



OFFICE OF COUNSEL

Issue #2

January 25, 2016
(updated 8/8/18; 1/30/2020)

RECENTLY ASKED QUESTIONS ABOUT THE REAL PROPERTY TAX LAW on the topic of SOLAR ENERGY SYSTEMS

*This is the second in a series of Recently Asked Questions (RAQs) from local officials about the Real Property Tax Law. In this edition, we will focus on the taxability of **solar energy systems** (i.e., solar panels and associated equipment), since we have received more questions on that general topic than any other over the last several months. We must emphasize, however, that the observations offered on the following pages are purely advisory, should not be equated to formal Opinions of Counsel, and should not be construed as binding in any way. Assessors and other local officials seeking definitive legal advice, or seeking guidance on how the law applies to a specific set of facts, are advised to consult their municipal attorneys.*

Introduction

A solar energy system is “real property” once it has been permanently affixed to land or a structure (Real Property Tax Law § 102(12)(b); see also, Metromedia, Inc. v. Tax Commission of the City of New York, 60 N.Y.2d 85, 468 N.Y.S.2d 457 (1983); [8 Op. Counsel SBEA No. 3](#)). As such, it is taxable unless it qualifies for an exemption (Real Property Tax Law § 300).

There is an exemption statute that applies specifically to solar energy systems: Section 487 of the Real Property Tax Law (RPTL). Section 487, which also covers wind power systems and farm waste energy systems, generally provides a 15-year exemption from real property taxation for the increase in value resulting from the installation of a qualifying system. A number of questions have recently arisen concerning the application of this exemption statute.

Local Option

1. Must every municipality offer the § 487 exemption?

A: No. Each municipality may decide for itself whether to offer the exemption. Unlike most other local option exemptions, however, this exemption applies within a municipality unless the municipality has taken action to disallow it.

2. How does the local option feature work?

A: The local option that’s attached to the § 487 exemption is structured as an opt-*out*, not an opt-*in*. That means that the exemption is automatically in effect within a municipality unless it has adopted a local law, ordinance or resolution providing that the exemption shall *not* be available therein. In municipalities that have taken no action one way or the other, the exemption is in effect. If a local law, ordinance or resolution opting out of the exemption is adopted, a copy must be filed with the New York State Department of Taxation and Finance and the New York State Energy Research and Development Authority (NYSERDA).

3. May an opt-out be made retroactive?

A: No. If a municipality opts out, it is effectively disallowing the exemption to solar energy systems where construction had *not* begun by the effective date of the applicable local law, ordinance or resolution (or by 1/1/1991, if later). See § 487(8)(a). Where a system's construction *had* begun by that date, it is not impacted by the opt-out and is entitled to the exemption if otherwise qualified (though it may be obligated to make PILOTs under certain circumstances; see Q. 6-10, below).

Note that for purposes of the § 487 exemption, the construction of a solar energy system is deemed to have begun upon the execution of a contract or interconnection agreement with a utility or, if applicable, upon the payment of a deposit thereunder. The owner or developer must give written notice to the appropriate municipalities when such a contract or agreement is executed. See § 487(8)(b).

4. If a municipality has opted out, may it restore the exemption later?

A: Yes. If a municipality that had opted out wishes to begin offering the exemption later, we believe it may do so by repealing the local law, ordinance or resolution that opted out. This is not stated explicitly in the law, but we believe such authority is implicit in statutes of this nature, absent language to the contrary. A copy of any local law, ordinance or resolution restoring the exemption should be filed with both the Department of Taxation and Finance and NYSERDA.

5. May a municipal opt out of the exemption for commercial property while leaving it in place for residential property?

A: No. If a municipality *does* opt out – i.e., if it adopts a local law disallowing the exemption – it must do so for *all* properties. It cannot allow the exemption for one type of property while disallowing it for another, because § 487(8) states that once a municipality has opted out, “*no* exemption under this section shall be applicable within its jurisdiction” (emphasis added). If a municipality does *not* opt out, however, the law *may* allow it to treat commercial and residential properties differently when deciding what their PILOT obligations should be; see Q. 8, below.

PILOTs

If a municipality does *not* opt out – i.e., if it leaves the exemption in place – then qualifying solar energy systems constructed in the municipality will be exempt from taxation for a period of 15 years. However, the municipality then has the option to require the owners of such systems to enter into contracts to make payments in lieu of taxes, which are generally referred to as “PILOTs.”

6. If a municipality leaves the exemption in place and requires owners to pay PILOTs, how much should those payments be?

A: That is largely a local decision, except that the statute sets limits on how large these PILOTs may be, and on how long they may last. Specifically, it provides that the PILOTs may not exceed the taxes that would have been payable if the property were not exempt under § 487. It also provides that the period over which the PILOTs are to be paid may not exceed 15 years. See § 487(9)(a). In effect, then, if a municipality leaves the exemption in place and imposes the maximum allowable PILOT obligation, the owner will be making payments to the municipality in the same amount as if the property were fully taxable. The primary difference is that those payments will have the legal status of PILOTs rather than property taxes.

7. What is the maximum PILOT for a solar farm built on vacant land?

A: We have heard it suggested that if a solar farm is built on vacant land, the PILOT may not exceed the amount of taxes that were payable on the vacant land immediately before the solar farm was built. In our view, that is not correct. The limit on the PILOTs in such an instance is the amount of taxes that would have been levied on the parcel as it now exists – that is, the land *with* the panels – if the municipality had opted out of the exemption.

8. May different PILOT requirements be imposed upon commercial and residential systems?

A: While it is clear that a municipality may not opt out of the § 487 exemption for one type of property while leaving the exemption in place for another type (see Q. 5, above), it is less clear whether it may impose different PILOT requirements on different property types. RPTL § 487(9)(a) states simply that the municipality may require “*the owner of a property*” that qualifies for the exemption “*to enter into a contract*” to make PILOTs (emphasis added). This wording, which arguably frames the PILOT question as an individualized determination rather than a collective one, provides no guidance as to how owners should be treated relative to one another. While principles of equal protection would clearly preclude a municipality from drawing arbitrary distinctions between similarly-situated owners when setting their PILOT requirements, we believe the law may reasonably be read as leaving open the possibility of treating owners of different types of property differently, as long as there is a rational basis for doing so. Accordingly, if differential treatment is desired, we suggest that the issue be directed to the municipal attorney, who would have to be satisfied that any such differentiation could successfully be defended in the event of litigation.

9. May a municipality enter into a PILOT agreement that requires the owner of a solar energy system to provide the municipality with energy at a discounted rate, or that bases the PILOT payments upon the amount of energy produced by the system or the value of the system?

A: Nothing in § 487 prohibits a municipality from structuring a PILOT as described above. However, as noted above (see Q. 6-7), § 487(9)(a) states that PILOT agreements may require annual payments in an amount *not to exceed* the amounts that would have been payable if not for the exemption. Therefore, no matter how the arrangement is structured, the PILOT obligation imposed upon the owner must comply with this limitation.

10. Our municipality received a notice stating that the sender of the notice intends to construct a solar energy system within our municipality. What is the significance of this notice?

A: In some cases, a municipality that has not opted out of the § 487 exemption may need to take action to preserve its rights to collect PILOTs on exempt property. The law now provides that the owner or developer of a solar energy system may notify a municipality in writing that it intends to construct such a system. If an owner or developer does so, and the municipality wishes to collect PILOTs on that system, then within 60 days of receiving the notice of intent, the municipality must notify that owner or developer that it intends to require it to enter into a PILOT contract. See § 487(9)(a). Note that the law does not require an owner or developer to use a specific form or include specific language when giving a municipality notice of its intent to construct a solar energy system.

Ownership

11. May solar panels receive the § 487 exemption if they are not owned by the owner of the underlying land or building?

A: Yes. There is no ownership requirement in § 487, so solar panels that otherwise qualify are entitled to the § 487 exemption even if they are owned by a third party.

12. Solar panels will be installed on property that is owned either by a municipality or by a public or private college. The panels themselves will be owned by a private entity, which will sell the electricity to the municipality or college at a discounted rate. Due to the 15-year limit on the § 487 exemption, it has been suggested that the panels may be granted a permanent exemption under the exemption statutes that apply to municipal corporations or non-profit educational organizations, rather than under § 487. Is this permissible?

A: It depends. The real property tax exemptions that apply to municipalities and non-profit educational organizations are embodied in RPTL §§ 406 and 420-a, respectively. Each statute provides that in order to qualify for the exemption real property must be both (1) “owned by” the eligible owner (i.e., the municipality or educational organization) and (2) used for qualifying purposes. Since these panels will be used to generate low-cost electricity for the municipality or college, it may reasonably be argued that these panels will be used for qualifying purposes.

However, the use requirement is just *one* of the requirements that must be satisfied to qualify for exemption under § 406 and § 420-a. In each case, the property must *also* be *owned by* the exempt entity in order to qualify for exemption. Record title is not necessarily required to qualify leased solar panels for the exemption. The courts have recognized that “indicia of ownership” may suffice, depending on the facts. *See e.g. Colleges of the Seneca v. City of Geneva*, 94 NY2d 713 (2000); *United Health Services Hospitals, Inc. v. Assessor of the Town of Vestal*, 122 AD3d 1177 (3d Dept. 2014); *c.f. Spectapark Associates v. City of Albany Dept. of Assessment and Taxation*, 12 AD3d 800 (3d Dept. 2004). We suggest you review these cases with your municipal attorneys prior to making any determinations about the taxable status of solar panels leased by or to a nonprofit organization.

Note that this analysis does not require the removal of the § 406 or § 420-a exemption from the land or buildings to which the solar panels will be attached. If that land or those buildings will remain under the ownership of the municipality or college, we see no reason why the § 406 or § 420-a exemption should be removed from the land or buildings in these cases.

Residential conservation improvements

13. There is a separate exemption statute for “residential conservation improvements,” namely, RPTL § 487-a. Do solar energy systems qualify for this exemption?

A: No. RPTL § 487-a states in its entirety:

Insulation and other energy conservation measures hereafter added to one, two, three or four family homes, which qualify for (a) financing under a home conservation plan pursuant to article VII-A of the public service law, or (b) any conservation related state or federal tax credit or deduction heretofore or hereafter enacted, shall be exempt from real property taxation and special ad valorem levies to the extent of any increase in value of such homes by reason of such addition.

It is undeniable that solar systems offer many benefits, but energy “conservation” is not among them. A conservation measure leads to the use of *less* energy. Examples include installing better insulation or upgraded thermostats, replacing leaky windows or inefficient furnaces, etc. Those are the types of improvements that § 487-a was enacted to exempt, as the legislative history indicates (see, e.g., L.1977, c.858, § 1, “Legislative Findings”).

Solar systems are in a different category: They lead to the use of clean, renewable energy in place of energy generated from fossil fuels, but they do not necessarily lead to the use of

less energy overall. In fact, solar systems may actually lead to the use of *more* energy, since beyond the fixed cost of installation, the electricity they produce is essentially free.

Moreover, it is a broadly-accepted principle of statutory construction that specific legislative language takes precedence over general language. While § 487-a generally applies to “insulation and energy conservation measures,” § 487 specifically applies to solar energy systems (as well as wind and farm waste energy systems). In fact, both statutes were enacted in the same year, just a few weeks apart (L.1977, c.322 and c.858). It only stands to reason that § 487-a must have been intended to apply to improvements *other than* solar energy systems.

We are aware that in 1980, three years after § 487-a was enacted, solar energy systems were added to the list of improvements that could qualify for financing under a home conservation plan pursuant to Article VII-A of the Public Service Law (L.1980, c.557). An indirect effect of that amendment was to render solar energy systems eligible for the § 487-a exemption for as long as that financing was available. However, the Article VII-A home conservation financing program was terminated on June 1, 1986 by § 135-c(1) of the Public Service Law. That being so, we believe the 1980 amendment that briefly extended this financing program to solar energy systems has no legal significance today.

Accordingly, we do not believe that the § 487-a exemption may properly be extended to solar energy systems.

Business investment exemption

14. There is a separate “business investment exemption” under RPTL § 485-b. Do solar energy systems qualify for this exemption? If so, can a solar energy system receive both the § 487 and § 485-b exemptions?

A. RPTL § 485-b arguably could apply to a solar energy system, but the statute is imprecise and there is room for disagreement on the correct interpretation of the law. Ultimately, the assessor must decide whether the RPTL § 485-b exemption applies. The business investment exemption cannot be granted concurrently with or subsequent to any other real property tax exemption (including the RPTL § 487 exemption) granted to the same improvements. The only exception is that if PILOTs or other payments were made in an amount in excess of what would have been owed had the § 485-b exemption been granted, in which case the exemption is allowed less the number of years the property would have been previously exempt.

The RPTL § 485-b exemption applies to real property constructed, altered, installed or improved for the purpose of commercial, business or industrial activity. The exempt property must be “used primarily for the buying, selling, storing or developing goods or services, the manufacture or assembly of goods or the processing of raw materials.”

The Court of Appeals in *Long Is. Light. Co. v Bd. of Assessors of County of Nassau*, 81 NY2d 1029 (1993), held that the 485-b exemption did not apply to transmission and distribution equipment because that equipment is used primarily to carry and conduct natural gas and electricity and is not used primarily to sell services as that term is used in the statute. Notably, the court did not hold that providing gas and electricity is not a “service” within the meaning of 485-b. Rather, it held that the utility poles, wires, and gas mains involved were not used primarily to sell a service – that property was essentially used to carry and conduct natural gas and electricity, not to sell it. The court could have held that electricity and gas are not “goods” as that term is used in the statute, but it did

not. The court could have held that providing gas and electric service are not “services” as that term is used in the statute, but it did not.

In *Niagara Mohawk Power Corp. v Town of Watertown Bd. of Assessors*, 216 AD2d 885 (4th Dept. 1995), the Fourth Judicial Department took the *Long Island Light* decision one step further and denied the § 485-b exemption to an electrical substation on the grounds that “the substation is not used to manufacture or produce electricity.” This implies that if the property **had** been “used to manufacture or produce electricity” the court would have found it eligible for § 485-b. If some other system that manufactures or produces electricity could qualify for the § 485-b exemption there does not seem to be a logical basis for denying the exemption where it is a solar farm that is manufacturing or producing the electricity.

Based on the cases cited above, it seems that there is sufficient authority for assessors to conclude that a solar farm could satisfy the requirements of the RPTL § 485-b exemption on the basis that the production of solar electricity constitutes the developing of a service within the meaning of the statute. Furthermore, we have found instances where § 485-b exemptions were granted to non-solar electric generating plants in a number of assessing units in the State. That finding provides further support for the notion that the generation of electricity may reasonably be considered to be an eligible use under 485-b. We see nothing in the text of section § 485-b to suggest that generating electricity from solar energy is any less of an eligible use than generating electricity from non-solar energy.

Notwithstanding the case law cited above, and despite the fact that some assessors have granted the § 485-b exemption to non-solar electric generating plants, it is not necessarily unreasonable or incorrect for an assessor to determine that the § 485-b exemption does not apply to electric generating facilities (including solar energy systems). The assessor must be satisfied that the applicant is entitled to the exemption. RPTL § 485-b(4).

§ 487. Exemption from taxation for certain energy systems

1. As used in this section:

(a) “Solar or wind energy equipment” means collectors, controls, energy storage devices, heat pumps and pumps, heat exchangers, windmills, and other materials, hardware or equipment necessary to the process by which solar radiation or wind is (i) collected, (ii) converted into another form of energy such as thermal, electrical, mechanical or chemical, (iii) stored, (iv) protected from unnecessary dissipation and (v) distributed. It does not include pipes, controls, insulation or other equipment which are part of the normal heating, cooling, or insulation system of a building. It does include insulated glazing or insulation to the extent that such materials exceed the energy efficiency standards required by law.

(b) “Solar or wind energy system” means an arrangement or combination of solar or wind energy equipment designed to provide heating, cooling, hot water, or mechanical, chemical, or electrical energy by the collection of solar or wind energy and its conversion, storage, protection and distribution.

(c) “Authority” means the New York state energy research and development authority.

(d) “Incremental cost” means the increased cost of a solar or wind energy system or farm waste energy system or component thereof which also serves as part of the building structure, above that for similar conventional construction, which enables its use as a solar or wind energy or farm waste energy system or component.

(e) "Farm waste electric generating equipment" means equipment that generates electric energy from biogas produced by the anaerobic digestion of agricultural waste, such as livestock manure, farming waste and food processing wastes with a rated capacity of not more than one thousand kilowatts that is (i) manufactured, installed and operated in accordance with applicable government and industry standards, (ii) connected to the electric system and operated in conjunction with an electric corporation's transmission and distribution facilities, (iii) operated in compliance with the provisions of section sixty-six-j of the public service law, (iv) fueled at a minimum of ninety percent on an annual basis by biogas produced from the anaerobic digestion of agricultural waste such as livestock manure materials, crop residues and food processing wastes, and (v) fueled by biogas generated by anaerobic digestion with at least fifty percent by weight of its feedstock being livestock manure materials on an annual basis.

(f) "Farm waste energy system" means an arrangement or combination of farm waste electric generating equipment or other materials, hardware or equipment necessary to the process by which agricultural waste biogas is produced, collected, stored, cleaned, and converted into forms of energy such as thermal, electrical, mechanical or chemical and by which the biogas and converted energy are distributed on-site. It does not include pipes, controls, insulation or other equipment which are part of the normal heating, cooling or insulation system of a building.

(g) "Micro-hydroelectric energy equipment" means any energy storage device, penstock, turbine, generator and other materials, hardware and equipment necessary to the process by which the flow of stream or river water or water from other water bodies is (i) converted into electrical energy; (ii) protected from unnecessary dissipation; and (iii) distributed. It does not include pipes, controls, insulation or other equipment which are part of the normal heating, cooling, or insulation system of a building. It does not include insulated glazing or insulation to the extent that such materials exceed the energy efficiency standards established by law.

(h) "Micro-hydroelectric energy system" means an arrangement or combination of micro-hydroelectric energy equipment designed to provide electrical energy by the use of flowing water. It does not include pipes, controls, insulation or other equipment which are part of the normal heating, cooling, or insulation system of a building. It does not include insulated glazing or insulation to the extent that such materials exceed the energy efficiency standards established by law.

(i) "Fuel cell electric generating equipment" means a solid oxide, molten carbonate, proton exchange membrane or phosphoric acid fuel cell with a combined rated capacity of not more than two thousand kilowatts. It does not include insulated glazing or insulation to the extent that such materials exceed the energy efficiency standards established by law.

(j) "Fuel cell electric generating system" means an arrangement or combination of equipment designed to produce electrical energy through reaction of chemicals, including but not limited to hydrogen, oxygen, methane and natural gas.

(k) "Micro-combined heat and power generating equipment" means an integrated, cogenerating building heating and electrical power generation system, owned, leased or operated by a residential customer, located at such customer's premises, operating on any fuel and of any applicable engine, fuel cell, fuel-flexible linear generator or other technology with a rated capacity of at least one kilowatt and not more than ten kilowatts electric and any thermal output that has a design total fuel use efficiency in the production of heat and electricity of not less than eighty percent, and annually produces at least two thousand kilowatt hours of useful energy in the form of electricity that may work in combination with supplemental or parallel conventional heating systems, that is manufactured, installed and operated in accordance with applicable government

and industry standards, that is connected to the electric system and operated in conjunction with an electric corporation's transmission and distribution facilities. It does not include pipes, controls, insulation or other equipment which are part of the normal heating, cooling, or insulation system of a building. It does not include insulated glazing or insulation to the extent that such materials exceed the energy efficiency standards established by law.

(l) "Micro-combined heat and power generating equipment system" means an arrangement or combination of equipment designed to produce electrical energy and heat for a residential customer on such customer's premises.

(m) "Electric energy storage equipment" means a set of technologies capable of storing electric energy and releasing that energy as electric power at a later time. Electric energy storage technologies may store energy as potential, kinetic, chemical or thermal energy, that can be released as electric power and include, but are not limited to, various types of batteries, flywheels, electrochemical capacitors, compressed air storage and thermal storage devices.

(n) "Electric energy storage system" means an arrangement or combination of equipment designed to store electrical energy in electric energy storage equipment and release electric power at a later time.

(o) "Fuel-flexible linear generator electric generating equipment" or "fuel-flexible linear generator" means an integrated system consisting of oscillators, cylinders, electricity conversion equipment and associated balance of plant components that directly convert the linear motion of the oscillators into electricity and which has a combined rated capacity of not more than two thousand kilowatts.

(p) "Fuel-flexible linear generator electric generating system" means an arrangement or combination of fuel-flexible linear generator electric generating equipment designed to produce electrical energy from linear motion created by the reaction of gaseous or liquid fuels, including but not limited to biogas and natural gas.

2. Real property which includes a solar or wind energy system, farm waste energy system, micro-hydroelectric energy system, fuel cell electric generating system, micro-combined heat and power generating equipment system, electric energy storage equipment and electric energy storage system, or fuel-flexible linear generator electric generating system approved in accordance with the provisions of this section shall be exempt from taxation to the extent of any increase in the value thereof by reason of the inclusion of such solar or wind energy system, farm waste energy system, micro-hydroelectric energy system, fuel cell electric generating system, micro-combined heat and power generating equipment system, electric energy storage equipment and electric energy storage system, or fuel-flexible linear generator electronic generating system for a period of fifteen years. When a solar or wind energy system or components thereof, farm waste energy system, micro-hydroelectric energy system, fuel cell electric generating system, micro-combined heat and power generating equipment system, electric energy storage equipment and electric energy storage system, or fuel-flexible linear generator electronic generating system also serve as part of the building structure, the increase in value which shall be exempt from taxation shall be equal to the assessed value attributable to such system or components multiplied by the ratio of the incremental cost of such system or components to the total cost of such system or components. The exemption provided by this section is inapplicable to any structure that satisfies the requirements for exemption under section four hundred eighty-three-e of this title.

3. The president of the authority shall provide definitions and guidelines for the eligibility for exemption of the solar and wind energy equipment and systems, farm waste energy equipment and systems, micro-hydroelectric equipment and systems, fuel cell electric generating equipment

and systems, micro-combined heat and power generating equipment and systems, electric energy storage equipment and electric energy storage system, and fuel-flexible linear generator electric generating equipment and systems described in paragraphs (a), (b), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o) and (p) of subdivision one of this section.

4. No solar or wind energy system, farm waste energy system, micro-hydroelectric energy system, fuel cell electric generating system, micro-combined heat and power generating equipment system, electric energy storage equipment and electric energy storage system, or fuel-flexible linear generator electric generating system shall be entitled to any exemption from taxation under this section unless such system meets the guidelines set by the president of the authority and all other applicable provisions of law.

5. The exemption granted pursuant to this section shall only be applicable to (a) solar or wind energy systems or farm waste energy systems which are (i) existing or constructed prior to July first, nineteen hundred eighty-eight or (ii) constructed subsequent to January first, nineteen hundred ninety-one and prior to January first, two thousand twenty-five, and (b) micro-hydroelectric energy systems, fuel cell electric generating systems, micro-combined heat and power generating equipment systems, electric energy storage equipment or electric energy storage system, or fuel-flexible linear generator electric generating system which are constructed subsequent to January first, two thousand eighteen and prior to January first, two thousand twenty-five.

6. Such exemption shall be granted only upon application by the owner of the real property on a form prescribed and made available by the commissioner in cooperation with the authority. The applicant shall furnish such information as the commissioner shall require. The application shall be filed with the assessor of the appropriate county, city, town or village on or before the taxable status date of such county, city, town or village. A copy of such application shall be filed with the authority.

7. If the assessor is satisfied that the applicant is entitled to an exemption pursuant to this section, he or she shall approve the application and enter the taxable assessed value of the parcel for which an exemption has been granted pursuant to this section on the assessment roll with the taxable property, with the amount of the exemption as computed pursuant to subdivision two of this section in a separate column. In the event that real property granted an exemption pursuant to this section ceases to be used primarily for eligible purposes, the exemption granted pursuant to this section shall cease.

8. (a) Notwithstanding the provisions of subdivision two of this section, a county, city, town or village may by local law or a school district, other than a school district to which article fifty-two of the education law applies, may by resolution provide either (i) that no exemption under this section shall be applicable within its jurisdiction with respect to any solar or wind energy system or farm waste energy system which began construction subsequent to January first, nineteen hundred ninety-one or the effective date of such local law, ordinance or resolution, whichever is later, and/or (ii) that no exemption under this section shall be applicable within its jurisdiction with respect to any micro-hydroelectric energy system, fuel cell electric generating system, micro-combined heat and power generating equipment system, electric energy storage equipment or electric energy storage system, or fuel-flexible linear generator electric generating system constructed subsequent to January first, two thousand eighteen or the effective date of such local law, ordinance or resolution, whichever is later. A copy of any such local law or resolution shall be filed with the commissioner and with the president of the authority.

(b) Construction of a solar or wind energy system or a farm waste energy system shall be deemed to have begun upon the full execution of a contract or interconnection agreement with a utility;

provided however, that if such contract or interconnection agreement requires a deposit to be made, then construction shall be deemed to have begun when the contract or interconnection agreement is fully executed and the deposit is made. The owner or developer of such a system shall provide written notification to the appropriate local jurisdiction or jurisdictions upon execution of the contract or the interconnection agreement.

9. (a) A county, city, town, village or school district, except a school district under article fifty-two of the education law, that has not acted to remove the exemption under this section may require the owner of a property which includes a solar or wind energy system which meets the requirements of subdivision four of this section, to enter into a contract for payments in lieu of taxes. Such contract may require annual payments in an amount not to exceed the amounts which would otherwise be payable but for the exemption under this section. If the owner or developer of such a system provides written notification to a taxing jurisdiction of its intent to construct such a system, then in order to require the owner or developer of such system to enter into a contract for payments in lieu of taxes, such taxing jurisdiction must notify such owner or developer of its intent to require a contract for payments in lieu of taxes within sixty days of receiving the written notification.

(b) The payment in lieu of a tax agreement shall not operate for a period of more than fifteen years, commencing in each instance from the date on which the benefits of such exemption first become available and effective.

10. Notwithstanding the foregoing provisions of this section, on or after April first, two thousand nineteen, a county, city, town or village may by local law or a school district, other than a school district to which article fifty-two of the education law applies, may by resolution provide that real property that comprises or includes a solar or wind energy system, farm waste energy system, microhydroelectric energy system, fuel cell electric generating system, microcombined heat and power generating equipment system, electric energy storage system, or fuel-flexible linear generator as such terms are defined in paragraphs (b), (f), (h), (j), (l), (n), and (o) of subdivision one of this section (hereinafter, individually or collectively, "energy system"), shall be permanently exempt from any taxation, special ad valorem levies, and special assessments to the extent provided in section four hundred ninety of this article, and the owner of such property shall not be subject to any requirement to enter into a contract for payments in lieu of taxes in accordance with subdivision nine of this section, if: (a) the energy system is installed on real property that is owned or controlled by the state of New York, a department or agency thereof, or a state authority as that term is defined by subdivision one of section two of the public authorities law; and (b) the state of New York, a department or agency thereof, or a state authority as that term is defined by subdivision one of section two of the public authorities law has agreed to purchase the energy produced by such energy system or the environmental credits or attributes created by virtue of the energy system's operation, in accordance with a written agreement with the owner or operator of such energy system. Such exemption shall be granted only upon application by the owner of the real property on a form prescribed by the commissioner, which application shall be filed with the assessor of the appropriate county, city, town or village on or before the taxable status date of such county, city, town or village.