

# PILOT AGREEMENTS, VALUATION ISSUES & RENEWABLE ENERGY PROJECTS

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# Taxability of Solar Arrays

- ▶ Considered “real property” once permanently affixed to land or a structure (RPTL section 102(12)(b); see *Metromedia, Inc. v. Tax Commission of the City of New York*, 60 N.Y.2d 85 (1983); 8 Op. Counsel SBEA No. 3).
- ▶ Therefore, Solar Arrays are taxable unless they qualify for an exemption. (RPTL section 300).
- ▶ Solar arrays are taxable, see:
  - ▶ *Cornell Univ. v Town of Seneca Board of Assessment Review*, 186 A.D.3d 990 (4th Dep’t 2020)
    - ▶ The Court determined solar arrays are annexed to the real property or appurtenant thereto and that ease of physical removal is not determinative in evaluating permanency – permanent over the life of the agreement.

# Real Property Tax Law Section 487

- ▶ Exemption statute specifically for solar arrays, wind systems, and farm waste energy systems.
- ▶ Generally provides exemption from RP tax if meets guidelines set by NYSERDA and applicable law. RPTL 487(3).
  - ▶ Each municipality/School District/County chooses to provide the exemption or not.
  - ▶ The exemption applies unless the municipality properly opts out.
    - ▶ Any exemption, or lack of exemption, must apply to all property types, including residential, not just commercial. RPTL 487(8).
  - ▶ In Governor's Budget Bill, the exemption period was made applicable to 2030 (initially was 2025). RPTL 487(5).

# Exemption

- ▶ Granted ONLY upon application of the developer/owner on a form “prescribed” and made available from NYSERDA. RPTL 487(6)
- ▶ The application must be filed with the Assessor of the taxing jurisdiction prior to the taxable status date of that jurisdiction (typically March 1 for Towns)
  - ▶ A copy must also be filed with NYSERDA
- ▶ If the Assessor is satisfied the applicant is entitled to an exemption, the Assessor will approve and apply the exemption to the assessment roll. RPTL 487 (7)

# Opting out of RPTL 487, section (8)(a)

- ▶ A municipality/school district/county must adopt a local law, ordinance or resolution providing that the exemption is not available.
- ▶ A copy then must be filed with the NYS Dep't of Taxation and Finance AND NYSERDA.
  - ▶ Where proper filing is not done, the exemption will not be opted out of and solar will not be taxable.
    - ▶ See: *Matter of Laertes Solar, LLC v Assessor of the Town of Harford, 2020 NY Slip Op 02302 (3d Dep't 2020)*
- ▶ This is not retroactive and opting out only works for projects not yet started. Construction "begins" at the signing of a contract or interconnection agreement. RPTL 487(8)(b).
  - ▶ If a deposit is required with contract or interconnection agreement, considered fully executed when deposit is made.

# Payments in Lieu of Taxes (PILOTs)

- ▶ Each municipality has an option to require owners to enter a PILOT agreement.
- ▶ The PILOT amount is a local decision, but may not exceed the amount of taxes that would be paid without an exemption. RPTL 487(9)(a).
  - ▶ Post model, the PILOT cannot exceed the model value.
- ▶ Developer must provide written notification to taxing jurisdiction of intent to construct such system:
  - ▶ Includes a hard copy letter to the highest ranking official of the jurisdiction;
  - ▶ Must reference subdivision nine of 487 of the RPTL and state that unless the taxing jurisdiction responds within sixty days in writing with its intent to require a contract for PILOT payments, such project shall not be obligated to make such payments.

# PILOTs Continued

- ▶ Upon receiving written notification, the taxing jurisdiction has 60 days to notify the owner or developer in writing of its intent to require PILOT payments.
- ▶ However, a taxing jurisdiction may adopt a law or resolution at any time within or prior to the sixty day window:
  - ▶ Indicating taxing jurisdiction's ongoing intent to require a contract for PILOT payments for such systems;
  - ▶ Such law or resolution shall be considered notification to owners/developers and no further action is required by taxing jurisdiction so long as the law or resolution remains in effect through the sixty day period.
- ▶ PILOT agreements shall not operate for more than fifteen years, beginning from the date the benefits of such exemption first became available and effective.

# RPTL 575-b and “The Model”

- ▶ Begins for 2022 Assessment year
- ▶ Pertains to Solar and Wind energy systems with a nameplate capacity equal to or greater than one megawatt.
- ▶ Mandates that the assessed valuation of solar and wind energy systems be determined by a discounted cash flow approach.
- ▶ The Discounted cash flow approach must:
  - ▶ Be based on a model identified and published by the NYSDTF, in consultation with NYSERDA;
  - ▶ Apply a discount rate or rates published annually by NYSDTF;
    - ▶ Prior to publication, discount rate(s) shall be published in preliminary form on NYSDTF website with sixty days for public comments.
  - ▶ NYSAA is to be consulted in forming the model and discount rate.



# The Model and 575-b Cont.

- ▶ NYSDTF may take into account economic and cost characteristics of solar and wind in different geographic regions of the state and may consider regionalized market pressures in forming the model and discount rate.
- ▶ Reports required under section 575-a (electric generating facility annual reports) also must be designed to elicit information that NYSDTF may require for the development and maintenance of an appraisal model and discount rate.
  - ▶ 575-b and 575-a fail to require or dictate that the developers/owners provide any information at the local level.

# The Model Review

- ▶ Tier 1 (or “open market”) plants with capacity over 5mw do not include subsidies, credits, or grants.
- ▶ VDER (“value of distributed energy resources”) which are 1-5mw plants include either a community or market transition credit or a community adder, but never both.
- ▶ The model is specific to ISO zone (NY Independent System Operator, which does spot energy pricing and day ahead pricing and controls the NYS electricity grid).

# Land – per NYSDTF Model Instructions

- ▶ Input tab instructions:
  - ▶ Land Leases
    - ▶ Enter the annual gross land lease payment, which is available from the developer.
  - ▶ If land is not leased, the assessor should value the underlying land separately.
    - ▶ Assessor should then use standard appraisal methodology to value the land independently from the model.
- ▶ How to calculate market value:
  - ▶ If there is a lease amount in annual ground lease payment field, the output represents the value of improvements only.
    - ▶ To achieve market value of the parcel, the assessor should use standard appraisal methodology to value the land and add result to the cash flow model.
  - ▶ If land is not leased, the model output represents the total market value for the improvements and underlying land.

# The Model Cont.

- ▶ Inverter expense number has no backup, no support provided.
- ▶ Where did typical expenses for each NYISO zone come from and what calculation is used?
- ▶ Discount rate calculations not provided.
  - ▶ Where does WACC and equity come from?
- ▶ What is “Utility Loss Adjustment Factor” in inputs?
- ▶ What is “Fraction of Off-taker Credits to Owner”?
- ▶ “block box”?

# Thank you!

- ▶ If you have any questions, do not hesitate to call or email me at:
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