

Real Estate and Corporate Law Alert: Real Property Taxation of Solar and Wind Energy Systems Modified

Real property taxation in New York State greatly affects both the financial viability of clean energy projects and the pocketbook of local taxing jurisdictions. Last year, former Governor Andrew Cuomo signed into law the State Budget for Fiscal Year 2021 (the “**Budget**”), which amended the Real Property Tax Law (“**RPTL**”) by creating a new Section 575-b and materially amending Section 487 (which we discussed in an [earlier alert](#)), each affecting real property taxation of clean energy projects.

The new Section 575-b established a process for the New York State Department of Tax and Finance (“**Tax Department**”) to develop a standard appraisal method for solar and wind energy systems larger than one megawatt, and requires assessors across the State to adopt that appraisal method. Section 487 was amended to (1) modify the notice that an owner or developer of a clean energy project must give a taxing jurisdiction prior to commencing construction of a wind or solar energy system, and (2) provide taxing jurisdictions an alternative way to notify owners or developers that it will impose a payment-in-lieu of taxes (“**PILOT**”) agreement. Generally, these amendments increase the burden on owners and developers and reduce the burden on taxing jurisdictions.

ASSESSED VALUE FOR SOLAR OR WIND ENERGY SYSTEMS

Section 487 exempts all solar or wind energy systems from real property taxation for a period of 15 years, unless a taxing jurisdiction opts out of Section 487 or imposes a PILOT after receiving a required notice from an owner or developer. The financial impact for all parties turns on the estimated assessed value of a prospective solar or wind energy project. Until recently, however, there was no standard method of assessing clean energy projects in the State of New York. Instead, individual owners and developers of clean energy projects and the taxing jurisdictions affected by those projects computed assessments *ad hoc*, creating tremendous variability across the State and incurring heavy transaction costs for each project.

Section 575-b reduces that variability by standardizing the assessment methods for solar or wind energy systems with a nameplate capacity of at least one megawatt. The Tax Department, in consultation with the New York State Energy Research and Development Authority and the New York State Assessors Association, will annually develop an appraisal model using the discounted cash flow approach and discount rates to be applied to the models. Following a 60-day comment period ending in October 2020, the Tax Department promulgated the final model for the 2022 fiscal year. Local assessors are required to use the approved assessment model and discount rates beginning with the 2022 assessment rolls.

The standard assessment methodology will impact PILOT amounts which, as required by Section 487, may not exceed the correlating assessed value of the clean energy project.

Additional information regarding the appraisal model and discount rates is published on the [Tax](#)

Department's website.

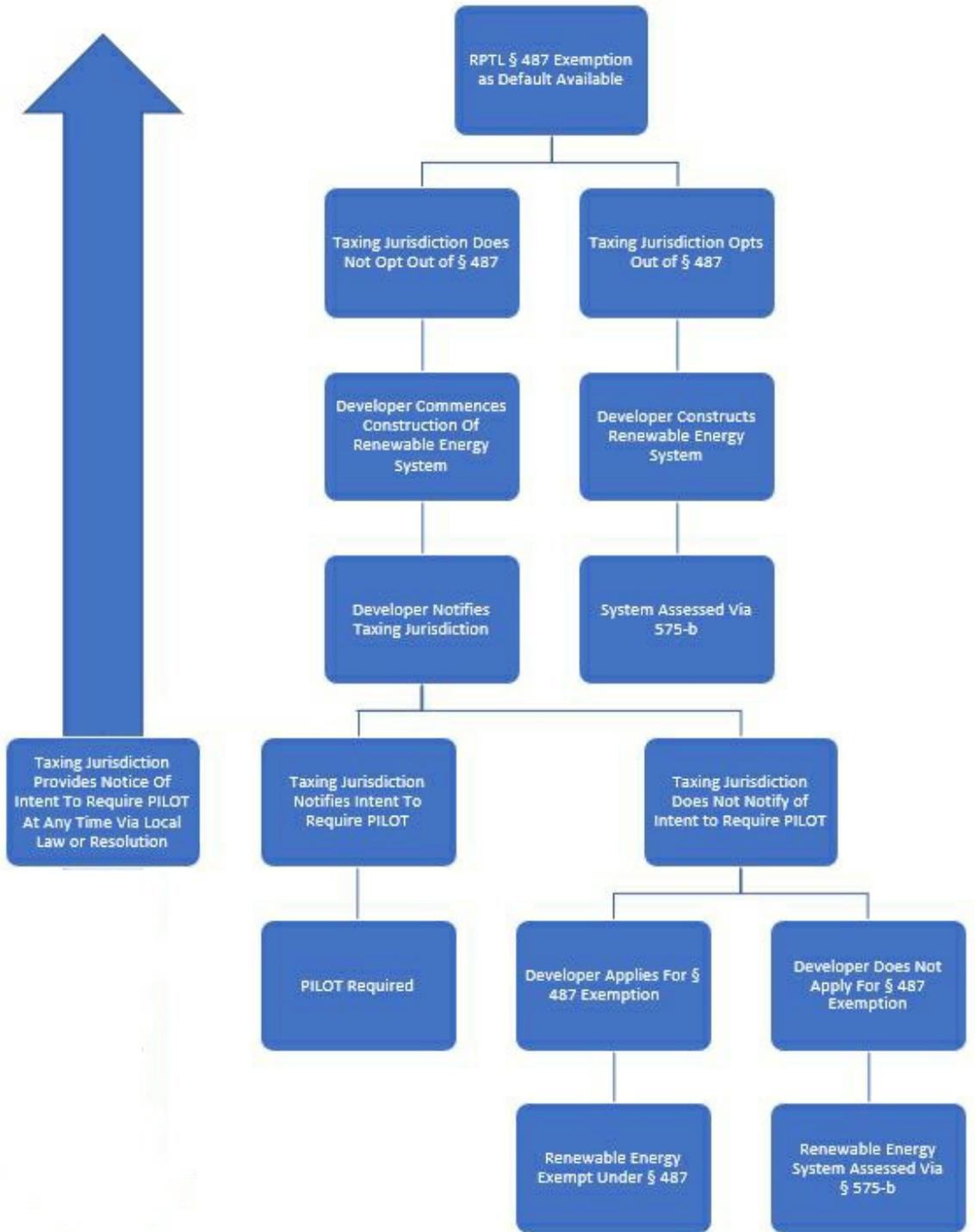
PRE-CONSTRUCTION NOTICES

Prior to construction, Section 487 requires an owner or developer of a clean energy project to provide written notification to all applicable taxing jurisdictions of its intent to construct a solar or wind energy system. Before the 2020 amendments, the law imposed no greater burden on the owner or developer. Now, however, the written notification must include a hard copy of a letter sent to the highest-ranking official of the taxing jurisdiction, must explicitly reference Section 487, and must clearly state that unless the taxing jurisdiction responds in writing within 60 days with its intent to require a PILOT agreement, the project shall not be obligated to make such payments. N.Y. Real Prop. Tax Law § 487(9)(a).

Previously, in response to the notification from an owner or developer, if a taxing jurisdiction wanted to require a PILOT agreement (and had not already opted out of the exemption granted by Section 487), it was required to advise the owner or developer of its intent to do so within 60 days of receiving the written notification. Failure to satisfy this requirement would eliminate its right to impose a PILOT. If it had not opted out of Section 487's tax exemption, the project would be eligible for full exemption of property taxes to that taxing jurisdiction for 15 years.

Now, Section 487 gives a taxing jurisdiction an alternative to the traditional notice within 60 days- it may instead adopt a local law or resolution reciting its "ongoing intent" to require a PILOT for clean energy projects in lieu of responding to each individual owner or developer. The law or resolution is considered sufficient notification to owners or developers and no further action by the taxing jurisdiction is required provided that the law or resolution remains in effect through the end of the 60-day notification period. N.Y. Real Prop. Tax Law § 487(9)(b).

This chart shows the applicability of the standard assessment of 575-b in the context of a municipality's decision to either opt out of Section 487 or not:



Through these amendments, the State of New York is trying to balance its stated goal of promoting clean energy projects with its support of local municipalities and school districts that rely on real property taxes to fulfill their mission.

If you have any questions about the Budget's amendments to the RPTL, our attorneys stand ready to assist.

