and activities.
- (2) The cognizant DOE Field Office is responsible for evaluating the request and preparing a recommendation for action. The evaluation will include:
- (a) A determination whether or not the subject property meets the criteria of eligibility for payments in lieu of taxes established by the Atomic Energy Act of 1954, as amended.
 - (b) An assessment of direct cash benefits to the taxing jurisdiction that are a result of the Department's activities. This will include payments to affected school districts, under Public Law 81-874 and 20 U.S.C. 631-647, and tax payments by DOE contractors to a State or local taxing authority that is requesting a new or revised payment in lieu of taxes. Other payments made by a DOE contractor that are based on property or equipment that are in lieu of taxes normally paid by a property owner will also be evaluated in recommending the amounts to be paid in lieu of taxes.
 - (c) An examination of the tax rate and assessment applied to similar properties elsewhere in the same tax jurisdiction to assure that payment requests are fair and consistent.
 - (d) A report of the assessment and recommendations forwarded to the cognizant PSO. The recommendations will be accompanied by workpapers and other information sufficient to support the recommendation made. The information will include:
 - 1 Recommendation of approval or disapproval.
 - 2 If approval is recommended:
 - a The amount to be paid;

- b The date first payment is to be made;
 - c Legal opinion from field counsel containing an analysis of relevant facts and law regarding the eligibility of the property under the Atomic Energy Act of 1954, as amended; and
 - d A comparative analysis of the imputed tax loss and all benefits accruing to the community as a result of the Department's activities.
- (3) Each request for new or revised payment will be reviewed by the cognizant PSO and forwarded to CR-1 with a recommendation.
 - (4) CR-1 will evaluate the recommendation in consultation with General Counsel and other staff, as appropriate, and determine if it is in the best interest of the Department to make the payment.
 - (5) When notified of approval by CR-1, the PSO will include funding for approved payments in the Department's next budget cycle.
 - (6) The cognizant procurement office will execute a separate intergovernmental agreement between the Department and each taxing authority designated to receive payments in lieu of taxes. The agreement will set forth the terms and procedures for billing, making payments, and revisions. The agreement must contain provisions that: (a) the payments are being conditioned on the availability of funds; (b) the date the first payment is due is indicated; and (c) explain that such funds are subject to legislative or administrative reductions in funding levels. Furthermore, agreements shall state that payments in lieu of taxes are not entitlements.
- b. Requests for new or revised payments based on special burdens that are in excess of any benefits derived from the Department's activities by the taxing jurisdictions are reviewed by the cognizant DOE Field Office to assure that Departmental policies are complied with and that the requests are complete and adequately supported. At a minimum, requests shall contain the following information:
 - (1) The information described in paragraph 9a(l)(a) through 9a(1) (g);

- (2) A description of special burden(s) incurred as a result of the Department's activities and the dollar cost of these burdens to the taxing jurisdiction; and
 - (3) Benefits derived from the activities of the Department. Such benefits include, but are not limited to, all local taxes paid by employees at the DOE site and economic activity created by DOE contractors and suppliers.
- c. The evaluation of the requests and recommendations will follow the procedures outlined in paragraphs 9a(2) thru 9a(6).
- d. Funds budgeted for payments in lieu of taxes must be specifically identified in the documentation supporting budget requests. Payments that have been approved will begin when funds have been appropriated for that purpose. In accordance with Office of Management and Budget Circular A-34, payments in lieu of taxes are recorded as an obligation in the period in which they are authorized to be paid and due.

BY ORDER OF THE SECRETARY OF ENERGY:



DONALD W. PEARMAN, JR.
Acting Director
Administration and Human
Resource Management

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 - c. The Department shall not make retroactive payments in lieu of taxes.
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for such payments are subject to the same reductions or other budgetary restrictions that may be applied to other Departmental programs.

- e. New or revised payments in lieu of taxes and payments based on special burdens require the advance approval of the Chief Financial Officer (CR-1).
- f. Payments in lieu of taxes being made at the time this Order is approved shall continue under the existing terms and conditions until a specific request to change the basis of the payment is received. Such requests shall be considered the same as new requests.
- g. Payments in lieu of taxes shall be made only after a valid and binding release or settlement of claims for payments related to the Department's land or property is obtained from the taxing authority.
- h. Payments shall be suspended when a taxing authority asserts a claim through the courts for real property taxes or their equivalent. If the courts rule in favor of the plaintiff, payments will be made in accordance with the terms set by the court, but no retroactive payment will be made for the period during which the tax was contested unless so directed by the court.
- i. Nothing in this Order modifies the discretionary authority given to the Secretary by Section 168 of the Atomic Energy Act of 1954, as amended, and such payments are not construed as entitlements.
- j. All payments in lieu of taxes must be supported by a duly executed intergovernmental agreement. This agreement serves as the obligating document.
- k. This Order does not affect existing agreements between DOE and State and local governments that preclude payments in lieu of taxes on all or part of real property owed by the Department.
- l. Payments in lieu of taxes made by the Department shall not exceed the tax payment had the real property remained on the tax rolls in the condition it was acquired unless the payment is based on a special burden.
- m. Payments in lieu of taxes will not be made where other, direct or indirect, Federal payments are made to the taxing jurisdiction that are based on the activities of the Department or other Federal agencies carried out on DOE property, e.g., payments levied on DOE contractors that are tantamount to property taxes.

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8. RESPONSIBILITIES.

a. Chief Financial Officer (CR-1) shall:

- (1) Authorize, for the Secretary, new and revised payments in lieu of taxes;
- (2) Develop and update, as required, Departmental policies and procedures related to making payments in lieu of taxes;
- (3) Ensure that funding for approved payments in lieu of taxes, as requested by the cognizant Program Secretarial Officer (PSO), is included in the Department's budget submission to OMB and to Congress; and
- (4) Ensure that appropriated and apportioned funds for payments in lieu of taxes are properly allotted.

b. Director of Administration and Human Resource Management (AD-1), through the Office of Organization, Resources and Facilities Management (AD-10), shall:

- (1) Maintain an inventory and description of Departmental real estate that is subject to the provisions of Section 168;
- (2) Independently review requests for new and revised payments in lieu of taxes for accuracy, completeness, and reasonableness and recommend concurrence or nonconcurrence to CR-1; and
- (3) Provide advice and consultation to CR-1 based on the independent review of new and revised payment requests and recommendations received from PSOs.

c. General Counsel and Field Counsel shall:

- (1) Review and concur or nonconcur on the eligibility of the State or local government or taxing authority requesting payments in lieu of taxes to receive such payments; and
- (2) Provide legal advice on other matters that should arise relating to payments in lieu of taxes.

d. Managers of DOE Field Offices shall:

- (1) Manage the administration of existing payments;
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 - (d) Classification of property by taxing authority (if applicable) and zoning of property the last year it was on the tax rolls (initial requests only);
 - (e) Tax rate, assessment, and total payment in lieu of tax proposed;
 - (f) Current assessment placed on property of the same zoning and/or class, as reported under 9a(1)(d) above, by the taxing authority;
 - (g) Current tax rate applicable to the same class and/or zoning of property as reported under paragraph 9a(1)(d) above;

- (h) The tax rate and assessment applied to similar properties elsewhere in the same tax jurisdiction;
 - (i) A description and valuation of all the benefits accruing to the community as a result of the Department's activities; and
 - (j) Information about payments received by the taxing jurisdiction(s) from the Federal governmental organizations that are based on the Department's property and activities.
- (2) The cognizant DOE Field Office is responsible for evaluating the request and preparing a recommendation for action. The evaluation will include:
- (a) A determination whether or not the subject property meets the criteria of eligibility for payments in lieu of taxes established by the Atomic Energy Act of 1954, as amended.
 - (b) An assessment of direct cash benefits to the taxing jurisdiction that are a result of the Department's activities. This will include payments to affected school districts, under Public Law 81-874 and 20 U.S.C. 631-647, and tax payments by DOE contractors to a State or local taxing authority that is requesting a new or revised payment in lieu of taxes. Other payments made by a DOE contractor that are based on property or equipment that are in lieu of taxes normally paid by a property owner will also be evaluated in recommending the amounts to be paid in lieu of taxes.
 - (c) An examination of the tax rate and assessment applied to similar properties elsewhere in the same tax jurisdiction to assure that payment requests are fair and consistent.
 - (d) A report of the assessment and recommendations forwarded to the cognizant PSO. The recommendations will be accompanied by workpapers and other information sufficient to support the recommendation made. The information will include:
 - 1 Recommendation of approval or disapproval.
 - 2 If approval is recommended:
 - a The amount to be paid;

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 - c Legal opinion from field counsel containing an analysis of relevant facts and law regarding the eligibility of the property under the Atomic Energy Act of 1954, as amended; and
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 - (4) CR-1 will evaluate the recommendation in consultation with General Counsel and other staff, as appropriate, and determine if it is in the best interest of the Department to make the payment.
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 - (6) The cognizant procurement office will execute a separate intergovernmental agreement between the Department and each taxing authority designated to receive payments in lieu of taxes. The agreement will set forth the terms and procedures for billing, making payments, and revisions. The agreement must contain provisions that: (a) the payments are being conditioned on the availability of funds; (b) the date the first payment is due is indicated; and (c) explain that such funds are subject to legislative or administrative reductions in funding levels. Furthermore, agreements shall state that payments in lieu of taxes are not entitlements.
- b. Requests for new or revised payments based on special burdens that are in excess of any benefits derived from the Department's activities by the taxing jurisdictions are reviewed by the cognizant DOE Field Office to assure that Departmental policies are complied with and that the requests are complete and adequately supported. At a minimum, requests shall contain the following information:
 - (1) The information described in paragraph 9a(1)(a) through 9a(1)(g);

- (2) A description of special burden(s) incurred as a result of the Department's activities and the dollar cost of these burdens to the taxing jurisdiction; and
 - (3) Benefits derived from the activities of the Department. Such benefits include, but are not limited to, all local taxes paid by employees at the DOE site and economic activity created by DOE contractors and suppliers.
- c. The evaluation of the requests and recommendations will follow the procedures outlined in paragraphs 9a(2) thru 9a(6).
 - d. Funds budgeted for payments in lieu of taxes must be specifically identified in the documentation supporting budget requests. Payments that have been approved will begin when funds have been appropriated for that purpose. In accordance with Office of Management and Budget Circular A-34, payments in lieu of taxes are recorded as an obligation in the period in which they are authorized to be paid and due.

BY ORDER OF THE SECRETARY OF ENERGY:



DONALD W. PEARMAN, JR.
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