

# Real Estate and Corporate Legal Alert: Obligations Under Section 487 of the New York State Real Property Tax Law

Developing a clean energy project in New York State involves a variety of interests and, frequently, these interests intersect in unexpected ways. Real Property Tax Law (“**RPTL**”) Section 487, which lays the foundation for how real property taxes allocable to solar and wind energy systems are assessed, is one example of a complicated scheme that manages diverse and competing interests.

RPTL § 487 has some notable characteristics. First, while the exemption from real property taxes allowed under the statute clearly benefits clean energy projects, it is important to understand that only those taxes allocable to the system itself are exempted and the land continues to be taxable. Second, RPTL § 487 offers a uniform scheme across the entire State of New York unless a taxing jurisdiction has “opted out”. This means that a taxing jurisdiction (the applicable school district, county, and city, town or village in which the real property sits) has—by adopting a local law, ordinance or resolution—decided it will not offer a 15-year exemption to clean energy projects. A current list of the taxing jurisdictions that have opted out of RPTL § 487 is maintained by the Department of Tax and Finance [here](#). In this client alert, we address how parties can expect real property taxes to be assessed in both those jurisdictions where RPTL § 487 applies and where it does not.

## WHEN RPTL § 487 APPLIES

If a taxing jurisdiction has not opted out, RPTL § 487 provides either a full 15-year real property tax exemption for “solar or wind energy systems” or, alternatively, a payment-in-lieu of taxes (“**PILOT**”) agreement by which such project is required to make payments in an amount not to exceed what would be taxable under ordinary circumstances. This means a taxing jurisdiction can either (a) fully exempt solar or wind energy systems from real property taxes, or (b) negotiate a contract pursuant to which PILOT payments will be made on a set schedule. Under either of these scenarios, the respective parties interested in the development of solar and wind energy systems (taxing jurisdictions, landowners, developers) benefit by setting fixed terms.

Pursuant to RPTL § 487, an owner or developer of a clean energy project must provide written notification to all applicable taxing jurisdictions of its intent to construct such a system. If nothing else happens, the solar or wind energy system will be exempt from real property taxes. If the taxing jurisdiction wants to require a PILOT agreement, however, it must notify the owner or developer of its intent to require a PILOT contract within 60 days of receiving the written notification.

If all three taxing authorities with jurisdiction over a project demand PILOTs from the owner or developer, negotiations must be conducted with all three authorities on PILOT schedules and payments, and the project will be subject to three separate sets of PILOT agreements.

## WHEN RPTL § 487 DOES NOT APPLY

So what happens if a taxing jurisdiction has opted out of RPTL § 487? First, remember that each

project falls under the jurisdiction of three taxing authorities. The fact that one taxing authority may have opted out means nothing for the other two. Second, it means that, as a default position, a solar or wind energy system will simply be taxable in the same way other real property improvements are. A tentative assessment for the property will be published on the tentative tax rolls each year and the property owner or developer will have the right to challenge the assessment as set forth in the law and the responsibility to pay the final assessed value.

Finally, it is possible that a local Industrial Development Authority (“**IDA**”) empowered under Article 18-a of the General Municipal Law may be authorized to negotiate PILOTs for solar or wind energy systems on behalf of all taxing authorities within its jurisdiction. In contrast to PILOTs under RPTL § 487, PILOTs negotiated with IDAs may have a term of 30 years and require only one negotiation and set of agreements.

If you have any questions about the applicability of RPTL § 487’s tax exemption for clean energy projects, our attorneys stand ready to assist.