



October 15, 2009

Michael D. Hughes, Chairman  
Douglas Board of Selectmen  
28 Depot Street  
Douglas, MA 01516

Re: Douglas Wind Farm Property Classification  
Our File No. 2009-1042

Dear Mr. Hughes:

Your request for a letter ruling has been forwarded to this bureau for a response, as it deals almost exclusively with local property tax classification. Therefore, it will not be treated as a request for a letter ruling of the Department of Revenue under 830 CMR 62C.3.2, but as a written opinion of the Division of Local Services. You indicate that the town is contemplating entering into a tax increment financing (TIF) agreement with a limited liability company (LLC), which intends to erect a wind farm on property in Douglas. The improvements to be erected consist of a “controls” building, 13 wind turbines with 50 meter blades and 2 MW capacities each and thirteen 100 meter towers “anchored to the ground.” You seek guidance on which of these items of property located at the facility will be considered part of the real estate subject to taxation under the TIF and which will be considered personal property exempt from taxation under the TIF.

Based on the description provided, it appears that the towers and building are clearly part of the real estate as being improvements to the real estate and firmly attached thereto. The towers are of sufficient height, bulk, size and attachment to the land that they should be considered part of the real estate. Board of Assessors of Wilmington v. Avco, Corp., 357 Mass. 704, 706 (1970). See also Chelsea v. Richard T. Green Co., 319 Mass. 162 (1946) (cradle, track, hoisting machinery used to haul ships in and out of dry dock). A building is ordinarily considered part of the real estate, regardless of the degree of attachment. M.G.L. c. 59, §2A(a) (“Real property for the purposes of taxation shall include all land within the commonwealth and all buildings and other things thereon or affixed thereto, unless otherwise exempted from taxation under other provisions of law.”). See Franklin v. Metcalfe, 307 Mass. 386 (1940) (lunch cart resting on its own wheels and four cement posts). The towers and building would be assessed as part of the real estate to the owner of the land, even if the owner of the land is not also the owner of the towers and building. Board of Assessors of Wilmington, Id.

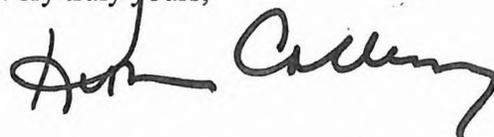
The turbines are electric generating machinery that are also firmly attached to the real estate at the top of the towers and are of such bulk and size that they would ordinarily be considered part of the real estate for tax assessment purposes. Boston Edison Company v. Board of Assessors of Boston, 402 Mass. 1, 6-12 (1988); Chelsea v. Richard T. Green Co., Inc., Id. In the Boston Edison case the company argued that as an electric generating utility corporation its electric manufacturing machinery had to be assessed as personal property, but the Supreme Judicial Court declined to so rule and determined that the board of assessors had properly assessed it as part of the real estate.

Thus, we conclude that the turbines, building and towers of the wind farm would be part of real estate for property tax classification purposes and not subject to the complete personal property tax exemption under a TIF agreement. There would be no need to provide a PILOT, as any monetary benefits to the town could be negotiated in the form of a lesser tax exemption in the TIF. The town would retain the tax lien on all the property to protect against any failure to pay the real estate taxes, something that would be questionable under a PILOT.

You have not indicated what will be housed in the building, but we assume it will contain equipment and perhaps an office. The furnishings, machinery, equipment and other property located in the building and not part of the fixtures of the building or the electric generating and distribution machinery will likely be personal property that would be subject to personal property tax to the LLC and would be entitled to the TIF exemption under a TIF agreement. Any separate PILOT negotiated for such personal property would likely be unenforceable under Town of Saugus v. Refuse Energy Systems Company, 388 Mass. 822 (1983) (town could not enter into agreement as to future tax liability of waste to energy power plant subject to tax in the manner and in the procedure otherwise provided by statute). No statutory PILOTs appear to apply in this case. See M.G.L. c. 121B, §16 (housing authorities), M.G.L. c. 59, §5D et seq (property held for specific purposes in a community by another community), M.G.L. c. 58, §13 et seq (state-owned land) and M.G.L. c. 59, §38H(b) (negotiated PILOTs for power plant property otherwise subject to tax). Again, however, the town could negotiate a lesser real estate TIF exemption to compensate for the loss of personal property taxes. Note also that proposals to change the total personal property TIF exemption to a negotiated exemption that may be partial are currently before the state legislature. See the Municipal Relief Commission Report from May 2009 at [http://www.mass.gov/legis/reports/municipal\\_relief\\_commission\\_report\\_may\\_2009.pdf](http://www.mass.gov/legis/reports/municipal_relief_commission_report_may_2009.pdf) on page 20 and Senate Bill 1266 at <http://www.mass.gov/legis/bills/senate/186/st01pdf/ST01266.PDF>.

If you have further questions, please do not hesitate to contact me again.

Very truly yours,



Kathleen Colleary, Chief  
Bureau of Municipal Finance Law