

THE IMPORTANCE OF MARCH 1 TO THE NEW YORK SOLAR, WIND, AND ENERGY STORAGE INDUSTRY

Real Property Tax Assessment & Eminent Domain Alert
February 11, 2019

For renewable energy project developers in New York, March 1 is an especially important date in most communities where projects are being constructed. In most towns in New York, March 1 is the “Taxable Status Date,” before which developers must submit their tax exemption application to the local assessor to obtain the benefit of New York’s renewable energy facility tax exemption under Real Property Tax Law (“RPTL”) § 487.

Whether or not real property is taxable or tax-exempt “shall be determined annually according to its condition and ownership as of the first day of March.” RPTL § 302 (1). There are exceptions to the March 1 date, such as in Nassau and Westchester counties, and therefore developers should check the assessment dates for each municipality in which they are building a project. Where a project has been constructed or mostly constructed to the point where a developer is to take advantage of the tax exemption, the RP-487 form must be submitted to the assessor prior to the Taxable Status Date.

The RP-487 should be filed even if one or more of the taxing jurisdictions has opted out of the RPTL § 487 exemption. That is because the opt-out applies to each taxing jurisdiction separately, and the property is entitled to an exemption in any jurisdiction that has not opted out prior to the start of construction (as defined in RPTL § 487 (8)). The RP-487 does not need to be filed if the project is obtaining a real property tax exemption through an industrial development agency.

The Taxable Status Date deadline raises the issue for many developers of whether or not they should seek an exemption for partially constructed projects. Where a project is under construction but not completed as of the Taxable Status Date, the assessor can place a value on the tax roll representing the value of the partially completed assessment. 4 Op. Counsel SBEA No. 103 (Feb. 25, 1975). Thus, if a project has been constructed, the assessor may place the full value on the tax roll even if the project is not yet operating. It is the condition of the property, not its operating status, that determines value. For projects under construction, consultation with the local assessor can determine whether filing the RP-487 is appropriate, but the assessor may not have determined value as of March 1, since the tentative tax roll does not have to be completed until May 1.

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Tax exemption issues are relevant to Payments-in-Lieu-of-Taxes Agreements (“PILOTs”) under RPTL § 487. Absent a properly-filed exemption form under RPTL § 487, any executed PILOT is invalid for that tax year because there is no authority to enter into a PILOT as the property is not tax-exempt. Some communities, as part of PILOT negotiating strategy, have suggested they will not grant a tax exemption unless an agreeable PILOT is reached. But there is no authority to condition the granting of the tax exemption on successful conclusion of a PILOT negotiation, as the qualification for a real property tax exemption is not dependent on a PILOT agreement.

If you have any questions about the application of tax exemptions to renewable energy property, or the requirements under RPTL § 487, please contact Daniel Spitzer, Michael Risman, or Henry Zomerfeld. They may be reached at (716) 856-4000. If you received this alert from a third party or from visiting our website, and would like to be added to our Municipal or Renewable Energy mailing lists or any other of our mailing lists, please visit us at: <https://forms.hodgsonruss.net/subscription-center-hr.html>