

The Holiday Bagful of Goodies

.....A Year End Topical Review



Bristol County Assessors Association
Annual Meeting
December 10, 2021

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A Year End Topical Review



Chapter 8 of the Acts of 2021, more commonly known as “The Climate Act” finally brought some sanity to the taxation of Solar Facilities in the Commonwealth.

Although it was approved March 26, 2021, Solar Facility taxation provisions don’t become effective until January 1, 2022.





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Solar Facility Provisions of the Climate Act

- Totally rewrites Chapter 59, Section 5, Clause 45th
- Owned or leased solar or wind powered system that is co-located with an energy storage system
 - Capable of producing not more than 125% of the annual electricity needs of the real property on which its located, and contiguous and non-contiguous commonly owned property in the municipality.





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Solar Facility Provisions of the Climate Act

- Owned or leased solar or wind powered system that is co-located with an energy storage system
 - Equal to or less than 25 kilowatts in capacity
- A solar or wind powered system, or energy storage system, or combination thereof, that has entered into a payment in lieu of tax (PILOT) agreement with the municipality





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Solar Facility Provisions of the Climate Act

- Climate Act Solar PILOT Provisions
 - Exemption for 20 years, but may be longer if agreed to in the PILOT
 - PILOT may only include personal property taxes, unless the real estate is in common ownership.
 - Leased Municipal Property may be considered under common ownership under certain circumstances.





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Solar Facility Provisions of the Climate Act

- Climate Act Solar PILOT Provisions
 - PILOT Agreement must be executed by “authorized officer” of the municipality.
 - MassDOR IGR 21-24 defines “Authorized Officer” as one given authority by the municipality’s legislative body to negotiate and, potentially in addition, to execute the PILOT.





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Solar Facility Provisions of the Climate Act

- Climate Act Solar PILOT Provisions
 - Municipality's Legislative Body must approve the PILOT as negotiated unless it has voted to authorize the CEO or other combination of officers to execute the agreement on the behalf of the municipality without further legislative body action.
 - PILOT must be in the municipality's "financial interest".





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Solar Facility Provisions of the Climate Act

- MassDOR Required Documentation For Certification:
 - A copy of the executed PILOT agreement along with a certified copy of the legislative body vote authorizing, approving or ratifying it.
 - Appraisal documentation used to support the estimates of full and fair cash value included in any PILOT agreement.





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Solar Facility Provisions of the Climate Act

- MassDOR Required Documentation For Certification:
 - A copy of any executed amendment to the agreement.
 - The IGR states that the documentation need only be provided once, but that it “should be available in connection with a 5 year certification process review.





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Solar Facility Provisions of the Climate Act

- Existing Solar PILOTs under Chapter 59, Section 38(h) are grandfathered.
- Revenues from 38(h) PILOTs are treated as committed revenues, while revenues from Clause Forty-Fifth PILOTs are treated as estimated receipts.
- Property Owners seeking $\leq 125\%$ or ≤ 25 kilowatt exemption must apply only once for it.





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Solar Facility Provisions of the Climate Act

- A previously exempt Solar Facility that is capable of producing more than 150% of the annual electricity needs of the property on which it is located is not grandfathered.
- The non-grandfathered Solar Facility may qualify for exemption under the 125% exemption, or become exempt pursuant to a Clause Forty-Fifth PILOT.





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The Eversource ATB Cases

- MassDOR Local Finance Opinion 2019-1
Both the Boston Gas and the NSTAR cases demonstrate that the ATB and the appellate courts have accepted that the DPU's carry-over rate base rule has changed over the years and that this change is a “special circumstance” warranting deviation from the net book valuation approach.
- MassDOR FY22 Assessment Standards
Required the blended rate and supporting documentation.





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The Eversource ATB Cases

- Springfield Case applies to FY12 & FY13
- There don't appear to be many cases pending in Bristol County but this may change due to the FY22 Standards
- Possible Outcomes





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Holyoke v. Tosado 20 TL 000040

- Decided by the Land Court on March 2, 2021 and concerned:
 - The requirement for Demands for unpaid taxes pursuant to Chapter 60, Section 16.
 - The requirement to give either actual or constructive notice to “all owners known to the collector.”





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Holyoke v. Tosado 20 TL 000040

- “The requirements of Chapter 60 are to be strictly construed”.
- Failing to give either actual or constructive notice to “all owners known to the collector”...substantially undermines those provisions of Chapter 60 that are “made for the protection of the interests of the taxpayers” and thereby invalidates the Taking.





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Holyoke v. Tosado 20 TL 000040

- The name of one of the persons listed on the Demand and Taking was actually the first name of an owner two owners before and the last name of the current owner.
- The name of the other person listed on the Demand and Taking was actually the name of one of the prior owners.





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Holyoke v. Tosado 20 TL 000040

- The Collector relies on information provided by the Assessors.
- While most Collectors review the Notice of Advertisement prior to publication, it is impossible for them to review names and addresses of everyone receiving a Demand Bill prior to issuing the Demand Bills





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Holyoke v. Tosado 20 TL 000040

- What can the Assessors do to prevent problems?
- Chapter 59, Section 12D
The undivided real estate of a deceased person may be assessed to his heirs or devisees, without designating any of them by name, until the names of such heirs or devisees appear in the probate court records in the county in which said real estate lies.





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Holyoke v. Tosado 20 TL 000040

- What can the Assessors do to prevent problems?
- Chapter 59, Section 12E

The real estate of a person deceased, the right or title to which is doubtful or unascertained by reason of litigation concerning the will of the deceased or the validity thereof, may be assessed in general terms to his estate, and said tax shall constitute a lien upon the land so assessed and may be enforced by sale of the same or a part thereof, as provided for enforcing other liens for taxes on real estate.





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Holyoke v. Tosado 20 TL 000040

- What can the Assessors do to prevent problems?
- Chapter 59, Section 12F

Wherever real estate has been unassessed because the right or title thereto has been doubtful or unascertained because of missing records or otherwise, and a municipality has conducted a search and has determined the record ownership of said real estate, the said real estate shall become subject to a lien for the expenditures incurred by said municipality in the determination of said ownership.





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Happy Holidays!!

