

Division of Property Valuation  
300 SW 29<sup>th</sup> Street  
PO Box 3506  
Topeka KS 66601-3506  
Mark A. Burghart, Secretary



Phone: 785-296-2365  
Fax: 785-296-2320  
www.ksrevenue.gov  
Laura Kelly, Governor

## MEMORANDUM

**TO: Kansas County Appraisers**

**FROM: David Harper, Director**

**DATE: September 17, 2024**

**SUBJECT: Renewable Energy Resources & Battery Energy Storage Systems (BESS)**

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The purpose of this memo is to clarify and support previous communications on this subject and further provide instruction for both county and taxpayer.

Property Valuation Division (PVD) has issued three memorandums dated December 4, 2015, April 20, 2016, and November 5, 2021, summarizing, and providing guidance for statutory changes for renewable energy resources and technologies that were included in K.S.A. 79-201(Eleventh), effective July 1, 2015. The amendment modified the treatment of property that was used predominantly to produce and generate electricity utilizing renewable energy resources or technologies. Although this note summarizes the information to date, the three previously published PVD memorandums may continue to be referenced for guidance for all renewable energy sources. However, as renewable energy projects have progressed in Kansas, primarily regarding wind and solar technologies, additional questions and concerns require further direction as specified in this document.

### Renewable Energy Exemption

K.S.A. 79-201(Eleventh), states:

For all taxable years commencing after December 31, 1998, all property ***actually and regularly used predominantly to produce and generate electricity utilizing renewable energy resources or technologies*** when the applicant for such property, on or before December 31, 2016, has filed an application for exemption pursuant to this subsection or has received a conditional use permit to produce and generate electricity on the property from the county in which the property is located. Any exemption granted under the provisions of this subsection for such property when the applicant, after December 31, 2016, has filed such application or filed such application and received a conditional use permit, shall be in effect for the 10 taxable years immediately following the taxable year in which construction or installation of such property is completed. For purposes of this section, "renewable energy resources or technologies" shall include wind, solar, photovoltaic, biomass, hydropower, geothermal and landfill gas resources or technologies.

## Local or State Appraised

It should first be determined if the project will be *locally*, or *state appraised*. If the project will be providing energy to wholesale customers only, resellers, it should be locally assessed. If it will be providing energy to retail customers, selling directly to consumers, it will be state assessed. Most projects will be locally valued by the county appraiser.

## Kansas Board of Tax Appeals

***All renewable energy exemptions must be applied for and granted by the Kansas Board of Tax Appeals (BOTA).*** The renewable energy exemption provided in K.S.A. 79-201(Eleventh) must be applied for upon project completion and/or initial production of renewable energy following the processes outlined in K.S.A. 79-213.

If the renewable energy source will be providing/selling energy to *wholesale customers* only, the project will be locally appraised, and the local assessment application should be used. The form should be completed and filed with the county appraiser where the property is located. The county appraiser will make recommendations and forward the application and fee to BOTA to determine exemption and exemption period.

- [Microsoft Word - TX App.doc \(kansas.gov\)](#) -- wholesale customers only

If the renewable energy source will be providing/selling energy to *retail customers*, the project should be state appraised, and the state assessment application should be used. The form should be completed and filed with Property Valuation Division (PVD). The PVD Director will make recommendations and forward the application and the fee to BOTA to determine the exemption and the exemption period.

- [Microsoft Word - PVX App.doc \(kansas.gov\)](#) -- retail customers

Please see BOTA's website for fees and additional information.

- [Kansas Board of Tax Appeals](#)

If the renewable energy project is granted exemption by BOTA, it will be for a ***ten-year period with an annual renewal application to be submitted to the county*** as required in K.S.A. 79-210. Once the exemption expires, it will be subject to property tax.

- [Annual Claim for Exemption from Property Taxation \(ksrevenue.gov\)](#)

## Personal Property CIME Exemption

K.S.A. 79-223 provides for exemption of personal property commercial and industrial machinery and equipment (CIME) acquired by qualified purchase or lease on or after June 30, 2006.

K.S.A. 79-223(d)(2) states that "'commercial and industrial machinery and equipment" means property classified for property tax purposes within subclass (5) of class 2 of section 1 of article 11 of the constitution of the state of Kansas, but ***shall not include any electric generation facility or addition to an electric generation facility*** that is used predominately to produce and generate

electricity utilizing renewable energy resources or technologies as defined in K.S.A. 79-201, and amendments thereto.”

A renewable energy project coming on the tax roll after a 10-year expired exemption from K.S.A. 79-201(Eleventh) would ***not*** typically qualify for the K.S.A. 79-223 CIME exemption pursuant to the language in paragraph (d)(2) previously noted.

### Battery Energy Storage System (BESS)

Battery Energy Storage Systems (BESS) are designed to capture, store, and release electrical energy when needed. They can be a component of energy technologies referenced in K.S.A. 79-201(Eleventh), or they may be a standalone system separate and distinct from a K.S.A. 79-201(Eleventh) referenced renewable energy technology.

BESS systems and other items that are ***not*** “***actually and regularly used predominantly to produce and generate electricity utilizing renewable energy resources or technologies***” ***may not*** be included in the K.S.A. 79-201(Eleventh) renewable exemption.

Additionally, BESS systems and other items considered a ***component*** or “***addition to*** an electric generation facility that is used predominately to produce and generate electricity utilizing renewable energy resources or technologies as defined in K.S.A. 79-201,” ***may not*** be eligible for a CIME exemption as stated in K.S.A. 79-223(d)(2).

Yet, BESS systems and other items that are determined on a case-by-case basis by the county appraiser through a physical inspection using the three-part fixture test prescribed in K.S.A. 79-261 or by the BOTA to be ***personal property that is distinct and separate from, and not an addition to or component of***, an electric generation facility utilizing renewable energy resources ***may*** qualify for CIME exemption per K.S.A. 79-223.

BESS systems are not clearly addressed in K.S.A. 79-201 or K.S.A. 79-223. To promote consistency among counties and each different project, it could be interpreted that BESS systems do not regularly qualify for either of the exemptions and would be taxable as CIME since all property in Kansas, real and personal, is subject to taxation unless it is expressly exempt as required in K.S.A. 79-101. PVD Directive #92-025, “Exemptions”, states, “If the appraiser is in doubt as to whether a particular item of personal property is exempt, the property should be placed on the roll. Whether or not there is an initial filing requirement, all doubts concerning exemption are to be resolved against the exemption in favor of taxation. Farmers Co-op v. Kansas Bd. of Tax Appeals, 236 Kan. 632, 635, 694 P.2d 462 (1985). If the taxpayer requests that property be exempt, the county appraiser should assist the taxpayer in filing a request for exemption with BOTA.” There is nothing precluding a taxpayer from applying for either or both exemptions for BESS systems.

It should be noted this information is provided as guidance for valuation and uniformity for both county appraisers and taxpayers. Moreover, the decision of granting or denying exemption is the responsibility of the Kansas Board of Tax Appeals (BOTA), although the K.S.A. 79-223 CIME exemption is allowed to be granted by the county appraiser under the exception list in K.S.A. 79-213(l) when there is ***no doubt of the exemption status***.

## Lease Agreement

K.S.A. 79-412 contains specific language pertaining to lease agreement requirements:

It shall be the duty of the county or district appraiser to value the land and improvements. The value of the land and improvements shall be entered on the assessment roll in a single aggregate, except as hereinafter provided. Improvements owned by entities other than the owner of the land shall be assessed to the owners of such improvements, if the lease agreement has been recorded or filed in the office of the register of deeds. ***The words "building on leased ground" shall appear on the first page of the lease agreement.*** It shall be the responsibility of the person recording or filing the lease agreement to include such words as provided in this section. Failure to include such words as provided in this section may result in such improvements being assessed to the owner of the land. (Emphasis added) As used in this section, the term "person" means any individual, business, domestic or foreign corporation, partnership or association. Delinquent taxes imposed on such improvements may be collected by levy and sale of the interests of such owners the same as in cases of the collection of taxes on personal property.

The requirement to include the words “building on leased ground” could be a flag alerting the appraiser (and others) as to what the lease pertains. If the lease agreement does not meet the statutory requirement, the appraiser should either ask the lessee to file a “corrected lease” including the words “building on leased ground” on the first page of the agreement or decide to accept the lease as is and consider the omission of the words an oversight.

## Valuation and Assessment

If a renewable energy project is granted an exemption by BOTA, it will be for a ten-year period as described in K.S.A. 79-201(Eleventh). It should be noted that once an exemption is granted, the exemption should be for the renewable portion of the property only.

A renewable energy project coming on the tax roll after a 10-year expired exemption would not typically qualify for the K.S.A. 79-223 CIME exemption. Therefore, once the exemption expires, the property becomes taxable whether locally or state appraised. Most projects will be providing energy to wholesale customers and will be locally valued by the county appraiser.

If the property provides energy to wholesale customers and is locally appraised, it is considered personal property subclass five, CIME, which is valued by its situs as of January 1 of the tax year and using a formula under K.S.A. 79-1439(2)(E) and the Kansas Constitution Article 11. The formula for subclass five begins with retail cost when new (RCWN) depreciated over a seven-year life to a salvage value of 20% of RCWN. Personal property that is considered renewable energy equipment coming off a ten-year exemption would be valued at 20% RCWN since it has exceeded the schedule’s seven-year economic life. The assessment rate for subclass five is 25%.

If the property provides energy to retail customers and is state assessed, it will be valued as a public utility by PVD after the ten-year exemption subject to K.S.A. 79-5a01 et seq. The assessment rate for public utilities is 33%.

***The land and/or site should be considered commercial real property and valued at its fair market value if it is locally appraised.*** Commercial land is assessed at 25%, and general guidance is provided for land and/or site valuation in a PVD memorandum dated May 13, 2013, as well as

Appraisal Directive #19-038.

The land and/or site of a state appraised property is typically included in the unit valuation of the public utility by PVD. Public utility property, including the land, is assessed at 33%.

Projects under construction are likely not taxable as the *separate and distinct equipment inventory* could qualify as: 1) CIME personal property and exempt per K.S.A. 79-223; 2) Property under construction not taxable for twenty-four months (24) prior to the date of first exempt use per K.S.A. 79-213(j); or 3) Merchants' and manufacturers' inventory per K.S.A. 79-201m.

### Data Tracking

***The county appraiser should obtain as much initial information as possible to include with the exemption application submission to BOTA***, and to gain the vital information required to properly value the project when the exemption period ends. PVD has created data tracking and collection templates for wind and solar generation that can be used to gather and submit all necessary project information to the county. PVD will provide Excel templates upon request.

PVD templates:

- Wind Farm Valuation Data Collection Template
- Solar Energy Valuation Data Collection Template

All applications for exemption should include:

- Date the applicant acquired ownership of the subject property
- Date construction began
- Date construction or installation of such property was completed
- Date of first exempt use
- Complete inventory of property components and applicable cost (record in templates)

***A copy of the project tracking document should be sent to PVD when completed to be added to a statewide database.*** This will provide a statewide view of all projects, and an additional source of data.

### Buildings with Renewable Energy Equipment Integration

Property owners with solar and/or wind equipment integrated into a structure may apply to BOTA for the exemption. Generally, the renewable energy exemption includes “all property actually and regularly used predominantly to produce and generate electricity utilizing renewable energy resources or technologies filing exemption application and has received a “conditional use permit” to produce and generate electricity on the property from the county in which the property is located.” BOTA will determine if this definition would include the solar and/or wind equipment only, or the structure(s) utilizing integrated renewable equipment as the ***entire property may not be “actually and regularly used predominantly to produce and generate electricity” and may not meet the “conditional use” requirements.***

Currently there are no base direct costs added for an energy source, including renewable, for a structure in the county's cost valuation system. However, it could be beneficial for counties to

track properties that include renewable energy sources for potential studies and property comparisons.

### System Maintenance or Repower

Renewable energy systems require maintenance and component upgrades for various reasons. Technological advances can necessitate the need for upgrades to a system where portions of a system (hardware or software) or the entire system is replaced. When system components are upgraded, it is common for upgrades to increase the power or energy output, thus expanding the capabilities of the system. The expansion may be something other than what was outlined in a local conditional use permit or the tax exemption application.

The question is whether the maintenance or upgrade to the system would require the property owner to file for exemption with the BOTA again. The PVD Property Tax Law course book provides the following:

“BOTA has ruled that if property is exempt under art. 11, § 13, replacement property can enjoy exemption throughout the remainder of the exempt period as long as the personal property replaces damaged or outdated property that was exempt by a prior order. The court has ruled that when the local governing body clearly approved exemption of property acquired throughout the 10-year exempt period, the law does not prohibit the exemption of such after-acquired property.

In the Matter of the Application of Abbott Aluminum, Inc., 269 Kan. 689, 8 P.3d 729 (2000). To assure the exemption is appropriate, the language in the ordinance (city) or resolution (county) must clearly indicate the intent to exempt all property acquired throughout the exempt period. The owner must clearly list new additions on the annual claim for exemption, and the clerk of the city or county authorizing exemption must submit a written statement indicating that all the property listed continues to meet the terms and conditions imposed upon the exemption. The BOTA order should also indicate that after-acquired property may be exempt consistent with the city or county’s ordinance or resolution. Additionally, if Industrial Revenue Bond (IRB) exemption, only the property purchased with proceeds of bonds is eligible for exemption; thus, replacement property would require proceeds for purchase to qualify for exemption.

If there is doubt as to whether a property meets the requirements of the original conditional use permit or exemption application, the appraiser should refer to Directive #-92-025 and place the property on the tax roll.

### Conclusion

The Division of Property Valuation intends for the contents of this memo to be general information to clarify, support, and provide instruction to both counties and taxpayers. It should not be construed as legal advice or counsel. The facts of every case must be considered individually, and ***all renewable energy exemptions must be applied for and granted by the Kansas Board of Tax Appeals (BOTA).***