

CHAPTER 194

TAXATION

HOUSE BILL 06-1275

BY REPRESENTATIVE(S) McKinley, Butcher, Gallegos, Gardner, Berens, Coleman, Curry, Frangas, Kerr J., Liston, Madden, Marshall, McFadyen, Paccione, Penry, Plant, Romanoff, Solano, Stafford, Todd, and White;
also SENATOR(S) Brophy, Gordon, Groff, Grossman, Shaffer, Tapia, Tochtrop, Tupa, and Williams.

AN ACT**CONCERNING THE DETERMINATION OF THE ACTUAL VALUE FOR PROPERTY TAX PURPOSES OF
PROPERTY USED TO GENERATE ELECTRICITY FROM WIND.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 39-4-101 (3), Colorado Revised Statutes, is amended, and the said 39-4-101 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

39-4-101. Definitions. As used in this article, unless the context otherwise requires:

(3) (a) "Public utility" means, for property tax years commencing on or after January 1, 1987, every sole proprietorship, firm, limited liability company, partnership, association, company, or corporation, and the trustees or receivers thereof, whether elected or appointed, ~~which~~ THAT does business in this state as a railroad company, airline company, electric company, WIND ENERGY FACILITY, rural electric company, telephone company, telegraph company, gas company, gas pipeline carrier company, domestic water company selling at retail except nonprofit domestic water companies, pipeline company, coal slurry pipeline, or private car line company.

(b) On and after January 1, 2000, for purposes of this article, "public utility" shall not include any affiliate or subsidiary of a sole proprietorship, firm, limited liability company, partnership, association, company, or corporation of any type of company described in paragraph (a) of this subsection (3) that is not doing business in the state primarily as a railroad company, airline company, electric company, WIND ENERGY FACILITY, rural electric company, telephone company, telegraph company,

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

gas company, gas pipeline carrier company, domestic water company selling at retail except nonprofit domestic water companies, pipeline company, coal slurry pipeline, or private car line company. Valuation and taxation of any such affiliate or subsidiary of a public utility as defined in paragraph (a) of this subsection (3) shall be assessed pursuant to article 5 of this title.

(4) "WIND ENERGY FACILITY" MEANS A NEW FACILITY FIRST PLACED IN PRODUCTION ON OR AFTER JANUARY 1, 2006, THAT USES PROPERTY, REAL AND PERSONAL, INCLUDING ONE OR MORE WIND TURBINES, LEASEHOLDS, AND EASEMENTS, TO GENERATE AND DELIVER TO THE INTERCONNECTION METER ANY SOURCE OF ELECTRICAL OR MECHANICAL ENERGY BY HARNESSING THE KINETIC ENERGY OF THE WIND.

SECTION 2. 39-4-102 (1) (e), Colorado Revised Statutes, is amended, and the said 39-4-102 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

39-4-102. Valuation of public utilities. (1) The administrator shall determine the actual value of the operating property and plant of each public utility as a unit, giving consideration to the following factors and assigning such weight to each of such factors as in the administrator's judgment will secure a just value of such public utility as a unit:

(e) When determining the actual value of a renewable energy facility that primarily generates electricity, the administrator shall consider the additional incremental cost per kilowatt of the construction of the renewable energy facility over that of the construction cost of a comparable nonrenewable energy facility that primarily generates electricity to be an investment cost and shall not include such additional incremental cost in the valuation of the facility. For purposes of this paragraph (e), "renewable energy" has the meaning provided in section 40-1-102 (6), C.R.S. FOR PURPOSES OF THIS PARAGRAPH (e), "RENEWABLE ENERGY" SHALL NOT INCLUDE ENERGY GENERATED FROM A WIND ENERGY FACILITY.

(1.5) THE ADMINISTRATOR SHALL DETERMINE THE ACTUAL VALUE OF A WIND ENERGY FACILITY AS FOLLOWS:

(a) THE GENERAL ASSEMBLY HEREBY DECLARES THAT CONSIDERATION BY THE ADMINISTRATOR OF THE COST APPROACH AND MARKET APPROACH TO THE APPRAISAL OF A WIND ENERGY FACILITY RESULTS IN VALUATIONS THAT ARE NEITHER UNIFORM NOR JUST AND EQUAL BECAUSE OF WIDE VARIATIONS IN THE PRODUCTION OF ENERGY FROM WIND TURBINES, BECAUSE OF THE UNCERTAINTY OF WIND AVAILABLE FOR ENERGY PRODUCTION, AND BECAUSE THE COST OF CONSTRUCTING A WIND ENERGY FACILITY IS SIGNIFICANTLY MORE EXPENSIVE THAN ANY OTHER UTILITY PRODUCTION FACILITY. THEREFORE, IN THE ABSENCE OF PREPONDERANT EVIDENCE SHOWN BY THE ADMINISTRATOR THAT THE USE OF THE COST APPROACH AND MARKET APPROACH RESULTS IN UNIFORM AND JUST AND EQUAL VALUATION, A WIND ENERGY FACILITY SHALL BE VALUED BASED SOLELY UPON THE INCOME APPROACH.

(b)(I) THE ACTUAL VALUE OF A WIND ENERGY FACILITY SHALL BE AT AN AMOUNT EQUAL TO A TAX FACTOR TIMES THE SELLING PRICE AT THE INTERCONNECTION

METER.

(II) AS USED IN THIS PART 1, "INTERCONNECTION METER" MEANS THE METER LOCATED AT THE POINT OF DELIVERY OF ENERGY TO THE PURCHASER.

(III) AS USED IN THIS PARAGRAPH (b), "SELLING PRICE AT THE INTERCONNECTION METER" MEANS THE GROSS TAXABLE REVENUES REALIZED BY THE TAXPAYER FROM THE SALE OF ENERGY AT THE INTERCONNECTION METER.

(IV) AS USED IN THIS PARAGRAPH (b), "TAX FACTOR" MEANS A FACTOR ANNUALLY ESTABLISHED BY THE ADMINISTRATOR. THE TAX FACTOR SHALL BE A NUMBER THAT WHEN APPLIED TO THE SELLING PRICE AT THE INTERCONNECTION METER RESULTS IN APPROXIMATELY THE SAME TAX REVENUE OVER A TWENTY-YEAR PERIOD THAT WOULD HAVE BEEN COLLECTED USING THE COST BASIS METHOD OF TAXATION AS DETERMINED BY THE ADMINISTRATOR FOR A RENEWABLE ENERGY FACILITY PURSUANT TO SECTION 39-4-102 (1) (e).

(V) FOR PURPOSES OF CALCULATING THE TAX FACTOR AS REQUIRED IN SUBPARAGRAPH (IV) OF THIS PARAGRAPH (b), AN OWNER OR OPERATOR OF A WIND ENERGY FACILITY SHALL PROVIDE A COPY OF THE WIND ENERGY FACILITY'S CURRENT PURCHASE POWER AGREEMENT TO THE ADMINISTRATOR BY APRIL 1 OF EACH ASSESSMENT YEAR. THE ADMINISTRATOR SHALL ALSO HAVE THE AUTHORITY TO REQUEST A COPY OF THE CURRENT PURCHASE POWER AGREEMENT FROM THE PURCHASER OF POWER GENERATED AT A WIND ENERGY FACILITY. ALL AGREEMENTS PROVIDED TO THE ADMINISTRATOR PURSUANT TO THIS SUBPARAGRAPH (V) SHALL BE CONSIDERED PRIVATE DOCUMENTS AND SHALL BE AVAILABLE ONLY TO THE ADMINISTRATOR AND THE EMPLOYEES OF THE DIVISION OF PROPERTY TAXATION IN THE DEPARTMENT OF LOCAL AFFAIRS.

(c) THE LOCATION OF A WIND ENERGY FACILITY ON REAL PROPERTY SHALL NOT AFFECT THE CLASSIFICATION OF THAT REAL PROPERTY FOR PURPOSES OF DETERMINING THE ACTUAL VALUE OF THAT REAL PROPERTY AS PROVIDED IN SECTION 39-1-103.

(d) PURSUANT TO SECTION 39-3-118.5, NO ACTUAL VALUE FOR ANY PERSONAL PROPERTY USED IN A WIND ENERGY FACILITY SHALL BE ASSIGNED UNTIL SUCH PERSONAL PROPERTY IS FIRST PUT INTO USE BY THE FACILITY. IF ANY ITEM OF PERSONAL PROPERTY IS USED IN THE FACILITY AND IS SUBSEQUENTLY TAKEN OUT OF SERVICE SO THAT NO WIND ENERGY IS PRODUCED FROM THAT FACILITY FOR THE PRECEDING CALENDAR YEAR, NO ACTUAL VALUE SHALL BE ASSIGNED TO THAT ITEM OF MORE THAN FIVE PERCENT OF THE INSTALLED COST OF THE ITEM FOR THAT ASSESSMENT YEAR.

SECTION 3. Applicability. This act shall apply to the determination of the actual value of new wind energy facilities first placed in production on or after January 1, 2006.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 9, 2006