

**VALUATION AND TAXATION OF ELECTRIC GENERATING PROPERTY**

**Chapter 164 of the Acts of 1997  
(Amending G.L. Ch. 59 §5(16)(3) and Adding G.L. Ch. 59 §38H)**

These guidelines address the valuation and taxation of electric industry property as a result of the 1997 Electric Utility Restructuring Act. Chapter 164 of the Acts of 1997. That act provides for the restructuring of the electric utility industry in Massachusetts by separating the generation of electricity from its transmission and distribution. Transmission and distribution of electricity will still be performed by regulated local electric utilities. However, electric generation will now be performed by independent, non-utility producers in a deregulated environment.

Of particular significance for local assessors and other municipal officials are provisions of the act that affect the taxation of electric generating facilities and give tax base protections to communities hosting them. These provisions:

- Make taxable certain electric generating plants of non-utility owners classified as manufacturing corporations.
- Allow host communities of electric generating plants that devalue after restructuring to continue to receive transition revenues attributable to those plants at levels equivalent to property tax revenues received in FY1997 before restructuring, but declining gradually to tax revenues based on actual full and fair cash value by FY2010.
- Allow host communities to enter into legally binding tax agreements with electric generation companies in order to provide revenue stability while restructuring occurs.
- Require transition or agreement payments to be treated as property tax revenues for Proposition 2½ and tax classification purposes.

The act also results in generating plants being subject to the same market forces as other non-regulated property bought and sold based on investor expectations. Beginning with assessments as of January 1, 1998 for fiscal year 1999, local assessors must consider how the removal of regulatory restrictions on potential buyers affects the valuation of plants in their community, whether or not the plants have been sold to a generation company.

## I. TAX AGREEMENTS

Municipalities hosting electric generating facilities have two avenues of taxing generating plants. The first is to value and assess property taxes on the facility in the same manner as other taxable property. Transition payments will supplement the assessed taxes during a transition period depending on whether the annual valuation of the plant is higher or lower than its FY1997 assessed valuation.

The second avenue is a voluntary tax agreement that is based on good faith negotiations and is the equivalent of assessing taxes on the full and fair cash valuation of the plant. This requires a negotiated agreement with a generation company.

This section explains the requirements for entering a tax agreement and outlines the roles of municipal officers in determining the avenue the municipality will pursue. The decision to enter into an agreement is made by the legislative body of the municipality. That decision will depend on a projection of the revenues that may be generated from taxing the plant at full and fair cash value and receiving transition payments, if any, and those received from a predictable, negotiated agreement.

### A. Entering Tax Agreements

#### 1. Agreements Executed Before Restructuring Act

"Binding" tax agreements made before the effective date of the Electric Restructuring Act (November 25, 1997) continue to govern until their expiration. Special legislation authorizing the agreement was or is required to make an agreement executed before restructuring binding.

#### 2. Agreements Authorized by Restructuring Act

Host municipalities may enter into agreements with generation companies under the act. G.L. Ch. 59 §38H.

##### a. Authority to Negotiate Agreement

Authorization to negotiate on behalf of a municipality should be specifically granted to the chief executive board or officer (CEO) of the municipality (Board of Selectmen, Mayor or Manager), or some other municipal officer or officers, such as the Board of Assessors, by vote of the municipal legislative body (Town Meeting, City or Town Council). The authority may also be given some combination of officers, such as the CEO and assessors.

b. Approval of Agreement

After an agreement has been negotiated by the authorized officials, it must be approved or ratified by the legislative body to be binding.

B. Estimating Property Tax Revenues

In order to determine whether a tax agreement is in the municipality's interest, the plant's current full and fair cash value should be determined and a revenue projection made.

1. Role of the Board of Assessors

The board of assessors is responsible for establishing full and fair cash values of property for local tax assessment purposes. Assessors must determine what a willing buyer under no compulsion to buy would pay for the property of a willing seller with no compulsion to sell. Ordinarily this determination is made on an annual basis, using information gathered over the year. This would be the method the assessors would continue to use in the valuation of electric generating plants if a tax agreement has not been negotiated or is not in effect.

If a multi-year tax agreement is being considered instead, the assessors should make projections of full and fair cash value for each year of the agreement, taking into account plant additions and retirements. These projections will necessarily be speculative, given the uncertainty involved with restructuring a complex industry.

2. Role of Town Meeting, City or Town Council

The legislative body has the power to authorize negotiations and to approve agreements with power producers and therefore, should have information as to the potential value of the property. It may rely on information provided by the assessors or seek an independent analysis of projected values for the purpose of determining whether an agreement is in the municipality's interest.

3. Role of the Board of Selectmen, Mayor or Manager

The CEO may be authorized to negotiate and execute a tax agreement on behalf of the municipality. The CEO may also rely on information provided by the assessors or seek an independent analysis of projected values.

**C. Agreement Requirements**

The primary purpose of tax agreements is to provide revenue stability for host municipalities over a transition period. However, agreements between host municipalities and generation companies must be the result of good faith negotiations and any payments the equivalent of property taxes assessed on a full and fair cash valuation basis. G.L. Ch. 59 §38H.

- Agreements should be for a reasonable term. As a general rule, a term within the 12 year transition period provided by the act would be a reasonable one.
- Agreements should fix values or formulas for determining values (rather than fixing tax payments). These values should be representative of the future full and fair cash values of the plant for the term of the agreement and payments resulting from them will be treated as property taxes for Proposition 2½ and tax classification purposes. The payments are subject to the municipality's levy limit, and the values will be used to calculate its levy ceiling and minimum residential factor.
- Agreements may include negotiated transition values to offset potential revenue losses due to the devaluation of existing electric generating property as a result of restructuring. These values will also be used in levy limit and minimum residential factor calculations and resulting payments considered part of the tax levy.
- Agreements may establish billing procedures and payment schedules for negotiated amounts that are the same as or different from the ones used for annual property taxes.

A copy of any executed and approved tax agreement, and any later amendments to the agreement, must be sent to the Bureau of Local Assessment immediately upon execution and approval. See Section III below.

**D. Assessing Taxes and Transition Payments**

Assessors should assess the amounts based on the representative full and fair cash and transition values negotiated under the agreement to the generation company and commit them to the tax collector at the same time and in the same manner as annual property taxes for the fiscal year, unless otherwise provided in the agreement.