

# City and Town

Amy Pittier, Commissioner • Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs



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## Solar And Wind Generate Taxing Questions

As you read the news, you see more and more articles and announcements surrounding the promotion, development and installation of solar and wind power technology. Across the Commonwealth, cities and towns are increasingly receiving proposals ranging from home owners interested in supporting clean energy through self-sustainability to companies offering to power hospitals, schools and municipal buildings in exchange for local incentive agreements. Less than two weeks ago, the Patrick-Murray Administration [announced steps toward a final settlement agreement](#) regarding NSTAR's proposed merger with Connecticut-based Northeast Utilities (NU) that would promote an increase in the purchase of clean energy as a condition.

As these technologies continue to advance and become more widespread, cities and towns find themselves wading into policy and legal interpretations that require a level of expertise unforeseen when the original laws were put into place over 20 years ago.

At the Division of Local Services (DLS), we're in the unique position of seeing these developments and goals presented on a broad scale and then implemented at the local level. We field questions on the issue on a regular basis. As a result, in this edition we're providing an overview of solar and wind power, the statutes that affect its taxation and some guidance on how it can be assessed.

I'm also pleased to announce that DLS will host two workshops for local officials in early June that will serve as a forum on the issue. As details become finalized, please feel free to check *City and Town* for updates or go to our website at [www.mass.gov/dor/dls](http://www.mass.gov/dor/dls). We hope you find this information helpful and that you'll consider attending a workshop.

Robert G. Nunes  
Deputy Commissioner & Director of Municipal Affairs

## Here Comes The Sun (And Wind Power)

Brenda Cameron, Bureau of Local Assessment

Under [M.G.L. c. 59, § 5, clause 45](#), qualifying solar or wind powered energy systems or heating devices are exempt from local taxation for a 20 year term. However, not all systems or devices qualify.

Energy from the sun can be converted to electricity in two ways: (1) Photovoltaic or solar cells that change sunlight directly into electricity or (2) solar thermal electric power plants that generate electricity by converting solar energy to heat a fluid that produces steam used to power a generator. Sunlight is not a constant. It varies depending on location, time of day, time of year and weather conditions. Therefore, a large surface area, such as defunct landfills, is necessary in order to collect the sun's rays at a rate able to produce ample amounts of energy.

Wind power is also considered a form of solar energy. Winds are caused by the uneven heating of the atmosphere by the sun. Wind power is the process by which the wind is used to generate mechanical power or electricity by converting the kinetic energy in the wind into mechanical power. A generator then converts the mechanical power into electricity.

### **Power Used on Site**

In order for the wind or solar system or device to be exempt from local taxation, it must be used as a primary or auxiliary power system for the purpose of heating or otherwise supplying the energy needs of property taxable under this chapter. In our opinion, this means the exemption applies only to those systems or devices being used as the primary or backup heating or power system for the taxable real estate on which they are installed (or associated, e.g., a contiguous parcel owned and used by the same owner together with the other parcel). It is for property owners who install systems or devices for use on their own properties, not for solar or wind facilities or farms constructed and operated for purposes of generating energy for sale to the grid. Once the local board of assessors determines that the system or device qualifies for the exemption, it is exempt for 20 years. The exemption does not extend to the land and any other real or personal property. A single abatement application is sufficient to apply for the exemption for its duration. See [IGR 84-209, Property Tax Exemption for Solar and Wind Powered Systems or Devices](#).

### **Power Sold to the Grid**

For solar or wind facilities built to generate electricity for sale to the grid, there are two tax agreements allowed by state law that may apply. Both agreements require approval by the municipality's legislative body. The first, a tax increment financing (TIF) exemption agreement, generally requires the facility to be located within an Economic Opportunity or Economic Target areas as designated by the Economic Advisory Coordinating Council. TIF agreements may reduce the taxes of a new generating facility for up to 20 years in exchange for providing specific job creation and economic benefits. M.G.L. c. 23A, § 3E; c. 40, § 59; c. 59, § 5, Clause 51. The second is a payment in lieu of tax agreement (PILOT) for facilities owned by an electric generation or wholesale generation company under M.G.L. c. 59, § 38H(b). This agreement provides tax stability for the company and municipality rather than a complete or substantial exemption from taxation. M.G.L. c. 164, § 1 provides a definition of electric generation and wholesale generation companies.

Communities should consult with their municipal counsels who can assist with language to safeguard the community in the event the company abandons or sells the facility before the end of the agreement. Many of these agreements offer the companies substantial tax benefits in the early years and equalize them later in the agreement. If so, the community may want to provide for recovery of taxes deferred to later years. A power plant PILOT agreement should also address adjustments in the annual payment for any property additions, replacements or deletions and since no tax lien exists to secure the payments, a contractual lien or other means to ensure collection if payment is not made. Any contractual lien will not supersede pre-existing liens such as mortgages.

### **Assessment as Real or Personal Property**

Absent a permitted tax agreement, solar or wind facilities are valued at fair cash value as of January 1, but are they assessed as real or personal property?

For property tax purposes, solar array panels, wind turbines and associated machinery and equipment may be assessed as part of the real estate if they are intended to remain on the site for their entire useful lives, are designed specifically for the parcel, or might cause damage to the land or equipment if removed. However, if they are easily removable or intended to be removed and replaced periodically while located at the site, they could be separately assessed as personal property. A property owner who believes the property is personal property must report it to the assessors on a Form of List by each March, but the assessor decides whether the assets are real estate or personal property based on the degree of attachment. See *Boston Edison Co. v. Board of Assessors of Boston*, 402 Mass. 1 (1988)(Taxable machinery of a utility used in the manufacture of electricity, and significantly attached to a parcel of real estate, but traditionally assessed as personal property, may be assessed as either real or personal property.)

If the assets are determined to be personal property, the assessment is made to the owner of the panels and associated machinery, not the land owner, if different. Typically a replacement cost new less depreciation methodology should be developed to value the assets. Proper depreciation would require an age/life analysis and must be applied uniformly.

If the assessors determine panels, associated machinery or assets of the facility are part of the real estate, their valuation would be included in the real estate assessment to the owner of the land. The assessors would have to support the value with appraisal documentation, which may include a valuation from their in-house appraisal system and not necessarily a fee appraisal. Two approaches to value should be performed by the assessors in accordance with DOR guidelines.

For more information please refer to [IGR 98-403, \*Valuation and Taxation of Electric Generating Property\*](#).

## March Municipal Calendar

### **March 1: DOR/MDM-TAB Notification of Cherry Sheet Estimates for the Following Year (pending action taken by the Legislature)**

The Cherry Sheet is an estimate of: 1) Receipts – local reimbursement and assistance programs as authorized by law and appropriated by the General Court; and 2) Assessments – state and county assessments and charges to local governments. All amounts listed on the Cherry Sheet are estimates. Actual receipts and charges are determined based on detailed formulas or guidelines for each program. Cherry Sheets are posted on the DLS website and updated at each juncture of the state budget process.

### **March 1: Personal Property Owner Submit Form of List**

This is a listing of all personal property filed by the owner with the Assessors each year for the purpose of determining taxes in the next fiscal year.

### **March 1: Non-Profit Organization Final Filing Date for 3-ABC Forms**

These must be filed on or before March 1 (this deadline may be extended by the Assessors). In no event may the extension granted be later than 30 days after the tax bill is mailed.

### **March 1: DOR/BLA Filing Deadline for Telecommunications Forms of List**

### **March 31: State Treasurer Notification of Quarterly Local Aid Payment on or Before March 31**

**City & Town** is published by the Massachusetts Department of Revenue's Division of Local Services (DLS) and is designed to address matters of interest to local officials.

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