

# VERMONT DEPARTMENT OF TAXES

## TECHNICAL BULLETIN

**TAX: Property**

**TB-69**

**SUBJECT: Solar Generating Facilities Constructed on  
Land Enrolled in the Current Use Program**

**ISSUED: July 13, 2015**

**STATUTORY REFERENCE: 32 V.S.A. § 3752, § 3755, §  
3757, § 3802, § 8701, and 30 V.S.A. § 219a.**

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### **Introduction**

This bulletin describes the circumstances in which the installation of a solar generating facility affects a property's eligibility for the Current Use Program.

Land with a solar generating facility may qualify for enrollment in the Current Use Program if the facility qualifies as a farm improvement. In that circumstance, the land and facility may both be enrolled in the Current Use Program. One of the statutory criteria that must be met in order to qualify as a farm improvement is that the improvement must be part of a farming operation. The Department of Taxes will presume that a facility is part of a farming operation in cases where 50% or more of the electricity generated is used by enrolled farm buildings.

Some surplus electricity may be shared with non-farm buildings, or sold, as long as 50% or more of the electricity generated is used by enrolled farm buildings. Generally, a facility that shares or sells more than 50% of the electricity generated is not eligible for enrollment in the Current Use Program. However, an applicant may provide further evidence that a facility is part of a farming operation even though 50% or more of the electricity generated is used by non-farm buildings or is sold. Enrollment decisions are ultimately made by applying the statutory criteria for Current Use eligibility and the applicable statutory definitions.

### **Statutory Framework**

#### ***Solar Generating Facilities as Farm Improvements***

"[A]ny . . . farm buildings which meet the criteria contained in [the subchapter on land use value] and in the regulations adopted by the [Current Use Advisory Board] shall be eligible for use value appraisal." 32 V.S.A. § 3755. The definition of farm building includes farm improvements. 32 V.S.A. § 3752(14). A farm improvement is eligible for use value appraisal if: (1) it is actively used by a farmer, (2) as part of a farming operation, (3) it is owned by the farmer or leased to a farmer for a term of three years or more, and (4) is situated on land enrolled in the use value appraisal program or on a housesite adjoining enrolled land. *Id.*

#### ***Land Use Change Tax***

The Land Use Change Tax will be assessed and will be due immediately when land becomes developed as a result of the construction or alteration of a facility that does not qualify as a farm building or improvement. 32 V.S.A. §§ 3752(5), 3757.

#### ***Farm Income***

For the purposes of determining eligibility under the Current Use Program, a "farmer" is defined in relevant part as a person who earns at least one-half of the person's income from the "business of farming," as that term is defined in federal regulations. 32 V.S.A. §3752(7); 26 C.F.R. §1.175-3. The term "person" includes any individual, firm, corporation, partnership, or other form of organization or group of individuals." 32 V.S.A. §3752(11). The term "farm" is used in its ordinary, accepted sense and includes stock, dairy, poultry, fish, fruit, and truck farms, and also

plantations, ranches, ranges, and orchards. 26 C.F.R. §1.175-3.

Income gained from the sale of electricity is not income from the business of farming. The sale of electricity generated by a solar generating facility could change a person's income resulting in possible removal from the program and assessment of the Land Use Change Tax because the person no longer qualifies as a farmer or because the installation of the solar facility constitutes development.

A solar generating facility that is not a farm improvement owned by or leased to a farmer does not qualify for enrollment in the Current Use Program.

### ***Agricultural Land***

The two acres surrounding any house, mobile home, or dwelling cannot be enrolled in the Current Use Program and is not considered agricultural land. For parcels of 25 acres or more, agricultural land qualifies for enrollment if it is in active use to grow hay or cultivated crops, pasture livestock, or to cultivate trees bearing edible fruit or produce an annual maple product. For parcels of less than 25 acres, agricultural land qualifies for enrollment if it is in active use to grow hay or cultivated crops, pasture livestock, or to cultivate trees bearing edible fruit or produce an annual maple product and it meets one of the following other criteria: (1) it is owned by a farmer and is part of the overall farm unit, (2) it is used by a farmer as part of his or her farming operation under written lease for at least three years, or (3) it has produced an annual gross income from the sale of farm crops in one of two, or three of the five, calendar years preceding of at least \$2,000.00. 32 V.S.A. § 3752(1).

### **Property Tax Exemption for Facilities with Capacity of Less than 50kW**

A solar generating facility is exempt from statewide education tax and municipal property tax if it has a plant capacity of less than 50 kW and is either (1) a net-metered system or (2) not connected to the electric grid and only provides power on the property on which it is located. 32 V.S.A. § 3802(17). A facility that qualifies for the solar property tax exemption may be located on land enrolled in the Current Use Program.

The requirements of the solar property tax exemption overlap with all of the requirements for a farm improvement, except for the requirement that a farm improvement be owned or leased by a farmer. Therefore, a facility that is owned by a farmer or leased to a farmer for a term of three years or more, and also meets the requirements of the solar property tax exemption, would qualify for enrollment as a farm improvement. However, since the facility will already be exempt from property taxation, it should not be enrolled in the Current Use Program. Underlying enrolled land and farm buildings may be enrolled because the facility would qualify as a farm improvement if not for the solar property tax exemption.

### **Determining Whether a Facility Qualifies for Enrollment**

Some solar generating facilities qualify as farm improvements that can be enrolled in the Current Use Program. The enrolled land underlying a solar facility may only be enrolled if the facility qualifies as a farm improvement. Farm improvements are valued at zero percent of fair market value for statewide education and municipal property tax purposes. 32 V.S.A. § 3752(12). The underlying land is valued at the use value for the current year. *Id.*

If a facility does not qualify as a farm improvement, the land must be unenrolled because the installation of the facility constitutes development. Land Use Change Tax will be assessed on land that is developed.

To qualify as a farm improvement, a solar facility must meet **all** of the following requirements: (1) be actively used by a farmer, (2) be part of a farming operation, (3) be owned by the farmer or leased to the farmer for a term of three years or more, and (4) be situated on enrolled land or a housesite adjoining enrolled land.

### ***Actively Used by a Farmer***

A facility must be actively used for agriculture. The generation of electricity for use by farm buildings and farm equipment constitutes active use. The active use requirement also means that a facility must be in operation before it can be enrolled. Property owners should therefore wait until a facility is in operation before applying to enroll it in the Current Use Program.

The active use must be by a farmer. A farmer is defined in relevant part as a person who earns at least one-half of the person's income from the "business of farming," as that term is defined in federal regulations.

### ***Part of a Farming Operation***

A facility becomes part of a farming operation by generating electricity that is used by the overall farming operation. Generally, at least 50% of the production (or the credits for net-metered facilities) must be used by farm buildings and the agricultural equipment incorporated in those buildings. If a facility produces much more electricity or credits than are used by the farming operation, the Department will presume that a facility is not part of the farming operation and that its primary use is a commercial or merchant generating facility. Accordingly, no more than 50% of the electricity or credits produced can be used by or credited to the utility meters of non-farm buildings unless an applicant can provide further evidence to show that a facility is part of a farming operation.

### ***Owned by a Farmer or Leased to a Farmer***

A facility must be owned by a farmer or leased to a farmer for a term of three years or more to qualify as a farm improvement. A farmer is defined in relevant part as a person who earns at least one-half of the person's income from the "business of farming," as that term is defined in federal regulations.

### ***Situated on Enrolled Land or a Housesite Adjoining Enrolled Land***

A facility that meets all the other requirements for a farm improvement may be situated on enrolled agricultural land, enrolled forestland, or an enrolled farm building without affecting the eligibility of the facility, the land, or the farm building. Farm buildings and improvements are permitted to be situated on the open or idle forestland allowed by Current Use statutes. An enrolled solar facility may only be situated on enrolled forestland where a farm building could be situated. The facility may also be situated on a housesite adjacent to enrolled land and still qualify as a farm improvement.

A facility that does not meet the requirements for a farm improvement may be located on the housesite or other unenrolled land. It cannot be located on enrolled land because such a facility constitutes development that disqualifies the underlying land from enrollment.

### **Interaction with the Uniform Capacity Tax on Solar Plants**

A solar generating facility that qualifies for enrollment in the Current Use Program may be subject to the Uniform Capacity Tax. 32 V.S.A. § 8701. The Uniform Capacity Tax is not a property tax and therefore enrollment in the Current Use Program does not reduce tax liability for, or exempt a facility from, the Uniform Capacity Tax.

### **Roads**

A road located on enrolled property is permissible as long as one of the uses for the road is for an active agricultural or forestry use. Other uses in addition to agricultural uses are permitted. However, a road is not eligible for enrollment in the program if it is never used for agriculture. For instance, a road cannot be enrolled in the program if it is exclusively used to access a solar facility that is not enrolled in the Current Use Program.

### **Application Process**

A property owner is responsible for proving that land and buildings are eligible for enrollment in the Current Use Program. Below is an explanation of how to apply to enroll solar generating facilities or the land on which they are situated. The Division of Property Valuation and Review may ask for additional evidence in some cases, such as electrical bills, documentation of the enrolled farm buildings that are associated with a solar facility, a record of electrical usage of non-enrolled buildings, and any other relevant information. The application requirements described below are in addition to the application requirements for enrolling other land and buildings in the Current Use Program.

A property owner may enroll the land on which a facility that qualifies for the solar property tax exemption is situated. Such a facility is exempt from property taxation but cannot be enrolled in the Current Use Program. When applying to enroll land on which an exempt facility is located, the applicant must provide a copy of the facility's Final Order and Certificate of Public Good (or Net Metering Registration form, for systems 15 kW or smaller) from the Public Service Board in order to show that the facility's plant capacity is less than 50 kW, as well as evidence

that the facility is net-metered or not connected to the grid. The applicant must also provide an invoice or a copy of a lease agreement for the facility to show the facility is owned by or leased to a farmer. Whether a farmer is the owner or leasee of the facility, the applicant must further provide the farmer's most recent federal income tax return, including all schedules, to show the person meets the definition of farmer.

For systems not eligible for the solar property tax exemption, a property owner may enroll a solar generating facility, and the land on which it is situated, if the facility meets the requirements of a farm improvement. When applying to enroll a solar generating facility as a farm improvement, the applicant must provide the relevant pages from any Certificate of Public Good registration form, application, or petition indicating the meters that will be receiving credits from the system and the allocation of those credits to each meter. The applicant must also indicate on these pages the meters corresponding to enrolled farm buildings and the meters corresponding to non-farm buildings. The applicant must certify that the claims made in submitted materials are true and accurate. The applicant must also provide an invoice or a copy of a lease agreement for the facility to show the facility is owned by or leased to a farmer. Whether a farmer is the owner or leasee of the facility, the applicant must further provide the farmer's most recent federal income tax return, including all schedules, to show the person meets the definition of farmer.

If land or a facility that is enrolled in the Current Use Program becomes ineligible, the owner may be subject to the Land Use Change Tax if the facility meets the definition of development.

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Mary N. Peterson  
Commissioner of Taxes

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Date