S. Gunn
GFM

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

8021

FILE: B-167553 DATE: October 16, 1978

MATTER OF: Computation of statutorily mandated reductions in payments in lieu of taxes.

DIGEST:

1. Payments to units of local government under section 2(a)(1) of the Payments in Lieu of Taxes Act of 1976, 31 U.S.C. §§ 1601-1607, are to be reduced only by the amounts of payments actually received by the units of local government under the statutes specified in section 4 of the Act, 31 U.S.C. § 1604. Thus, Federal revenues paid to a State under the statutes in section 4 and distributed by the State directly to a school district without being received or acted upon by a unit of local government, should not be deducted from payments to that unit of local government under section 2(a)(1) of the Act, 31 U.S.C. § 1602(a)(1). Payments to other single or special purpose districts should be treated in a similar manner.

2. Federal revenues paid to a State under the statutes in section 4 of the Payments in Lieu of Taxes Act of 1976, 31 U.S.C. § 1604, and distributed by the State to a unit of local government, which unit is required by State law to pass these revenues directly to a financially independent school district, should not be considered "received" by the unit of local government, and should not be deducted from payments to that unit of local government under section 2 of the Act, unless that unit is legally responsible for provision of school services and has collected other tax revenues for that purpose. Payments passed through to other special or single purpose districts should be treated in a similar manner.

This is in response to a request dated August 3, 1978, from the Deputy Solicitor, Department of the Interior, for a decision concerning whether payments to units of local government under the Payments in Lieu of Taxes Act of 1976, Pub. L. No. 94-565, 31 U.S.C. §§ 1601-1607 (1976), October 20, 1976, 90 Stat. 2662 (the Act) must be reduced pursuant to section 2(a)(1) of the Act, 31 U.S.C. § 1602(a)(1), with respect to two specific kinds of payments to States.

The questions which we have been asked to decide are:

1. "If Federal revenues paid to a State under one of the statutes in section 4 of the Act are distributed by the State government directly to a school district, should the Secretary deduct the amount of the revenues distributed to the school district in computing in-lieu payments to the county within which it is located?

"2. If Federal revenues paid to a State under one of the statutes in section 4 of the Act are distributed by the State government to counties, but the counties are obligated under State law to pass on the revenues to school districts, should the Secretary consider the revenues to have been "received by" the counties within the meaning of section 2(a)(1) of the Act and therefore deduct that amount in computing in-lieu payments to the counties?"

In fiscal year 1977 the Bureau of Land Management (BLM) answered "yes" to both questions quoted above, and certified payments under the Act, but this position has since been challenged by officials of several States. Prior to certifying payments for fiscal year 1978, the instant request was submitted by the Deputy Solicitor.

The relevant provisions of the Act state in pertinent part:

Section 1, 31 U.S.C. § 1601, provides:

> "Effective for fiscal years beginning on and after October 1, 1976, the Secretary is authorized and directed to make payments on a fiscal year basis to each unit of local government in which entitlement lands (as defined in section 6 [section 1606 of this title]) are located. Such payments may be used by such unit for any governmental purpose. The amount of such payments shall be computed as provided in section 2 [section 1602 of this title]."

Section 2, 31 U.S.C. § 1602, states:

"(a) The amount of any payment made for any fiscal year to a unit of local government under section 1 [section 1601 of this title] shall be equal to the greater of the following amounts--

> "(1) 75 cents for each acre of entitlement land located within the boundaries of such unit of local government (but not in excess of the population limitation determined under subsection (b)), reduced (but not below 0) by the aggregate amount of payments, if any, received by such unit of local government during the preceding fiscal year under all of the provisions specified in section 4 [section 1604], or
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> "(2) 10 cents for each acre of entitlement land located within the boundaries of such unit of local government (but not in excess of the population limitation determined under subsection (b)).
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> "In the case of any payment under a provision specified in section 4 which is received by a State, the Governor (or his delegate) shall submit to the Secretary a statement respecting the amount of such payment which is transferred to each unit of local government within the State." (Emphasis added.)

The underscored portion of section 2 is the subject of the instant inquiry.

Section 6(c) of the Act, 31 U.S.C. § 1606(c), defines "unit of local government" as follows:

> "(c) 'unit of local government' means a county, parish, township, municipality, borough existing in the State of Alaska on [October 20, 1976], or other unit of government below the State which is a unit of general government as determined by the Secretary (on the basis of the same principles as are used by the Bureau of the Census for general statistical purposes). Such term also includes the Commonwealth of Puerto Rico, Guam, and the Virgin Islands."

According to Department of the Interior regulations published at 42 F.R. 51580, September 29, 1977 (to be codified as 43 C.F.R. Part 1881), "unit of general government" has been defined as follows:

> "(b)(1) 'Unit of general government' means a unit of that type of government which, within its state, is the principal provider of governmental services affecting the use of entitlement lands. Those services of government include (but are

not limited to) maintenance of land records, police protection, fire protection, taxation, land use planning, search and rescue and road construction. Ordinarily, a unit of general government will be a county. However, where a smaller unit of government is the principal provider of governmental services affecting the use of public lands within a state, the smaller unit, even though within a larger unit of government, will be considered a general unit of government and will receive payments under the Act. These units of general government will ordinarily be 'towns' or townships within states where county governments are nonexistent or nearly nonexistent. The term 'unit of general government' also includes:

"(i) Governments with the functions of a unit of general government in that state combined with another type of government such as city, township, parish, borough or county, e.g., a city and county as in the City and County of Denver.

"(ii) Cities located outside of any of the units of general government for that state and administering functions commonly performed by those units of general government.

"(iii) Alaskan boroughs in existence on October 20, 1976.

"(iv) The Governments of the District of Columbia, Puerto Rico, Guam and the Virgin Islands.

"(2) The term 'unit of general government' excludes single purpose or special purpose units of local government such as school districts or water districts." 43 C.F.R. § 1881.0-5. (Emphasis added.)

Question One

As stated previously, the first question asked by the Deputy Solicitor was whether payments to States under section 4 of the Act, which the State passed directly to a school district, should be deducted from section 2(a)(1) payments to a unit of local government.

BLM's decision to deduct payments made by States directly to school districts depends upon its interpretation of the intent of Congress, and on certain policy considerations. Thus, in his letter of August 3, the Deputy Solicitor stated:

> "The Bureau's action was based upon the following arguments:
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> "1. The position is consistent with the intent of Congress. Departmental replies to the concerned State officials pointed out that the House report on the bill which was enacted stated that revenues from several of the statutes in section 4 must be used for schools and roads within counties, but it did not state that such payments would not be deducted simply because they were transferred directly to school districts rather than through a county to a school district. H. R. Rep. No. 94-1106, 94th Cong., 2d Sess. 14-16 (1976).
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> "2. Not to deduct such payments would be inequitable towards States that distribute the section 4 revenues which must be used for schools by providing for their transfer to school districts through the counties in which the districts are located.
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> "3. The purpose of the section 4 deductions would be negated if States were able to change their systems for distributing section 4 revenues so that all such revenues would be distributed to single-purpose entities such as school districts and highway commissions without any distribution to counties. The ten statutes cited in section 4 concern revenue sharing which represents a form of compensation to local governments in view of the tax-free status of federal lands. It appears that Congress, in requiring the deduction in section 2(a)(1), intended to avoid a duplicate payment to units of local government for the tax-free status of federal lands located within their boundaries. It appears, therefore, that a revenue sharing payment to a school district located within a county is tantamount to a payment to the county itself--the county receives the benefits of the payment in the same fashion as if it had received the payment itself and been required to pass it on to the school district."

He continues that:

"Arguments which can be made against the Department's position are as follows:

"1. School districts may be independent political entities and therefore revenue sharing payments received by them without passing through the county government are not 'received by such unit of local government' (i.e., the county) as is required by section 2(a)(1). In connection with this, it should be noted that the Act requires a unit of local government to be a 'unit of general government' (43 U.S.C. § 1606(c)) [sic] and the regulations implementing the Act expressly exclude school districts from the definition of 'unit of general government' (43 CFR § 1881.0-5(b)(2). 42 Fed. Reg. 51581 (1977)). The words of the Act seem clear: Payments to counties are to be reduced by the amount of payments under section 4 received by that unit of local government.

"2. The legislative history shows that Congress recognized that payments received under the statutes in section 4 would not be transferred by the State to counties in many cases, but that counties would nevertheless receive the benefits. * * *"

We have analyzed the provisions of the Act and have reviewed its legislative history, and we believe that Federal revenues paid to a State under the statutes listed in section 4 of the Act, and distributed by the State directly to a school district without being received or acted upon by a local government unit, should not be deducted from payments to that unit under section 2(a)(1) of the Act.

It is clear from the history of the Act, that the statute's primary purpose was to reimburse local governments for the direct and indirect burdens placed upon them by the presence of large amounts of Federal lands that are not subject to State or local taxation. Although Federal payments were being made to States or local governments under existing legislation out of receipts from timber, grazing, or mineral leases, Congress believed that these payments were distributed so as to provide an inequitable and inadequate share to local governments. H.R. Rep. No. 94-1106, 94th Cong., 2d Sess., 4-6.

In order to remedy the perceived inadequacies of existing statutes (which are included in the list in section 4 of the Act), the formula of section 2(a)(1) was provided for calculating payments based on the amount of entitlement lands in each unit of

local government, subject to a ceiling based on population. Recognizing the potential for the duplication of payments received under the statutes listed in section 4 of the Act, the formula provides for the deduction of the "aggregate amount of payments, if any," received by the local government under these statutes, and requires the Governor of each State to submit to the Secretary of the Interior a statement respecting the amount of payment to his State under a section 4 statute "which is transferred to each unit of local government within the State." (Emphasis added).

We believe that this language evidences a clear intent by the Congress to reduce section 2(a)(1) payments to local governments only by the amount of section 4 funds actually and directly received by them, as was in fact stated by both the House and the Senate Committees on Interior and Insular Affairs:

"To whom should the payments be made?

"Under existing programs for sharing public land revenues, the Federal government returns a percentage of revenues to the States, which are then distributed to state and local governments according to State law and the requirements of the Federal statutes. For example, while receipts from timber production and grazing on national forest lands are passed on to the counties, mineral leasing receipts are paid to the States for use for schools and roads. Some States pass on a percentage of mineral leasing receipts to counties and others do not, although there are indirect benefits to local governments from most of these funds.

"H. R. 9719 requires that any payments under the ten statutes set forth in section 4 that are actually received by a unit of local government are to be deducted from payments under this Act. The Committee realized that in most cases only a small percentage of mineral leasing revenues produced within a county are returned to that county by the State, and to preclude penalizing these counties the Committee determined that only those monies actually received by the local government should be deducted.

"Moreover, the Committee believes that payments under H. R. 9719 should go directly to units of local government since it is the local governments that assume the burden for the tax immunity of these lands. The Committee does not believe these new payments should

be restricted or earmarked for use for specific purposes and the bill allows these payments to be used for any governmental purpose.

"It is the general purpose local governments which are the taxing authorities and the units responsible for providing services and which should be the recipients of these payments * * *" (Emphasis added.) Id., at 11-12. See also, S. Rep. No. 94-1262, 94th Cong., 2d Sess., 15.

Further support for this conclusion is seen in the following explanation of section 4, which is contained in the Section-by-Section Analysis in H.R. Rep. No. 94-1106:

"Section 4 sets forth certain public laws under which units of local government now receive a percentage of revenues from natural resource lands. These payments would not be affected by this Act. However, payments made under section 2 of this Act would be reduced by the amount of payments actually received by units of local government from these programs. * * *" (Emphasis added.) H.R. Rep. No. 94-1106, at 14.

The Deputy Solicitor has expressed concern that it might be inequitable to treat States with independent school districts differently than States which provide such services through units of local government. He also fears that States might change their systems for distributing section 4 revenues so that all such revenues would be distributed directly to single-purpose local governments, thereby negating the purpose of section 4. On the first point, we note that both House and Senate Reports recognize that there are variations in the way different States designate responsibility for various services but nevertheless chose to rely on the Secretary's discretion in defining "units of local Government" which would be subject to the deduction provisions. As to the second concern, if its fears materialize, the Department may wish to bring them to the attention of the Congress for remedial action.

Question Two

With respect to whether section 4 payments distributed by States to units of local government to be passed by them to school districts should be deducted from section 2(a)(1) payments, the basis stated for BLM's deduction of these funds from local government payments is as follows:

> "The Bureau of Land Management deducted such payments in computing in-lieu payments to counties for fiscal year 1977. The basis for this position is the express language of section 2(a)(1), requiring a reduction for section 4 federal revenue payments 'received by such unit of local government.' The position has been expressed also in paragraph 4 of the 'Supplementary Information' portion of the notice of final rulemaking for the Act. 42 Fed. Reg. 51581 (1977). The only argument in opposition to this position appears to be that money is not actually 'received by' a county in cases where the county is legally obligated to act as a mere conduit in passing on the funds to a school district."

Unlike the situation described in our answer to your first question, here section 4 payments are in fact "received by" the local governments prior to being passed on to the school districts, and a literal reading of the Act would require that all such sums be deleted from payments to units of local government. We do not believe, however, that this literal approach would carry out the intent of Congress that only those funds actually received by and available to local governments to carry out their own responsibilities be deducted from section 2 payments to these general government entities.

The concern that local governments were not receiving sufficient funds under existing legislation to meet their legitimate, varied needs was included in the list of shortcomings of section 4 funding contained in the Senate report on H. R. 9719, the bill that was enacted as the Payments in Lieu of Taxes Act:

> "(4) The percentages of revenues and fees shared under the various provisions of law are not based on any rational criteria. As a result they vary from 5 to 90 percent, depending on the program and agency involved.
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> "(5) Even in the few instances when a local government's share of the various revenues and fees is sufficient to meet service demands arising from the Federal lands and to approximate the loss of ad valorem tax revenues which would otherwise be generated by those lands, too many of the revenue sharing provisions restrict the use of funds to only a few governmental services--most often the construction and maintenance of roads and schools. Yet, local governments are called upon to provide many

other services to the Federal lands or as a direct or indirect result of activities on the Federal lands. These services include law enforcement; search, rescue and emergency; public health; sewage disposal; library; hospital; recreation; and other general local government services. It is only the most fortunate of local governments which is able to juggle its budget to make use of those earmarked funds in a manner which will accurately correspond to its community's service and facility needs.

"(6) Many of the revenue sharing provisions permit the States to make the decisions on how the funds will be distributed. In far too many States, the result has been that the funds are either kept at the State level and not distributed to local governments at all or are parcelled out in a manner which provides shares to local governments other than those in which the Federal lands are situated and where the impacts of the revenue and fee generating activities are felt. S. Rep. No. 94-1262, at 9."

From this language it is obvious that the Congress was concerned that section 2(a)(1) funds should be distributed to the local governments, who then were to make the necessary decisions on how to distribute them to meet their internal needs. We can find no support in the Act, the Committee reports, or the floor debates to lend credence to BLM's view that payments "received by such units of local government" means something less than "actually received by" such units and available to them for obligation and expenditure to carry out their own responsibilities, thereby reducing the financial burdens caused by inadequate tax revenues due to the tax-exempt status of Federal lands in their geographical area. For this reason, we do not believe that Congress intended payments to local governments under the Act to be reduced by amounts that, by virtue of State law, merely pass through these governments on their way to politically and financially independent school districts which alone are responsible for providing the services in question.

On the other hand, where a local government serving as a "conduit" for section 4 revenues, is by State law, responsible for providing school services and collects taxes from local residents for that purpose, we believe Congress intended that the local government's section 2 payments should be reduced by the amount of section 4 revenues passed through to the schools, since in the absence of the in lieu payments, the total costs of providing these

services would be borne by the local unit's tax revenues. Other single purpose districts would normally be treated in the same manner.

The questions submitted are answered accordingly.

Deputy Comptroller General
of the United States