

New Advanced Energy Property Tax Exemptions

For more information regarding these tax exemptions, please contact your Vorys attorney or:

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On June 4, 2010, the General Assembly passed Substitute Senate Bill 232 (“S.B. 232”), which provides for real and personal property tax exemptions for certain advanced energy projects. The significant property tax portions of S.B. 232 are summarized below.

Qualifying Projects – Certain “qualified energy projects” certified by the Director of the Ohio Department of Development (“ODOD”) and approved by the board of county commissioners of each county in which the project is located. Wind energy projects, along with a number of other types of energy projects, including solar, biomass, cogeneration, clean coal and advanced nuclear, are eligible to be certified as “qualified energy projects.”

Exemption Term and Scope – Qualified energy projects are exempt from real and personal property taxes for tax years 2011, 2012, 2013 and each tax year thereafter, if certain requirements are met (see description below). The exemption is effective for all real and tangible personal property included as part of a qualified energy project.

Siting Provisions – The taxable value of all production equipment of an energy company is apportioned to the taxing district in which the property is physically located. The taxable value of all other property, including certain “energy conversion equipment,” is apportioned to each taxing district in the proportion that the cost of such property located in each taxing district is of the total cost of such other property physically located in the State.

Assessment Percentages – For tax years 2011 and thereafter, in the case of an energy company, taxable production equipment is assessed at 24% and all other taxable property is assessed at 85%.

Prerequisites to Obtain Exemption – In order for a project using “renewable energy sources” (there are different procedures in place for projects using clean coal technology, advanced nuclear

technology or cogeneration technology) to be eligible for an exemption, the following requirements must be met:

- The project must be certified as a qualified energy project, which requires the following:
 - An application must be filed with the Director of ODOD on or before December 31, 2011.
 - No portion of the project’s facility may have been used to supply electricity before December 31, 2009.
 - For an energy project with a nameplate capacity of five MW or more, any board of county commissioners that receives a copy of the certification application from ODOD must adopt a resolution to approve or reject the application within 30 days of the receipt of the application from ODOD, unless the board has previously adopted a resolution declaring the county to be an “alternative energy zone,” which provides for blanket approval of all exemptions subject to certain conditions.
 - In either circumstance, the board resolution may require payments in lieu of tax (“PILOTs”) in excess of the amount of PILOTs required by statute (discussed below); provided, however, that the total PILOT cannot exceed \$9,000 per MW of nameplate capacity.
- For tax years 2011 and 2012:
 - On or before December 31, 2011, the owner of the project must submit an application to obtain a certificate from the Power Siting Board;
 - Construction or installation of the energy facility has begun on or after January 1, 2009 and before January 1, 2012; and

- The affected board of county commissioners has adopted a resolution approving the exemption for the project in one of the two ways discussed above.
- If a qualified energy project is exempt for tax years 2011 and 2012, it is exempt for tax years 2013 and all ensuing tax years if the property was placed into service before January 1, 2013 as certified in a construction progress report, unless the project's certification is revoked. If the tangible personal property of a qualified energy project is exempt, all real property that is part of the same qualified energy project also is exempt.

Ohio Employment Requirements – Project owners are required to maintain a ratio of Ohio-domiciled full-time equivalent employees employed in the construction or installation of the energy project to the total full-time equivalent employees of not less than 50%.

PILOT Requirements – Project owners are required to make PILOTs as follows:

- If the project maintains a ratio of full-time, Ohio-domiciled employees of not less than 75%, \$6,000 per MW of nameplate capacity;
- If the project maintains a ratio of full-time, Ohio-domiciled employees of less than 75% but not less than 60%, \$7,000 per MW of nameplate capacity; and
- If the project maintains a ratio of full-time, Ohio-domiciled employees of less than 60% but not less than 50%, \$8,000 per MW of nameplate capacity.

Other Owner Requirements – Project owners also are required to do the following:

- Comply with all applicable regulations;

- File with the Director of ODOD a certified construction progress report before the first of March of each year indicating the percentage of completion (during the construction/ installation phase) and the project's nameplate capacity as of the preceding December 31st;
- File with the Director of ODOD, in a manner prescribed by the Director, a report of the total number of full-time equivalent employees and the total number of full-time equivalent employees domiciled in Ohio who are employed in the construction or installation of the energy facility;
- For an energy project with a nameplate capacity of five MW or more, repair all roads, bridges and culverts affected by the project and provide a bond for such purposes if required by the county engineer;
- Provide training for fire and emergency responders;
- For an energy project with a nameplate capacity more than two MW, establish a relationship with a State university or apprenticeship program to educate and train individuals for careers in the wind or solar energy industry; and
- Offer to sell power or renewable energy credits to electric utilities that have issued RFPs, subject to certain exceptions.

S.B. 232 creates exciting new opportunities for the efficient financing of advanced energy projects. If you believe your community or your project could benefit from the new S.B. 232 opportunities, please call a member of our Climate Change and Sustainability group or your primary Vorys attorney.

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