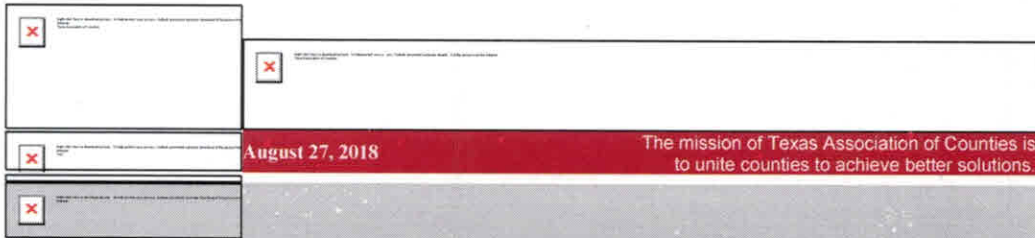


**From:** Texas Association of Counties <tacannounce@county.org>  
**Sent:** Monday, August 27, 2018 2:43 PM  
**To:** judge@co.tyler.tx.us  
**Subject:** Information on PILT Class Action Lawsuit

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## Information on PILT Class Action Lawsuit

*The following message is provided by the law firm appointed Class Counsel in a class action lawsuit to recover federal Payments in Lieu of Taxes (PILT) underpayments for fiscal years 2015-2017. The message includes additional information about the lawsuit for your review.*

You most likely have heard about the *Kane County v. United States* class action lawsuit to recover PILT underpayments for fiscal years 2015 through 2017. My law firm has been appointed Class Counsel by the Court of Federal Claims.

The Court has ruled that the United States is liable to 1,953 counties and other local governments that were underpaid in those years, and has certified them as a Class. Of this total, 87 are in Texas.

**Please note:** The Court of Federal Claims requires Class Members to affirmatively “opt in” to a class action lawsuit if they wish to participate—unlike other courts, where a class member is included in the lawsuit unless it affirmatively takes action to “opt out.” With the assistance and support of the National Association of Counties (NACo), over 650 local governments have already opted into the *Kane County* class action lawsuit.

- There is an article about the lawsuit on [NACo's website](#).
- A recording of the June 19 NACo-sponsored telephone conference discussing the lawsuit is also linked on [NACo's website](#).
- The official Class Action Notice mailed to all Class Members can be read or downloaded [here](#): (the link is at the bottom of the webpage). There are also FAQs, Court documents, and other information on the webpage.

To opt in, all a county or other local government must do is fill out and submit a [Class Action Opt-In Notice Form](#)—a simple form that takes no more than 5 minutes to complete—no later than September 14, 2018. A local government may fill out and submit the Form via the internet directly from that webpage, or download and print the Form to submit via first class mail, express mail delivery, or by hand.

as UPS or FedEx.

Here are the local governments in Texas that were underpaid in FYs 2015 - 2017; the dollar amount the federal government owes each one (before deducting a pro rata share of attorney's fees and expenses); and whether each has or has not opted into the lawsuit as of this writing: As soon as the opt-in period has ended, Class Counsel will file a motion asking the Court to award it attorney's fees and expenses. As explained in the June 19 NACo telephone conference, Class Counsel will ask for one-third (33.3%) of the amounts recovered on behalf of all Class Members who opted in as its attorney's fees, plus (b) its actual out-of-pocket expenses—for filing fees, costs of printing and mailing the Class Notice, and the like (expenses should not exceed a small fraction of 1% of the amounts recovered).

Brewster County	\$48,089	1
Denton County	\$8,188	1
Dallam County	\$8,028	
Culberson County	\$6,222	1
Angelina County	\$6,011	1
Grayson County	\$5,951	
Val Verde County	\$5,946	
Hardin County	\$5,768	
Bowie County	\$5,674	1
San Augustine County	\$4,984	1
Jasper County	\$4,675	1
Hill County	\$4,188	
Bell County	\$4,074	1
Collin County	\$3,880	1
Potter County	\$3,729	1
Cass County	\$3,594	
Delta County	\$2,928	1
Kenedy County	\$2,846	
Cooke County	\$2,831	1
Hudspeth County	\$2,823	1
Tom Green County	\$2,775	1

Harris County	\$2,573	
Tyler County	\$2,502	
Lamar County	\$2,463	
Kleberg County	\$2,426	
Marion County	\$2,414	
Nacogdoches County	\$2,155	1
Polk County	\$1,981	1
Williamson County	\$1,965	
McMullen County	\$1,879	1
Montgomery County	\$1,799	
Tarrant County	\$1,798	
Fannin County	\$1,718	
Live Oak County	\$1,700	
Morris County	\$1,603	
Bosque County	\$1,583	
Chambers County	\$1,541	
Sabine County	\$1,486	
Orange County	\$1,483	
San Jacinto County	\$1,406	
Brazoria County	\$1,403	
Houston County	\$1,369	
Hopkins County	\$1,353	1
Burleson County	\$1,322	1
McLennan County	\$1,233	1
Moore County	\$1,158	1
Foard County	\$1,153	
Comal County	\$1,140	

Hutchinson County	\$1,058	
Washington County	\$1,038	
Dallas County	\$1,006	1
Trinity County	\$984	
Comanche County	\$936	1
Ellis County	\$931	
Walker County	\$917	1
Navarro County	\$912	
Shelby County	\$875	1
Matagorda County	\$828	
Lee County	\$720	1
Jefferson County	\$698	1
Galveston County	\$569	
Willacy County	\$532	
Liberty County	\$527	
Knox County	\$407	
Cameron County	\$334	
Upshur County	\$316	
Coleman County	\$312	
Wise County	\$292	1
Fort Bend County	\$152	
Camp County	\$106	
Coryell County	\$105	1
Calhoun County	\$104	1
Gray County	\$88	1
Nueces County	\$88	
Aransas County	\$84	

Hardeman County	\$84	
Gillespie County	\$62	
Jeff Davis County	\$57	
Johnson County	\$54	
Titus County	\$34	
Bexar County	\$26	
Newton County	\$25	
Blanco County	\$10	1
Harrison County	\$10	
Hemphill County	\$10	
El Paso County	\$5	
San Patricio County	\$4	1

\*\*\* "1" above indicates that a county has already opted in as of Aug. 24

Each Class Member who opts in will receive a notice when the motion is filed, and will have the opportunity to object to Class Counsel's request if it wishes to do so. Whether or not objections are filed, the Court will independently determine what fees are reasonable and fair, and what expenses were reasonable and necessary. Whatever the Court awards, it is almost certain to be a small fraction of the cost any county would have incurred to recover its underpayment in an individual lawsuit. Lower litigation costs for each Class Member is a principal advantage of a class action lawsuit.

Please call or [e-mail](#) me with any questions.

Thanks,

Mark Morley,  
Paralegal



2700 Marquis One Tower | 245 Peachtree Center Avenue NE | Atlanta, GA 30303  
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## PILT Payment Information

### In the United States Court of Federal Claims

KANE COUNTY, UTAH, individually Nos. 17-739C; 17-1991C

and (Consolidated)

on behalf of all others similarly

situated,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

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### Court Documents

[Click here to see the Court's decisions holding the United States liable for 2015 - 2017 PILT underpayments](#)

[Click here to see the Court's Order certifying \*Kane County, Utah v. United States\* as a class action lawsuit](#)

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### Submitted Counties

[To see a list of counties that have already opted in, click here](#)

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### Frequently Asked Questions

**Q.1. If I join the lawsuit, how much money can I expect to receive?**

**A.1.** The underpayment amount varies, depending upon (a) each government's PILT entitlement, calculated by the formula in the PILT Act, and (b) whether it

received a PILT payment in one, two, or all three of fiscal years 2015 – 2017. Net recoveries are expected to range from a low of \$100 or less, to a high of \$130,000 or more.

## **Q.2. Why was I underpaid?**

**A.2.** In fiscal years 2015 – 2017, the amount appropriated by Congress for PILT payments was insufficient to satisfy all statutory PILT obligations. The agency administering the PILT program, the Department of the Interior, is prohibited by law from spending more than Congress appropriates. So in fiscal years 2015 – 2017, Department of the Interior paid out the available funds on a pro-rata basis, but those payments were less than what each unit of local government was entitled to receive.

## **Q.3. Has Congress appropriated additional funds for fiscal years 2015 – 2017 PILT payments? If not, where will the money come from?**

**A.3.** Congress has not made any additional appropriation for PILT obligations in fiscal years 2015 – 2017. But Congress has established by law a permanent, indefinite appropriation account called the Judgment Fund, to pay final money judgments against the United States. The Court's final judgment in the Lawsuit will be paid out of the Judgment Fund.

## **Q.4. Will joining the Lawsuit affect the PILT payments I receive in future years?**

**A.4.** No. Future PILT payments will continue to be determined by the provisions of the PILT Act [subject to any future amendments or modifications made by Congress], and the funds made available by Congress for making those payments.

## **Q.5. The Notice I received speaks of “sequestration” of a portion of the fiscal year 2015 appropriation for PILT payments. What is that?**

**A.5.** In the 2011 Budget Control Act, in an attempt to lower the deficit, Congress set annual spending caps for subsequent fiscal years. The budget Congress enacted for FY 2015 exceeded the cap for that year, and the U.S. Treasury was



required to withhold, or “sequester,” amounts exceeding that cap. The PILT appropriation for fiscal year 2015, already insufficient to make full PILT payments, was further reduced by this sequestration. Kane County did not seek to recover the additional underpayment resulting from sequestration because the Court of Federal Claims had ruled in an earlier lawsuit that units of local government are not entitled to recover that portion of PILT funds eliminated by sequestration.

### **Q.6. Does the method I choose for submitting the Class Action Opt-In Notice Form affect the deadline?**

**A.6.** The deadline, September 14, 2018, remains the same, but the criteria for meeting that deadline differ slightly:

- **Online:** click “Submit” no later than 11:59 p.m. on September 14, 2018.
- **First Class Mail:** get it postmarked no later than 11:59 p.m. on September 14, 2018.
- **Pre-paid Delivery Service:** get it physically delivered to the designated address in Washington, D.C. no later than 5:30 p.m. EDT on September 14, 2018.

### **Q.7. What is a “pre-paid delivery service?”**

**A.7.** Common examples are Federal Express (FedEx) and United Parcel Services (UPS), but you may use any similar courier or delivery service you wish so long as you pay the delivery fee up front (as opposed to the fee being due on delivery).

### **Q.8. Online submission of the Class Action Opt-In Notice Form calls for an “electronic signature.” What is that?**

**A.8.** A simple (as opposed to secure or encrypted) electronic signature is all that is required. A simple electronic signature is made by using a keyboard to enter “/s/” followed by your typed name on the signature line. For example, Class Counsel’s electronic signature would appear as “/s/ Alan I. Saltman.”

### **Q.9. Other class action notices I have seen say that I am included in the class action lawsuit unless I “opt**

## **out.” Why do I have to “opt in” to be part of this Lawsuit?**

**A.9.** The Rules of the United States Court of Federal Claims, unlike the rules of many other courts around the country, expressly require that you “opt into” any class action lawsuit pending in that Court if you wish to be included.

## **Q.10. Can the Court’s final judgment in the Lawsuit be appealed?**

**A.10.** Yes. The United States has 60 days from the date final judgment is entered to file an appeal to the U.S. Court of Appeals for the Federal Circuit, in Washington, D.C. The rule of thumb is that it takes the Federal Circuit approximately one year to decide an appeal.

## **Q.11. Will there be any costs associated with joining the lawsuit, and if so, what are those costs?**

**A.11.** Opting into the class action lawsuit costs nothing; nor will you be required to pay out-of-pocket any attorney’s fees of Class Counsel, or related litigation expenses.

How, then, will Class Counsel be paid?

Class counsel will submit a request to the Court for its fees and expenses. Whatever fees and expenses the Court deems reasonable and awards will be deducted from the money obtained on behalf of the Class, and therefore reduce the amount you receive. In effect, if you opt in, you will—like every other local government who opts in—indirectly pay your pro rata share of Class Counsel’s fees and expenses.

## **Q.12. Could attorney’s fees and costs be awarded against those who opt in if the case is ultimately not successful?**

**A.12.** No. A participant is at no risk of having to pay anything if the ultimate outcome is negative (an outcome which, at this point, would require a successful appeal by the government).

*Pages 6+7  
not printed*

### Q.13. What attorney's fees and expenses will Class Counsel ask the Court to award?

A.13. As soon as the opt-in period has ended, Class Counsel will file a motion asking the Court to award (a) as attorney's fees, one-third (33.3%) of the amounts recovered on behalf of the Class Members who opted in, plus (b) actual out-of-pocket expenses—for filing fees, costs of printing and mailing the Class Notice and the like (expenses should not exceed a small fraction of 1% of the amounts recovered).

Each Class Member who opts in will receive a notice when the motion for fees and expenses is filed, and will have the opportunity to object if it wishes to do so. Whether or not objections are filed, the Court will independently determine what fees are reasonable and fair, and what expenses were reasonable and necessary.

Whatever the Court awards, it is virtually certain to be a fraction of the cost any county or governmental unit would have incurred to recover its underpayment in an individual lawsuit. Lower litigation costs for each Class Member is a principal advantage of a class action lawsuit.

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## Additional Questions

If you were unable to find an answer to your question(s), please submit below and Class Counsel will respond.

Name

Phone

Email \*

State \*

Unit of Local Government \*