

Assessing the Taxability of Solar Energy Systems in Michigan

Article By:

Business and Corporate Services at Varnum LLP

The very practical concern of knowing how solar energy equipment is taxed in Michigan is just one of many questions for those considering such a project.

Under Michigan's General Property Tax Act (the "Act"), real and personal property not otherwise exempted is subject to tax (MCL 211.1). Before a property owner can estimate future tax bills, however, the subject property must be properly classified. While "real property" includes land, buildings, and fixtures on land, "personal property" includes "goods, chattels, and effects." "Personal property" is also defined to encompass certain enumerated items, including a "wind energy system." While this provision provides a measure of certainty to one segment of the alternative energy industry, the Act lacks a similar provision addressing solar panels or solar energy systems with such precision. As a result, another rapidly-growing alternative energy subsector is left with considerably less predictability.

The 2016 State Tax Commission (STC) Guide to Basic Assessing specifies that solar energy systems are to be assessed as personal property (STC Guide to Basic Assessing, page 55). Despite the absence of specific statutory classification, this position is supported by language within the General Property Tax Act. From 2003 to 2012, the Act provided a property tax exemption at MCL 211.9i for "alternative energy personal property." Although the tax exemption is no longer available, MCL 211.9i has not been repealed, and it defines "alternative energy personal property," with reference to "[a]n alternative energy system" as defined by the Michigan Next Energy Authority Act (MCL 207.821 et seq.). In pertinent part, the Michigan Next Energy Authority Act defines this term to include a fuel cell energy system, a photovoltaic energy system, a solar-thermal energy system, a wind energy system, and a thermoelectric energy system (MCL 207.822(c)). Therefore, although the personal property tax exemption for these systems is not currently operative, the existence and continued presence of the statute mitigates in favor of categorizing solar energy systems as personal property.

Categorization as personal property is partially determinative of the tax treatment of solar energy systems, but another level of classification is also required before reaching a conclusion regarding taxability. In 2013, the STC issued a memorandum to assessors and equalization directors indicating that solar panels would be considered *industrial* personal property. STC Memo, June 11, 2013. Industrial personal property includes "[a]ll machinery and equipment, furniture and fixtures, and dies

on industrial parcels, and inventories not exempt by law," as well as personal property of mining companies. MCL 211.34c(3). While this subclassification seems to be a reasonable choice for solar energy systems, "commercial personal property" (generally equipment, furniture, and fixtures on commercial parcels, as well as billboards, well drilling rigs, and certain commercial vehicles) or "utility personal property" ("[e]lectric transmission and distribution systems, substation equipment, spare parts, gas distribution systems, and water transmission and distribution systems," as well as various types of oil and gas equipment, wells, and transmission lines) may seem like equally appropriate options. The STC's 2013 memorandum arguably supports the classification of solar energy systems (which presumably include more than just solar panels) as industrial personal property, but the lack of clear statutory guidance and the availability of different categories theoretically provide multiple possibilities. However, the STC's earlier guidance regarding the classification of wind energy systems is instructive in suggesting a resolution to this question. In May 2008, the STC issued a memorandum acknowledging that, while the Act designated wind energy systems as personal property, uncertainty remained because it did not provide a definitive personal property classification. In its analysis, the STC noted that the definition of "utility personal property" only references electrical transmission and distribution and omits electrical generation. However, the same statute defines industrial *real* property to include sites where electrical generation takes place. Based on the legislature's decision to designate wind energy systems as personal property and the implied categorization of electrical generation as industrial activity, the STC concluded that wind energy systems were most appropriately categorized as industrial personal property (see STC Memo, May 13, 2008). This argument can be analogized to solar energy systems. Solar energy systems may lack a statutory categorization as clear as that provided for wind energy, but the STC analysis and the existing guidance regarding solar panels support a conclusion that solar energy systems would also be classified as industrial personal property.

Solar energy systems are likely ineligible for the recent property tax exemption made available to "eligible manufacturing property" because "eligible manufacturing personal property" specifically excludes "personal property used in the generation, transmission, or distribution of electricity for sale" (MCL 211.9m(7)(c)). However, there are still tax advantages to categorization as industrial personal property. Under MCL 380.1211, industrial personal property is exempt from the 18 mills permitted to be levied for school operating purposes. Generally, industrial personal property is also exempt from the 6 mill state education tax levied by MCL 211.903. (As of December 31, 2011, MCL 211.903 provides that turbines powered by gas, steam, nuclear energy, coal or oil for the generation of electricity remain subject to the 6 mill state education tax. However, this provision is notably silent regarding wind turbines, and there is no indication that electrical generation by solar energy would not be similarly exempt.)

While the language of the General Property Tax Act has not yet been updated to provide solar energy systems with the clear categorization afforded to wind energy systems, the growing popularity of solar energy systems may eventually warrant a place in the definition of "personal property." Until that time, however, a careful review of the existing statute, analogous property, and previously published guidance are likely to provide the most comprehensive basis for assessing the taxability of solar energy systems.

The author wishes to thank Mr. Sam Field, of Helios Solar LLC, for sharing his expertise in this area.

Source URL: <https://natlawreview.com/article/assessing-taxability-solar-energy-systems-michigan>