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Real Property Tax Law Update on Renewable Energy Projects:
Assessments, Exemptions, and PILOT Agreements

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186 A.D.3d 990, 130 N.Y.S.3d
142, 2020 N.Y. Slip Op. 04636

****1** In the Matter of Cornell University, Respondent,
v
Board of Assessment Review et al., Appellants.

Supreme Court, Appellate Division,
Fourth Department, New York
114, 19-00339
August 20, 2020

CITE TITLE AS: Matter of Cornell
Univ. v Board of Assessment Review

HEADNOTES

Taxation

Assessment

Solar Photovoltaic Electrical System Constituted Taxable
Real Property

Taxation

Exemptions

Educational Institution Not Owner of Solar Photovoltaic
Electrical System Located on its Land

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counsel), for respondents-appellants.

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Appeal from a judgment and order (one paper) of the Supreme
Court, Ontario County (John J. Ark, J.), entered January
28, 2019, in proceedings pursuant to RPTL article 7. The
judgment and order granted the petitions by, inter alia,
directing the removal of a tax parcel from the tax rolls of the
Town of Seneca.

It is hereby ordered that the judgment and order so appealed
from is unanimously reversed on the law without costs and
the petitions are dismissed.

Memorandum: Petitioner, an educational institution,
commenced these proceedings pursuant to, inter alia, RPTL
article 7, challenging tax assessments on a solar photovoltaic
electrical system (system) that is located on its land in
the Town of Seneca. Petitioner and nonparty for-profit
corporation Argos Solar, LLC (Argos) had entered into an
agreement pursuant to ***991** which petitioner granted Argos
an exclusive license to use certain agricultural research land
owned by petitioner “for the sole purpose of constructing,
installing, owning, operating and maintaining the [s]ystem.”
The agreement obligated petitioner to purchase from Argos
the energy output generated by the system. The initial term
of the agreement was 20 years, and the agreement further
provided Argos with the option to extend the term for as many
as two additional 5-year periods, and then allowed petitioner
to continue making payments for energy output beyond the
30-year anniversary of the agreement, thereby extending it on
a month-to-month basis. In addition, Argos was obligated to
remove the system following termination of the agreement
unless petitioner exercised its option to purchase the system,
and the agreement also provided for removal of the system
as an available remedy in the event of termination resulting
from the default of either party.

Petitioner subsequently applied to renew its real property
tax exemption pursuant to [RPTL 420-a](#), and although the
land itself indisputably remained tax exempt thereunder,
respondent Shana Jo Hilton, as Assessor of Town of Seneca,
created a separate tax parcel to assess taxes on the newly
constructed system located on the land. As relevant here,
taxes were assessed on the system each year over a three-year
period, and respondent Board of Assessment Review denied
petitioner's complaints challenging each of those assessments.

After petitioner commenced these proceedings, Supreme
Court determined that the tax assessments were not lawful
inasmuch as the system did not constitute real property and,
even if it did, it would be exempt on the basis of petitioner's
beneficial ownership thereof. Respondents appeal from a
judgment and order granting petitioner's petitions by, inter
alia, removing the tax parcel from the rolls and cancelling
the taxes assessed thereunder for each of the subject years.
We agree with respondents that the court erred in granting the
petitions.

We note at the outset that the petitions must be dismissed
insofar as they seek relief pursuant to CPLR article 78,
because the proper vehicle for seeking the instant relief is a
certiorari proceeding pursuant to RPTL article 7 (*see Matter*

of *Crouse Health Sys., Inc. v City of Syracuse*, 126 AD3d 1336, 1336 [4th Dept 2015]; *Matter of ViaHealth of Wayne v VanPatten*, 90 AD3d 1700, 1701 [4th Dept 2011]).

Respondents contend that the system constitutes taxable real property under RPTL 102 (12) (b). We agree. Pursuant to that statute, taxable real property is defined as “[b]uildings *992 and other articles and structures, substructures and superstructures erected upon, under or above the land, or affixed thereto” (*id.*). “The common law relating to fixtures provides guidance in determining whether particular items fall within [that] statutory definition” (*Matter of Maines v Board of Assessors of Town of Lafayette*, 125 AD2d 951, 951-952 [4th Dept 1986]; see *Matter of Metromedia, Inc. [Foster & Kleiser Div.] v Tax Commn. of City of N.Y.*, 60 NY2d 85, 90 [1983]; *Matter of Consolidated Edison Co. of N.Y. v City of New York*, 44 NY2d 536, 541-542 [1978]). “To meet the common-law definition of fixture, the personalty in question must: (1) be actually annexed to real property or something appurtenant thereto; (2) be applied to the use or purpose to which that part of the realty with which it is connected is appropriated; and, (3) be intended by the parties as a permanent accession to the freehold” (*Metromedia, Inc.*, 60 NY2d at 90).

First, with respect to annexation, petitioner's own submissions show that the system consists of nearly 1,600 piles driven directly into the ground and nearly 400 piles set on footings of concrete poured into tube forms in the ground, bolted on top of which is a racking system housing the solar panels that are attached thereto by nuts and bolts, as well as an inverter and associated equipment installed on a poured concrete slab. We conclude that those characteristics establish that the system is annexed to real property or something appurtenant thereto (see *id.* at 88-90).

Second, we conclude that the system applies to the purpose of the land to which it is connected inasmuch as petitioner devoted the land to generating solar energy as part of its sustainability efforts and in furtherance of its educational mission (see *id.* at 90; *Maines*, 125 AD2d at 952).

Third, contrary to petitioner's assertion and the court's determination, the purported ease of physical removal is not determinative in evaluating permanency (see *Metromedia, Inc.*, 60 NY2d at 89-91; *Maines*, 125 AD2d at 952). It has long been settled law that “[t]he permanency of the attachment does not depend so much upon the degree of physical force with which the thing is attached as upon the motive and

intention of the party in attaching it” (*McRea v Central Natl. Bank of Troy*, 66 NY 489, 495 [1876]; see *Matter of City of New York [Kaiser Woodcraft Corp.]*, 11 NY3d 353, 360 [2008], *rearg denied* 11 NY3d 903 [2009]; *Consolidated Edison Co. of N.Y.*, 44 NY2d at 542-543). Here, in view of the purpose and duration of the agreement, the options to extend afforded to both Argos and petitioner, and the terms permitting removal of the system *993 upon termination, we conclude that the record establishes that petitioner and Argos “intended the [system] to be ‘permanent’ over the life of the . . . agreement” (*Metromedia, Inc.*, 60 NY2d at 91; see *Matter of T-Mobile Northeast, LLC v DeBellis*, 143 AD3d 992, 995-996 [2d Dept 2016], *affd on other grounds* 32 NY3d 594 [2018], *rearg denied* 32 NY3d 1197 [2019]; *Consolidated Edison Co. of N.Y.*, 44 NY2d at 542-543).

Based on the foregoing, we conclude that the system constitutes taxable real property under RPTL 102 (12) (b), and we therefore need not address respondents' remaining contentions on that issue (see *T-Mobile Northeast, LLC*, 32 NY3d at 610).

Respondents further contend that the court erred in holding that the system, even if it constituted taxable real property, would be tax exempt on the ground that petitioner is the beneficial owner of the system. We agree. RPTL 420-a (1) (a) provides, in relevant part, that “[r]eal property owned by a corporation or association organized or conducted exclusively for . . . educational . . . purposes, and used exclusively for carrying out thereupon . . . such purposes . . . shall be exempt from taxation.” “Land and [structures] are separately defined as taxable forms of real property (see RPTL 102 [12] [a], [b]), and [parties to an agreement] may agree to their separate ownership” (*Matter of United Health Servs. Hosps., Inc. v Assessor of the Town of Vestal*, 122 AD3d 1177, 1178 [3d Dept 2014], *lv denied* 25 NY3d 909 [2015]; see *Metromedia, Inc.*, 60 NY2d at 91; *Matter of National Cold Stor. Co. v Boyland*, 16 AD2d 267, 268-269 [1st Dept 1962], *affd* 12 NY2d 808 [1962]). “Although the parties' labeling of one as owner is not enough to create a taxable interest, a finding of such an interest is justified where that party exercises dominion and control over the property” (*Metromedia, Inc.*, 60 NY2d at 91; see *Matter of Colleges of the Seneca v City of Geneva*, 94 NY2d 713, 716-717 [2000]; *United Health Servs. Hosps., Inc.*, 122 AD3d at 1178-1179).

Here, it is undisputed that petitioner is a qualifying corporation, but Argos is not, and that the system is used for a qualifying purpose; therefore, whether the system is tax

exempt depends on its ownership. The agreement separates ownership of the system from the land and designates Argos as the owner of the system. While that fact must be considered, “the question of ownership turns on whether the . . . agreement confers incidents of ownership upon [Argos] or whether [petitioner] retains such dominion and control over the property that it must be deemed the beneficial owner for tax purposes” (*United Health Servs. Hosps., Inc.*, 122 AD3d at 1179). We conclude for *994 the reasons that follow that the agreement confers incidents of ownership upon Argos to justify a finding—consistent with the designation in the agreement—that Argos, not petitioner, is the owner of the system.

Unless petitioner exercises its option to purchase the system from Argos, the agreement obligates Argos to remove the system and all assets thereto whether buried or above ground from the land following termination of the agreement at its sole cost and expense (*see Metromedia, Inc.*, 60 NY2d at 91; *United Health Servs. Hosps., Inc.*, 122 AD3d at 1179). In addition, Argos is responsible for all taxes associated with ownership of the system, Argos bears the risk of any damage

to the system and is entitled to all insurance proceeds, and petitioner has the option to purchase the system from Argos upon termination of the agreement at a price to be determined in accordance with the provisions thereof (*see Colleges of the Seneca*, 94 NY2d at 718; *Metromedia, Inc.*, 60 NY2d at 91; *United Health Servs. Hosps., Inc.*, 122 AD3d at 1179; *Matter of Spectapark Assoc. v City of Albany Dept. of Assessment & Taxation*, 12 AD3d 800, 801-802 [3d Dept 2004], *lv denied* 4 NY3d 705 [2005]). Although the agreement provides petitioner with some minor incidents of ownership, we conclude that the agreement does not confer to petitioner “such dominion and control over the property that it must be deemed the beneficial owner for tax purposes” (*United Health Servs. Hosps., Inc.*, 122 AD3d at 1179; *see Colleges of the Seneca*, 94 NY2d at 718; *Metromedia, Inc.*, 60 NY2d at 91). Therefore, respondents correctly determined that the system is real property that is not tax exempt under RPTL 420-a. Present—Smith, J.P., Peradotto, DeJoseph, NeMoyer and Curran, JJ.

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McKinney's Consolidated Laws of New York Annotated
Real Property Tax Law (Refs & Annos)
Chapter 50-a. Of the Consolidated Laws
Article 5. Assessment Procedure (Refs & Annos)
Title 4. Miscellaneous Provisions (Refs & Annos)

McKinney's RPTL § 575-b

§ 575-b. Solar or wind energy systems

Effective: April 9, 2022

[Currentness](#)

1. The assessed value for solar or wind energy systems, as defined in [section four hundred eighty-seven](#) of this chapter, shall be determined by a discounted cash flow approach that includes:

(a) An appraisal model identified and published by the New York state department of taxation and finance, in consultation with the New York state energy research and development authority, within one hundred eighty days of the effective date of this section, and periodically thereafter as appropriate; and

(b) A solar or wind energy system discount rate or rates published annually by the New York state department of taxation and finance; provided that prior to such publication, such discount rate or rates shall be published in preliminary form on the department's website and notice thereof shall be sent to parties who have requested the same. The department shall then allow at least sixty days for public comments to be submitted, and shall consider any comments so submitted and make any changes it deems necessary prior to publishing the final discount rate or rates; and

(c) In the formulation of such a model and discount rate, the New York state department of taxation and finance shall consult with the New York State Assessors Association. Provided, further, in the formulation of such a model and discount rate, the New York state department of taxation and finance shall be authorized to take into account economic and cost characteristics of such solar and wind energy systems located in different geographic regions of the state and consider regionalized market pressures in the formulation of the appraisal model and discount rate required under this section.

1-a. Notwithstanding any provision of law to the contrary, the solar or wind energy system appraisal model authorized by this section shall be identified, formulated, adopted, published, and updated periodically in the manner provided in this section without regard to the provisions of article two of the state administrative procedure act.

2. The reports required by [section five hundred seventy-five-a](#) of this title shall be designed to elicit such information as the commissioner may reasonably require for the development and maintenance of an appraisal model and discount rate.

3. The provisions of this section shall only apply to solar or wind energy systems with a nameplate capacity equal to or greater than one megawatt.

4. Complaints with respect to assessments determined under this section shall be governed by [sections five hundred twelve and five hundred twenty-four](#) of this article and the following provisions:

(a) The assessor shall, upon request, provide the owner with the inputs that he or she entered into the commissioner's appraisal model when valuing the property pursuant to this section.

(b) The property owner may advise the assessor of any alleged errors to the appraisal model inputs believed to have been made by the assessor, and may provide information to the assessor in support of any proposed change to those inputs.

(c) If the property owner provides such information to the assessor prior to the filing of the tentative assessment roll, the assessor may make such adjustments to the appraisal model inputs as he or she deems warranted based upon the information provided by the property owner, and may recalculate the property value by entering the adjusted inputs into the appraisal model.

(d) If dissatisfied with the assessed value appearing on the tentative assessment roll, the property owner may file a complaint with the board of assessment review; provided, however, that the grounds for review of an assessment determined under this section with respect to both article five and article seven of this chapter shall be limited to the accuracy of the appraisal model inputs made by the assessor.

(e) Actions or proceedings that challenge the validity and accuracy of the appraisal model or discount rates established under this section may not be commenced against assessing units. Such challenges may only be brought by commencing an action against the commissioner in the third department of the appellate division of the supreme court in the manner provided by article seventy-eight of the civil practice law and rules.

Credits

(Added L.2021, c. 59, pt. X, § 3, eff. April 19, 2021. Amended L.2022, c. 59, pt. AA, § 1, eff. April 9, 2022; L.2023, c. 59, pt. N, § 1, eff. May 3, 2023, deemed eff. April 19, 2021.)

McKinney's R. P. T. L. § 575-b, NY RP TAX § 575-b

Current through L.2024, chapters 1 to 49, 52, 61 to 112. Some statute sections may be more current, see credits for details.



**Department of
Taxation and Finance**

OFFICE OF REAL PROPERTY TAX SERVICES

2024 Solar and Wind Appraisal Model User Guide

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Glossary

AC	Alternating Current
CA	Community Adder
CC	Community Credit
CDG	Community Distributed Generation
CES	New York State Clean Energy Standard
COD	Commercial Operation Date
DC	Direct Current
DER	Distributed Energy Resource
DPS	Department of Public Service
DRV	Demand Reduction Value
E-Value	Environmental Value
ICSA	Inclusive Community Solar Adder
kW	Kilowatt
LSRV	Locational System Relief Value
Model	Draft 2024 Solar and Wind Appraisal Model
MTC	Market Transition Credit
MW	Megawatt
NEM	Net Energy Metering
NYISO	New York Independent System Operator
NYSAA	New York State Assessors Association
NYSERDA	New York State Energy Research and Development Authority
PILOT	Payment in Lieu of Taxes
REC	Renewable Energy Credits
RES	New York State Renewable Energy Standard
Tax Department	New York State Department of Taxation and Finance
VDER	Value of Distributed Energy Resources
W	Watt

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Model/User Guide Overview

The 2021-2022 Enacted New York State Budget established a process for the New York State Department of Taxation and Finance (the Tax Department) to develop a standard appraisal methodology for solar and wind energy systems with a nameplate capacity equal to or greater than one megawatt (MW). The Tax Department, in consultation with the New York State Energy Research and Development Authority (NYSERDA) and the New York State Assessors Association (NYSAA), will annually develop:

- an appraisal Model using the discounted cash flow approach for solar and wind energy systems, and
- corresponding discount rates to be applied for valuation purposes.

Beginning with 2022 assessment rolls, assessors are required to use the model and discount rates to value and place assessments on affected solar and wind energy systems.

Note: Municipalities will continue to have the flexibility to negotiate payment in lieu of taxes (PILOT) agreements.

This User Guide is designed to assist assessors and stakeholders in entering inputs into and retrieving the appraised value from the Draft 2024 Solar and Wind Appraisal Model (the model) published by the Tax Department. Management and interpretation of the appraisal values are the responsibility of the assessor or stakeholder.

It is the user's responsibility to enter information specific to their solar or wind project on the *Inputs* sheet. This is the only sheet in the model that requires the user to enter information.

This sheet contains four sections that allow for user input:

- *Inputs for All Project Revenue Types*. It includes five required and two optional user inputs that apply to all projects.
- *Additional Required Inputs for VDER Projects*. It includes two required and two optional user inputs that apply only to projects receiving Value of Distributed Energy Resources (VDER) revenues.
- *Additional Input for NEM Projects*. It includes a single required user input that applies only to projects receiving Net Energy Metering (NEM) revenues.
- *Additional Input for Tier 1 Projects*. It includes a single required user input that applies only to projects receiving Tier 1 revenues.

Each of the four user input sections is covered in a subsequent section of this guide.

Note: In each section, only cells highlighted in light blue can be modified by the user. After the user selects *Project Revenue Type*, the model shades the two revenue-specific user input sections that are not applicable for the project. This shading is presented to the user as a black diagonal grid pattern to indicate that these input sections should be ignored.

Figure 1 on page 2 shows the four user input sections on the *Inputs* sheet. The shading of the non-applicable revenue-specific user input sections has been omitted for demonstrative purposes.

Required user inputs are circled in red.

Revenue-specific required user inputs are circled in orange.

Optional user inputs are circled in yellow.

Figure 1. User Input Sections of The Model

Inputs for All Project Revenue Types			
Project Revenue Type	VDER - Value of Distributed Energy Resources		
Plant Type	Solar - Tracking		
System Size	5,000	kW AC	
Start Date of Plant Operation	1/1/2023		
Taxable Status Year	2024		
System Age at Taxable Status Date	1	Year(s)	
Before Tax Discount Rate - Real WACC	6.68%		
Tax Load	3.00%		
Loaded Real Discount Rate	9.88%		
Annual Ground Lease Payment (if applicable)	\$5,000		
Annual Ground Lease Escalator (if applicable)	2.00%		
Additional Required Inputs for VDER Projects			
NYISO Zone	A - West		
Utility Company	NYSEG		
DRV Rate	\$0.0890	\$/kWh	
Default Maximum MTC/CC	\$0.0314	\$/kWh	
Additional Optional Inputs for VDER Projects			
Actual Market Transition or Community Credit or Community Adder/ICSA		\$/kWh	
		\$	
<p>Note: The model assumes that VDER projects receive the maximum possible Market Transition Credit (MTC) by default, but allows a lower MTC or Community Credit (CC) or a Community Adder (CA) to be entered to override the default assumption. VDER projects may receive either a MTC, a CC or a CA. No VDER project can receive more than one of these credits, and some VDER projects receive none of them. VDER projects may also receive the Inclusive Community Solar Adder (ICSA). If applicable, the ICSA should be added to the CA (if any) and the combined CA and ICSA value should be entered into cell C23.</p>			
Additional Input for NEM Projects			
Utility for Retail Rate	ConEd NYC		
Additional Input for Tier 1 Projects			
NYISO Zone	A - West		

Interpreting Model Output

The model output (the Present Value of the Cash Flows) is in cell D36 of the *Model* sheet.

This region of the *Model* sheet is reproduced below for demonstrative purposes, with cell D36 circled in green. The value in D36 is the sum of the discounted cash flows for the project and reflects the estimated current value of the investment.

Note: All cash flows in the Model are pre-tax.

If a lease amount is entered in the *Annual Ground Lease Payment* field, then the model output represents the value of the improvements only.

To derive the fair market value of the parcel, the user should use standard appraisal methodology to value the land and add the result to the present value of cash flows.

If the land is not leased (Annual Ground Lease Payment is \$0 or blank), then the model output represents the total market value for the improvements and underlying land.

Figure 2. Present Value of Cash Flows Model Output

Discounted Cash Flow	\$ -	\$ 672,451	\$ 516,299	\$ 423,467	\$ 406,931	\$ 353,248
Present Value of Cash Flows:	<div style="border: 1px solid green; border-radius: 50%; padding: 2px; display: inline-block;"> \$ 4,053,320 </div> Value for Improvements Only					
	\$ 811 / kW AC					

*Expense includes O&M, Insurance, Management.
Cash flows are expressed in Real 2022 Dollars.

Inputs for All Project Revenue Types

Project Revenue Type

This required user input determines which revenue(s) the modeled project receives. Due to significant differences between the three Project Revenue Types, this user input has a significant impact on the project's appraised value. Additionally, this user input determines which of the three revenue-specific user input sections remains unshaded for data entry. The user selects from a drop-down list containing the model's three Project Revenue Types:

- **VDER - Value of Distributed Energy Resources.** The New York State Public Service Commission established VDER in 2017 as a new mechanism to compensate energy created by distributed energy resources (DERs), such as solar and wind. VDER compensates projects in the form of utility bill credits based on when and where (some components vary by utility) they provide electricity to the grid. The amount of compensation is determined by a DER's energy value, capacity value, environmental value (E-Value), demand reduction value (DRV) and (for a minority of projects) locational system relief value (LSRV). Additionally, certain Community Distributed Generation (CDG) VDER projects may have incentives called the Market Transition Credit (MTC), Community Credit (CC), or Community Adder (CA). These elements recognize the benefits that DERs provide to the grid and society, including avoided carbon emissions, cost savings to customers and utilities, and other savings from avoided capital investments.¹ The model can be used for fixed solar and tracking solar² VDER projects between 1 MW and 5 MW alternating current (AC) (the maximum project size currently allowed for VDER projects).³
- **NEM - Net Energy Metering.** NEM projects are CDG projects that were built prior to the implementation of VDER. These projects receive net metering credits that compensate them for electricity delivered into the grid based on the residential and commercial retail rate of the local utility. The model can be used for fixed solar and tracking solar NEM projects between 1 MW and 5 MW AC (the maximum project size that was allowed for NEM projects).
- **Tier 1.** Tier 1 projects produce Tier 1 renewable energy credits (RECs) under New York State's Renewable Energy Standard (RES), which is a mechanism enacted by the Clean Energy Standard (CES) to help the state reach its clean energy goals and transition toward a low-carbon energy system.⁴ The RES requires utilities and other load serving entities in the state to procure Tier 1 RECs. Tier 1 RECs are produced by generators using new renewable energy resources that entered commercial operation on or after January 1, 2015.⁵ The model can be used for fixed solar, tracking solar and land-based wind Tier 1 projects greater than 5 MW AC. There are not currently any fixed solar, tracking solar or land-based wind Tier 1 projects that are less than 5 MW AC.

¹ [The Value Stack – Value of Distributed Energy Resources](#), NYSERDA; 2023

² The terms *fixed* and *tracking* refer to the racking upon which a solar array is mounted. For tracking arrays, motors rotate the array throughout the day to follow the sun, resulting in a greater energy output.

³ Further discussion on AC is provided in the System Size section on page 6.

⁴ [Clean Energy Standard \(CES\)](#), NYSERDA; 2023

⁵ [Tier 1 – New Renewables](#), NYSERDA; 2023

The user should select a *Project Revenue Type* for their project using the following guidelines:

- If the project is land-based wind or solar greater than 5MW AC, the user should select Tier 1.
- If the project is solar between 1 MW and 5 MW AC, the user should select either VDER - Value of Distributed Energy Resources or NEM - Net Energy Metering.
 - If unknown, the user can query a publicly available database of solar projects to determine which of these two options to select. Utility interconnection inventories are posted monthly on the [Department of Public Service website](#) under the *SIR Inventory Information* section. If Column AB (*Value Stack Y/N*) reads *Yes* or *Y*, the user should select *VDER – Value of Distributed Energy Resources*. Otherwise, the user should select *NEM – Net Energy Metering*.
 - If the user cannot find their project in this database, then they should select *VDER – Value of Distributed Energy Resources* if it commenced operation on or after January 1, 2017, or *NEM – Net Energy Metering* if it commenced operation before January 1, 2017.
- This input could also be provided by the project developer if they attest to the veracity of the provided information.

The model cannot be used for projects less than 1 MW AC.

Plant Type

This required user input determines the project's *Plant Type*. The plant type affects the annual electricity generated by the project as well as various cost data (operating, decommissioning, etc.). The model can be used for three plant types:

- fixed solar
- tracking solar
- land-based wind.

The user selects from a drop-down list that dynamically populates the available plant types based on the currently selected *Project Revenue Type*. All project revenue types allow for fixed solar and tracking solar, but only the Tier 1 project revenue type also allows for land-based wind.

The user should select *Land-Based Wind* for all wind projects. The two solar plant types account for whether the project's panels have trackers installed. Trackers allow the project's panels to shift their angle throughout the day based on the sun's position to maximize electricity production, while fixed panels remain tilted in a single, unmovable position. Nearly all utility-scale projects use trackers, so the user should select tracking solar for most solar projects.

The user should only select *Fixed Solar* if they have information confirming that the project's panels do not track, or the project developer attests that the project's panels do not track. Selecting *Fixed Solar* decreases the project's electricity generation by an average of 13%.

System Size

This required user input determines the *System Size* (also known as nameplate capacity). The system size is used to scale unitized values and affects various cost data (operating, decommissioning, etc.). Any system size greater than or equal to 1,000 kilowatts (kW) of AC can be entered into this input.⁶ The *System Size* must be entered in kW AC; it is vital that the user ensures that it is entered in the correct units to avoid substantial modeling errors. The electric grid operates in AC, but solar panels and wind turbines produce electricity as direct current (DC). Therefore, inverters are required to convert the produced DC electricity into AC electricity that can be injected into the grid. Due to inverter inefficiency and project-specific design parameters, 1 MW DC of solar panel capacity does not equal 1 MW AC of inverter capacity to the electric grid.

Project developers have the most accurate system size data for their project. If the user can get an AC system size value from the project developer, and the developer attests to the veracity of the provided information, then the user should use the value provided by the project developer. If the project developer is unwilling to provide this information, the project's permitting documents with the local building inspector will probably list both AC and DC size. Alternately, the user may want to conduct a search for press releases containing an AC system size value for their project. If the user is still unable to determine the project's system size, they can query a publicly available database of NYSERDA solar projects to find the project's DC system size.⁷ The DC system size should then be converted into an AC system size by dividing by 1.38. Note that 1.38 is an approximate AC-to-DC conversion factor, but each project's actual AC-to-DC conversion factor varies based on its unique design.

Start Date of Plant Operation

This required user input should be set equal to the *Start Date of Plant Operation*, (the Commercial Operation Date or COD). The *Start Date of Plant Operation* is used to determine how many operating years the project has remaining before it is decommissioned.

The model assumes that all projects have a 25-year operating life. The *System Age at Taxable Status Date* (the value by which the assumed 25-year operating life is reduced) is displayed on the *Inputs* sheet in cell C9. If a date in 2020 is entered, for example, then the 2024 model reduces the project's operating life by four years.

Note: Only the year of the date entered is used (entering 1/1/2020 and 12/31/2020 will result in identical appraised values).

The user can find the date to enter via press releases announcing their project's completion or by querying a publicly available database of NYSERDA solar projects to find their project's date

⁶ *System Size* can be expressed in watts (W), kilowatts or megawatts. 1 kW is equal to 1,000 W or 0.001 MW.

⁷ NEM & VDER Projects: [Solar Electric Programs Reported by NYSERDA: Beginning 2000](#), Open NY; December 18, 2023

Tier 1 Projects: [Large-scale Renewable Projects Reported by NYSERDA: Beginning 2004](#), Open NY; March 14, 2024

completed.⁸ If the project has not yet begun operation, then the user should enter the date construction was completed instead.

Entering a date more than 24 years in the past will result in a project valuation of zero, as the project has no operating years remaining.

Tax Load

This required user input should be set equal to the overall full value tax rate for the property where the plant is sited. This rate should reflect all property taxes applicable to the property, including town, county, village, school district, and special district tax rates.

The model allows a *Tax Load* between 0% and 100% to be entered. The *Tax Load* is used by the model to calculate the *Loaded Discount Rate*, which is shown on the *Inputs* sheet in cell C12.

To calculate the *Tax Load*, the user should follow three steps:

1. For each taxing jurisdiction, multiply the tax rate per thousand dollars of assessed valuation by the latest final equalization rate (Note: Use the actual equalization rate, not the percentage. For example: 100.0, 90.0, 25.34, etc.).
2. Divide the product by 1,000.
3. Sum the results of all jurisdictions to arrive at the *Tax Load*.

For example, assume a project has a town tax rate of 5.561390, a county tax rate of 13.264834, a special district tax rate of 1.024976 and a school tax rate of 29.241161. The total of those tax rates is 49.092361. The property is entirely in one town, so the equalization rate can be applied after the tax rates are summed. The equalization rate is 66. The product of 49.092361 and 66 is 3,240.0958. 3,240.0958 divided by 1,000 equals 3.2401, so the *Tax Load* to enter into the model is 3.24%.

⁸ NEM & VDER Projects: [Solar Electric Programs Reported by NYSERDA: Beginning 2000](#), Open NY; December 18, 2023

Tier 1 Projects: [Large-scale Renewable Projects Reported by NYSERDA: Beginning 2004](#), Open NY; March 14, 2024

Annual Ground Lease Payment (if applicable)

This optional user input should be set equal to the *Annual Ground Lease Payment* amount, if applicable. The entered value will be treated as an annual expense.

If the land is not leased, the user should enter \$0 or leave the input blank. As a result of the land not being leased, the model output will represent the total market value for the improvements and necessary supporting land. In the income approach, the land value is inherent to the concluded value, unless removed with a lease expense. For instance, assessors and appraisers may use the income approach to value an apartment building and the land below it.

The land lease information is available from the project developer, who should attest to the veracity of the provided information.

Annual Ground Lease Escalator (if applicable)

This optional user input should be set equal to the escalation rate of the *Annual Ground Lease Payment*, if applicable. If the annual ground lease includes an escalator clause, the user should enter the escalation rate as a percentage.

If there is no escalator, the user should enter 0% or leave the user input blank for a constant lease. The land lease information is available from the developer, who should attest to the veracity of the provided information.

If the *Annual Ground Lease Payment* is set to \$0 or left blank, then the *Annual Ground Lease Escalator* input does not have an impact, even if a value is entered.

Additional Required Inputs for VDER Projects

NYISO Zone

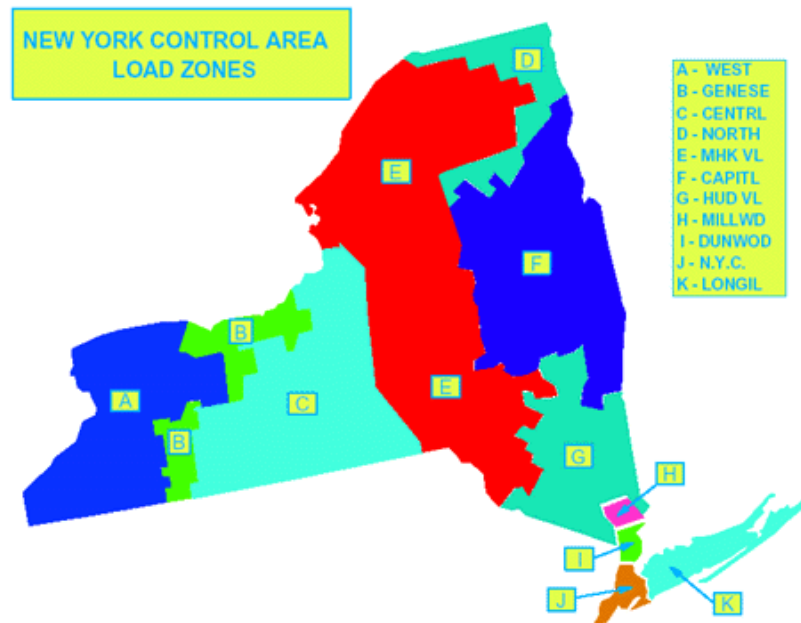
This revenue-specific required user input should be set to the NYISO Zone that the user’s project is located within. The New York Independent System Operator (NYISO) runs the state’s electric grid.

NYISO divides the state into eleven main zones for wholesale electricity pricing, which are mapped in Figure 3 below. A dynamic version of this map is also accessible online.⁹ The user should use these maps to determine which NYISO Zone their project is in and then select it from the drop-down list.

The model uses the NYISO Zone to determine which energy and capacity price forecasts to use for the project. If a project spans multiple zones, or the user does not have precise location data for their project, they should ask the project developer for the project’s NYISO Zone and have them attest to the veracity of the provided information.

If the project developer is unwilling to provide this information, then the user should make an informed choice based on the user’s examination of the maps.

Figure 3. Map of NYISO Load Zones



Source: NYISO [New York Control Area Load Zones](#)

⁹ A dynamic version of Figure 3 [is available online](#).

Utility Company

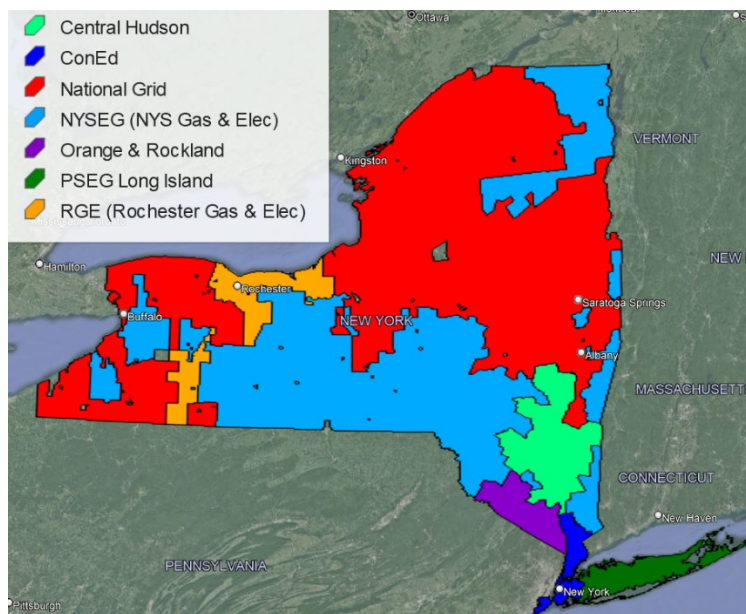
This revenue-specific required user input should be set to the *Utility Company* whose service area the project is located in using the drop-down list. The selected *Utility Company* is used to populate utility-specific DRV data, default maximum MTC/CC data and utility loss adjustment factor data. New York State is served by seven major electric utility companies. The user can query a publicly available database of NYSERDA solar projects to determine their project's utility company.¹⁰ If the user's project is not in the NYSERDA database, a map of the company's service area is shown in Figure 4 below. A dynamic version of this map is also accessible online.¹¹ The user should use these maps to determine which Utility Company's service area their project is located in.

Con Edison (ConEd) appears in the drop-down list four times since it has four different DRV windows. If the user's project is in ConEd's service area, they should ask the project developer which DRV window applies to the project and have them attest to the veracity of the provided information. If the developer is unwilling to provide this information, the user should select the 11 A.M. – 3 P.M. DRV window option since it results in the highest project appraisal. All other inputs being equal.

Note: If one of the four ConEd options are selected for the utility company, the NYISO Zone must be set to H – Millwood, I – Dunwoodie, or J – N.Y.C.

If a project spans multiple utility companies' service areas, or the user does not have precise location data for their project, they should ask the project developer for the project's utility company and have them attest to the veracity of the provided information. If the project developer is unwilling to provide this information, then the user should make an informed choice based on the user's examination of the maps.

Figure 4. Map of New York Electric Utility Service Areas



¹⁰ [Solar Electric Programs Reported by NYSERDA: Beginning 2000](#), Open NY; December 18, 2023

¹¹ A dynamic version of Figure 4 [is available online](#).

Actual Market Transition or Community Credit or Community Adder/ Inclusive Community Solar Adder

These two revenue-specific optional user inputs allow the user to override the model's default handling of the incentives known as the Market Transition Credit (MTC), Community Credit (CC), and Community Adder (CA). Certain Community Distributed Generation (CDG) projects receive one of these revenues, but no project can receive more than one of them.

Some VDER projects receive none of these revenues. By default, the model assumes that VDER projects receive the maximum possible MTC/CC for the selected *Utility Company*, but it allows a lower MTC/CC or a CA to be entered to override this default assumption. The MTC and CC are administered by the utilities and are included in a project's per-kilowatt-hour compensation. The CA is an upfront lump-sum incentive paid to the project developer by NYSERDA.

The user should ask the project developer whether the project receives an MTC/CC/CA. If so, the developer should be asked to provide the value and attest to its veracity.

If the project developer provides an MTC/CC/CA value or attests that their project receives no MTC/CC/CA, then the user should follow the instructions in Figure 5 on page 12 to override the model's default assumption.

If the project developer is unwilling to provide the MTC/CC/CA information, then the user should leave both of these user inputs blank, thereby resorting to the default assumption. The default assumption will lead to the highest appraised value, all other inputs being equal.

The Community Adder input can also contain a value for the *Inclusive Community Solar Adder* (ICSA). If the project receives a CA but no ICSA, then the Community Adder/ICSA user input should be set to the value of the CA. If the project receives an ICSA but no CA, then the Community Adder/ICSA user input should be set to the value of the ICSA. If the project receives both a CA and an ICSA, then the Community Adder/ICSA user input should be set to the sum of the CA and ICSA. The user should ask the project developer whether the project receives an ICSA. The developer should be asked to provide the value and attest to its veracity.

Figure 5. MTC/CC/CA Model Scenarios

Scenario	User Enters	Model Behavior
Scenario 1	No MTC/CC/CA	If no actual MTC/CC/CA information was provided by the project developer, the model will use the maximum MTC/CC rate for the selected utility company to ensure the highest possible appraised value and incentivize the project developer to provide proof of a lower value if applicable.
Scenario 2	Actual MTC/CC	If the project developer attests that their project receives a lower MTC/CC than the maximum default, the user should enter it into the user input cell for the MTC/CC. The model will then use the provided value to override the maximum default assumption. If a project developer attests that their project receives no MTC/CC/CA, the user should enter a value of zero into the user input cell for the MTC/CC to override the maximum default assumption.
Scenario 3	Actual CA	If a project developer attests that their project receives a CA, the user should enter it into the user input cell and the model will use the provided value to override the maximum default MTC/CC assumption (which changes to zero since the project can't receive both). CA values are also listed in a NYSERDA database of solar projects. ¹²
Scenario 4 (Invalid)	Actual MTC/CC and Actual CA	If the user accidentally enters values into both the MTC/CC and CA user input cells, a bold red error message displays warning them that only one of the two inputs can be used (since a project cannot receive both). If the user does not fix this error, the model ignores the entered MTC/CC value and uses only the entered CA value to avoid double counting this revenue category.

¹² [Solar Electric Programs Reported by NYSERDA: Beginning 2000](#), Open NY; December 18, 2023
Column AH, *Community Adder*.

Additional Input for NEM Projects

Utility for Retail Rate

This revenue-specific required user input should be set to the electric utility whose service area the project is located in using the drop-down list.

The selected *Utility for Retail Rate* determines which residential and commercial retail rate forecasts are used to forecast the value of the project's net metering credits. New York State is served by seven major electric utilities.

The user can query a publicly available database of NYSERDA solar projects to determine their project's utility company.¹³ If the user's project is not in the NYSERDA database, a map of the utility company's service area is shown previously in Figure 4 on page 10. The user should use these maps to determine which utility's service area their project is located in.

If a project spans multiple utility companies' service areas, or the user does not have precise location data for their project, they should ask the project developer for the project's electric utility and have them attest to the veracity of the provided information.

If the project developer is unwilling to provide this information, then the user should make an informed choice based on the user's examination of the maps.

Additional Input for Tier 1 Projects

NYISO Zone

This revenue-specific required user input should be set to the NYISO Zone that the user's project is located within. The NYISO runs the state's electric grid. NYISO divides the state into eleven main zones for wholesale electricity pricing, which are mapped in Figure 3 on page 9.

The user should use these maps to determine which NYISO Zone their project is in and then select it from the drop-down list. The model uses the NYISO Zone to determine which energy and capacity price forecasts to use for the project.

If a project spans multiple zones, or the user does not have precise location data for their project, they should ask the project developer for the project's NYISO Zone and have them attest to the veracity of the provided information. Alternately, the user can query a publicly available database of NYSERDA solar projects to determine their project's utility company.¹⁴

If the project developer is unwilling to provide this information, then the user should make an informed choice based on the user's examination of the maps.

¹³ [Solar Electric Programs Reported by NYSERDA: Beginning 2000](#), Open NY; December 18, 2023

¹⁴ [Large-scale Renewable Projects Reported by NYSERDA: Beginning 2004](#). Open NY; March 14, 2024

McKinney's Consolidated Laws of New York Annotated
Real Property Tax Law (Refs & Annos)
Chapter 50-a. Of the Consolidated Laws
Article 4. Exemptions
Title 2. Private Property

McKinney's RPTL § 487

§ 487. Exemption from taxation for certain energy systems

Effective: April 19, 2021

[Currentness](#)

1. As used in this section:

(a) “Solar or wind energy equipment” means collectors, controls, energy storage devices, heat pumps and pumps, heat exchangers, windmills, and other materials, hardware or equipment necessary to the process by which solar radiation or wind is (i) collected, (ii) converted into another form of energy such as thermal, electrical, mechanical or chemical, (iii) stored, (iv) protected from unnecessary dissipation and (v) distributed. It does not include pipes, controls, insulation or other equipment which are part of the normal heating, cooling, or insulation system of a building. It does include insulated glazing or insulation to the extent that such materials exceed the energy efficiency standards required by law.

(b) “Solar or wind energy system” means an arrangement or combination of solar or wind energy equipment designed to provide heating, cooling, hot water, or mechanical, chemical, or electrical energy by the collection of solar or wind energy and its conversion, storage, protection and distribution.

(c) “Authority” means the New York state energy research and development authority.

(d) “Incremental cost” means the increased cost of a solar or wind energy system or farm waste energy system or component thereof which also serves as part of the building structure, above that for similar conventional construction, which enables its use as a solar or wind energy or farm waste energy system or component.

(e) “Farm waste electric generating equipment” means equipment that generates electric energy from biogas produced by the anaerobic digestion of agricultural waste, such as livestock manure, farming waste and food processing wastes with a rated capacity of not more than one thousand kilowatts that is (i) manufactured, installed and operated in accordance with applicable government and industry standards, (ii) connected to the electric system and operated in conjunction with an electric corporation's transmission and distribution facilities, (iii) operated in compliance with the provisions of [section sixty-six-j of the public service law](#), (iv) fueled at a minimum of ninety percent on an annual basis by biogas produced from the anaerobic digestion of agricultural waste such as livestock manure materials, crop residues and food processing wastes, and (v) fueled by biogas generated by anaerobic digestion with at least fifty percent by weight of its feedstock being livestock manure materials on an annual basis.

(f) “Farm waste energy system” means an arrangement or combination of farm waste electric generating equipment or other materials, hardware or equipment necessary to the process by which agricultural waste biogas is produced, collected, stored, cleaned, and converted into forms of energy such as thermal, electrical, mechanical or chemical and by which the biogas and converted energy are distributed on-site. It does not include pipes, controls, insulation or other equipment which are part of the normal heating, cooling or insulation system of a building.

(g) “Micro-hydroelectric energy equipment” means any energy storage device, penstock, turbine, generator and other materials, hardware and equipment necessary to the process by which the flow of stream or river water or water from other water bodies is (i) converted into electrical energy; (ii) protected from unnecessary dissipation; and (iii) distributed. It does not include pipes, controls, insulation or other equipment which are part of the normal heating, cooling, or insulation system of a building. It does not include insulated glazing or insulation to the extent that such materials exceed the energy efficiency standards established by law.

(h) “Micro-hydroelectric energy system” means an arrangement or combination of micro-hydroelectric energy equipment designed to provide electrical energy by the use of flowing water. It does not include pipes, controls, insulation or other equipment which are part of the normal heating, cooling, or insulation system of a building. It does not include insulated glazing or insulation to the extent that such materials exceed the energy efficiency standards established by law.

(i) “Fuel cell electric generating equipment” means a solid oxide, molten carbonate, proton exchange membrane or phosphoric acid fuel cell with a combined rated capacity of not more than two thousand kilowatts. It does not include insulated glazing or insulation to the extent that such materials exceed the energy efficiency standards established by law.

(j) “Fuel cell electric generating system” means an arrangement or combination of equipment designed to produce electrical energy through reaction of chemicals, including but not limited to hydrogen, oxygen, methane and natural gas.

(k) “Micro-combined heat and power generating equipment” means an integrated, cogenerating building heating and electrical power generation system, owned, leased or operated by a residential customer, located at such customer's premises, operating on any fuel and of any applicable engine, fuel cell, fuel-flexible linear generator or other technology with a rated capacity of at least one kilowatt and not more than ten kilowatts electric and any thermal output that has a design total fuel use efficiency in the production of heat and electricity of not less than eighty percent, and annually produces at least two thousand kilowatt hours of useful energy in the form of electricity that may work in combination with supplemental or parallel conventional heating systems, that is manufactured, installed and operated in accordance with applicable government and industry standards, that is connected to the electric system and operated in conjunction with an electric corporation's transmission and distribution facilities. It does not include pipes, controls, insulation or other equipment which are part of the normal heating, cooling, or insulation system of a building. It does not include insulated glazing or insulation to the extent that such materials exceed the energy efficiency standards established by law.

(l) “Micro-combined heat and power generating equipment system” means an arrangement or combination of equipment designed to produce electrical energy and heat for a residential customer on such customer's premises.

(m) “Electric energy storage equipment” means a set of technologies capable of storing electric energy and releasing that energy as electric power at a later time. Electric energy storage technologies may store energy as potential, kinetic, chemical or

thermal energy, that can be released as electric power and include, but are not limited to, various types of batteries, flywheels, electrochemical capacitors, compressed air storage and thermal storage devices.

(n) “Electric energy storage system” means an arrangement or combination of equipment designed to store electrical energy in electric energy storage equipment and release electric power at a later time.

(o) “Fuel-flexible linear generator electric generating equipment” or “fuel-flexible linear generator” means an integrated system consisting of oscillators, cylinders, electricity conversion equipment and associated balance of plant components that directly convert the linear motion of the oscillators into electricity and which has a combined rated capacity of not more than two thousand kilowatts.

(p) “Fuel-flexible linear generator electric generating system” means an arrangement or combination of fuel-flexible linear generator electric generating equipment designed to produce electrical energy from linear motion created by the reaction of gaseous or liquid fuels, including but not limited to biogas and natural gas.

2. Real property which includes a solar or wind energy system, farm waste energy system, micro-hydroelectric energy system, fuel cell electric generating system, micro-combined heat and power generating equipment system, electric energy storage equipment and electric energy storage system, or fuel-flexible linear generator electric generating system approved in accordance with the provisions of this section shall be exempt from taxation to the extent of any increase in the value thereof by reason of the inclusion of such solar or wind energy system, farm waste energy system, micro-hydroelectric energy system, fuel cell electric generating system, micro-combined heat and power generating equipment system, electric energy storage equipment and electric energy storage system, or fuel-flexible linear generator electronic generating system for a period of fifteen years. When a solar or wind energy system or components thereof, farm waste energy system, micro-hydroelectric energy system, fuel cell electric generating system, micro-combined heat and power generating equipment system, electric energy storage equipment and electric energy storage system, or fuel-flexible linear generator electronic generating system also serve as part of the building structure, the increase in value which shall be exempt from taxation shall be equal to the assessed value attributable to such system or components multiplied by the ratio of the incremental cost of such system or components to the total cost of such system or components. The exemption provided by this section is inapplicable to any structure that satisfies the requirements for exemption under [section four hundred eighty-three-e](#) of this title.

3. The president of the authority shall provide definitions and guidelines for the eligibility for exemption of the solar and wind energy equipment and systems, farm waste energy equipment and systems, micro-hydroelectric equipment and systems, fuel cell electric generating equipment and systems, micro-combined heat and power generating equipment and systems, electric energy storage equipment and electric energy storage system, and fuel-flexible linear generator electric generating equipment and systems described in paragraphs (a), (b), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o) and (p) of subdivision one of this section.

4. No solar or wind energy system, farm waste energy system, micro-hydroelectric energy system, fuel cell electric generating system, micro-combined heat and power generating equipment system, electric energy storage equipment and electric energy storage system, or fuel-flexible linear generator electric generating system shall be entitled to any exemption from taxation under this section unless such system meets the guidelines set by the president of the authority and all other applicable provisions of law.

5. The exemption granted pursuant to this section shall only be applicable to (a) solar or wind energy systems or farm waste energy systems which are (i) existing or constructed prior to July first, nineteen hundred eighty-eight or (ii) constructed

subsequent to January first, nineteen hundred ninety-one and prior to January first, two thousand thirty, and (b) micro-hydroelectric energy systems, fuel cell electric generating systems, micro-combined heat and power generating equipment systems, electric energy storage equipment or electric energy storage system, or fuel-flexible linear generator electric generating system which are constructed subsequent to January first, two thousand eighteen and prior to January first, two thousand thirty.

6. Such exemption shall be granted only upon application by the owner of the real property on a form prescribed and made available by the commissioner in cooperation with the authority. The applicant shall furnish such information as the commissioner shall require. The application shall be filed with the assessor of the appropriate county, city, town or village on or before the taxable status date of such county, city, town or village. A copy of such application shall be filed with the authority.

7. If the assessor is satisfied that the applicant is entitled to an exemption pursuant to this section, he or she shall approve the application and enter the taxable assessed value of the parcel for which an exemption has been granted pursuant to this section on the assessment roll with the taxable property, with the amount of the exemption set forth in a separate column as computed pursuant to subdivision two of this section in a separate column. In the event that real property granted an exemption pursuant to this section ceases to be used primarily for eligible purposes, the exemption granted pursuant to this section shall cease.

8. (a) Notwithstanding the provisions of subdivision two of this section, a county, city, town or village may by local law or a school district, other than a school district to which article fifty-two of the education law applies, may by resolution provide either (i) that no exemption under this section shall be applicable within its jurisdiction with respect to any solar or wind energy system or farm waste energy system which began construction subsequent to January first, nineteen hundred ninety-one or the effective date of such local law, ordinance or resolution, whichever is later, and/or (ii) that no exemption under this section shall be applicable within its jurisdiction with respect to any micro-hydroelectric energy system, fuel cell electric generating system, micro-combined heat and power generating equipment system, electric energy storage equipment or electric energy storage system, or fuel-flexible linear generator electric generating system constructed subsequent to January first, two thousand eighteen or the effective date of such local law, ordinance or resolution, whichever is later. A copy of any such local law or resolution shall be filed with the commissioner and with the president of the authority.

(b) Construction of a solar or wind energy system or a farm waste energy system shall be deemed to have begun upon the full execution of a contract or interconnection agreement with a utility; provided however, that if such contract or interconnection agreement requires a deposit to be made, then construction shall be deemed to have begun when the contract or interconnection agreement is fully executed and the deposit is made. The owner or developer of such a system shall provide written notification to the appropriate local jurisdiction or jurisdictions upon execution of the contract or the interconnection agreement.

9. (a) A county, city, town, village or school district, except a school district under article fifty-two of the education law, that has not acted to remove the exemption under this section may require the owner of a property which includes a solar or wind energy system which meets the requirements of subdivision four of this section, to enter into a contract for payments in lieu of taxes. Such contract may require annual payments in an amount not to exceed the amounts which would otherwise be payable but for the exemption under this section. If the owner or developer of such a system provides written notification to a taxing jurisdiction of its intent to construct such a system, then in order to require the owner or developer of such system to enter into a contract for payments in lieu of taxes, such taxing jurisdiction must notify such owner or developer in writing of its intent to require a contract for payments in lieu of taxes within sixty days of receiving the written notification. Written notification to a taxing jurisdiction for this purpose shall include a hard copy letter sent to the highest-ranking official of the taxing jurisdiction. Such letter shall explicitly reference subdivision nine of section four hundred eighty-seven of the real property tax law, and clearly state that, unless the taxing jurisdiction responds within sixty days in writing with its intent to require a contract for payments in lieu of taxes, such project shall not be obligated to make such payments.

(b) Notwithstanding paragraph (a) of this subdivision, should a taxing jurisdiction adopt a law or resolution at any time within or prior to the sixty day window, indicating the taxing jurisdiction's ongoing intent to require a contract for payments in lieu of taxes for such systems, such law or resolution shall be considered notification to owners or developers and no further action is required on the part of the taxing jurisdiction, provided that such law or resolution remains in effect through the end of the sixty day notification period.

(c) Any payment in lieu of a tax agreement shall not operate for a period of more than fifteen years, commencing in each instance from the date on which the benefits of such exemption first become available and effective.

10. Notwithstanding the foregoing provisions of this section, on or after April first, two thousand nineteen, a county, city, town or village may by local law or a school district, other than a school district to which article fifty-two of the education law applies, may by resolution provide that real property that comprises or includes a solar or wind energy system, farm waste energy system, microhydroelectric energy system, fuel cell electric generating system, microcombined heat and power generating equipment system, electric energy storage system, or fuel-flexible linear generator as such terms are defined in paragraphs (b), (f), (h), (j), (l), (n), and (o) of subdivision one of this section (hereinafter, individually or collectively, "energy system"), shall be permanently exempt from any taxation, special ad valorem levies, and special assessments to the extent provided in [section four hundred ninety](#) of this article, and the owner of such property shall not be subject to any requirement to enter into a contract for payments in lieu of taxes in accordance with subdivision nine of this section, if: (a) the energy system is installed on real property that is owned or controlled by the state of New York, a department or agency thereof, or a state authority as that term is defined by [subdivision one of section two of the public authorities law](#); and (b) the state of New York, a department or agency thereof, or a state authority as that term is defined by [subdivision one of section two of the public authorities law](#) has agreed to purchase the energy produced by such energy system or the environmental credits or attributes created by virtue of the energy system's operation, in accordance with a written agreement with the owner or operator of such energy system. Such exemption shall be granted only upon application by the owner of the real property on a form prescribed by the commissioner, which application shall be filed with the assessor of the appropriate county, city, town or village on or before the taxable status date of such county, city, town or village.

Credits

(Added L.1977, c. 322, § 2. Amended L.1977, c. 618, §§ 1, 2; L.1979, c. 220, § 2; L.1990, c. 121, §§ 1 to 5; L.1992, c. 316, § 8; L.1993, c. 440, § 11; L.1996, c. 263, § 1; L.2002, c. 515, § 3, eff. Sept. 17, 2002; L.2002, c. 608, § 1, eff. Oct. 2, 2002; L.2006, c. 129, § 1, eff. July 5, 2006, deemed eff. Jan. 1, 2006; L.2010, c. 56, pt. W, § 1, subd. (b), eff. June 22, 2010; L.2010, c. 366, § 1, eff. Aug. 13, 2010; L.2013, c. 272, § 2, eff. July 31, 2013; L.2014, c. 344, §§ 1 to 3, eff. Sept. 4, 2014; L.2016, c. 57, pt. P, § 3, eff. April 13, 2016; L.2017, c. 336, §§ 1 to 4, eff. Jan. 1, 2018; L.2018, c. 325, §§ 1 to 3, eff. March 1, 2019; L.2019, c. 59, pt. AA, § 1, eff. April 12, 2019; L.2021, c. 59, pt. X, § 1, eff. April 19, 2021.)

McKinney's R. P. T. L. § 487, NY RP TAX § 487

Current through L.2024, chapters 1 to 49, 52, 61 to 112. Some statute sections may be more current, see credits for details.

182 A.D.3d 826

Supreme Court, Appellate Division,
Third Department, New York.

In the Matter of LAERTES
SOLAR, LLC, et al., Respondents,

v.

ASSESSOR OF the TOWN OF
HARFORD et al., Appellants.

528301, 528703

|

Calendar Date: February 10, 2020

|

Decided and Entered: April 16, 2020

Synopsis

Background: Town assessor appealed from decision of the Supreme Court, Cortland County, Guy, J., in favor of taxpayer in combined Article 78 and declaratory judgment proceeding in which taxpayer sought a declaration that solar energy system was exempt from property taxes.

Holdings: The Supreme Court, Appellate Division, Devine, J., held that:

opt-out provision of statute that exempted from property taxation any increase in the value of real property by reason of the inclusion of a solar energy system for a period of 15 years was mandatory, and thus, a resolution by school district that purported to opt-out of a tax exemption for the value of a solar system subsequently installed on real property in the school district was inapplicable, and

the 60-day period for school district to demand that taxpayer enter into a payment in lieu of taxes with regard to the property tax exclusion afforded a taxpayer for the inclusion of a solar energy system, absent a valid opt-out agreement by the district, began to run on the date the district was informed by taxpayer that the system existed.

Affirmed.

Procedural Posture(s): On Appeal; Motion to Dismiss; Motion to Reargue.

Attorneys and Law Firms

****428** Hancock Estabrook, LLP, Syracuse ([Alan J. Pierce](#) of counsel), for appellants.

Goldman Attorneys PLLC, Albany ([Paul J. Goldman](#) of counsel), for Laertes Solar, LLC, respondent.

Cornell University, Ithaca ([Jared M. Pittman](#) of counsel), for Cornell University, respondent.

Before: [Lynch, J.P.](#), [Clark, Devine](#), [Pritzker](#) and [Reynolds Fitzgerald, JJ.](#)

MEMORANDUM AND ORDER

[Devine, J.](#)

826** Appeals (1) from a judgment of the Supreme Court (Guy, J.), entered October 3, *429** 2018 in Cortland County, which granted the application of petitioner Laertes Solar, LLC, in a combined proceeding pursuant to CPLR article 78 and action for declaratory judgment, to, among other things, annul a determination of respondent Assessor of the Town of Harford denying said petitioner's request for a real property tax exemption, and (2) from an order of said court, entered November 30, 2018 in Cortland County, which denied respondents' motion to renew and/or reargue.

The Board of Education of respondent Dryden Central School District (hereinafter school district) adopted a resolution in 2014 to opt out of a tax exemption for, as is relevant here, the value of solar energy systems subsequently installed on real property in the school district (*see* [RPTL 487\[2\]](#), [\[8\]](#)). The school district was obliged to file the 2014 resolution with officials at the Department of Taxation and Finance (hereinafter Department) and the New York State Energy and Research Development Authority (hereinafter NYSEDA), but did not file with NYSEDA (*see* [RPTL 487\[8\]\[a\]](#)). Petitioner Laertes Solar, LLC later built a solar energy system (hereinafter the system) on real property within the school district under an agreement with petitioner Cornell University. The property is owned by the State University of New York and under the control of Cornell – and thereby exempt from property taxes – but the agreement between Cornell and Laertes reflects that the latter “own[ed] and maintain[ed]” the system (*see* [Education Law § 5712](#); [RPTL 404](#)). Respondent Assessor of the Town of Harford accordingly determined that Laertes owned the system,

created a new tax parcel for it and assigned it a school taxable value for the 2017 assessment rolls. Laertes applied for ***827** a tax exemption pursuant to RPTL 487 that was denied (*see* RPTL 487[6]).¹

Laertes paid the school tax bill under protest, then commenced this combined CPLR article 78 proceeding and action for declaratory judgment arguing, among other things, that the system was tax exempt under RPTL 487 because the 2014 resolution was ineffective. Cornell was granted intervenor status by stipulation of the parties and served an intervenor pleading that largely tracked the petition. Respondents joined issue and thereafter moved to dismiss the amended petition/complaint (*see* CPLR 3211[e]; 7804[f]). Supreme Court denied the motion and, finding that the pertinent facts were undisputed, went further to determine that the system was tax exempt under RPTL 487 and that the petition/complaint should be granted on that basis. Respondents appeal from that judgment, as well as a subsequent order that denied their motion for reargument and/or renewal.²

RPTL 487(2) exempts from real property taxation “any increase in the value [of real property] by reason of the inclusion of [a solar energy system] for a period of [15] years.” There is no dispute that the school district was entitled to opt out of the exemption and that the 2014 resolution was an attempt to do so (*see* RPTL 487[8]). The question is whether the 2014 resolution was effective despite the ****430** school district's failure to comply with the statutory direction that the resolution be filed with both the Department and NYSERDA (*see* RPTL 487[8][a]). In answering that question, we will strictly construe the statute against those claiming the exemption, but will not adopt an interpretation “so narrow and literal as to defeat [the statute's] settled purpose” (*People ex rel. Watchtower Bible & Tract Socy. v. Haring*, 8 N.Y.2d 350, 358, 207 N.Y.S.2d 673, 170 N.E.2d 677 [1960]; *accord Matter of Gordon v. Town of Esopus*, 15 N.Y.3d 84, 90, 905 N.Y.S.2d 545, 931 N.E.2d 529 [2010]; *see Matter of Suozzi v. Tax Appeals Trib. of the State of N.Y.*, 179 A.D.3d 1253, 1255, 116 N.Y.S.3d 778 [2020]; *Newsday, Inc. v. Town of Huntington*, 82 A.D.2d 245, 249–250, 441 N.Y.S.2d 689 [1981], *affd* 55 N.Y.2d 272, 449 N.Y.S.2d 157, 434 N.E.2d 226 [1982]).

The statute directs that an opt-out resolution “shall be filed” with the Department and NYSERDA (RPTL 487[8][a]), ***828** mandatory language that, although not determinative, “is ordinarily construed as peremptory in the

absence of circumstances suggesting a contrary legislative intent” (*People v. Schonfeld*, 74 N.Y.2d 324, 328, 547 N.Y.S.2d 266, 546 N.E.2d 395 [1989]; *accord Matter of Janus Petroleum v. New York State Tax Appeals Trib.*, 180 A.D.2d 53, 54, 583 N.Y.S.2d 983 [1992]; *see Murphy Constr. Corp. v. Morrissey*, 168 A.D.2d 877, 878, 564 N.Y.S.2d 551 [1990]; McKinney's Cons Laws of NY, Book 1, Statutes § 171). We are unable to discern a contrary intent. To the contrary, the Legislature carved out the ability for localities to opt out from the previously general tax exemption afforded by RPTL 487 (*see* L 1990, ch 121, § 5; Mem of State Division of Equalization and Assessment, Bill Jacket, L 1990, ch 121 at 21) and, by detailing how a locality may deprive landowners of a tax exemption to which they would otherwise be entitled, the strong implication is that opting out cannot, “even although there are no negative words, be done in any other manner” (*Hardman v. Bowen*, 39 N.Y.196, 199 [1868]; *see City of Rochester v. Bloss*, 77 App.Div. 28, 31–32, 79 N.Y.S. 236 [1902], *affd* 173 N.Y. 646, 66 N.E. 1105 [1903]). Moreover, when the tax exemption afforded by RPTL 487 was last extended in 2014, the Legislature made clear that the tax exemption furthered the public policy of “spur[ring] the development of renewable energy across New York State” and that changes to the statutory language ensured “fair play for both the taxing jurisdiction and the developer” through proper and timely notice of an opt-out resolution's adoption (Senate Introducer's Mem in Support, Bill Jacket, L 2014, ch 344 at 8). Those aims would both be undermined if the filing requirements of RPTL 487(8), which enable the creation of a statewide “opt-out” registry that is consulted by renewable energy developers such as Laertes, were deemed to be permissive.

The foregoing examination of “the language of the statute and the legislative intent underlying it” (*Matter of Syquia v. Board of Educ. of Harpursville Cent. School Dist.*, 80 N.Y.2d 531, 536, 591 N.Y.S.2d 996, 606 N.E.2d 1387 [1992]) leads us to agree with Supreme Court that the filing requirements of RPTL 487(8) are mandatory and that the 2014 resolution was inapplicable to the system given the school district's failure to meet those requirements during the relevant period (*see* RPTL 487[8][a]). Indeed, although we need not defer to the Department's interpretation of RPTL 487 given that this case presents a question “of pure statutory reading and analysis, dependent only on accurate apprehension of legislative intent” (*Lorillard Tobacco Co. v. Roth*, 99 N.Y.2d 316, 322, 756 N.Y.S.2d 108, 786 N.E.2d 7 [2003] [internal quotation marks and citations ****431** omitted]; *see Matter of Level 3 Communications, LLC v. Erie County*, 174 A.D.3d

1497, 1500, 108 N.Y.S.3d 246 [2019]), it is notable that the Department has also taken the position that an opt-out resolution *829 “must be filed” with both it and NYSERDA (N.Y. St Div of Taxation & Fin, Recently Asked Questions About the Real Property Tax Law on the Topic of Solar Energy Systems, available at <https://www.tax.ny.gov/pdf/publications/orpts/legal/raq2-18.pdf>). It follows that – even assuming that the system may be viewed as a distinct parcel of real property that may be taxed – Laertes was entitled to the RPTL 487 exemption for which it applied (*see* RPTL 487[6]).

Respondents, anticipating the possibility that we would find the 2014 resolution to be inapplicable, further argue that the school district was entitled to demand that Laertes enter into a payment in lieu of taxes (hereinafter PILOT) agreement (*see* RPTL 487[9][a]). To the extent that this argument is properly before us, the school district could require Laertes to enter into a PILOT agreement absent a valid opt-out resolution, but notice of intent to do so had to be given within 60 days of receiving a “written notification [from the owner or developer] of its intent to construct such a system” (RPTL 487[9][a]). The school district was aware that the system existed given that it was assessed a taxable value and was notified in writing of that fact by Laertes no later than September 28, 2017, when a check for the taxes due on the system was sent with correspondence from Laertes reserving its right to contest the bill. The school district did not notify Laertes of its intent to require a PILOT agreement until December 19, 2017, over 60 days later. Thus, having failed to

comply with the requirements set forth by RPTL 487(9), the school district may not demand a PILOT agreement.

Finally, respondents acknowledged at oral argument that the 2014 opt-out resolution had not been properly filed and that the only question under RPTL 487 was the legal effect of that failure, and Supreme Court granted the petition/complaint on that issue alone. Their present argument that Supreme Court improperly granted the petition/complaint without giving them an opportunity to conduct further discovery – to the extent that it relates to the RPTL 487 issue actually decided by Supreme Court – is unpreserved, as well as without merit (*see General Elec. Capital Corp. v. Highgate Manor Group, LLC*, 69 A.D.3d 992, 993–994, 893 N.Y.S.2d 321 [2010]). In view of the foregoing, we need not reach the parties' arguments regarding alternate grounds for holding the system to be exempt from real property taxation.

Lynch, J.P., Clark, Pritzker and Reynolds Fitzgerald, JJ., concur.

ORDERED that the judgment and order are affirmed, without costs.

All Citations

182 A.D.3d 826, 122 N.Y.S.3d 427, 2020 N.Y. Slip Op. 02302

Footnotes

- 1 The school district adopted and properly filed a second opt-out resolution in 2017, but there is no dispute that the 2017 resolution does not apply to previously constructed projects like the system.
- 2 With regard to respondents' appeal from the order denying their motion for reargument and/or renewal, the denial of the former is not appealable and respondents abandoned issues relating to the latter by failing to raise those points in their brief (*see Pryba v. Pryba*, 70 A.D.3d 1109, 1109, 894 N.Y.S.2d 216 n [2010]).