

# SOLAR ARRAY'S and TAXATION



**ED HOMENICK, DIRECTOR  
SULLIVAN COUNTY REAL PROPERTY TAX  
SERVICES**



## OVERVIEW

**How could a solar lease  
affect your assessment and  
property tax**

# AD VALOREM TAX



- **Your real property tax is based on the value of your land (your assessment). The solar arrays are considered real property and will increase your assessed value.**

# RPTL 487 – Solar Exemption



- **Real property which includes a solar energy system... shall be exempt from taxation to the extent of any increase in the value thereof by reason of the inclusion of such solar energy system for a period of 15 years.**
- **Application for exemption to be made by the owner of the real property.**

# RPTL 487



- **After the 15 year period the value is fully taxable.**
- **How long is your lease?**
- **During this 15 year period, special ad valorem and special assessments are not exempt (sewer, water, fire, library, etc.)**

# ASSESSMENT



- **Solar panels are considered real property**
- **Can vary from town to town, but the probable approach assessors will use to calculate assessed value will be based on income.**
- **Assessors have preliminarily calculated this value to be from \$1.65 to \$1.95 per watt.**

# ASSESSMENT



- **Two mega watt system?**
- **$\$1.65 \times 2,000,000 = \$3,300,000$**
- **Assessed value will increase and will result in a higher tax bill on the parcel as a whole.**
- **Special district taxes will increase.**
- **What happens after 15 years?**

#### 14. Taxes.

(a) During the Term, Tenant shall pay Tenant's Portion (calculated in accordance with this Section 14(a) of the Tax Bill, applicable to each tax year or part thereof which falls within the Term. Landlord shall provide Tenant with copies of all invoices, bills and notices (collectively, "**Tax Bills**") regarding all real estate and ad valorem taxes and assessments imposed or levied on the Premises by any applicable government taxing authority (each, a "**Tax**", and collectively, "**Taxes**"), within thirty (30) days of Landlord's receipt of any such Tax Bill. Tenant shall remit payment directly to the taxing authority for any Tax Bill that Tenant receives; provided, that if the Premises are comprised of less than 100% of a larger tax parcel ("**Larger Parcel**"), Tenant shall pay the portion of the Tax Bill allocable to the Premises (such portion, "**Tenant's Portion**"), which portion shall bear the same relationship to the total Tax Bill as the Premises bears to the Larger Parcel. Once the Lease Boundary Line is established, the parties shall confirm Tenant's Portion in a written confirmation. Without limiting the foregoing, Tenant shall have the right, but not the obligation, at any time during the Term to pay the entire Tax Bill on Landlord's behalf and deduct any amounts not attributable to Tenant's Portion from future installment payments of Rent.



# LEASE AGREEMENT 14(d)

(d) Notwithstanding anything contained in this Lease, (1) Tenant shall not be under any obligation to pay any part of any franchise, excise, estate, inheritance, income or similar tax which is or may become payable by Landlord or which may be imposed against Landlord or against the Rent payable under this Lease or upon the income or profits of Landlord by reason of any law now in force or later enacted, and (2) in the event the Premises are re-assessed for tax purposes because of transfer of ownership of the Land during the Term of this Lease, Tenant shall not be responsible for payment of any increase in taxes, charges and assessments attributable to such re-assessment, which increase shall be the sole responsibility of Landlord.

# LOCAL OPTION TO OPT OUT



- **Keep in mind that municipalities and school districts can opt out of the tax exemption by local law or resolution.**

# PILOT



- **Municipalities and school districts that have not opted out may require landowner to enter into a contract for payment in lieu of taxes.**

# AGRICULTURE ASSESSMENTS



**Will you lose your ag. assessment or a portion thereof?**

# ELIGIBILITY



- **Agricultural assessments is limited to land used in agricultural production**
- **Seven or more acres**
- **Minimum of \$10,000 in gross receipts**
- **Encumbered for 5 years (8 if outside an ag. district)**

# CONVERSION



- **Definition: Conversion is defined as “an outward or affirmative act changing the use of agricultural land”**
- **No penalty imposed if agricultural land is converted to use for oil, gas, or wind energy development**
- **Solar conversion is not included – a penalty can be applied**

# CONVERSION PENALTIES



- **A payment for conversion will be equal to five times the taxes saved in the most recent year that the land received an agricultural assessment. In addition, interest of 6 percent per year compounded annually will be added to the payment amount for each year that the land received an agricultural assessment, not to exceed five years**

# CONVERSION PENALTIES



- **When only a portion of a parcel is converted, the assessor apportions the assessment and determines the tax savings attributable to the converted portion. The payment for conversion of the portion of the parcel is then computed**



# CONVERSION PENALTIES



- **Conversion penalties are added to the taxes levied upon the land converted.**
- **In other words, it becomes a lien on the property.**

# FOREST EXEMPTION 480-a



- **Shall be exempt from taxation to the extent of 80% of the assessed valuation.**
- **Committed to continued forest crop production for an initial period of ten years.**

# PENALTIES



**For full removal, the penalty shall be two and one-half times the amount of taxes that would have been levied for each year of the exemption, plus interest**

**For partial removal, penalty shall be five times the amount for that portion.**

# LEASE AGREEMENT



(b) Without limiting Section 14(a), if Tenant's use of the Premises results in the revocation of a classification of the Premises as “agricultural land”, “forestry land” or similar classification, thereby triggering liability for “rollback” taxes, Tenant shall pay Tenant’s Portion of such rollback tax liability, together with any related interest or penalties, other than interest

and/or penalties arising from Landlord's failure to timely provide Tenant with a copy of such Tax Bill.

# RESTRICTIONS



- Adjacent land owned

20. **Easements.** Landlord hereby grants to Tenant during the Term of this Lease (a) an easement for light, solar energy resources, access (including vehicular and pedestrian ingress and egress) and utility access over, under and across all property owned by Landlord which is adjacent to or in the vicinity of the Premises as reasonably necessary for Tenant's conduct of the Intended Use on the Premises and to access the Premises, (b) an easement for any and all encroachments of Tenant's Property onto Landlord's adjacent property, and (c) an easement over, under and across the Landlord's adjacent property for audio, visual, view, light, flicker, noise, vibration and any other effects attributable to the Intended Use of the Premises. Without limiting the foregoing, Landlord agrees to execute and deliver any separate easement agreements

# RESTRICTIONS - 24 (a)



shrub, and yard trimmings or other vegetation that could adversely affect insulation levels on the Premises), and, upon written notice from Tenant, Landlord shall promptly remove any existing uses or improvements on any property adjacent to or in the vicinity of the Premises which Tenant reasonably determines will impair Tenant's use of the Premises; (iv) cause or permit the violation of any applicable laws, rules, regulations or ordinances applicable to the Premises; or (v) commence (or have commenced against it) any voluntary or involuntarily proceedings in bankruptcy, insolvency or similar proceedings with respect to Landlord.

# RIGHT OF FIRST REFUSAL



**40. First Refusal to Purchase.** Without limiting Tenant's rights to renew or extend the Term as set forth in this Lease, Landlord hereby grants to Tenant a right of first refusal to purchase the Premises, or any land of which the Premises is a part, upon the same terms and conditions as contained in any bona fide purchase offer Landlord, or its successors and assigns, may receive prior to the cancellation or termination of this Lease, as extended. Tenant shall have twenty (20) days after receipt from Landlord of written notice of such offer, with a certified full written statement of such offer and copy of the proposed sale agreement ("**Proposed Sale Agreement**") within which time to exercise its option to purchase and accept any such proposed sale terms. Tenant shall exercise such option of first refusal by delivery of notice to Landlord accepting such offer. If Tenant exercises its option, Landlord and Tenant shall enter into a commercially reasonable sale agreement ("**Sale Agreement**") upon the economic terms of the Proposed Sale Agreement; provided, however, irrespective of the terms of the Proposed Sale Agreement, the Sale Agreement shall provide that (a) Landlord shall deliver to Tenant a current commitment for an owners title insurance policy issued by a title company acceptable to Tenant committing to insure Tenant in the amount of the purchase price and showing title to be good and marketable fee simple, free and clear of all liens, reservations, easements encumbrances, restrictions of record and encroachments, except such matters approved by Tenant as part of a the Sale Agreement, (b) transfer of title by Landlord to Tenant shall be effected by warranty deed conveying such title, (c) Landlord shall satisfy and remove from title at closing any and all monetary encumbrances, including any mortgage or trust deed, and (d) Tenant shall have no obligations for payment of any brokerage fee in connection with the purchase and if any such payment is due to any party it shall be paid by Landlord. Notwithstanding Tenant's failure to exercise such right of first refusal on a single occasion, such right of first refusal shall be a continuing right throughout the balance of the Term and Landlord shall be obligated to submit any future offers to Tenant.

# GRIEVANCE



- **Tenants who are required to pay property taxes pursuant to a lease or written agreement have the right to grieve an assessment.**

(c) Upon Tenant's reasonable request, Landlord shall take such reasonable actions and do such things as necessary or desirable to facilitate any action by Tenant to contest any Tax Bill or the assessed value of the property on which they are levied, or to otherwise seek the abatement of Taxes applicable to the Premises, or to seek the separate assessment of the Premises as a distinct tax parcel if the Premises are included within a Larger Parcel. Tenant shall have the right, but not the obligation to pursue any such action.