

CASE LAW UPDATE – PROCEDURAL REQUIREMENTS FOR REAL PROPERTY TAXATION OF RENEWABLE ENERGY SYSTEMS

Under Section 487 of the Real Property Tax Law (“RPTL”), real property which includes solar, wind, or other renewable energy systems (a “Renewal Energy System”) is exempt from real property taxation to the extent of any increase in value attributable to the presence of the Renewable Energy System on the property.¹ Local municipalities and school districts may adopt a resolution opting out of this exemption (an “Opt-Out Resolution”), however, provided that the Opt-Out Resolution is filed with the New York State Department of Taxation and Finance (the “Department”) and the New York State Energy and Research Development Authority (“NYSERDA”).² If a municipality or school district does not properly adopt an Opt-Out Resolution, a Renewable Energy System will remain exempt from real property taxes.

A taxing jurisdiction may still require the owner/developer of a Renewable Energy System to enter into a payment in lieu of taxes (“PILOT”) agreement with the taxing jurisdiction, even without adopting an Opt-Out Resolution.³ When the owner/developer provides written notification to the taxing jurisdiction of its intent to construct a Renewable Energy System, the taxing jurisdiction must notify the owner/developer within 60 days of its receipt of such notification of its intent to require a PILOT agreement.⁴ This 60-day time period is important and must be followed. If it is not, the municipality or school district will lose its right to demand the PILOT agreement and thousands of dollars in PILOT payments it would have otherwise been entitled to receive.

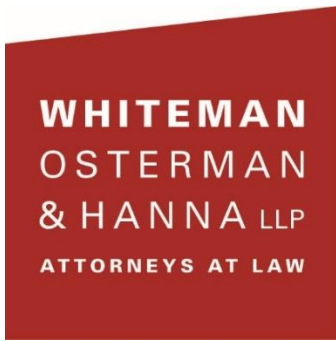
This potential risk of forfeiture is evident in the Appellate Division, Third Department’s recent decision in Laertes Solar, LLC v. Assessor of Town of Harford, Third Department Case No. 528301, [2020 NY Slip Op 02302](#) (3d Dept Apr. 16, 2020). In Laertes Solar, the Third Department made very clear that a taxing jurisdiction’s failure to adhere strictly to the statutory procedures to adopt an Opt-Out Resolution or to require the owner/developer to enter a PILOT agreement was fatal to the jurisdiction’s attempt to get out of the normal statutory tax exemption for Renewal Energy Systems. In that case in particular, the Board of Education of the Dryden Central School District (the “School District”) filed its Opt-Out Resolution with the Department, but not with NYSERDA. The Third Department strictly construed the procedural requirements of RPTL 487 and held that the School District’s failure to file the resolution with

¹ RPTL § 487(2).

² RPTL § 487(8).

³ RPTL § 487(9)(a).

⁴ RPTL § 487(9)(b).



NYSERDA meant that the Opt-Out Resolution was ineffective. Thus, the Renewal Energy System remained entitled to a RPTL 487 property tax exemption.

Anticipating that the Opt-Out Resolution was ineffectual because it had not been properly filed with *both* the Department *and* NYSERDA, the School District also argued that it should have been entitled to require the developer to enter a PILOT agreement. The Third Department rejected this argument too, however, because the School District failed to notify the developer of its intent to require a PILOT agreement within the mandatory 60-day notice period described above. Strict compliance means that every procedure must be followed as spelled out under RPTL 487, or else the taxing jurisdiction loses its ability to require a PILOT.

The Third Department's decision in Laertes Solar is a warning to taxing jurisdictions. To tax Renewable Energy Systems, municipalities and school districts must carefully follow the requirements of RPTL 487. Procedural errors, such as those illustrated in the Laertes Solar decision, will likely render Renewable Energy Systems exempt from real property taxation.

Whiteman Osterman & Hanna LLP can assist with these issues and more, as you and your business work to navigate the novel and difficult decisions arising from the COVID-19 pandemic. For assistance with real property taxation and renewable energy systems, please contact:

[Daniel Hubbell](mailto:DHubbell@woh.com) – DHubbell@woh.com
518.487.7692

[Teresa M. Bakner](mailto:TBakner@woh.com) – TBakner@woh.com
518.487.7615