

Qualified Energy Project Tax Abatements for Ohio Solar Projects

Through the Qualified Energy Project (QEP) program, most Ohio utility-scale solar projects are developed with real and personal property tax abatements in exchange for payments in lieu of taxes (PILOT). This is an overview of the QEP program, its eligibility requirements, and other Ohio taxes that may be applicable to solar projects.



Updated November, 2023

Dylan Borchers, Kara Herrnstein, and William Liss

Bricker 
Graydon

Requirements for Public Personal Property Tax Exemption

Tax Exemption for Qualified Energy Projects

Section 5727.75 of the Ohio Revised Code (R.C.) exempts the real and tangible personal property of solar projects that obtain certification as a “qualified energy project” (QEP). QEPs are certified by the director of the Ohio Department of Development (referred to herein as ODOD).

On June 30, 2023, the Ohio General Assembly, as part of the state’s biennial budget bill, HB 33, further extended the construction and operation deadlines within the QEP Program. With respect to these program deadlines, HB 33 extends the QEP Program to the *later* of tax year 2029 or the tax year in which the federal government determines that the annual greenhouse gas emissions from the production of electricity are equal to or less than 25% of the annual emissions in 2022, in accordance with section 45Y of the Internal Revenue Code (collectively, the “Applicable Tax Year”).

The practical implication is that the QEP Program will remain available until *at least* December 31, 2028.

Obtaining (and ultimately maintaining) certification as a QEP requires the following:

- 1) No portion of the project’s facility was used to supply electricity before December 31, 2009. R.C. 5727.75(E)(2)(c).
- 2) On or before the last day of the tax year preceding the “Applicable Year,” the owner¹ must apply for a certificate from the Ohio Power Siting Board, or obtain any such approval from the proper public

agency or political subdivision for energy facility construction. R.C. 5727.75(B)(1)(a).

- 3) Construction of the energy facility must begin (or have begun on or) after January 1, 2009, but before the first day of the Applicable Tax Year.² R.C. 5727.75(B)(1)(b).
- 4) For projects with a nameplate capacity of 20 megawatts (MW)² or greater, the county board of commissioners must have approved the QEP status of the project by resolution, or alternatively, adopted a resolution declaring the county to be an alternative energy zone (AEZ). R.C. 5727.75(E)(2)(b).
- 5) A certified construction progress report must be filed with the ODOD by March 1 of each year during construction indicating percentage of the project completed and the project’s nameplate capacity as of the preceding December 31st. R.C. 5727.75(F)(2).
- 6) A certified construction completion report is filed within 90 days after the project is placed into service. O.A.C. 122:23-1-03.
- 7) Additionally, reports must be filed by March 1st each year once the project is placed into service that indicate nameplate capacity as of the preceding December 31st (referred to as Nameplate Capacity Reports).
- 8) Each tax year the property is exempt, the facility owner must make annual service payments in lieu of taxes (PILOTs) to the county or counties in which the project operates as a QEP. For solar projects, the minimum PILOT is \$7,000 per MW of name plate capacity. However, counties may impose an additional service payment, with the total PILOT not to exceed \$9,000 per MW. Allocation rules also apply where a project is treated as a QEP within multiple counties. R.C. 5727.75(E)(1)(b), (F)(9), (G).
- 9) The owner must report to ODOD the total number of full-time equivalent employees³ in the construction

¹ Where the statute refers to “owners” of projects, the definition generally also includes “a lessee pursuant to a sale and leaseback transaction.

² This is an increase from 5 MW, as a result of the passage of Am. Sub. H.B. 6 on July 23, 2019.

³ “Full-time equivalent employee” means the total number of hours for which compensation was paid to individuals including contract employees, employed at a qualified energy project for services performed at the project during the calendar year divided by 2,080. Owners must file a report of

or installation of the energy project, and it must distinguish how many are domiciled within and without Ohio. R.C. 5727.75(F)(6). For the purposes of calculating the hours performed at the project, only hours at the project and devoted to site preparation or protection, construction and installation, and the unloading and distribution of materials at the project site may be included. The calculation may not include hours worked by superintendents, owners, manufacturers' representatives, persons employed in a bona fide executive, management, supervisory, or administrative capacity, or persons whose sole employment on the project is transporting materials or persons to the project site.

- 10) Prior to the changes via HB 33, at least 80% of full-time employees must be Ohio-domiciled.⁴ HB 33 revised these workforce requirements:
 - a) For existing projects that already applied for certification as a QEP as of the effective date of HB 33, the applicant may self-certify that the project will voluntarily be subject to the wage requirements described in section 45(b)(7)(A) of the Internal Revenue Code and apprenticeship requirements described in section 45(b)(8)(A)(i) of the Internal Revenue Code. By doing this, a solar project can reduce its required ratio of Ohio-domiciled workers from 80% to 70%.
 - b) For projects applying for certification as QEP after the effective date of HB 33 (October 1, 2023), solar projects must maintain a ratio of Ohio-domiciled workers of at least 70%, and at least 50% for all other types of QEP facilities.

The regulations also require certain recordkeeping and documentation be maintained. This is an area of increased concern given current labor markets. Project owners may consider auditing EPC contractors during construction and/or including liquidated manage provisions in EPC agreements tied to workforce composition.

- 11) Provide (or facilitate) training and equip fire and emergency responders to enable them to respond to emergencies at the project site.
- 12) Large projects with a nameplate capacity of 20 MW or greater are subject to certain additional requirements. These include:
 - a) The owner must repair or rebuild⁵ all roads, bridges, and culverts affected by construction to their preconstruction condition, as reasonably required. R.C. 5727.75(F)(4). The owner must also post a bond to ensure funding for repairs as required by the Ohio Power Siting Board pursuant to R.C. 4906.10.
 - b) Projects must establish a relationship with any of the following to educate and train individuals for careers in solar energy industry: (i) members of the Ohio university system; (ii) a person offering apprenticeship programs registered with the U.S. Department of Labor or the apprenticeship council created by R.C. 4139.02; (iii) career-technical centers; and (iv) training centers operated by labor organizations or by a for-profit or non-profit. The relationship can include endowments, cooperative agreements, internships, apprenticeships, and similar programs R.C. 5727.75(F)(7).

the total number of full-time equivalent employees and of Ohio-domiciled full-time equivalent employees employed in the construction and installation of the facility.

⁴ The number of full-time equivalent employees employed in the construction or installation of the energy project equals the number actually employed or the number projected to be employed by ODOD, whichever is greater. To estimate the number of employees to be employed in the construction or installation of an energy project, director shall use a generally accepted job-estimating model in use for renewable energy projects, including, but not limited to, the job and economic development impact model. The director may adjust an estimate produced by a model to account for variables not accounted for by the model. Development will use a generally accepted job estimating model in use for renewable impact model, and may adjust an estimate produced by a model to account for variables. A report on such employee numbers must be filled with ODOD. See R.C. 5727.75(F)(3) and (6).

⁵ In the event that the county engineer deems any road, bridge, or culvert to be inadequate to support the construction or decommissioning of the energy facility, the road, bridge, or culvert shall be rebuilt or reinforced to the specifications established by the county engineer prior to the construction or decommissioning of the facility.

If a project continues to meet applicable exemption criteria, the exemption shall last for the life of the project unless ODOD revokes the exemption for failure to comply with the statute. R.C. 5727.75(B)(2).

Points of Emphasis

Real Property Tax Exemption

Real property of a QEP that is included within the scope of the “energy facility” is exempt from taxation in any tax year in which tangible personal property of the same QEP is exempt (see also below). R.C. 5725.75(A)(1), (A)(2), (D); R.C. 5727.01(P). An energy facility includes, but is not limited to, “so much of the land on which such tangible personal property is situated as is required for operation of the facility and is not devoted to some other use, not to exceed, in the case of wind turbines, one-half acre for each wind turbine, and regardless of whether the land is owned by the owner or lessee of the tangible personal property or by another person.”

County Approval and Additional Service Payments

As noted above, a project with a nameplate capacity of 20 MW or greater must obtain approval from the county (or counties) where the project located. Therefore, ODOD will forward a project’s QEP exemption application to the board of county commissioners in the county(ies) in which the property is located, and to each taxing unit of the affected counties, for review. The county commissioners will prepare a resolution approving or rejecting the application.⁶ Through this resolution, counties may impose the additional service payments referenced above (which exceed the minimum \$7,000 per MW PILOT). Obtaining county approval thus is often a negotiated process.

Process for filing for exemption at ODOD

The application to receive the personal property tax exemption may be found online on ODOD’s website. Applicants with questions regarding the application and exemption process should contact the Business Services Division at qep@development.ohio.gov.

If Exemption is Revoked or Not Obtained

Public Utility Tangible Personal Property Tax

Generally, solar projects fall under the definition of “energy company” and are classified as public utilities for Ohio tax purposes under R.C. 5727.01. Note, classification for tax purposes does not impact classification for Ohio regulatory purposes.

“Energy company,” as defined by R.C. 5727.01(D)(10), is a person in the business of generating, transmitting, or distributing electricity from an “energy facility” with an aggregate nameplate capacity greater than 250 kW. An “energy facility” means one or more interconnected wind turbines, solar panels, or other tangible personal property used to generate electricity from an energy resource. R.C. 5727.01(P).

While tangible personal property tax is no longer imposed on general business property, tangible personal property of public utilities, such as energy companies, remains taxable under R.C. 5727.06. Accordingly, if taxes are not abated or exempted, such as through a QEP, then solar projects may be subject to Ohio personal property taxes.

⁶ Unless the board of county commissioners adopted a resolution establishing an AEZ.

Valuation Assessment, & Apportionment of Non-Exempt Projects

Non-Exempt Projects: Valuation

Under R.C. 5727.11(D)(2), the true value of production or energy conversion equipment is the equipment's purchase price as capitalized on the company's books and records less composite annual allowances, as prescribed by the Ohio Tax Commissioner.

Non-Exempt Projects: Assessment

R.C. 5727.111(H) sets forth the assessment percentages of a public utility's taxable property. For energy companies, taxable production equipment is assessed at 24% of its true value, and all other equipment is assessed at 85% of true value. Thus, nonexempt projects are taxed such that electricity-generating equipment, such as the solar panels themselves, would be assessed at 24% of true value. "Energy conversion equipment," transmission equipment, distribution equipment, and all other tangible personal property would be assessed at 85% of true value.

Other Taxes

Taxes Measured by Gross Receipts

Public utilities are generally subject to an annual gross receipts tax under R.C. 5727.30(B). While energy companies are exempt from the public utility gross receipts tax, they are subject to the commercial activity tax (the CAT).

Real Estate Tax

If the project is not certified as a QEP or if it loses such certification, it lacks exemption status, and its real property is taxable from the time the exemption lapses onward. See R.C. 5709.01(A).

When agricultural land is enrolled in Ohio's current agricultural use value (CAUV) program, converting it to

non-agricultural use may result in recoupment charges equal to the tax savings realized on the property as a result of CAUV status for the prior three years. Ohio law provides an exception under which no

recoupment charge will be levied. "[F]or the conversion of a portion of a tract, lot, or parcel of land devoted exclusively to agricultural use if the conversion is incident to the construction or installation of an energy facility, as defined in section 5727.01 of the Revised Code, and if the remaining portion of the tract, lot, or parcel continues to be devoted exclusively to agricultural use." R.C. 5713.34(A)(3). Installation of an energy facility on land devoted to agricultural use will not cause the remaining portion of the tract to be regarded as a conversion of land devoted exclusively to agricultural use for CAUV purposes if the remaining portion of the tract continues to be devoted to agricultural use. R.C. 5713.3(B)(4). Solar projects should seek the advice of counsel as to the scope and implications of the recoupment exception.

Sales Tax

R.C. 5739.02(B)(40) provides a broad tax exemption that most solar projects are able to claim. It exempts sales of tangible personal property and services to a provider of electricity used or consumed directly and primarily in generating, transmitting, or distributing electricity for use by others, including property that is or is to be incorporated into and will become a part of the consumer's production, transmission, or distribution system and that retains its classification as tangible personal property after incorporation.

Kilowatt Hour Tax

Ohio imposes an excise tax on entities that qualify as "electric distribution companies." The tax is levied on "all electricity distributed by such company ... through a meter of an end user in this state." R.C. 5727.81. Under some circumstances, a solar project may be subject to the tax, depending on the nature of its activities and the identity of the purchasers of the electricity. Taxpayers should consult specialized counsel with respect to the application of the tax.

Municipal Income Tax

Many cities and villages impose a net profits tax on business activities conducted in their jurisdiction. Energy companies are subject to these taxes to the extent any income is apportioned to a city or village pursuant to a net income tax. R.C. 718.01(C)(9) and 718.02. The Ohio Department of Taxation is authorized to administer business net profit taxes on behalf of municipalities. Taxpayers are given the option to file with a centralized filing system to reduce the burden of filing with multiple separate municipalities. R.C. 718.80. Municipal tax rates vary depending on jurisdiction and can be imposed on employer income tax withholdings and local sales taxes.

CONTACT



Dylan Borchers

Partner
614 227 4914
dborchers@brickergraydon.com



Kara Herrnestein

Attorney
614 227 4908
kherrnestein@brickergraydon.com



William Liss

Partner
513 629 2885
wliiss@brickergraydon.com

This is for informational purposes only. It is not intended to be legal advice and does not create or imply an attorney-client relationship.

©Bricker Graydon LLP



www.brickergraydon.com