BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application of Champaign Wind, LLC, for a Certificate to Construct a Wind-Powered Electric Generating Facility in Champaign County, Ohio	)))	Case No. 12-0160-EL-BGN

DIRECT TESTIMONY OF STANLEY BIALCZAK, DIVISION COUNSEL, ENERGY & EXCISE TAX DIVISION, OHIO DEPT. OF TAXATION

Q. Please provide the name and position of the person testifying herein.

The testimony set forth in this document discussing Ohio taxation of wind turbines is Stanley T. Bialczak, Division Counsel to the Energy & Excise Tax Division, Ohio Department of Taxation.

Q. How long has he been in this position?

Mr. Bialczak's entire legal career has been with the Ohio Department of Taxation, beginning as a legal intern in 1982 and 1983, an attorney/hearing examiner from 1984 until 2001 with an emphasis on personal property and public utility taxpayer appeals, and division counsel since January 2001.

Q. Please provide a general overview of how wind turbines are classified for taxation purposes (personal property, utility, etc.) and specific information regarding the type and current rate of taxes to be levied on the wind turbines and the electricity generated, including whether wind turbines, or the electricity generated, have been excluded from any tax levied.

Wind Turbine Classification

As personal property

An electric company is defined in pertinent part in R.C. 5727.01(D)(3) as any person that is "engaged in the business of generating, transmitting, or distributing electricity within this state for use by others . . . ." Any tangible personal property used by the electric company in its business is subject to taxation in Ohio. Wind turbines used in business in Ohio by an electric company qualify as "business fixtures" as defined in R.C. 5701.03(B) and, therefore, are classified as taxable tangible personal property used to generate, transmit, or distribute electricity to others.

A business engaged in some other primary business to which the supplying of electricity to others is incidental (in other words, a nonutility electricity provider), must report for taxation that property used to supply electricity to others. See R.C. 5727.031(A) and (B). Therefore, though the tangible personal property of such a business is no longer subject to the general personal property tax that has been phased-out, any property used in supplying electricity to others is taxable as public utility personal property. If such a business used a wind turbine to generate its own electricity and to supply the excess to others, the wind turbine would be taxable. If the business generates electricity exclusively for its own use, the generation equipment is not taxable.

The definition of "supplying of electricity" means "generating, transmitting, or distributing electricity." See R.C. 5727.02(A)(3)(a). A person that leases to others energy facilities with an aggregate nameplate capacity of 250 kilowatts or less per lease is not considered to be supplying electricity to others. Similarly, a person that owns or leases from another person an energy facility with an aggregate nameplate capacity of 250 kilowatts or less also is not considered to be supplying electricity to

others, regardless of whether the owner or lessee engages in net metering. See R.C. 5727.02(A)(3)(b) and (c).

Taxation methodology

In order to determine the taxable value of personal property, the Tax Commissioner must determine the true value of personal property used in business. The true value computation is a judicially approved formula used to make that determination. The formula begins with assigning a useful life to personal property. The useful life indicates over how many years the personal property, in general, will be used. Each year of use is assigned a valuation percentage or, in other words, a "percent good." For production equipment, which includes wind turbines, the Tax Commissioner has assigned a 30 year useful life. The valuation percentages decrease over the 30 year useful life of the personal property, beginning with 98.3% and ending with a floor of 15%. If personal property lasts longer than 30 years, the personal property would maintain a valuation percentage of 15% for however long the personal property is kept in use. The valuation percentage is multiplied by the original cost of personal property to determine a "true value" for that property for each tax year.

The true value is multiplied by an assessment percentage. See R.C. 5727.111. For electric companies, the assessment percentage is 24% for production equipment, which includes wind turbines;for rural electric companies, the assessment percentage is 50%; and for energy companies the assessment percentage is 24%. The product of multiplying the true value by the assessment percentage is the "taxable value," which is multiplied by the local tax rate in the taxing district where the personal property is located. For electric production equipment, including wind turbines, the taxable value

is apportioned to the taxing district in which the production equipment is located. See R.C. 5727.15(C)(2)(a) and (D). This means that the taxing district in which the production equipment is located receives all of the tax attributed to the production equipment.

As Real Property

Wind turbines owned by individuals to generate electricity for their own use qualify as either "fixtures" or "structures" as defined in R.C. 5701.02(C) and (D) and are classified as real property.

Taxation methodology

The tax rate applicable to real property is the local tax rate in the taxing district in which the real property is located. County auditors are valuing real property that contains wind turbines in varying ways. Individuals that own land containing wind turbines generally are in a rural area, therefore one method is to carve out one-half acre of CAUV (current agricultural use value) for each wind turbine and assess the one-half acre at fair market value.

Other taxes

The electricity generated by wind turbines could be subject to the Kilowatt-Hour Tax (Kwh tax). See R.C. 5727.80. The Kwh tax is assessed against an electric distribution company which distributes electricity to an end-user, and certain large commercial and industrial end users (known as self-assessing purchasers). The source of the electricity is irrelevant, but to whom the electricity is distributed is significant. If a wind energy company sells its electricity to another electric company via the power grid, the wind energy company would not be subject to the Kwh tax; if the wind

energy company sells its electricity to an end-user of electricity, such as a residential consumer, the wind energy company would be subject to the Kwh tax. The Kwh is paid to the state treasurer. The General Revenue Fund receives 63% of the Kwh tax, and the School District Property Tax Replacement Fund receives 25.4% and the Local Government Property Tax Replacement Fund receives 11.6% through fiscal year 2011; beginning in fiscal year 2012, the percentages are 88%, 9%, and 3%, respectively. The gross receipts generated by wind energy companies are subject to the Commercial Activity Tax.

Q. Are there are any other ways that the tax benefits to the local governments can be reduced?

Tax Exemptions

Wind turbines could be subject to certain tax exemptions, i.e., enterprise zone agreements (EZA) and Ohio Air Quality Development Authority (OAQDA) bond financing.

EZA

A wind turbine could be subject to tax exemption as electric generation equipment pursuant to an EZA. See R.C. 5709.61(C), et seq. An EZA allows for up to 100% tax exemption for up to 15 years. The exemption could apply to public utility personal property taxes and/or real property taxes.

The practicalities of exempting wind farms through an EZA are immense. For instance, a 100% exemption requires not only approval by the granting authority, but also approval of the board of education of any affected school district. Therefore, a wind farm encompassing thousands of acres will cover multi-taxing districts and,

undoubtedly, multi-school districts. In those situations, approval would be necessary from not only the granting authority, but from each board of education.

Another practical problem is the allocation of jobs that are required to be created by each EZA project. EZAs are designed to benefit investment in one particular taxing district per EZA. By statute, each EZA requires a certain number of jobs to be created or retained in the taxing district which contains the EZA project. If a wind farm is in more than one taxing district, and if few jobs are created by the wind farm project (as is usually the case), the problem becomes how to apportion the jobs between/among the taxing districts to meet statutory requirements.

These are only two of numerous issues that must be addressed if an EZA is used to provide tax exemption for a wind farm.

OAQDA

Wind farms also can gain tax exempt status through financing by the OAQDA. Financing through the OAQDA consists of the issuance of revenue bonds by the OAQDA. Any property financed through the issuance of such bonds is exempt from all state taxation for the duration of the bonds. See R.C. 3706.041(B) and R.C. 3706.15. The bonds can be in effect for up to forty years. R.C. 3706.01(O). However, the ownership structure of many, if not most, wind energy companies makes OAQDA financing unattractive. Most wind energy companies must have third party partners in order to take advantage of federal income tax credits. This causes a problem with OAQDA financing because the project ownership structure must appear to be equity vis-à-vis the Internal Revenue Service, but debt for OAQDA purposes. Therefore, the wind industry has indicated that OAQDA financing often is not a viable alternative.

If a wind energy company finances its wind turbines with OAQDA bonds, the wind turbines would be exempt from public utility personal property taxation. Receipts from the sale of electricity, however, would not be tax exempt.

Q. How does R.C. §5727.75 impact the tax revenue to local entities from wind projects?

An energy project that receives certification as a "qualified energy project" pursuant to R.C. 5727.75(A)(1) and (E)(2) would receive exemption from taxation until the certification is revoked. See R.C. 5727.75(B)(2). An exemption from taxation would impact the local entities by reducing the tax revenue they receive.

Q. What are the requirements an owner or lessee pursuant to a sale and leaseback transaction of a qualified energy project must meet in order to maintain certification as a qualified energy project and prevent revocation of the certification?

R.C. 5727.75(F) imposes several requirements on the owner or lessee:

1. File with the director of development an annual certified construction progress report during the construction of the energy project indicating percentage of completion, and after construction is completed an annual report indicating the nameplate capacity as of the preceding calendar year end.

2. File with the director of development a report reflecting the total number of full-time equivalent employees and the total number of those who are domiciled in Ohio who are employed in the construction or installation of the energy facility.

3. Repair all roads, bridges, and culverts damaged by the construction of the energy project, to the satisfaction of the county engineer, for all energy projects with a nameplate capacity of 5 megawatts or greater.

4. Provide or facilitate the training for fire and emergency responders for response to emergency situations related to the energy project and, for energy projects 5 megawatts or greater, provide the necessary equipment for the responders.

5. Maintain certain stated ratios of Ohio-domiciled full-time equivalent employees to total full-time equivalent employees employed in the construction and installation of the energy project.

6. Establish with a university in Ohio an apprenticeship program to educate and train individuals for careers in the wind and solar industry, for energy projects 2 megawatts or greater.

7. Offer to sell power or renewable energy credits to electric distribution companies.

8. Make annual service payments in lieu of taxes, commonly referred to as a PILOT, or payment in lieu of taxes.

Q. Were the requirements set forth in R.C. §5727.75(F) intended to offset the reduction in tax benefits set forth in R.C. §5727.75?

Not entirely. The requirements were included partly to ensure that the owners and lessees installing the energy projects would partner with the local governmental authorities to maintain the infrastructure, invest in the local communities, provide educational opportunities with the anticipation of future employment, and assist in providing the necessary specialized emergency response potentially required by the energy project constructed in that particular locale. These requirements were set forth by statute also to reassure the local governmental authorities from the affected counties, municipalities, and townships that the stated requirements would be met

and that the local communities would not have the expense of these requirements imposed upon them.

The requirements also were included to ensure that the owners and lessees provided employment opportunities for Ohioans, and not simply bring in non-Ohioans to construct and install the energy facilities, then leave. How to ensure the majority of the employment opportunities went to Ohioans was a major issue the solution to which we spent many hours developing and fine tuning. At the time I drafted the original statute, and through its numerous re-drafts with the participation of other state agencies, the Strickland administration continually emphasized the need to guarantee employment for Ohioans. The Strickland administration also emphasized to the wind and solar industries, in particular, that Ohio was giving them a huge benefit with the tax exemption, and Ohio truly was and still is, and Ohio expected certain considerations in return.

Finally, the requirement of the PILOT certainly is to compensate the local governments for the loss of tax revenue due to the exemption. To demonstrate once again the importance of employment opportunities for Ohioans, the PILOT is based not only on the size of the project in terms of nameplate capacity, but also the ratio of Ohio-domiciled full-time equivalent employees to total full-time equivalent employees.

Q. To your knowledge, why were the requirements set forth in R.C. §5727.75(F) made a part of the statute?

In large part, for the reasons I stated in the previous question. To summarize those reasons, to ensure that the industries had a clear, legally enforceable recitation of the

requirements imposed upon them; that the industries recognized both the importance of cooperating with the local governments and the significance of the tax exemption Ohio was providing to them; the necessity that the industries support the local communities through repair of the infrastructure and investment in the future of the communities through educational and training opportunities, as well as the PILOT; to provide local governments with the statutory reassurance that state government was looking out for their interests; to provide electric distribution companies the opportunity to purchase electricity generated in Ohio to fulfill their own statutory mandates; to provide Ohio the ability to revoke certification and subject to taxation any owner or lessee that might fail to meet its statutory obligations; and to set forth with specificity the employment opportunities the industry was expected to provide for Ohioans.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was sent to Miranda R. Leppla, Esq., Vorys, Sater, Seymour & Pease, 52 East Gay Street, P.O. Box 008, Columbus, Ohio 43216-1008, to Chad A. Endsley, Esq., Ohio Farm Bureau Federation, 280 N. High Street, P.O. Box 182383, Columbus, Ohio 43218-2383, to Christopher A Walker, Esq., Van Kley & Walker LLC, 137 North Main Street, Suite 316, Dayton, Ohio 45402, Stephen Reilly and Devin Parram, Assistant Attorneys General, Public Utilities Section, 180 East Broad Street, 6th Floor, Columbus, Ohio 43215-3793 and Kurt P. Helfrich, Philip B. Sineneng and Ann B. Zallocco, Thompson Hine LLP, 41 South High Street, Suite 1700, Columbus, OH 43215-6101 and to Gil S. Weithman, City of Urbana Law Director, 205 S Main St., Urbana, Ohio 43078 by electronic service, this 5th day of November, 2012.

Jane A. Napier (0061426)

Summary: Testimony of Stanley Bialczak, Division Counsel, Ohio Dept. of Taxation electronically filed by Jane A. Napier on behalf of Champaign County Board of Commissioners and Union Township Board of Trustees and Urbana Township Board of Trustees and Goshen Township Board of Trustees