



Solar PILOTs - Harnessing the Power of the Sun to Warm Your Municipal Budgets.

MCAA Spring Education Meeting.

May 4, 2023

MATTHEW J. THOMAS, ESQ.

Attorney at Law



Payment In Lieu of Tax Agreements,
commonly known as “PILOTs”,
are a great way for municipalities
to sustainably enhance their revenues
while reducing the costs associated
with annual Abatements
& ATB Appeals.



Some Basics

- The Climate Act amended M.G.L. Chapter 59, Section 5, Cl. 45th to clarify the exemption and allow PILOTs.
- M.G.L. Chapter 59, Section 38(H)(b) Tax Agreements can not be used after January 1, 2022.



Some Basics

- Legislative Body of the municipality must designate an “authorized officer” to negotiate & execute Solar PILOTs.
- Legislative Body of the municipality must approve the negotiated Solar PILOT unless delegated without further legislative action.



Some Basics

- Solar PILOT Revenue is an Estimated Receipt, not a Committed Revenue.
 - DOR IGR 21-24
- Real Estate is not included unless the Real Estate and Solar Facility are under common ownership
 - DOR LFO 2022-1



Some Basics

- Since Solar Facilities are personal property they follow personal property taxation rules:
 - Must be in place as of January 1st;
 - PILOTs should begin on July 1st;
 - No supplemental assessments on Solar Facility – possibly on Solar Land.



PILOT Provisions

- PILOTs should:
 - Explicitly state that they do not include real estate;
 - Require annual affidavits in addition to Forms of List;
 - Prohibit assignment without prior municipal approval;



PILOT Provisions

- PILOTs should:
 - Explicitly state that the collection provisions of M.G.L Chapters 59 & 60 apply:
 - Right of Offset, 14% Interest, Attorney's Fees & Legal Costs
 - Grant UCC Security Interests to the municipality;



PILOT Provisions

- PILOTs should:
 - Be subject to provisions of M.G.L. Chapter 40, Section 57;
 - Waive ability to apply for abatements or ATB Appeals;
 - Contain “clawback” provisions;
 - Provide a Lender’s Right to Cure.



Solar on Municipal Property

- Chapter 59, Section 2B applies.
- Land or Rooftop under Solar Facility will become taxable.
- Rooftop Solar Facility on Schools:
 - Rooftop must be surplusd by School Committee with DESE Approval.

- M.G.L. Ch. 40, § 3



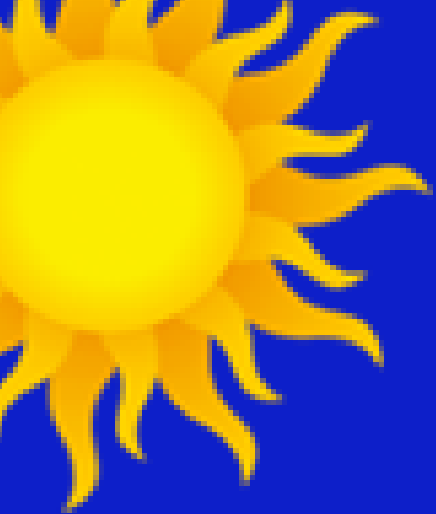
Solar on Chapterland

- Land must be removed from Chapter unless deemed “Dual Use”.
- Dual Use Solar requires an approved Agricultural Plan, and a Pre-Determination Letter from DOER.
- Solar Facilities not allowed on APR protected agricultural land.



Solar on Rooftops

- Rooftop Solar Facilities on multiple buildings should be treated separately to determine if they are exempt.
- Formerly exempt Rooftop Solar Facilities may have become taxable after the Climate Act.
- Valuation of Solar Facility is a little different on a rooftop.



Thank You!

MATTHEW J. THOMAS, ESQ.
4 PARK PLACE, SUITE 101
NEW BEDFORD, MA 02740
(774) 930-2936
mjt@mjthomaslaw.com

© Law Office of Matthew J. Thomas, 2023