The Opt-Out Process for New York State's RPTL 487 Renewable Energy Tax Exemption

New York State's Real Property Tax Law (RPTL) Section 487 provides a 15-year tax exemption for properties with renewable energy systems, including solar, wind, and other clean energy technologies. This exemption applies specifically to the value that these systems add to the property, not to the entire property tax burden. The law includes a mechanism for local governments to opt out of providing this exemption, giving them control over their tax base. This report examines how this opt-out process works, its implications, and the alternatives available to local jurisdictions.

The Default Exemption and Local Control

RPTL 487 is structured as an "opt-out" rather than an "opt-in" provision. This means that the tax exemption for renewable energy systems automatically applies in all municipalities across New York State unless they take specific action to remove it.

Default Application of the Exemption

By default, all properties within New York State that install qualifying renewable energy systems are entitled to the 15-year exemption on the added value these systems bring to the property[1]. This automatic application applies to counties, cities, towns, villages, and school districts unless they have actively opted out through formal procedures[2]. In municipalities that have taken no action one way or another regarding this exemption, it remains fully in effect[1].

Importance of Local Decision-Making

The opt-out mechanism provides local taxing jurisdictions with flexibility to determine their approach to renewable energy taxation based on local priorities. Some jurisdictions may prefer to provide full tax incentives to encourage renewable development, while others may need to maintain their tax base and therefore choose to opt out[3].

Formal Opt-Out Procedures

The process for a municipality to opt out of the RPTL 487 exemption involves several specific steps that must be followed precisely.

Required Legislative Action

To opt out of the exemption, a municipality must take formal legislative action by passing a local law, ordinance, or resolution specifically stating that the RPTL 487 exemption will not apply within its jurisdiction[1] [3]. The document must clearly indicate the municipality's intention to disallow the tax exemption provided under Section 487[4].

Filing Requirements

After passing the opt-out legislation, the municipality must file copies of the local law, ordinance, or resolution with two state agencies:

1. The New York State Department of Taxation and Finance
2. The New York State Energy Research and Development Authority (NYSERDA) [1] [3]

This dual filing requirement ensures proper documentation and statewide tracking of which jurisdictions have opted out of the exemption.

All-or-Nothing Approach

When opting out of the RPTL 487 exemption, a municipality cannot selectively apply the opt-out to certain types of properties or projects. The law states that once a municipality has opted out, "no exemption under this section shall be applicable within its jurisdiction" [1]. This means a municipality cannot, for example, maintain the exemption for residential solar installations while opting out for commercial solar farms [1].

Timing and Retroactivity Considerations

The timing of an opt-out decision has important implications for existing and planned renewable energy projects.

Non-Retroactive Application

An opt-out decision cannot be applied retroactively [1]. When a municipality opts out of the exemption, it only affects renewable energy systems where construction had not yet begun by the effective date of the local law, ordinance, or resolution [1].

Definition of Construction Commencement

For purposes of determining whether a project is grandfathered in under the exemption despite a subsequent opt-out, the law provides specific guidance on when construction is deemed to have begun. Construction of a renewable energy system is considered to have commenced upon:

1. The execution of a contract or interconnection agreement with a utility, or
2. The payment of a deposit under such an agreement [1]

Developer Notification Requirement

The developer or owner must provide written notice to the appropriate municipalities when such contracts or agreements are executed [1]. This notification establishes the timeline and helps determine whether a project would be affected by any subsequent opt-out decision.

Reversibility of the Opt-Out Decision

The opt-out decision is not permanent and can be reversed if a municipality changes its policy direction.

Process for Reversing an Opt-Out

If a municipality that previously opted out wishes to restore the exemption, it may do so by repealing the local law, ordinance, or resolution that initially opted out of the exemption[1] [3]. Similar to the original opt-out, the municipality should file copies of the repeal with both the Department of Taxation and Finance and NYSERDA[1].

Timing of Exemption Restoration

While the law does not explicitly address the timing of exemption restoration, the implication is that once the opt-out is repealed, new renewable energy projects would qualify for the exemption going forward, though this would not retroactively apply to projects developed during the opt-out period.

Alternatives to Full Opt-Out: The PILOT Option

For municipalities that don't want to fully opt out but still wish to generate some revenue from renewable energy projects, RPTL 487 provides an alternative approach through Payment In Lieu of Taxes (PILOT) agreements.

PILOT as a Middle Ground

If a municipality does not opt out of RPTL 487, it can still negotiate PILOT agreements with renewable energy developers[2] [3]. These agreements allow the municipality to receive payments that partially offset the tax revenue that would have been collected without the exemption.

PILOT Limitations

By law, annual PILOT payments cannot exceed the value of what the taxes would have been without the exemption[2] [3]. The PILOT will typically reflect the 15-year exemption period required by law[3].

Time Sensitive Process

A municipality must act quickly if it wants to pursue a PILOT agreement. The law requires that if a municipality wants to enter into a PILOT, it must notify the developer within 60 days of receiving the developer's written notification to construct a solar facility[3]. If the municipality fails to act within this 60-day window, the option for a PILOT expires, and the project would receive the full exemption[3].

Impact of Opt-Out Decisions

The decision to opt out of RPTL 487 has significant implications for both the municipality and renewable energy development within its jurisdiction.

Economic Implications

Opting out of RPTL 487 allows municipalities to tax renewable energy systems at their full assessed value, potentially increasing tax revenue[3]. However, this decision can also impact project economics in ways that might make renewable energy projects financially unfeasible[2].

Effects on Different Project Types

According to search result [2], opting out of RPTL 487 can make community solar projects financially unviable and increase costs for homeowners' rooftop systems[2]. This suggests that the opt-out decision may have different impacts depending on the scale and type of renewable energy project.

Tracking of Opt-Out Jurisdictions

The New York State Department of Taxation and Finance maintains a comprehensive table listing all municipal corporations that have filed copies of local laws or resolutions opting out of the real property tax exemption for certain energy systems[5]. This allows developers and property owners to check whether the exemption is available in specific jurisdictions.

Conclusion

The opt-out process for RPTL 487 provides New York municipalities with important control over how they approach taxation of renewable energy systems within their jurisdictions. The process involves formal legislative action, proper filing with state agencies, and consideration of the impacts on different types of renewable energy projects. Municipalities have three main options: allow the full exemption, negotiate PILOT agreements, or completely opt out of the exemption.

Understanding the specifics of this process is crucial for both municipal officials making tax policy decisions and renewable energy developers planning projects throughout New York State. The choice between these options represents a balance between encouraging renewable energy development and maintaining local tax revenues.

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1. https://www.nycourts.gov/reporter/webdocs/TaxPublicationsORPTS.pdf
2. https://www.greenegovernment.com/wp-content/uploads/2019/11/NYSERDA-Solar-PILOT-Toolkit-Cover-Sheet.pdf
3. https://www.townofmanlius.org/DocumentCenter/View/1792/8421--OCIDA-SOLAR-PILOT-PPManlius-Town--School
4. https://cdn.townweb.com/townofcopake.org/wp-content/uploads/2022/09/9-Local-Law-to-Opt-Out-of-RPTL-487-Tax-Exemption.pdf

5. https://www.tax.ny.gov/research/property/legal/localop/487opt.htm