



## Solar and Wind Industries – Ohio Tax Summary

February 9, 2012

A Green Strategies Bulletin

Despite the focus on the personal property taxes that may, or may not, apply to wind, solar, and other green energy projects, a number of questions remain about which taxes may apply. This article will project a quick list of the taxes that may apply to large or small-scale projects. It will also list some incentive programs that may support such projects.

Developers that retain ownership of a project will typically generate electricity for sale to others. Similarly, owners who have an arrangement to net-meter the electricity that is generated are also generating electricity for sale to others. As a result, developers and owners may well be classified as "electric companies," even though they may not qualify as a regulated public utility. Under Ohio tax law, an electric company is any person "engaged in the business of generating, transmitting or distributing electricity" in Ohio for use by others. Generally, a taxpayer is engaged in the specified activities when it owns the physical facilities necessary to perform those activities. An electric company is a public utility for Ohio tax purposes.

In General: As an electric company for Ohio tax purposes, a developer or owner will be subject to the public utility personal property (Revised Code [R.C.] Chapter 5727), real property (R.C. Chapters 5713 and 5715), commercial activity (R.C. Chapter 5751), and sales and use taxes (R.C. Chapters 5739 and 5741). Projects smaller than 250 kilowatts will not be subject to personal property tax in any event. A developer or owner should not be subject to the public utility gross receipts tax (R.C. 5727.30-.38) or the kilowatt-hour tax (R.C. 5727.80-.93) if electricity is sold only to another, such as an incumbent electric provider, for resale. However, either a developer or an owner may be required to pay the kilowatt-hour tax on electricity that is sold directly to end users. However, to the extent that the scope of the activities of a solar developer changes, it may become subject to one or more additional taxes.

Tax Exemptions and Incentive Programs: There is a sales-tax exemption for purchases of equipment used to generate, transmit or distribute electricity for sale to others. This will generally apply to purchases transacted by a developer, and possibly to purchases by an owner.

There are several tax incentives that may be available to solar projects. These include facilities constructed in an enterprise zone or a community reinvestment area. In some cases, the project may qualify for certification as pollution control or energy conversion facilities. As noted previously, projects less than 250 kilowatts are not subject to personal property taxes. In addition, to the extent projects may be funded in part by bonds issued by the Ohio Air Quality Development Authority, a property tax exemption may also be available.

Qualified Energy Projects: R.C. 5727.75 provides a real and personal property tax exemption for qualified energy projects that use a renewable energy source, such as the sun or wind. There are a number of requirements, including the timing of the approval, construction and commencement of operations of a project. For projects greater than 5 megawatts (MW), the approval of the county in which the project is located is required.

If a project qualifies for this exemption, it is relieved from all real and tangible personal property taxes associated with the project. However, in lieu of the property taxes, the owner of the project is required to make annual payments in lieu of taxes.

These payments can vary between \$6,000 and \$9,000 per MW of nameplate capacity.

This exemption does not expire, so long as the project otherwise continues to meet the statutory requirements for the exemption.

Summary: Developers and owners of green energy projects may be subject to a number of Ohio taxes, including personal and real property, sales and use, commercial activity, and kilowatt hour taxes. Those projects may also qualify for a number of incentives or exemptions that can significantly reduce the cost of the projects. Project owners and developers who do not pay attention to these taxes may well find the project does not provide the savings that were anticipated.

# Authors

---