

Take Advantage of the Massachusetts Personal Property Tax Exemption for Solar Installations

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The Massachusetts Appellate Tax Board recently addressed the situation in which a land owner used a solar power system to reduce the electricity bill for other land owned by the taxpayer's affiliates. In *Forrestall Enterprises, Inc. v. Board of Assessors of the Town of Westborough*, the Appellate Tax Board determined that a solar installation that did not supply power to the parcel on which it was installed, or to an adjoining parcel, was nonetheless exempt from personal property taxes.

The land owner had installed a solar photovoltaic system (the "Solar System") on property it owned in Westborough, Massachusetts. Several additional properties in Westborough were owned by related entities, none of which abutted the parcel on which the Solar System was located. The land owner entered into an agreement with National Grid in which the Solar System was connected to the electrical grid and the land owner received a credit for each kilowatt hour of power generated. The land owner then used those credits to offset the cost of electricity usage at properties owned by related entities so that only the net electricity consumed was paid for.

The land owner applied for a property tax exemption provided by Mass. G.L.c. 59, §5, cl. 45 ("Clause Forty-Fifth") for:

"Any solar or wind powered system or device which is being utilized as a primary or auxiliary power system for the purpose of heating or otherwise supplying the energy needs of property taxable under this chapter; provided, however, that the exemption under this clause shall be allowed only for a period of twenty years from the date of the installation of such system or device."

Acting in accordance with prior guidance from the Massachusetts Department of Revenue, the Board of Assessors of the Town of Westborough denied the property tax exemption, reasoning that the statutory exemption only applied to wind or solar systems that provided power either to the parcel on which they were installed or a contiguous parcel. The Appellate Tax Board disagreed, ruling that there was no statutory limitation on the location of the "property taxable under this chapter" and determined that, had the Legislature wanted such a limitation, it would have drafted Clause Forty-Fifth to include one. The Appellate Tax Board also noted that the Commonwealth received the same benefit from the Solar System regardless of the location of the parcel to which it furnished power.

Under the Appellate Tax Board's ruling, owners of solar or wind powered systems that generate electricity for the benefit of other taxable property that they or affiliates own are entitled to a tax exemption under Clause Forty-Fifth for twenty years following the date of the installation. The degree of affiliation required to qualify for the exemption, if affiliation is required at all, remains an open question. The Appellate Tax Board's decision specifically points out that it did not decide whether solar power net metering credits could be sold rather than used to offset electric bills of the taxpayer or its affiliates. Note that owners of commercial solar farms or wind power farms generally enter into an agreement for payment in lieu of taxes ("PILOT Agreement") pursuant to Mass. G.L.c. 59, §38H(b), which is available to a "generation company or wholesale generation company which



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does not qualify for a manufacturing classification exemption”.

The requirements for a property tax abatement are complicated, including timely payment of tax under protest, and there are several missteps that can cause a taxpayer to lose a tax exemption. Property owners who think that the local assessors have taxed property that should have been exempt should be careful to timely pay the assessed tax so as not to jeopardize their request for an abatement, and should consult a lawyer who has experience with property tax abatement requirements and procedures.

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