PILOTs: Minimizing Cash Flow Uncertainty

Massachusetts Wind Working Group

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Which Projects Are Exempt?

- M.G.L. c 59, § 5 cl. 45: authorizes an exemption for:
  – [a]ny solar or wind powered system or device which is being utilized as a primary or auxiliary power system for the purpose of heating or otherwise supplying the energy needs **of a property taxable under this chapter**; provided, however, that the exemption under this clause shall be allowed only for a period of twenty years from the date of the installation of such system or device.

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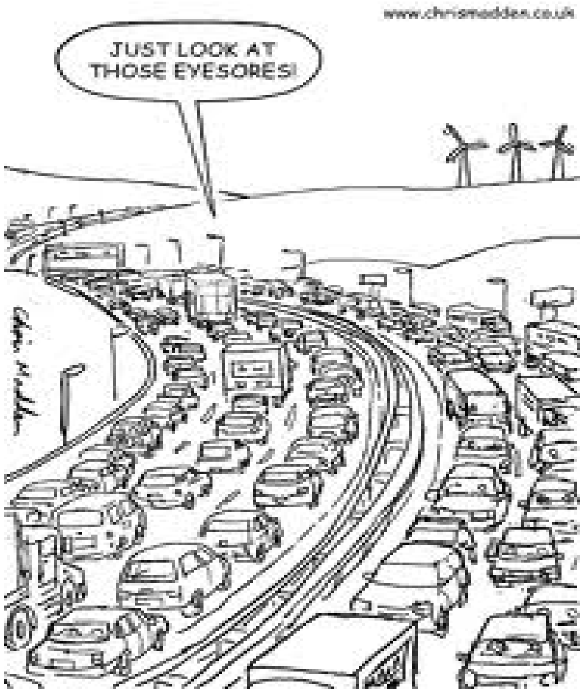
Exemption Rule of Thumb

- If the customer's property is taxable, the wind facility is not subject to property tax.
- If the customer's property is not taxable, the wind facility is subject to property tax.



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Unresolved Questions re: Exemption

- If owner of tax-exempt property makes voluntary Payments-in-Lieu of-Taxes, is wind facility exempt?

- If owner of property makes property tax payments under a chapter of General Laws *other than c. 59*, is wind facility exempt?
  - (example: c.121A Urban Redevelopment Corporations)

For unresolved exceptions, obtain guidance from DOR.

Think About Taxes Early in Planning Process

- Is the customer's property taxable?
- What approach will the community take in assessing?
  - Income
  - Replacement
  - Comparable Sales
- What components of project will be taxed or exempted?
- Best option for managing property taxes?
  - Annual tax bill (based on depreciating value over time)?
  - Tax Increment Financing ("TIF") Plan?
  - PILOT agreement?

GCA Made Wind Eligible for TIFs

Green Communities Act (St. 2008, Chapter 169, §8) added to the list that Economic Assistance Coordinating Council may designate as an Economic Target Area an area that:

> "…has been designated by the municipality as an area with potential for the development of a Class I renewable energy generating sources, as defined by section 11F of chapter 25A."
>
> G.L. c. 23A, §3D(a)(ii)(K)

Tax Increment Financing

- Allows municipalities to provide targeted incentives to stimulate job-creating development.
- Negotiated Agreement between business and host municipality;
- 5 year minimum, 20 year maximum or anything in between;
- Business pays full tax rate on the “base value”;
- Exemption from property taxation on all or part of the increased value accrued as a result of development (the “increment”);
- Percentage of exemption may range from 5% to 100%;
- Personal property tax exemption for both existing and new property;
- G.L. 40, § 59 governs all TIF Agreements.

Risk Mitigation Strategies

- If no RFP (commodity sale only or net metering credit sale only), negotiate tax treatment in bilateral negotiations.
  - **(Assessor must be involved).**

- If RFP used by municipality, use bidding process (if any) to gather as much information as possible on tax treatment.
- Propose transparent valuation methodology to be included in RFP.
- Last resort: assume tax payments in price of energy in PPA or in price of net metering credits in credit purchase agreement.

Preparing for PILOT Negotiations

- If retaining an expert to conduct valuation
  - Structure the work to ensure it will be privileged
- Tax assessment using income method:
  - Assume all income streams will be included
  - Account for potential for regulatory changes
  - Should result in a high discount rate for fair market value calculation

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Questions?

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