

RPTL § 575-B IS BACK! NEW YORK STATE BUDGET MOOTS LITIGATION OVER ASSESSMENT MODEL

Hodgson Russ Real Property Tax Assessment & Eminent Domain Alert
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Last year, New York State implemented Real Property Tax Law (“RPTL”) § 575-b, which required the use of the discounted cash flow method to assess solar and wind projects over a certain size. This methodology was carried out through the creation of a model by the New York State Department of Taxation and Finance (“DOTF”), through consultation with the New York State Assessors Association and the New York State Energy Research and Development Authority (the “Model”).^[1] The use of the Model was limited, however, due to a temporary restraining order issued last year based on the failure of DOTF to put the Model through the State Administrative Procedure Act (“SAPA”) process, as alleged in the lawsuit.^[2] After a year of delay and uncertainty, Part N of the New York State budget legislation resolves the issue and moots the litigation.^[3] Confirming this, a stipulation of discontinuance was filed in the litigation officially disposing of the case.^[4] The Model now governs.

Part N of the budget legislation has three sections: first it amends RPTL § 575-b so that the Model is not subject to the SAPA; second SAPA is amended for the same purpose, to exempt appraisal models and discount rates from the requirements of SAPA; and third, any assessing unit that failed to use the Model in 2022 shall not be held liable for such a failure. The last section goes on to provide that “[w]ithin fifteen days from the effective date of this act, the commissioner of taxation and finance may readopt the 2022 appraisal model or models and discount rates for use in 2023, without additional consultation with the New York state energy research and development authority or the New York state assessors association, and without soliciting or considering additional public comments.”^[5] And DOTF has done so, as noted on its website.^[6]

The first and second are the operative provisions that moot the litigation. The main argument in the litigation was that the Model was a “rule” under SAPA and therefore subject to SAPA. The budget legislation makes clear that is not the case and will not be the case in future years. The third aspect of the budget legislation insulates assessors who did not use the Model because of the temporary restraining order. Many assessors relied on the Model last year, however, because the temporary restraining order was granted just after most submitted the tentative rolls for

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publication for May 1, 2022, and because of other benefits of using the Model. By allowing for the re-adoption of last year's Model and discount rates, the legislation recognizes that assessments for renewable projects should be set using the Model this year. This uniformity will bring certainty to both renewable project developers and municipalities alike, limiting valuation-based assessment challenges.

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At last, renewable project developers and assessors have certainty about how solar and wind projects are to be assessed for real property tax purposes. For too long there was a lack of uniformity throughout the State concerning the assessments of renewable projects. The litigation over the Model only added to this uncertainty, while increasing administrative challenges and litigation against municipalities in the interim.

The enactment of the budget legislation comes just after the tentative roll publication date of May 1, 2023. This means that administrative grievances challenges assessments are likely in jurisdictions where the Model was not used (if the tentative roll disfavors the developer; more on that below). This year, for most jurisdictions, Grievance Day is May 23, 2023. Developers will need to compare the tentative assessment against the equalized value of Model to determine if there is a discrepancy. Many times, assessors do not have all of the inputs necessary, so even if they used the Model, the value may be skewed because of incorrect inputs. The only way to correct this would be through an administrative grievance before the board of assessment review by the Grievance Day deadline. If a grievance is not filed this year, the tentative assessment will become finalized even if erroneous. Reviewing the tentative assessment is important even when the RPTL § 487 exemption is granted because this exemption does not cover special district taxes, special assessments, and taxes for any jurisdiction that opted out of RPTL § 487.

And the natural question that arises is: if assessors did not use the Model for their 2023 roll, do they now have to correct the tentative roll? The answer appears to be yes, even if they have to correct the tentative roll, as DOTF has, in accordance with the new law, re-adopted the prior model and rates for 2023. Nevertheless, developers who are materially prejudiced by the failure to use the Model should file a grievance and not assume the assessors will make the adjustment.

It should also be noted that one of prime benefits to municipalities for using the Model was never enjoined and is still in effect. Under RPTL § 575-b(4)(e), any "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." Thus, if the Model is employed and there is no conflict over the inputs to the Model, any other dispute does not have to be defended by the municipality. Such litigation is certainly possible—for example, the discount rates have never been adjusted to reflect increases since the Federal Reserve started raising rates—and refunds would still be the liability of local jurisdictions, but where else does the State defend the proceedings brought about by the State's mandates?

While the Model does not address payment-in-lieu-of-taxes ("PILOT") agreements, it implements the formula for assessments for covered solar and wind projects. Project developers and municipalities must be mindful that under RPTL § 487(9)(a), PILOT agreements for these projects cannot exceed full taxes. With the Model now resolved, we expect PILOT payments will be more closely scrutinized.

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If you have any questions about the RPTL § 575-b assessment model, taxation of renewable energy projects, or tax assessment challenges for these projects, or about renewable energy projects generally, please contact [Daniel Spitzer](#) (716.848.1420), [Henry Zomerfeld](#) (716.848.1370), or a member of our [Tax Assessment Practice](#).

[1] Understanding the Reach and Limits of RPTL § 575-b and the State-Mandated Solar and Wind Real Property Assessment Models, *Hodgson Russ Renewable Energy Alert*, Sept. 8, 2021, available from <https://www.hodgsonruss.com/newsroom-publications-13472.html>.

[2] 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*, April 29, 2022, available from <https://www.hodgsonruss.com/newsroom-publications-13764.html>.

[3] New York State Assembly Bill A03009C and Senate Bill S04009-C, Part N, signed into law May 3, 2023, available from https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A03009&term=&Summary=Y&Actions=Y&Memo=Y&Text=Y.

[4] Stipulation of Discontinuance granted May 4, 2023 in *Matter of Town of Blenheim, et al. v. Hiller, et al.*, Index No. 903157-22, available from <https://www.tax.ny.gov/pdf/publications/orpts/legal/judicial-case-05-04-23.pdf>.

[5] *Id.*

[6] Appraisal methodology for solar and wind energy projects, New York State Department of Taxation and Finance, available from <https://www.tax.ny.gov/research/property/renewable-appraisal.htm>.