

Qualified energy project exemptions: New DSA regulations

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On October 20, 2017, Ohio's Development Services Agency (DSA) adopted new regulations related to the personal property and real property tax exemption available for qualified energy projects. The updated regulations, effective October 30, 2017, replace prior regulations that were up for their five-year administrative review. Though different in form, the updated regulations should not substantially change the way DSA administers the qualified energy project exemption program.

Section 5727.75 of the Ohio Revised Code provides a real and personal property tax exemption for qualified energy projects that use a renewable energy source, such as sun or wind. There are a number of requirements to obtain (and keep) the exemption, including application and reporting deadlines. For projects greater than five megawatts (MW), the approval of the county in which the project is located is also 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. 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.

DSA regulations govern all aspects of the exemption program, including the application process, ongoing reporting requirements and the revocation process. The updated regulations do not significantly change how the qualified energy project exemption is administered. Instead, most changes simply reflect an attempt to reorganize the regulations to more closely mirror the statute.

There are, however, a few substantive changes, including the following:

- The updated regulations include a more detailed list of information required in an application for exemption as a qualified energy project.
- Taxpayers must provide additional factual certifications in their annual construction reports provided to DSA.
- Taxpayers that submit an application lacking the necessary documentation will have a right to cure the deficiency within 30 days. The updated regulations eliminate the conditional certification process that was formerly provided on a discretionary basis for deficient applications.

For additional guidance on how these updated regulations may impact your existing or planned qualified energy project, be sure to connect with your legal counsel.

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