

## **SOLAR ENERGY FACILITIES TAXATION ACT**

### **Act 108 of 2023**

AN ACT to provide for the establishment of solar energy districts in certain local governmental units; to provide for the exemption from certain taxes; to levy and collect a specific tax on the owners or lessees of certain qualified facilities; to provide for the disposition of the tax; to provide for the obtaining and transferring of an exemption certificate and to prescribe the contents of those certificates; and to prescribe the powers and duties of certain state and local governmental officials.

**History:** 2023, Act 108, Imd. Eff. July 27, 2023.

*The People of the State of Michigan enact:*

#### **211.1151 Short title.**

Sec. 1. This act may be cited as the "solar energy facilities taxation act".

**History:** 2023, Act 108, Imd. Eff. July 27, 2023.

#### **211.1152 Definitions.**

Sec. 2. As used in this act:

- (a) "Applicant" means an owner or lessee of a qualified facility.
- (b) "Commission" means the state tax commission created by 1927 PA 360, MCL 209.101 to 209.107.
- (c) "Construction in progress" means a facility not yet placed in service but for which on-site delivery of any component described in subdivision (f) has been delivered to the site as of December 31 of that year. Construction in progress does not include land improvements or site preparation.
- (d) "Department" means the department of treasury.
- (e) "Qualified local governmental unit" means a city, village, or township.
- (f) "Qualified solar energy facility" or "qualified facility" means a facility, whether owned or leased, that when constructed and placed in service is located in a solar energy district and that uses or will use solar energy as the sole source for the generation of at least 2 megawatts of nameplate capacity, alternating current, including any solar modules, inverter, racks, tracking, on-site battery storage systems if identified in the application pursuant to section 4(1)(a), controls, electric interface, and all components that are positioned up to, and including, the inversion of the current delivered from the facility. Qualified solar energy facility or qualified facility also includes all land improvements, except buildings, exclusively used for the generation of solar energy at the facility, including access roads, security fences, and communication facilities. Qualified solar energy facility or qualified facility does not include any distribution or transmission lines.
- (g) "Solar energy district" or "district" means an area in a qualified local governmental unit established as provided in section 3(1).
- (h) "Solar energy facilities tax" or "specific tax" means the specific tax levied under this act.
- (i) "Solar energy facility exemption certificate" or "certificate" means a certificate issued under section 6.
- (j) "Taxable value" means the value determined under section 27a of the general property tax act, 1893 PA 206, MCL 211.27a.
- (k) "Unzoned qualified local governmental unit" means a qualified local governmental unit that has no zoning ordinance within its zoning jurisdiction.

**History:** 2023, Act 108, Imd. Eff. July 27, 2023.

#### **211.1153 Solar energy districts; establishment by resolution; written notice; discretionary approval.**

Sec. 3. (1) One or more solar energy districts may be established in a qualified local governmental unit in any of the following ways:

- (a) Pursuant to subsections (2) to (4), by resolution of the legislative body of the qualified local governmental unit that has a zoning ordinance within its zoning jurisdiction.
- (b) By the existence or establishment of a zoning ordinance designating the area within the qualified local governmental unit where a qualified solar energy facility can be located as a permitted or special use. Subsections (2) to (4) do not apply to a solar energy district established under this subdivision.
- (c) All land within an unzoned qualified local governmental unit is to be considered a solar energy district for purposes of this act, unless the qualified local governmental unit, before receiving an application under section 5, establishes a solar energy district by resolution of its governing body, which action is not subject to subsections (2) and (3).

(2) The legislative body of a qualified local governmental unit may establish a solar energy district on its

own initiative or upon a written request filed by the owner or owners of real property comprising more than 50% of all taxable value of the property located within a proposed district. The written request must be filed with the clerk of the qualified local governmental unit.

(3) Before adopting a resolution establishing a district, the legislative body shall give written notice by certified mail to the legislative body of each taxing unit that levies ad valorem property taxes in the proposed district and the owners of all real property in the proposed district and shall set a public hearing on the establishment of the district at which any of those owners, taxing units, and any other resident or taxpayer of the qualified local governmental unit may appear and be heard. The legislative body shall give public notice of the hearing not less than 10 days or more than 30 days before the date of the hearing. Public notice under this subsection must be provided by online posting on the qualified local governmental unit's website if online posting is available and by physical posting in a location open to the public in the office of the qualified local governmental unit.

(4) The actions by a qualified local governmental unit to either approve or disapprove a solar energy district within this act are discretionary and are for solar energy facilities tax purposes only.

**History:** 2023, Act 108, Imd. Eff. July 27, 2023.

### **211.1154 Solar energy exemption certificate; application; form, manner, and fees; transfer of application.**

Sec. 4. (1) After a district is established under section 3, including any district considered to exist pursuant to section 3(1)(b) or (c) or simultaneously with a request to establish a district, the owner or lessee of a qualified facility not yet placed in service may file an application for a solar energy exemption certificate with the clerk of the qualified local governmental unit. The application must be filed in the manner and form prescribed by the commission. The application must contain or be accompanied by all of the following:

(a) A general description of the qualified facility, including the proposed nameplate capacity and itemized list of facility components, including any on-site battery storage.

(b) A general description of the proposed use of the qualified facility.

(c) A description of the general nature and extent of the new construction.

(d) A time schedule for undertaking and completing the qualified facility.

(e) Information relating to the requirements in subsection (4). All cost information regarding the claim for the exemption must be considered taxpayer confidential information whether in possession of the department or the local assessing unit and is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(f) The proposed location of the qualified facility.

(g) For a leased qualified facility, a copy of the lease agreement or other writing confirming that the lessee is liable for payment of the specific tax for the length of the certificate as defined in section 7, and proof of that liability.

(h) For a qualified facility located on leased real property or an easement, a copy of the memorandum of lease or memorandum of easement, which must confirm that the duration of any lease of the real property where the qualified facility is located, including all options to extend the duration of the lease, is equal to or exceeds the duration of the certificate as described in section 7.

(2) Upon receipt of an application for a certificate, the clerk of the qualified local governmental unit shall provide written notice of the application, in a form and manner as prescribed by the commission, to the assessor of the local tax collecting unit in which the qualified facility is located and the legislative body of each taxing unit that levies ad valorem property taxes in the qualified local governmental unit in which the qualified facility is located. Before acting on the application, unless a public hearing has been held under section 3, the legislative body of the qualified local governmental unit shall hold a public hearing on the application and give public notice to the applicant, the assessor, a representative of each affected taxing unit, and the general public. Public notice under this subsection must be provided by online posting on the qualified local governmental unit's website if online posting is available and by physical posting in a location open to the public in the office of the qualified local governmental unit.

(3) The qualified local governmental unit may charge the applicant an application fee to process an application for the certificate. Except as provided in section 14, the application fee must not exceed the actual cost incurred by the qualified local governmental unit in processing the application or \$30,000.00, whichever is less.

(4) Upon receipt of notice of the filing of an application as provided in subsection (2), the assessor shall estimate and furnish to the local legislative body of the qualified local governmental unit an estimate of the assessed value and the taxable value of the qualified facility not yet placed in service to which the application pertains.

(5) Using a form prescribed by the commission, an applicant may transfer an application filed under this section to another party if the legislative body of the qualified local governmental unit has not yet taken any action under section 5. If an applicant transfers an application within 30 days before the end of the 120-day period required under section 5(1), the 120-day period is extended by 30 days.

**History:** 2023, Act 108, Imd. Eff. July 27, 2023.

#### **211.1155 Qualified local governmental unit; approval or disapproval by resolution.**

Sec. 5. (1) The legislative body of the qualified local governmental unit, not more than 120 days after receipt of the application by the clerk, shall by resolution either approve or disapprove the application for a certificate in accordance with all provisions of this act. The clerk shall retain the original of the application and resolution. If approved, the clerk shall forward a copy of the application, the resolution, and the assessed and taxable value estimate referenced in section 4(4) to the commission within 60 days after approval or before September 30 of the year, whichever is first, in order for the applicant to be able to receive the certificate for the following year. If the application is determined to be incomplete, the clerk shall notify the applicant in writing within 60 days after receipt of the incomplete application, describing the deficiency and requesting the additional information. The 120-day period is reset and tolled upon notification by the clerk of a deficiency until all of the information requested in writing by the clerk is received by the qualified local governmental unit. The applicant has 60 days to correct the deficiency, or the application is void unless the applicant and the qualified local governmental unit agree in writing to an extension of this period not to exceed an additional 30 days. The extension agreement must be completed in a form and manner prescribed by the commission. The determination of the completeness of an application is not an approval of the application. If the application is disapproved, the reasons must be set forth in writing in the resolution, and the clerk shall send, by certified mail, a copy of the resolution to the applicant, the assessor, and the commission. A resolution approving the application is not effective unless approved by the commission as provided in section 6.

(2) Within 14 days after the adoption of a resolution disapproving the application under subsection (1), the owner or lessee may request the legislative body of the qualified local governmental unit to reconsider the application by submitting information not previously included in the application submitted under section 4. Within 60 days after receipt of the request for reconsideration, the legislative body of the qualified local governmental unit shall review the new information and by resolution either approve or disapprove the request for reconsideration in accordance with subsection (1).

(3) The actions by a qualified local governmental unit to either approve or disapprove an application for a certificate within this act are discretionary and are for solar energy facilities tax purposes only.

**History:** 2023, Act 108, Imd. Eff. July 27, 2023.

#### **211.1156 Issuance of certificate; effective date; maintenance of records.**

Sec. 6. (1) Not more than 90 days after receipt of a copy of a complete application and resolution approving the application adopted under section 5, the commission shall approve the application if it determines that the qualified facility complies with all provisions of this act. Placement of a qualified facility in service after the date of application under section 4 does not disqualify the facility from receiving approval by a qualified local governmental unit under section 5 or by the commission under this section.

(2) Following approval of the application by the legislative body of the qualified local governmental unit and the commission, the commission shall issue to the applicant a certificate in the form the commission determines, which must contain all of the following:

- (a) The address of the real property on which the qualified facility is located.
- (b) The time schedule for undertaking and completing the qualified facility.
- (c) A statement that unless revoked as provided in this act, the certificate will remain in force for the period stated in the certificate.
- (d) A statement of the estimated taxable value of the qualified facility for the tax year immediately preceding the effective date of the certificate after deducting the taxable value of the land as determined under section 4(4).

(3) The effective date of the certificate is the December 31 immediately following the date of issuance of the certificate.

(4) The commission shall file with the clerk of the qualified local governmental unit a copy of the certificate, and the commission shall maintain a record of all certificates filed. The commission shall also send, by certified mail, a copy of the certificate to the applicant and the assessor of the local tax collecting unit in which the qualified facility is located.

**History:** 2023, Act 108, Imd. Eff. July 27, 2023.

**211.1157 Exemption from ad valorem property taxes; time period.**

Sec. 7. A qualified facility for which a certificate is in effect, but not the land on which the qualified facility is located, for the period on and after the effective date of the certificate and continuing for 20 years is exempt from ad valorem property taxes collected under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155.

**History:** 2023, Act 108, Imd. Eff. July 27, 2023.

**211.1158 Qualified facility; annual form; nameplate capacity.**

Sec. 8. (1) An owner or lessee that claims an exemption under this act shall provide to the qualified local governmental unit an annual form as of December 31 of each year indicating the nameplate capacity in alternating current of the qualified facility. The annual form must be filed in the manner and form prescribed by the commission and must include, but not be limited to, the addition to the facility or retirement from the facility of any equipment during that year.

(2) The assessor of each qualified local governmental unit in which there is a qualified facility with respect to which 1 or more certificates have been issued and are in force shall determine annually as of December 31 the assessed value, taxable value, and nameplate capacity of each qualified facility separately.

**History:** 2023, Act 108, Imd. Eff. July 27, 2023.

**211.1159 Solar energy facilities specific tax; levy; amount; disbursement of payments; renaissance zone exemption.**

Sec. 9. (1) The solar energy facilities tax is levied on the owner or lessee of a qualified facility to which a certificate is in effect under this act, as described in subsections (2) to (5).

(2) Except as provided in subsections (3), (4), and (5), the amount of the solar energy facilities tax, in each year after the facility is placed in service, is equal to \$7,000.00 per megawatt of nameplate capacity, alternating current as reported on the annual form prescribed under section 8(1).

(3) The amount of the specific tax as prescribed in subsection (2) must be reduced to \$2,000.00 per megawatt of nameplate capacity, alternating current as reported on the annual form prescribed under section 8(1), for a qualified facility located on 1 or more of the following:

(a) Property owned by this state either at the time of installation of the qualified facility or immediately prior to a sale of the property to accommodate the installation of the qualified facility.

(b) Property located in an opportunity zone designated by the United States Department of Treasury in April 2018 under the tax cuts and jobs act of 2017, Public Law No. 115-97.

(c) Property that was used or is currently used for commercial or industrial purposes and that is a facility, historic resource, functionally obsolete, or blighted, as those terms are defined in section 2 of the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2652, or a site or property as those terms are defined in section 21303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.21303.

(d) Improved real property used for another purpose if the qualified facility is attached to the improvement.

(4) For construction in progress, the specific tax prescribed in subsections (2) and (3) must be reduced by 50%.

(5) After the effective date of the certificate, but prior to the commencement of construction in progress, the specific tax prescribed in subsections (2) and (3) must be reduced by 100%.

(6) The solar energy facilities tax is an annual tax that becomes a lien on July 1, payable at the same time and to the same officer or officers as taxes imposed under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155, are payable. Interest must be added to delinquent amounts paid after September 14 at a rate of 1% per month or fraction of a month. Except as otherwise provided in this section, the officer or officers shall disburse the specific tax payments received by the officer or officers each year to and among this state, cities, school districts, townships, counties, villages, and authorities by December 1 using the tax rates levied in the year in the same proportions as required by law for the disbursement of taxes collected on industrial personal property under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155, as of the effective date of this act.

(7) For intermediate school districts receiving state aid under sections 56 and 62 of the state school aid act of 1979, 1979 PA 94, MCL 388.1656 and 388.1662, of the amount of the specific tax that would otherwise be disbursed to an intermediate school district, all or a portion, to be determined on the basis of the tax rates being utilized to compute the amount of state aid, must be paid to the state treasury to the credit of the state school aid fund established by section 11 of article IX of the state constitution of 1963.

(8) The officer or officers shall send a copy of the amount of disbursement made to each unit under this section to the department on a form provided by the department.

(9) A qualified facility located in a renaissance zone under the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, is exempt from the specific tax levied under this act to the extent and for the duration provided pursuant to the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, except for that portion of the specific tax attributable to a special assessment or a tax described in section 7ff(2) of the general property tax act, 1893 PA 206, MCL 211.7ff. The specific tax calculated under this subsection must be disbursed proportionately to the taxing unit or units that levied the special assessment or the tax described in section 7ff(2) of the general property tax act, 1893 PA 206, MCL 211.7ff.

**History:** 2023, Act 108, Imd. Eff. July 27, 2023.

#### **211.1160 Revocation of certificate; grounds for revocation; notice; reinstatement of certificate; continuation payments.**

Sec. 10. (1) Upon receipt of a request by certified mail to the commission by the holder of a certificate requesting revocation of the certificate, the commission shall by order revoke the certificate for any of the following reasons:

- (a) The facility has not yet been placed in service.
- (b) The qualified facility has permanently ceased operations.

(2) The legislative body of the qualified local governmental unit may by resolution request the commission to revoke the certificate of a qualified facility for any of the following reasons:

(a) The legislative body finds that completion of the qualified facility has not occurred within the time authorized by the legislative body in the certificate issued under section 6(2)(b), an extension of that time has not been granted by resolution of the qualified local governmental unit for good cause, and circumstances that are beyond the control of the holder of the certificate have not occurred.

(b) The specific tax under this act has not been paid within 1 year of September 14 as provided in section 9(6).

- (c) The qualified facility has permanently ceased operations.

(3) Before revocation of the certificate as described in subsection (1) or upon receipt of a resolution described in subsection (2), the commission shall give notice in writing by certified mail to the holder of the certificate, to the local legislative body, to the assessor, and to the legislative body of each local taxing unit that levies taxes on property in the local governmental unit in which the qualified facility is located. The commission shall afford the holder of the certificate, the local legislative body, the assessor, and a representative of the legislative body of each taxing unit an opportunity for a hearing. If the requirements in subsection (2) have not been cured, the commission shall consider the resolution and by order revoke the certificate.

(4) The order of the commission revoking a certificate under subsection (1) or (2) is effective on the December 31 next following the date of the order, and the commission shall send by certified mail copies of its order of revocation to the holder of the certificate, to the local legislative body, to the assessor, and to the legislative body of each taxing unit that levies taxes on property in the qualified local governmental unit in which the qualified facility is located. If the commission revokes a certificate for nonpayment of the specific tax under subsection (2)(b), the holder of the certificate shall within 90 days of the revocation repay all of the prior years' net tax savings under the certificate, calculated by the commission by subtracting the specific tax paid from the amount of property tax that would have been levied on the qualified facility if the certificate had not been in effect based on the value determined under section 8(2). If not repaid, the prior years' net tax savings must be added to the next property tax bill for the qualified facility.

(5) Notwithstanding any other provision of this act, the commission shall reinstate a revoked certificate if all of the following conditions are met during the 20-year period described in section 7:

(a) A written request for reinstatement is submitted to the legislative body of the qualified local governmental unit in which the qualified facility is located and the commission by either the holder of the revoked certificate or a subsequent owner of the qualified facility seeking transfer of the revoked certificate.

(b) The legislative body of the qualified local governmental unit submits to the commission a resolution of concurrence in the requested reinstatement.

- (c) The qualified facility continues to qualify under this act.

(6) If, after a qualified facility is placed in service, the commission revokes a certificate for the cessation of operations under subsection (1)(b) or (2)(c), the holder of the certificate is subject to a 1-time continuation payment based on the number of years remaining on the 20-year period described in section 7. The commission shall calculate the continuation payment as the product of the number of years remaining, the annual solar energy facilities tax required under section 9(2) or 9(3), and an applicable percentage. The applicable percentage is equal to 1 of the following:

- (a) If 11 or more years of the 20-year period remain, 25%.



- (b) If 6 or more years and less than 11 years of the 20-year period remain, 50%.
- (c) If the 20-year period is not complete and less than 6 years of it remain, 75%.
- (d) Notwithstanding subdivisions (a) to (c), 0% if any of the following apply:
  - (i) The 20-year period is complete.
  - (ii) The cessation of operations is due to an act of God and the owner has no intent to resume operations.
  - (iii) The commission reinstates a revoked certificate under subsection (5).

**History:** 2023, Act 108, Imd. Eff. July 27, 2023.

#### **211.1161 Requirements for transfer of certificate.**

Sec. 11. (1) Not later than 30 days after a qualified local governmental unit receives a request to transfer a certificate, the qualified local governmental unit shall approve the transfer from the holder of the certificate and assign the certificate to a new owner or lessee of the qualified facility if all of the following conditions are met:

- (a) The new owner or lessee consents to the terms of the existing certificate and all provisions of this act.
- (b) All taxes on the qualified facility have been paid.
- (c) The qualified facility has not permanently ceased operations.
- (d) In the case of a leased qualified facility, the lessee has provided a copy of the lease agreement or other writing confirming that the lessee is liable for payment of the specific tax for the remaining length of the certificate and proof of that liability.

(2) A qualified local governmental unit shall notify the commission of a transfer under this section not later than 30 days after approval of the transfer.

**History:** 2023, Act 108, Imd. Eff. July 27, 2023.

#### **211.1162 Status report of exemptions to department.**

Sec. 12. Not later than June 15 each year, each qualified local governmental unit granting a certificate shall report to the department on the status of each exemption. The report must include the current taxable value of the property to which the exemption pertains.

**History:** 2023, Act 108, Imd. Eff. July 27, 2023.

#### **211.1163 Utilization report to legislature.**

Sec. 13. (1) The department annually shall prepare and submit to the committees of the house of representatives and senate responsible for tax policy and economic development issues a report on the utilization of this act, based on the information filed with the commission.

(2) After this act has been in effect for 3 years, the department shall prepare and submit to the committees of the house of representatives and senate responsible for tax policy and economic development issues an economic analysis of the costs and benefits of this act in the 3 qualified local governmental units in which it has been most heavily utilized.

**History:** 2023, Act 108, Imd. Eff. July 27, 2023.

#### **211.1164 Removal of abandoned or improperly maintained qualified facilities; fee or bonding requirement.**

Sec. 14. As a condition to an exemption granted under this act, a qualified local governmental unit may impose a fee or adopt a bonding requirement for a qualified facility if the purpose of the fee or bond is to provide for the removal of an abandoned or improperly maintained qualified facility, including a facility that a qualified local governmental unit determines should be removed to protect public health, safety, or welfare. However, a qualified local governmental unit may impose a fee or adopt a bonding requirement for a qualified facility under this section only if the qualified facility is not otherwise subject to a decommissioning fee or removal bond under general zoning ordinances or land use permitting.

**History:** 2023, Act 108, Imd. Eff. July 27, 2023.

#### **211.1165 Sunset of new exemptions; effectiveness of existing exemptions.**

Sec. 15. A new exemption must not be granted under this act after December 31, 2031, but an exemption then in effect continues until the expiration or revocation of the certificate.

**History:** 2023, Act 108, Imd. Eff. July 27, 2023.