Resolving the Real Property Tax Burden During the Development of a Renewable Energy Project

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Renewable Energy Facility as an "Improvement"

- In the absence of an exemption, it will be taxable at the fair market value
- Full fair market value of the improvement will create an insurmountable barrier to development.

Paths to Reducing the Real Property Tax Burden

Section 487 of the Real Property Tax Law

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Section 487 of the RPTL

- Permits a 15-year exemption
- Permits the taxing jurisdiction to require PILOT agreements with the facility developer
- Taxing jurisdictions may opt out of the Section 487 exemption

Paths to Reducing the Real Property Tax Burden

Receiving the designation as a project of the local Industrial Development Agency

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Industrial Development Agency Designation

- Provides sales tax exemption on any portion of the project not covered by the Tax Law Section 1115(12) exemption
- Permits the negotiations with all jurisdictions to be channeled through a central point

Paths to Reducing the Real Property Tax Burden

PILOT Agreements

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PILOT Advantages

- Include a distribution plan which is a variant from the prorata distribution required by RPTL Section 487 thereby eliminating the need for a “host community payment agreement”
- Include terms that can be longer than 15 years

PILOT Advantages

- Lower the payment burden in the early years in return for a correlation between the increase in value of the facility and the amount of the PILOT payments received
- Have PILOT include escalators and floors rather than a fixed schedule to reduce burden in the early years of a project

Hiscock & Barclay, LLP provides business counsel to a wide variety of clients in the energy industry. Our clients include integrated electric companies, oil and gas producers, natural gas pipelines, natural gas gathering systems, cogeneration facilities, non-utility power producers, large commercial and industrial energy, energy marketers, municipalities and publicly-owned utilities.