



PROPERTY TAX:

Exemptions and PILOT (Payments-in-lieu-of-Taxes)

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This document is one of a series of reports and guides that are all part of the NYSERDA Wind Energy Tool Kit. Interested parties can find all the components of the kit at: <http://www.powernaturally.org/>. All sections are free and downloadable, and we encourage their production in hard copy for distribution to interested parties, for use in public meetings on wind, etc.

Any questions about the tool kit, its use and availability should be directed to: Vicki Colello; vac@nyserda.org; 518-862-1090, ext. 3273.

In addition, other reports and information about Wind Energy can be found at www.powernaturally.org in the on-line library under “Large Wind.”

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Property Tax: Exemptions and PILOT (Payments-in-lieu-of-Taxes)

Payments to local governments can take the form of property tax, sales tax (on miscellaneous materials and supplies purchased locally), or alternative payment agreements negotiated between a local taxing jurisdiction and the project owner to compensate for the additional burden the project may place on local services. These payments either incent or deter developers' interests in an area. Whatever approach or mechanism is used for establishing payments to governments, the magnitude of the payments should be comparable to the costs associated with additional services required by the project while providing a reasonable benefit to the larger community. For many small towns, payments from wind energy projects result in a significant increase in revenue in comparison to other local revenue sources.

Some areas have limited or exempted wind energy projects from paying certain or all local taxes to induce development and increase the economic diversity of small rural towns. Other forms of stimulus include business or corporate incentives for establishing manufacturing or company headquarters in a region or state.

Exemption

Property values increase via appreciation, improvements to the property, and additions to the property. If a property owner either installs a home-sized wind turbine or leases a portion of the property to a developer for installation of a utility-scale turbine, the assessed value of the property may increase. If the property owner owns the wind turbine, the owner is responsible for any increase in property taxes or for filing for an exemption. If the turbine is owned by an entity other than the property owner, the turbine owner is responsible for any increase in property taxes due to the wind turbine, as negotiated in the land lease agreement.

Payment of additional property taxes on improvements associated with wind turbines (as well as solar and farm waste energy systems) is exempt for a period of 15 years under the New York State Real Property Tax Law (RPTL Section 487) unless disallowed by the local taxing jurisdiction. This exemption applies to county, city, town, village, and school taxing jurisdictions but does not apply to special-use districts such as fire districts. Projects must be installed by January 1, 2006, to be eligible. NYSERDA is working with the Governor's Office on a legislative initiative (Governor's Departmental Bill No. 164) to extend the law through January 1, 2013. However, as of June 2005, the proposal had no sponsorship in the State Legislature.

Any county, city, town, village, or school district may actively retract this exemption by adopting a local law or school district resolution to disallow it. However, the city school

districts of New York, Buffalo, Rochester, Syracuse, and Yonkers cannot retract the exemption. This tax exemption has become a significant negotiation issue between project developers and local taxing jurisdictions. Taxing jurisdictions that have not disallowed the exemption can do so at any time prior to the turbines being constructed, thereby making the project pay its full tax burden. Local governments can use this provision as leverage to negotiate a voluntary payment with the developers.

Payments-in-lieu-of-Taxes

For county, city, town, village, and school district taxing jurisdictions that do not retract the exemption, they may enter into a contract for payments-in-lieu-of-taxes (PILOTs) with the property owner (in this case, the owner of the wind turbine equipment). PILOT agreements may be written by the county's or local taxing jurisdiction's tax counsel. Several taxing jurisdictions can be parties to the same agreement (i.e. each taxing jurisdiction does not have to enter into its own PILOT with the project owner). The PILOT agreement defines the amount the property owner pays each taxing jurisdiction (if multiple jurisdictions are parties to the agreement). This amount is paid in lieu of property taxes due on the equipment and improvements to the land. PILOT amounts cannot exceed the amount that would be due if property taxes due to the improvement were not exempt, and the agreement cannot continue for more than 15 years. PILOT agreements only cover the amount to be paid and how it is distributed among the different parties to the agreement. PILOT agreements do not include language on how these funds will be used.¹

Common PILOT Payment Structure

Specific guidelines for determining the magnitude of PILOTs do not exist except for the provision that payments may not exceed what would have been owed had the equipment been assessed under the ordinary tax provisions. A common structure is a \$/installed capacity amount. One agency indicated that they are considering a payment of approximately \$5,000 per MW per year with a contract term of 15 years. Based on information from Madison County, New York, voluntary payments from the Madison Wind Power Project amounts to approximately \$30,000 per year each for both the town of Madison and the Madison Central School District, or approximately \$5,200 per installed MW. The Fenner Wind Power Project is providing the town of Fenner with approximately \$150,000 per year for 15 years, or approximately \$5,000 per installed MW.

¹ For information on how to address issues such as road damage during construction or decommissioning, please refer to the Potential Environmental Impacts and Permits and Approvals sections of the NYSERDA Wind Energy Toolkit.

Alternative PILOT Payment Structures

Although basing payments to local taxing jurisdictions on the value of the project or the installed capacity is the most common method for structuring such payments, several alternatives have been explored. For example, the use of actual turbine energy production (kWh) may be a more objective measurement for basing payments. Similar to the royalties or royalties with guaranteed minimum payment options in a land lease agreement, the project could pay the taxing district a percentage of gross revenue.²

When basing payments from wind energy projects on capacity, a 30 MW wind farm on a moderately windy site provides the same local revenue as a 30 MW wind farm on land with a high wind resource. If payments were based on actual energy production, more revenue may be available from the project with a higher wind resource. One downside to this approach is that tax revenues will vary from year to year due to variations in the wind resource, which may make budgeting difficult.

As an example of how PILOT payments can be structured, Minnesota uses a production-based PILOT model to calculate payments to local taxing jurisdictions based on energy production from wind turbines. The payments are based on project size:

- Large-Scale Wind Energy Conversion Systems: Projects with installed capacities of 12 MW or greater will make payments of 0.12 cents per kWh.
- Medium-Scale Wind Energy Conversion Systems: Projects with installed capacities between 2 and 12 MW will make payments of 0.036 cents per kWh.
- Small-Scale Wind Energy Conversion Systems: Projects with installed capacities between 250 kW and 2 MW will make payments of 0.012 cents per kWh.
- Systems with installed capacities less than 250 kW are exempt from the production tax.

Wind Farm Impact on Property Owner Tax Assessment

Typically, utility-scale turbines as part of a large wind energy project are placed on the project owner's tax assessment. However, a unique situation occurred at the Madison and Fenner wind power projects in which the wind turbines were listed as improvements on the tax parcel owned by the landowner. Even though the wind turbines are exempt from real property taxes (where the local tax authorities have not disallowed the wind and solar tax exemption), the presence of the turbines on the landowner's tax assessment caused considerable concerns for the landowner. The tax-exempt status in New York expires after 15 years, after which the turbines become fully taxable. Listing the turbines on the landowner's parcel means that, theoretically, the landowner is liable to pay the large tax on the wind farm improvements in the event the project owner defaults or goes bankrupt, pursuant to any clauses in the land lease agreement.

² See the Land Lease Agreement document in the NYSERDA Wind Energy Toolkit for more information on payment structures.

An alternative to placing the turbines on the landowner's parcel is for the turbines to be placed on a separate "suffix" parcel that is associated with the wind project owner and all tax liabilities for this "suffix" reside with the project owner (and not the underlying landowner). "Suffix" parcels are more commonly used for billboards or cellular phone towers, which are placed on leased land. The only recourse for tax authorities is against the owner of the "suffix" and not the owner of the land. This appears to be a relatively simple method for addressing an issue that is extremely important to landowners. However, assessors cannot be compelled to separately assess the turbines to their owners instead of assessing them to the landowner.

At the Maple Ridge wind project in the Tug Hill area, Lewis County has taken this suffix parcel approach to protect the underlying landowner. A new tax ID is created for each tower location. As owner of the tower and associated equipment, the wind project owner is exclusively responsible for taxes associated with the equipment.

References

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