

Qualified Energy Project Tax Abatements for Ohio Solar Projects

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The majority of utility scale solar projects in Ohio utilize the real and personal property tax abatement and payment in lieu of taxes (PILOT) framework within the qualified energy project program. The following is an overview of the program and its requirements, including a brief summary of other Ohio taxes that may be applicable to Ohio solar projects.



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REQUIREMENTS FOR PUBLIC UTILITY PERSONAL PROPERTY TAX EXEMPTION^{1a}

Tax exemption for qualified energy projects

Ohio Revised Code (R.C.) § 5727.75 exempts “qualified energy projects” from tangible personal property tax that meet certain criteria as certified by the director of the Ohio Development Services Agency (DSA, formerly the Ohio Department of Development). A qualified energy project includes any renewable energy generation as defined in the state’s renewable portfolio standard,¹ as well as clean coal, advanced nuclear and co-generation². Focusing primarily on factors applicable to solar projects, the criteria for the exemption include:

1. Existing facilities: The facility did not supply electricity before December 31, 2009.
2. Siting/building permit approval: On or before December 31, 2022,³ the owner⁴ must submit an application to the power siting board or a political subdivision for construction.
3. R.C. § 5727.75(B)(1)(a).
4. Construction deadline: Construction must begin on or after January 1, 2009, and before January 1, 2023.⁵ R.C. § 5727.75(B)(1)(b). A construction progress report must be filed with DSA before March 1 of each year during construction indicating percentage completed and nameplate capacity as of the previous December 31. R.C. § 5727.75(F)(2). Reports also must be filed by March 1 each year after construction indicating nameplate capacity as of the previous December 31, unless DSA waives such requirement.
5. County approval: For projects greater than 20 megawatts (MW),⁶ the local county commissioners must approve the exemption by resolution within 30 days or else have declared itself an “alternative energy zone.”
6. Make annual payment in lieu of taxes: Make annual service payments in lieu of taxes to the county in which the exempted property is located in the following amounts. R.C. § 5727.75(G). The PILOT is distributed in the same manner as the tangible personal property tax (to localities and school districts). For solar projects, the PILOT is \$7,000 per MW.⁷

^{1a}Updated as of April 28, 2020.

¹ Solar PV, solar thermal, wind, hydropower, certain solid waste, biomass, bio-methane gas, fuel cells, wind turbines on Lake Erie, off-peak storage facilities and distributed generation utilizing renewable energy. R.C. § 4928.01(A)(35).

² The definition of “co-generation” was amended to also include any electricity produced from co-generation that is sold to third parties and not simply for the primary use of the generator.

³ This is an extension from December 31, 2020, as a result of Am. Sub. H.B. No. 166, signed into law July 18, 2019.

⁴ Where the statute refers to “owners” of projects, the definition generally also includes “a lessee pursuant to a sale and leaseback transaction.”

⁵ Construction is deemed to begin on the earlier of the date of application for a certificate or other approval, or the date the construction contract is entered into. As amended by 130th General Assembly, House Bill 59.

⁶ This is an increase from 5 MW, as a result of the passage of Am. Sub. H.B. 6 on July 23, 2019.

⁷ However, note that 5727.75(E)(1)(b) permits the county to impose an annual service payment to be made *in addition* to the PILOT. The sum of the additional service payment and the PILOT payment shall not exceed \$9,000 per megawatt of nameplate capacity located in the county.

7. Ohio jobs: Employment of at least 80% of Ohio-domiciled employees⁸ in the construction of a solar project. The number of full-time equivalent employees employed in the construction or installation of the energy project equals the number actually employed or the number projected to be employed by DSA, whichever is greater. To estimate the number of employees to be employed in the construction or installation of an energy project, the director shall use a generally accepted job-estimating model in use for renewable energy projects, including but not limited to the job and economic development impact model. The director may adjust an estimate produced by a model to account for variables not accounted for by the model. DSA will use a generally-accepted job-estimating model in use for renewable energy projects, including, but not limited to, the job and economic development impact model, and may adjust an estimate produced by a model to account for variables. A report on such employee numbers must be filed with DSA. R.C. § 5727.75(F)(6); R.C. § 5727.75(F)(3).
8. Road repair: For projects greater than 20 MW, repair all roads, bridges and culverts affected by the construction to their preconstruction condition. Owner must post a bond to ensure funding for repairs. R.C. § 5727.75(F)(4).
9. First responders: Provide training for fire and emergency responders for response to emergencies related to the project and, for facilities greater than 20 MW, provide any necessary equipment. R.C. § 5727.75(F)(5).
10. University partnership: For projects greater than 20 MW, establish a relationship with an Ohio university or apprenticeship program for purposes of education and training. The relationship may include endowments, co-ops, internships, apprenticeships, R&D projects and curriculum development. R.C. § 5727.75(F)(7).
11. RECs/utility right of first refusal: Offer to sell power (or RECs) to Ohio utilities that have issued requests for proposal for such power or credits. If no request is issued on or before December 31, 2010, or no offer accepted for power or renewable energy credits within 45 days after the offer is submitted, power or credits may be sold to others.⁹ R.C. § 5727.75(F)(8).

⁸ "Full-time equivalent employee" means the total number of hours for which compensation was paid to individuals, including contract employees, employed at a qualified energy project for services performed at the project during the calendar year divided by 2,080. Owners must file a report of the total number of full-time equivalent employees and of Ohio-domiciled full-time equivalent employees employed in the construction and installation of the facility.

⁹ This "right of first refusal" does not apply if the owner or lessee: (a) is a rural electric company or municipal power agency; (b) is a person that, before completion of the project, contracted for the sale of power or credits with a rural electric company or municipal power agency; or (c) contracts for the sale of power or credits from the project before the effective date of the legislation. See also, Ohio Administrative Code 122:23-1-03(D)(4), which states "[t]his requirement will not apply to any application for certification *filed after* the expiration of all requests for proposal issued by electric distribution utilities and electric service companies on or before December 31, 2010 to purchase power or renewable energy credits." Emphasis added.

If a project meets the criteria for exemption, the exemption lasts for the life of the project *if the property is placed in service before January 1, 2024*, and unless DSA revokes exemption for failure to comply with the law. R.C. § 5727.75(B)(2).

Real property tax exemption

Real property included in a qualified energy project facility generally is also exempt from taxation for any tax year for which the tangible personal property that is part of the same qualified energy project is exempted (see also below). R.C. § 5725.75(D).

County approval and additional service payments

For projects greater than 20 MW in size, DSA will forward the application for exemption to the local county commissioners and to each taxing unit in the affected counties for approval. The combined total of the service payments required and the county service payment may not exceed \$9,000.00 per MW annually. R.C. § 5727.75(E)(1)(b).

Allocation of service payments

The PILOT is allocated just as tangible personal property tax is allocated—to local governments and school districts. The additional service payment required by the county is to be deposited in the county general fund. R.C. § 5727.75(E)(1)(b).

Process for filing for exemption at DSA

The application to receive the personal property tax exemption is online, at the DSA's website.¹⁰ Applicants with questions regarding the application and exemption process should contact the Business Services Division:

John Werkman
Assistant Chief
Business Services Division
(614) 466-6791
john.werkman@development.ohio.gov

RPS cost cap

Ohio's renewable portfolio standard contains a "cost cap" such that utilities are not required to meet an annual benchmark to the extent compliance would raise overall generation rates by 3% or more. When calculating the cost cap, taxes are assumed to be at levels that would apply if no exemption were in place. R.C. § 4928.64(C)(3).

¹⁰ See http://development.ohio.gov/bs/bs_qepte.htm.

POST-SUNSET, IF EXEMPTION IS NOT OBTAINED

VALUATION, ASSESSMENT AND APPOR- TIONMENT IF PROJECT NOT EXEMPT

Public utility tangible personal property tax

Under Ohio law, R.C. § 5727.01(D)(10) defines an “energy company” as a person in the business of generating, transmitting or distributing electricity from an “energy facility” with an aggregate nameplate capacity greater than 250 kw. An “energy facility” is one or more interconnected wind turbines, solar panels or other tangible personal property used to generate electricity from an energy resource.¹¹ R.C. § 5727.01(P). Solar projects, therefore, generally fall within the definition of an “energy company.” Energy companies are classified as public utilities for Ohio tax purposes under R.C. § 5727.01.

Although the tangible personal property tax imposed upon general business property has been repealed, the tangible personal property of public utilities, such as energy companies, remains taxable. R.C. § 5727.06. Thus, if taxes are not abated or exempted, such as through certification as a qualified energy project, energy companies are subject to Ohio personal property taxes.

Non-exempt valuation for personal property tax

R.C. § 5727.11(D)(2) provides that the value of production and energy conversion equipment is to be determined starting with the cost of the property as capitalized on the owner’s books and records less composite annual allowances as prescribed by the tax commissioner.

Non-exempt assessment for personal property tax

R.C. § 5727.111(H) sets forth the percentages of true value at which the taxable property of a public utility is assessed. In the case of an energy company, production equipment is assessed at 24% of its true value, and all other equipment is assessed at 85% of true value.

Thus, projects that are not exempt from taxation will be taxed such that generation equipment (such as the solar panels themselves) is assessed at the rate of 24% of true value and the newly-defined “energy conversion equipment” will be assessed at the same (higher) rate of 85% as transmission and distribution equipment.

Non-exempt apportionment for personal property tax

R.C. § 5727.15(D) provides for the apportionment of taxable value of public utility property to taxing districts. For an energy company, the taxable value of all production equipment is apportioned to the taxing district in which the property is located. The taxable value of all *other* property, including energy conversion equipment, is apportioned to districts in the proportion that the cost of the property located in each district bears to the total cost of all such other property.

¹¹ An energy facility also includes interconnection equipment, devices and related apparatus, as well as equipment that connects generators to an electricity grid or a building that consumes the electricity produced, that facilitates transmission, or that transforms voltage before delivery. Furthermore, it includes buildings, structures, improvements or fixtures exclusively used to house, support or stabilize tangible personal property constituting the facility, and the land on which such property sits as is required for operation of the facility.

Gross receipts taxes

R.C. § 5727.30(B) generally subjects public utilities to an annual gross receipts tax. However, energy companies are exempt from the public utility gross receipts tax. They do, however, remain subject to the commercial activity tax, Ohio's broadly applicable gross receipts tax. (See R.C. § 5751.01(E) providing a list of entities excluded from Ohio's commercial activity tax that does not include energy companies). The computation of the commercial activity tax has become more complex, and we recommend consultation with our tax specialists for more information.

Real estate tax

If a solar project is exempt from personal property taxation as a qualified energy project, real property comprising the project is also exempt from taxation. R.C. § 5727.75(D). If the project is not certified as a qualified energy project (or loses this certification), the project's real property is subject to taxation. See R.C. § 5709.01(A).

When land is enrolled in Ohio's current agricultural use value (CAUV) program, converting the property to non-agricultural use can result in a recoupment charge. However, the law provides a limited exception, which states that no recoupment charge will be levied "for the conversion of a portion of a tract, lot, or parcel of land devoted exclusively to agricultural use if the conversion is incident to the construction or installation of an energy facility, as defined in section 5727.01 of the Revised Code, and if the remaining portion of the tract, lot, or parcel continues to be devoted exclusively to agricultural use." R.C. § 5713.34(A)(3). Installation of an energy facility on land devoted to agricultural use will not cause the remaining portion of the tract to be regarded as a conversion of land devoted exclusively to agricultural use for CAUV purposes if the remaining portion of the tract continues to be devoted to agricultural use. R.C. § 5713.30(B)(4). Solar projects should seek counsel as to the scope of this recoupment exception.

Sales tax

The law clarifies that the purchase of "energy conversion equipment" by a provider of electricity is exempt from sales tax. R.C. § 5739.02(B)(40). This provides energy conversion equipment the same tax-exempt treatment as other tangible personal property purchased by a provider of electricity and used to generate, transmit or distribute electricity for sale to others.

Kilowatt hour tax

Ohio imposes an excise tax on entities that qualify as "electric distribution companies." R.C. § 5727.81. The tax is levied on "all electricity distributed by such company...through a meter of an end user in this state." *Id.* A solar project may be subject to this tax, depending on the nature of its activities and the identity of those purchasing its electricity. Taxpayers should consult specialized counsel with respect to the application of this tax.

Municipal income tax

Many cities and villages impose a net profits tax on any business activity conducted within their taxing jurisdiction. Energy companies are subject to

municipal net income tax to the extent any of their income is apportioned to a city or village with a net income tax. See R.C. § 718.01(C)(9) and 718.02. Recently, the Ohio Department of Taxation was granted authority to administer business net profit taxes on behalf of municipalities, and taxpayers may opt into this centralized filing to reduce the burden of filing separately with many different Ohio municipalities. R.C. 718.80. Municipal tax rates vary within each jurisdiction, and they are publicly available on the Department of Taxation's website. There is no authority for townships to impose income tax.

For additional information, contact:



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