Mass Wind Working Group

Property Tax Considerations for Massachusetts Wind Power Projects

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PROPERTY TAXATION of Wind Facilities
Two Major Classes

• **Publicly** owned & operated by municipal light plant or other governmental entity

• **Privately** owned & operated on public or private property
Publicly Owned Facilities
Exemptions & PILOTs

- Exempt from property tax
- Municipal light plants (MLPs) may voluntarily make a payment-in-lieu-of-tax (PILOT) to municipality
- MLP cooperative must make PILOT
Publicly Owned Facilities
Allocation of Revenues

• Revenues from municipal project not operated by MLP generally go to the general fund

• Revenues of municipal project that qualifies as small municipal renewable generation facility remain with the enterprise, if municipality adopts enterprise fund
Publicly Owned Facilities
Allocation of Revenues

• Revenues generated by MLP facilities belong to the MLP

Special Acts

• Kingston Modified Enterprise – St. 2008, c. 352, § 5

• Falmouth Special Receipts Reserved for Appropriation – St. 2010, c. 175
Privately Owned Wind Facility on Public Real Estate

- Public RE leased or occupied for business/non-public purpose taxable to lessee under M.G.L. c. 59, § 2B
- Business carrying out public purpose for governmental unit not subject to 2B
- Example: private wind company operating wind facility for municipality under management contract

2B or not 2B, That is the Question
Privately Owned Wind Facility on Public Real Estate

- Weigh commercial activity v. public purpose (reduced energy expense, cleaner energy)
- Two cases are illustrative:
  - Atlantic Refining Co v. BOA of Newton, 342 Mass. 200 (1961)
Privately Owned Wind Facility on Public Real Estate

- Restaurant/gas station on limited access highway and fish marketers on public pier were taxable businesses

- Conclusion: Private for profit company in the business of providing energy sited on publicly owned RE is taxable even if the public receives incidental benefits
Privately Owned Wind Facility on Public Real Property

Public Utility Exception

• §2B exception for public real estate subject to easements, grants, licenses or rights of way of a public utility

• Does not apply in case of lease to wind power company (non-utility)

• A lessee or occupant that would qualify for exemption if on private property, will also be exempt under §2B
Privately Owned Facility
on Privately Owned RE
Clause 45 Exemption

- Exemption under M.G.L. c. 59, § 5(45) applies to solar or wind system utilized as a primary or auxiliary power source
- To heat or otherwise supply the energy needs of taxable property
- Maximum 20 years from installation
Privately Owned Facility on Privately Owned RE
Clause 45 Exemption

- Cl. 45 provides a personal exemption to owner when electricity or heat is used on same or adjacent property
- Exemption not applicable if non-taxable entity uses electricity or if sent to grid
- Exemption not applicable if wind or solar property serves another purpose
Privately Owned Facility on Privately Owned RE
MGL c. 59, §38H(b) PILOT

• M.G.L. c. 59, § 38H(b) lets municipality negotiate a PILOT with a retail or wholesale “generation company”

• May include wind power generator qualified under M.G.L. c. 164, §1

• Negotiated value or tax based on appraisal documentation intended to provide stable revenue/obligations
Privately Owned Facility on Privately Owned RE

Tax Increment Financing

- M.G.L. c. 40, § 59 & c. 59, § 5(51) lets municipality negotiate a tax increment financing (TIF) agreement as property tax incentive
- Primarily intended to create jobs and spur economy in an economically depressed area
Privately Owned Facility on Privately Owned RE
Tax Increment Financing

- Economic Advisory Coordinating Council (EACC) designates Economic Target Areas (ETAs) & Economic Opportunity Areas (EOAs)
- EACC Approves TIFs & Usually Requires Job Creation
Privately Owned Facility on Privately Owned RE

Tax Increment Financing

• Recently amended (2008) to apply to renewable energy projects designated by the municipality as potential class 1 generating source [M.G.L. c. 25A, §11F]

• Agreements subject to oversight of MOBD under 402 CMR 2.00
Privately Owned Facility on Privately Owned RE

Tax Increment Financing

• TIF may provide partial or full exemption for (1) the increased value of RE and (2) the personal property located at the site, for up to 20 years

• A TIF is a true tax incentive for developers of renewable energy projects
Privately Owned Facility on Privately Owned RE Tax Assessment

• Wind generating machinery is subject to tax whether it is assessed as real or personal property
• Decision how to tax based on characteristics of the property
• Taxable machinery attached to land, towers, buildings may be assessed as part of real estate (Opinion 2009-1042)