Guidance on Solar Panels from Department of Revenue

DOR Division of Local Services on leases of town land, taxation, and how putting solar on c. 61 lands affects its eligibility and taxation.

Are solar panels installed by a third-party vendor on municipal real estate exempt under MGL c. 59, sec. 5, Clause 45 where the electricity generated will be sold to the grid, and the municipality will be sharing the revenue generated by those sales?

If the municipality owned the solar panels, they would not be subject to taxation because real and personal property owned by a municipality is exempt. Tax Collector of North Reading v. Town of North Reading, 366 Mass. 438, 440-441 (1974).

If, however, the third party owns the panels and is "using" the municipal real estate to generate electricity for profit, the third party is subject to taxation for the leased premises and any property sited on it. MGL c. 59, sec. 2B. The third party can qualify for any exemptions a fee owner may be entitled to, but here any power being generated is for the grid so the panels are not "being utilized as the primary or auxiliary power system for the purpose of heating or otherwise supplying the energy needs of property taxable" under chapter 59 as required for exemption under MGL c. 59, sec. 5, Clause 45.

If the third party is an electric generating company, the municipality may be able to enter into a payment in lieu of tax (PILOT) agreement with it under MGL. c. 59, sec. 38H(b). For more information on PILOT agreements, please see Ask DLS in the August 7th edition of City & Town.

Are solar panels installed on the roof of a building owned and occupied by a charitable organization exempt under MGL c. 59, sec. 5, Clause 45 or otherwise?

It depends on the specific circumstances.

If the charitable organization owns the panels and they are being used to supply the energy needs of the building occupied for charitable purposes, they are not exempt under MGL c. 59, sec. 5, Clause 45 because they would be supplying the energy needs of property not subject to tax. However, they would be exempt under MGL c. 59, sec. 5, Clause 3, whether part of the real estate or as personal property. That is because real estate owned by charitable organizations is exempt if occupied by them (or other charities) for charitable purposes. MGL c. 59, sec. 5, Clause 3. Personal property owned by charitable organizations is also specifically exempt from property tax under that clause.

However, if the panels are owned by a third party in business to make a profit, even if the electricity is used by the charitable organization, the panels and the leasehold interest of the real estate used by the third party business would be taxable. That is because the panels are not owned by the charitable organization and thus not entitled to the charitable exemption. If the electricity is used by the organization, it would not be exempt under Clause 45 because that exemption only applies if the electricity is used by taxable property.

Does the development or installation of solar or wind farms or facilities on land classified under Chapters 61, 61A or 61B constitute a change in use making the land ineligible to continue classification?

As a general rule, development or installation of solar or wind farms or facilities on classified land will constitute a change in use and trigger a municipality's right of first refusal and a penalty tax assessment, i.e., a conveyance or roll-back, whichever is applicable.

Forest Land (Chapter 61) - To be classified as forest land under Chapter 61, the land has to be "actively devoted" to the growth of forest products. MGL c. 61, secs. 1, 2 and 3. The initial decision on classification is made by the state forester. Under the state forester's current regulations, the land must be used to grow forest products and may not include any land where structures are erected or that is accessory to the use of the structures. 304 CMR 8.03(3). The land on which the solar or wind farm or facility is sited does not appear to qualify under those regulations. In that case, the assessors can initiate action by the state forester if they believe land is no longer being used for purposes compatible with the growth of forest products.

Farm Land (Chapter 61A)- To be classified as farm land under Chapter 61A, the land has to be "actively devoted" to agricultural or horticultural use. Actively devoted means the land must be used (1) primarily and directly for agricultural or horticultural production, or (2) in a manner necessary and related to that production, i.e., in a manner that directly supports or contributes to the production, e.g., farm roads, irrigation ponds, land under farm buildings. MGL c. 61A, secs. 1, 2, and 3.

Therefore, if the solar panels, wind turbines and related structures are integral to farm production, e.g., intended to supply power on-site in order to irrigate the fields, then the land would continue to be considered necessary and related land. However, if used for other power generation purposes, then it no longer qualifies for classification. The ineligible land would include land under the solar arrays, wind turbines and any surrounding land necessary for the operation of the solar or wind farm or facility (e.g., access roads) or impacted by its operation.

Recreational Land (Chapter 61B) - To be classified as recreational land under Chapter 61B, the land must be: (1) retained in a substantially natural, wild or open condition, landscaped or pasture condition or forest condition under a forest management plan certified by the State Forester, in a manner that preserves wildlife or other natural resources and be open to the public or held as private, undeveloped land, or (2) be devoted to certain recreational uses in a manner that does not materially interfere with the environmental benefits derived from the land and be open to the public or members of a non-profit organization. MGL c. 61B, sec. 1.

Land on which a solar or wind farm or facility is sited is not undeveloped land being retained in a natural or other permitted condition. It is being used to generate power, a commercial or industrial use and for operational and security reasons, will have limited access, i.e., will not be available for use by the public or a membership organization for one of the permitted recreational uses. Therefore, the land used for power generation purposes would no longer qualify for classification. As with classified farm land, the ineligible land would include land under the solar arrays, wind turbines and any surrounding land necessary for the operation of the

solar or wind farm or facility (e.g., access roads) or impacted by its operation.