

CHAPTER 186

TAXATION

SENATE BILL 09-177

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also REPRESENTATIVE(S) Vigil, Fischer, Frangas, Kefalas, McCann, McFadyen, Merrifield, Middleton, Pace, Pommer,
Primavera, Priola, Ryden, Todd.

AN ACT**CONCERNING THE VALUATION OF NEW SOLAR ENERGY FACILITIES FOR THE PURPOSE OF PROPERTY TAXATION.**

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, that does business in this state as a railroad company, airline company, electric company, wind energy facility, SOLAR 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, SOLAR ENERGY FACILITY, rural electric company, telephone

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

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. 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.

(3.5) "SOLAR ENERGY FACILITY" MEANS A NEW FACILITY FIRST PLACED IN PRODUCTION ON OR AFTER JANUARY 1, 2009, THAT USES REAL AND PERSONAL PROPERTY, INCLUDING BUT NOT LIMITED TO ONE OR MORE SOLAR ENERGY DEVICES, AS DEFINED IN SECTION 38-32.5-100.3 (2), C.R.S., LEASEHOLDS, AND EASEMENTS, TO GENERATE AND DELIVER TO THE INTERCONNECTION METER ANY SOURCE OF ELECTRICAL, THERMAL, OR MECHANICAL ENERGY IN EXCESS OF TWO MEGAWATTS BY HARNESSING THE RADIANT ENERGY OF THE SUN AND THAT IS NOT PRIMARILY DESIGNED TO SUPPLY ELECTRICITY FOR CONSUMPTION ON SITE.

SECTION 2. 39-4-102 (1) (e) (II), the introductory portion to 39-4-102 (1.5), and 39-4-102 (1.5) (a), (1.5) (b) (I), (1.5) (b) (IV), (1.5) (b) (V), (1.5) (c), and (1.5) (d), Colorado Revised Statutes, are amended 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) (II) For purposes of this paragraph (e), "renewable energy" has the meaning provided in section 40-1-102 (11), C.R.S., but shall not include energy generated from a wind energy facility OR A SOLAR ENERGY FACILITY.

(1.5) The administrator shall determine the actual value of a wind energy facility OR A SOLAR 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 OR A SOLAR 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 AND SOLAR ENERGY DEVICES, AS DEFINED IN SECTION 38-32.5-100.3 (2), C.R.S., because of the uncertainty of wind AND SUNLIGHT available for energy production, and because ~~the cost of~~ constructing a wind energy facility OR A SOLAR ENERGY FACILITY is significantly more expensive than CONSTRUCTING 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 OR A SOLAR ENERGY FACILITY shall be valued based solely upon the income approach.

(b) (I) The actual value of a wind energy facility OR A SOLAR ENERGY FACILITY shall be at an amount equal to a tax factor times the selling price 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 ON A NOMINAL DOLLAR BASIS that would have been collected using the cost basis method of taxation as determined by the administrator for a renewable energy facility pursuant to paragraph (e) of subsection (1) of this section.

(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 OR A SOLAR ENERGY FACILITY shall provide a copy of the wind energy facility's OR SOLAR ENERGY FACILITY'S current power purchase 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 power purchase agreement from the purchaser of power generated at a wind energy facility OR A SOLAR 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 OR A SOLAR 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 OR A SOLAR ENERGY FACILITY shall be assigned until ~~such~~ THE 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 OR SOLAR 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. 39-5-104.7 (1) (b), Colorado Revised Statutes, is amended to read:

39-5-104.7. Valuation of real and personal property that produces alternating current electricity from a renewable energy source. (1) (b) The valuation requirements specified in paragraph (a) of this subsection (1) shall not apply to SOLAR ENERGY FACILITIES, AS DEFINED IN SECTION 39-4-101 (3.5), OR wind energy facilities, as defined in section 39-4-101 (4).

SECTION 4. Applicability. This act shall apply to the determination of the actual value of new solar energy facilities first placed in production on or after January 1, 2009.

SECTION 5. 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: April 22, 2009