

BUDGET BILL AMENDS ASSESSMENT CHALLENGES TO RENEWABLE ENERGY PROJECTS UNDER REAL PROPERTY TAX LAW § 575-B

Hodgson Russ Renewable Energy & Municipal Alert
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We recently alerted you of the temporary restraining order (the “TRO”) halting the Real Property Tax Law (“RPTL”) § 575-b assessment model (the “Model”).^[1] There is no mention in the TRO concerning the Legislature’s recent amendment of RPTL § 575-b as part of the budget bill passed in April of 2022 (the “Amendment”). The Amendment limits the authority of assessors and boards of assessment review in resolving assessment challenges for wind or solar projects if the Assessor used the correct inputs under the Model.^[2] In a (very) rare case of the State taking responsibility for its legislation, a challenge to the validity or accuracy of the Model itself or discount rates employed shall not be commenced against local municipalities. Instead, these challenges must be brought as a Civil Practice Law and Rules Article 78 proceeding against the Department of Taxation and Finance (“DOTF”) Commissioner in the Appellate Division, Third Department.^[3] Given the timing and (unclear) extent of the TRO, a number of assessors may have relied on the Model for the values published on the tentative rolls. Thus, the Amendment remains relevant notwithstanding the effect of the TRO.

The aim of the Amendment is to protect municipalities from potential challenges over the state-created Model and discount rates. Even in instances where an assessor used the Model, the only relief to municipalities is avoiding the legal expenses related to the litigation. Municipalities would still be at risk for issuing refunds.

The Amendment does not change the grievance process. Taxpayers must follow the same process for filing a grievance and exhausting administrative remedies. Boards of Assessment Review still have jurisdiction and authority under Article 5 of the RPTL. But their discretion is limited—so long as the Assessor used the correct inputs, the Model governs. The caveat, of course, is the impact of the TRO. If assessors strayed from the Model, whether or not based on the TRO, it would seem then that assessment challenges would be brought directly against the municipality in an RPTL Article 7 proceeding, and not against the DOTF in the Third Department.

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There are a number of open questions with the Amendment itself, and additional questions based on the recent TRO. The Amendment does not address challenges to land values. It would seem that, based on the absence of contrary language in the Amendment and its focus on only the Model and discount rates, land-based challenges may still be commenced and maintained against local municipalities. Local assessors are still responsible for valuing land using “standard appraisal methodology.” [4] The Model does not provide an explicit standalone land value, regardless of whether there is an annual ground lease or not. Under the same rationale, if there are issues with the placement or value of the RPTL § 487 exemption, taxpayers would also seem to be able to commence such a challenge directly against the municipality.

Potentially, multiple lawsuits may be required. It is not clear if there is a challenge to an improvement valued under the Model, as well to the land valued under the standard methodology, or application of any exemptions, or the value of non-wind or solar improvements on the same parcel, that the Third Department has jurisdiction over all questions. The Third Department may turn to judicial hearing officers to handle cases, but no implementing regulations yet exist. How those cases will play out—the Model is not an appraisal compliant with New York law—is an unknown at best.

The TRO certainly raises questions about project valuation for this year. What if an assessor did not use the Model, but the suit challenging the Model ultimately fails? Any challenges (grievances and lawsuits) where the Model would produce a lower assessment should preserve the challenge to the failure to apply the mandatory Model. And the TRO did not enjoin the Amendment. If assessors, because of the TRO or any other reason, valued a wind or solar project by another method other than the Model, it would seem that taxpayers could proceed with an RPTL Article 7 challenge against the municipality as they normally would.

Renewable project owners and developers with existing projects valued on the tentative assessment rolls this year have to review the rolls to determine the assessment of their projects. To understand how the Assessor set this year’s tentative assessment, the value needs to be compared to last year’s assessment value and also compared to the output value from the Model, which must be equalized using the current equalization rate. This will help determine whether there is a basis for a challenge and whether the challenge will proceed under the Amendment or not. If the Assessor used the Model, then the Amendment will apply. Timing is crucial because there is a strict deadline to challenge assessments: typically the fourth

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Tuesday of May in most jurisdictions outside of New York City where wind and solar projects are located. This deadline falls on May 24 this year. Failure to timely file a grievance waives the right to challenge this year's tentative assessment, including any issues with land or exemption values.

If you have any questions about this Amendment, the impact it has on tax assessment challenges for renewable energy projects, or about renewable energy projects generally, please contact [Daniel Spitzer](mailto:dspitzer@hodgsonruss.com) (716.848.1420), [Henry Zomerfeld](mailto:hzomerfeld@hodgsonruss.com) (716.848.1370), or a member of our [Renewable Energy Practice](#).

[1] *Temporary Restraining Order Halts Assessment Model for Wind and Solar Projects Under Real Property Tax Law § 575-b*, Hodgson Russ Renewable Energy and Municipal Alert, Apr. 29, 2022, available from <https://www.hodgsonruss.com/newsroom-publications-13764.html>.

[2] New York Senate Bill S08009/Assembly Bill A09009-C, Part AA, RPTL § 575-b(4)(d), available from https://www.assembly.state.ny.us/leg/?default_fld=%0D%0A&leg_video=&bn=S08009&term=0&Summary=Y&Actions=Y&Memo=Y&Text=Y.

[3] New York Senate Bill S08009/Assembly Bill A09009-C, Part AA, RPTL § 575-b(4)(e).

[4] Department of Taxation and Finance, Appraisal methodology for solar and wind energy projects, Questions and Answers, Land Value, Question and Answer L1, available from <https://www.tax.ny.gov/research/property/renewable-qa.htm>.