

Solar, Is it Taxable or Not

The rules have changed

Chapter 8 of the Acts of 2021

April 2021

Agenda

- ▶ 2021-22 Legislative session update
- ▶ Overview/background/history of the solar property tax exemption issue/legislation
- ▶ What it was
- ▶ What it is now

Legislative Session Update

2021-2022 Session (Jan 2021 to Dec 2022)

- ▶ Swearing in - January 6th
- ▶ Legislative Committee Assignments
 - ▶ February 12
- ▶ Bill filing deadline pushed back
 - ▶ February 19
- ▶ Bills sent to Committees
 - ▶ Committee hearings on our bills

Legislative Session Update

- ▶ State Budget/ Fiscal picture of the state
 - ▶ Rainy day fund
 - ▶ Tax collections
 - ▶ CARES Act, CARES Act 2, Amer Rescue Act
- ▶ MAAO filed 9 bills for new Legislative Session

Legislative Session Update

Projected Hot Issues

- ▶ Senior property tax exemption
- ▶ Solar (generally on taxation)
- ▶ Covid impact - relief for certain segments

Solar Property Tax Exemption Clarification

- ▶ **Assessors:**
 - ▶ Law is outdated and ambiguous
 - ▶ Hasn't kept up with advancements in technology
 - ▶ Different agencies saying different things
 - ▶ Needs clarification

Solar Property Tax Exemption Clarification

- ▶ Passed by Legislature's Revenue Committee in 2015-16 session



- ▶ Passed by State Senate in 2017-18 session (Sen. Mike Rodrigues - Westport)
 - ▶ Made it to final vote in House of Representatives



- ▶ 5 bills filed for 2019-20 session to address issue



- ▶ Included in House version of Climate Change bill (July 2020)
 - ▶ Amendment of Rep. Jeff Roy - Franklin

Solar Property Tax Exemption Clarification

- ▶ Included in **House version of Climate Change bill (July 2020)**
 - ▶ Assessor's outreach to their district legislators
 - ▶ Training sessions
 - ▶ Match Assessors with Key Committee members
- ▶ Lengthy Conference Committee negotiation to reach agreement
 - ▶ *Other solar industry elements try to alter*
- ▶ **Final version passed last day of 2019-20 session (January 2021)**
 - ▶ Vetoed by Gov. Baker (only option sign or veto)

Solar Property Tax Exemption Clarification

- ▶ **“Re-passed” by the Legislature in early January** in new 2021-22 session
 - ▶ Gov. Baker sends back with amendments
 - ▶ *Other solar industry elements continue to try to alter*
- ▶ Legislature passes once again with version of amendments by Gov. Baker
- ▶ **Signed into law March 26, 2021**

Chapter 59, Section 5, Clause 45 Before

- ▶ Forty-fifth, 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.

Basics of the Law Before

- ▶ Residential (house) installation - Exempt
- ▶ Less than 100% of the needs of the Property - Exempt
- ▶ Solar Fields - Taxable
- ▶ Installations on Tax exempt properties - Taxable

- ▶ Chapter 59, Section 38H
- ▶ You can write a PILOT (tax agreement)
- ▶ Market Value
- ▶ Under the Levy

ATB Decisions - WESTBOROUGH

FORRESTALL ENTERPRISES, INC. v. BOARD OF ASSESSORS OF THE TOWN OF WESTBOROUGH

Docket Nos. F317708, F318861 Promulgated:
December 4, 2014

“However, this does not mean that the exemption ***must*** be used by a property owner for solar panels on his or her own property, only that it ***may*** be so used.”

ATB Decisions - SAWNSEA

KTT, LLC. vs. BOARD OF ASSESSORS OF THE TOWN OF SWANSEA

Docket Nos. F322736 Promulgated:
October 13, 2016

“There is nothing ambiguous in the language of Clause Forty- Fifth, and the plain meaning of its words requires only that the subject property be: (1) a solar or wind powered system or device; (2) utilized as a primary or auxiliary power system for the purpose of heating or otherwise supplying the energy; and (3) utilized to supply the energy needs of property that is subject to Massachusetts property tax.”

Basics of the New Law

Sets in place new criteria for a system to be property tax-exempt:

- ▶ Produces 125% or less of energy needed (includes contiguous or other property owned with that community), or
- ▶ Is a 25kw or less system

If a system does not meet either of these criteria, **they can do a PILOT.**

If a system does not meet the exempt criteria or does not execute a PILOT **would be taxable.**

Basics of the New Law

Directs Department of Revenue develop guidance for the assessment of solar properties

Allows systems prior deemed to be exempt to do a Pilot or remain exempt if they produce 150% or less of needed energy

The law takes effect in 90 days from signing

Chapter 8 of the Acts of 2021

Solar small part of this act

Sections applicable to Assessors 61,62,63,97,98 and 105

- ▶ Section 61 - Basic Exemption
- ▶ Section 62 - Adds Fuel Cell powered system
- ▶ Section 63 - Removes Solar Pilots from Section 38H
- ▶ Section 97 - Grandfathers old PILOTS
- ▶ Section 98 - Property Previously deemed Exempt
- ▶ Section 105 - DOR Guidance

Section - 61

Basic Exemption

- ▶ SECTION 61. Section 5 of chapter 59 of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by striking out clause Forty-fifth and inserting in place thereof the following clause:-
- ▶ Forty-fifth, An owned or leased solar powered system, wind powered system or a solar or wind powered system that is co-located with an energy storage system, as defined in section 1 of chapter 164, that is: (i) capable of producing **not more than 125 per cent** of the annual electricity needs of the real property upon which it is located

Section 61 - Continued

- ▶ ; provided, however, that the real property shall include both contiguous or non-contiguous real property within the same municipality in which there is a common ownership interest;
- ▶ (ii) a solar or wind powered system or a solar or wind powered system that is co-located with energy storage that is **equal to or less than 25 kilowatts or less in capacity**, provided that the capacity of the system is verified by department of energy resources incentive program documentation or electric distribution company permission to operate documentation

Certificate

3/30/2020

Vivint Solar Mail - MA Simple Application XXXXX - Authority to Interconnect Notification

vivint.Solar

MA Interconnection <mainterconnection@vivintsolar.com>

MA Simple Application XXXXXX - Authority to Interconnect Notification

1 message

Customer Application Portal <cap@nationalgrid.com>

Mon, Mar 30, 2020 at 5:38 AM

To: "mainterconnection@vivintsolar.com" <mainterconnection@vivintsolar.com>,"

Cc: "Distributed.Generation@nationalgrid.com" <distributed.generation@nationalgrid.com>,"cap@nationalgrid.com" <cap@nationalgrid.com>,"cs@masscec.com" <cs@masscec.com>



Greetings:

Authority to Interconnect:

This email shall serve as formal notification that you are authorized to interconnect your **3.8 kW PV system** (Application:XXXXXXXX) at XXXXX WA,XXXX,MA,XXXXX with National Grid's distribution system. In order to accurately register energy import and export, a bi-directional meter was installed at your facility.

If you have applied for the MA SMART incentive, a separate email will follow with the authorized date of your MA SMART meter installation which will also act as the start date for your MA SMART incentive.

Friendly Reminder: To ensure your production is being recorded, the system and the disconnects will need to be on. If you have any questions about activating your system, please contact your solar developer.

If your system ownership information changes, please contact: Distributed.Generation@nationalgrid.com

Note about system ownership: Any changes to ownership information should be reported immediately to ensure that our records are up-to-date, that net metering credits are allocated appropriately, and legal and emergency notifications are issued correctly. Changes to ownership that need to be reported include, but are not limited to: a sale of the generating system to a third party owner, a sale of the property at which the generating system is located (e.g. a new homeowner is moving into a house that hosts a net metered system), or a change in the responsible

Section 61 - Continued

- ▶ or (iii) a solar or wind powered system or energy storage system, or a combination therein, that has **entered into an agreement for payment in lieu of taxes** associated with the system with the municipality where the system is located.
- ▶ The exemption under this clause shall be allowed for a **period of 20 years**; provided, however, that upon a written agreement between the owner of the solar or wind powered system and the municipality where the system is located, an **exemption with a period greater than 20 years may be allowed.**

Section 61 - Continued

- ▶ For purposes of this clause, an agreement for payment in lieu of taxes associated with the system shall include all personal property taxes on the system and any real property taxes attributable to the system and those taxes associated with the land on which the system is located, provided the land and the system are in common ownership. In cases in which the system and land are not in common ownership, only the personal property taxes attributable to the system shall be included in the agreement.
- ▶ A municipality, acting through its authorized officer, **may execute an agreement for the payment in lieu of taxes** with the owner of a solar, wind or storage powered system in the municipality where the solar or wind powered system is located.

Section - 62

Next Generation

- ▶ SECTION 62. Said section 5 of said chapter 59, as so appearing, is hereby further amended by inserting after clause Forty-fifth A the following clause:-
- ▶ Forty-fifth B, Any qualified fuel cell powered system, the construction of which was commenced after January 1, 2020, that is capable of producing **not more than 125 per cent of the annual energy needs of the real property upon** which it is located. All other qualified fuel cell powered systems shall be taxable under the same conditions provided in clause Forty-fifth. For the purposes of this clause, “qualified fuel cell powered system” shall mean an integrated system comprised of a fuel cell stack assembly and associated components that converts fuel into electricity without combustion and is being utilized as the primary or auxiliary power system for the real property upon which it is located, which shall include contiguous or non-contiguous real property owned or leased by the owner, or in which the owner otherwise holds an interest.

Section - 63

Removes Solar Pilots from Section 38H

- ▶ SECTION 63. Section 38H of said chapter 59, as so appearing, is hereby amended by inserting after the word “thereof”, in line 91, the following words:- ; provided, however, that for the purposes of this subsection, a generation facility shall not include a facility that generates electricity through solar or wind power, nor shall it include a facility that generates electricity by a qualified fuel cell powered system, as defined in clause Forty-fifth B of section 5; and provided further, that a facility that generates electricity through solar or wind may execute an agreement for the payment in lieu of taxes under clause Forty-fifth of said section 5.

True PILOT Payment

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PAGE 2

PAGE 3

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***Local Receipts Not Allocated**

		Receipt Type Description	(a) Actual Receipts Fiscal 2020	(b) Estimated Receipts Fiscal 2021
==>	1.	MOTOR VEHICLE EXCISE	2,906,462.36	3,182,923.00
	2.	OTHER EXCISE		
==>		a.Meals	393,522.50	200,000.00
==>		b.Room	530,213.84	250,000.00
==>		c.Other	265,296.55	150,000.00
==>		d.Cannabis	0.00	0.00
==>	3.	PENALTIES AND INTEREST ON TAXES AND EXCISES	221,299.16	170,000.00
==>	4.	PAYMENTS IN LIEU OF TAXES	47,857.52	25,000.00

Section - 97

Grandfathers old PILOTS

- ▶ SECTION 97. Notwithstanding clause forty-fifth of section 5 of chapter 59 of the General Laws, the owner of a solar or wind powered system and the municipality in which the system is located shall not be required by sections 61 and 63 to amend, modify or renegotiate an existing payment in lieu of tax agreement that was entered into or executed before the effective date of this act.

Section - 98

Property Previously deemed Exempt

- ▶ SECTION 98. Notwithstanding sections 61 and 63, a solar or wind system determined to be exempt under clause Forty-fifth of section 5 of chapter 59 of the General Laws **prior to the effective date of this act** and that has not executed a payment in lieu of taxes agreement with the municipality in which such system is located shall remain exempt; provided, however, that the system **produces less than 150 per cent of the annual electricity needs of the real property** on which it is located.

Section - 105

DOR Guidance

- ▶ SECTION 105. The department of revenue, in consultation with the department of energy resources, shall issue guidance for municipalities and solar, wind and energy storage system owners that shall include, but not be limited to: (i) assessment of solar, wind and energy storage systems; (ii) standardization of agreement terms; and (iii) where feasible, standardization of tax policy when agreements for payments in lieu of taxes are not in place. The guidance shall be issued not more than 9 months after the effective date of this act.

Questions

The background features a series of overlapping, semi-transparent geometric shapes in various shades of blue and teal. These shapes are primarily located on the right side of the frame, creating a modern, layered effect. The overall aesthetic is clean and professional.