

Mass Wind Working Group



Property Tax Considerations for Massachusetts Wind Power Projects

Gary A. Blau
Tax Counsel
Massachusetts Department of
Revenue

Boston, MA
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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)
- Dehydrating Process Co. of Gloucester, Inc. v. Gloucester, 334 Mass. 287 (1956)



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

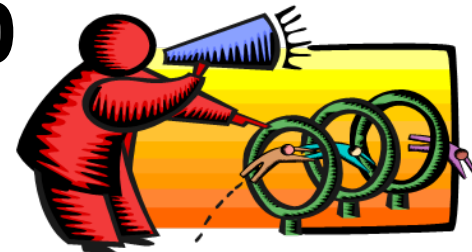
- **Economic Advisory Coordinating Council (EACC) designates Economic Target Areas (ETAs) & Economic Opportunity Areas (EOAs)**
- **EACC Approves TIFs & Usually Requires Job Creation**



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)

