

Frequently Asked Questions
Solar Energy Facilities Taxation Act (2023 PA 108)

The following frequently asked questions are being provided as a service to assessors and taxpayers to better inform them about the administration of 2023 PA 108 and 109, MCL 211.1151 *et seq.*

Note: The information contained in these frequently asked questions constitutes an analysis of one or more statutes and not legal advice. Since the analysis is limited to general statutory requirements, individual facts may result in different conclusions being reached. Therefore, individuals may wish to consult legal counsel.

1. What is a Solar Energy Facility Exemption?

The Solar Energy Facilities Taxation Act (known as the Solar Energy Facility Exemption), 2023 PA 108, provides a tax incentive to owners of utility-scale solar energy generation facilities who build a new solar energy facility and provides local governmental units a guaranteed and stable revenue stream from the solar energy generation facilities. A Solar Energy Facility Exemption Certificate (SEFEC) entitles a qualified facility to an exemption from ad valorem real and personal property taxes for a term of 20 years. Exempt solar facilities are subject to a specific tax called the solar energy facilities tax. Applications are filed, reviewed, and approved by the local governmental unit. The State Tax Commission (STC) must also approve the application and issue the exemption certificate.

2. What is a qualified facility?

A “qualified solar energy facility” or “qualified facility” is defined as a facility that will be located in a solar energy district and use solar energy as the sole source for the generation of at least 2 megawatts of nameplate capacity, alternating current. A qualified facility includes any solar modules, inverter, racks, tracking, on-site battery storage systems if identified in the application pursuant to section 4(1)(a) of PA 108, controls, electric interface, and all components that are positioned up to, and including, the inversion of the current delivered from the facility. A qualified facility includes all land improvements, except buildings, exclusively used for the generation of solar energy at the facility, including access roads, security fences, and communication facilities. A qualified facility does not include any distribution or transmission lines.

3. Who establishes a Solar Energy District?

Under certain circumstances, a township, city, or village (local governmental unit) must adopt a resolution to create a solar energy district, but in other circumstances, no action is required to designate a district, as follows:

In a local governmental unit with a zoning ordinance within its zoning jurisdiction:

- If the zoning ordinance designates an area within the local governmental unit where a qualified facility can be located as a permitted or special use, that area

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is considered a solar energy district without any additional action by the local governmental unit.

- If the zoning ordinance does not designate an area where a qualified facility can be located as a permitted or special use, the local governmental unit must establish a solar energy district by providing certified mail notice to all taxing units and all property owners in the proposed district, hold a public hearing, give public notice of the hearing not less than 10 days or more than 30 days before the hearing, and adopt a resolution establishing a solar energy district. Public notice of the hearing must be provided by online posting on the local governmental unit's website if available and by physical posting in a location open to the public in the office of the local governmental unit. The proposed district may be initiated by the local governmental unit or by written request filed by the owners of real property comprising more than 50 percent of the taxable value of the property in the proposed district.

In a local governmental unit that has no zoning ordinance within its zoning jurisdiction, all land within the local governmental unit is considered a solar energy district, unless the local governmental unit, before receiving a solar energy facility exemption certificate application for a qualified facility, establishes a solar energy district by resolution. The statute does not require any notice or public hearing for this action.

4. Who can file an application for a Solar Energy Facility Exemption Certificate (SEFEC) and with whom is it filed?

The owner or lessee of a qualified facility may file Form 6052, *Application for Solar Energy Facility Exemption Certificate* with the clerk of the local governmental unit that established the solar energy district, or the application may be filed simultaneously with a request for a district.

5. When can I apply for a Solar Energy Facility Exemption Certificate?

Form 6052, *Application for Solar Energy Facility Exemption Certificate* may be filed after a solar energy district is established or simultaneously with a request to establish a district.

6. How do I apply for a Solar Energy Facility Exemption Certificate?

Form 6052, *Application for Solar Energy Facility Exemption Certificate* can be found on the Michigan Department of Treasury website www.michigan.gov/propertytaxexemptions. Completed applications are filed with the clerk of the city, village, or township and must be accompanied by the following documentation:

- a. A general description of the qualified facility, including the proposed nameplate capacity and itemized list of facility components, including any on-

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site battery storage.

- b. A general description of the proposed use of the qualified facility.
- c. A description of the general nature and extent of the new construction.
- d. A time schedule for undertaking and completing the qualified facility.
- e. Information that will allow the assessor to estimate the assessed value and the taxable value of the qualified facility not yet placed in service to which the application pertains. All cost information regarding the claim for the exemption must be considered taxpayer confidential information whether in possession of the department or the local assessing unit and is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.
- f. The proposed location of the qualified facility.
- g. For a leased qualified facility, a copy of the lease agreement or other writing confirming that the lessee is liable for payment of the specific tax for the length of the certificate and proof of that liability.
- h. For a qualified facility located on leased real property or an easement, a copy of the memorandum of lease or memorandum of easement, which must confirm that the duration of any lease of the real property where the qualified facility is located, including all options to extend the duration of the lease, is equal to or exceeds the duration of the certificate.

7. Are there provisions in the application process that are time sensitive?

Yes. Form 6052, *Application for Solar Energy Facility Exemption Certificate* must be filed before the facility is placed into service. An application received by the STC on or after September 30 may not be processed until the following tax year.

8. What actions must a local governmental unit take after receiving an application?

Upon receipt of Form 6052, *Application for Solar Energy Facility Exemption Certificate*, the local governmental unit clerk shall provide written notice of the application, in a form and manner prescribed by the STC, to the assessor and each taxing unit. Unless a public hearing was held to establish the solar energy district, the local governmental unit shall hold a public hearing and give public notice to the applicant, the assessor, each taxing unit, and the general public.

9. What fees may a local governmental unit impose on an applicant?

The local governmental unit may charge the applicant an application fee for the actual cost incurred by the local governmental unit in processing the application, not to exceed \$30,000.

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A local governmental unit may impose a fee or adopt a bonding requirement for a qualified facility to provide for the removal of an abandoned or improperly maintained qualified facility, including a facility that the local governmental unit determines should be removed to protect public health, safety, or welfare. The local governmental unit may impose this fee or bonding requirement only if the qualified facility is not otherwise subject to a decommissioning fee or removal bond under general zoning ordinances or land use permitting.

10. Who determines if a facility qualifies for a Solar Energy Facility Exemption Certificate (SEFEC)?

The local governmental unit, within 120 days of receipt of the application, shall by resolution either approve or disapprove the application. The resolution must include the solar energy facility tax rate for the facility and an explanation as to why the facility qualifies for that rate under the provisions of MCL 211.1159, as noted in Question #16. If approved, the local governmental unit shall send a copy of the application and resolution to the STC within 60 days of approval but before September 30. If the application is disapproved, the reasons must be set forth in the resolution and the resolution must be sent by certified mail to the applicant, the assessor, and the STC. Within 14 days after adoption of the disapproval resolution, the applicant may request reconsideration of the denial and provide new information. Within 60 days after receiving the request for reconsideration, the local governmental unit shall either approve or disapprove the request for reconsideration.

Not more than 90 days after receipt of a local-government-approved application, the STC shall approve the application if it determines that the qualified facility complies with all provisions of the statute. Placement of a qualified facility in service after the date of application to the local governmental unit does not disqualify the facility from receiving approval by the local governmental unit or the STC.

11. What actions must the STC take after approving a SEFEC application?

Following approval of the application by the STC, the STC shall issue to the applicant a solar energy facility exemption certificate, which, at a minimum, must contain all the following:

- The address of the real property on which the qualified facility is located.
- The time schedule for undertaking and completing the qualified facility.
- A statement that unless revoked, the certificate will remain in force for the period stated in the certificate.
- A statement of the estimated taxable value of the qualified facility for the tax year immediately preceding the effective date of the certificate after deducting the taxable value of the land.

The STC shall send a copy of the certificate to the clerk and assessor of the local governmental unit and to the applicant.

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12. What happens if the local governmental unit determines that an application is incomplete?

If the application is determined to be incomplete, the clerk shall notify the applicant within 60 days after receipt of the incomplete application and request additional information. The 120-day approval period is reset and tolled until the date all of the requested information is received. The application is void unless the applicant corrects the deficiency within 60 days or within 90 days if agreed to in writing by the local governmental unit.

13. Can an application for a Solar Energy Facility Exemption Certificate be denied?

Yes. An application can be denied at the local unit level. The STC can also disapprove the resolution.

14. Can a decision of the STC regarding a Solar Energy Facility Exemption Certificate (SEFEC) be appealed?

Yes. A party aggrieved by the issuance, refusal to issue, revocation, transfer, or modification of an SEFEC may appeal a final decision of the STC by filing a petition with the Michigan Tax Tribunal, www.michigan.gov/taxtrib, within 35 days. MCL 205.735a(6).

15. What determines the starting date of a Solar Energy Facility Exemption Certificate (SEFEC)?

The effective date of the SEFEC is December 31 immediately following the date of issuance of the certificate by the STC.

16. How is the Solar Energy Facilities Tax (SEFT) computed on property subject to a Solar Energy Facility Exemption Certificate?

The solar energy facilities tax is levied annually on the owner or lessee of a qualified facility to which a certificate is in effect at a rate of \$7,000 per megawatt of nameplate capacity, alternating current as reported annually by the owner or lessee to the local governmental unit on a form filed in the manner and form prescribed by the STC.

Per MCL 211.1159(3), the specific tax is reduced to \$2,000 per megawatt of nameplate capacity, alternating current if the facility is located on one or more of the following:

- a. Property owned by this state either at the time of installation of the qualified facility or immediately prior to a sale of the property to accommodate the installation of the qualified facility.

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- b. Property located in an opportunity zone designated by the United States Department of Treasury in April 2018 under the tax cuts and jobs act of 2017, Public Law No. 115-97.
- c. Property that was used or is currently used for commercial or industrial purposes and that is a facility, historic resource, functionally obsolete, or blighted, as those terms are defined in section 2 of the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2652, or a site or property as those terms are defined in section 21303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.21303.
- d. Improved real property used for another purpose if the qualified facility is attached to the improvement.

The specific tax is reduced by 50% for construction in progress. There is no specific tax prior to the commencement of construction in progress. A qualified facility in a renaissance zone is exempt from the specific tax to the extent provided for in the renaissance zone act.

The solar energy facility tax rate that will be levied must be included in the resolution of approval passed by the local governmental unit with an explanation as to why the facility qualifies for that rate under the provisions of MCL 211.1159 as noted above.

17. How and when is the property valued?

Section 4(4) provides: Upon receipt of notice of the filing of an application as provided in subsection (2), the assessor shall estimate and furnish to the local legislative body of the qualified local governmental unit an estimate of the assessed value and the taxable value of the qualified facility not yet placed in service to which the application pertains.

Section 8(2) provides: The assessor of each qualified local governmental unit in which there is a qualified facility with respect to which 1 or more certificates have been issued and are in force shall determine annually as of December 31 the assessed value, taxable value, and nameplate capacity of each qualified facility separately.

Assessors value a qualified facility using standard assessing methods.

18. What if the solar energy district crosses local unit lines?

A solar energy district may not cross city or township lines. If the facility is located in more than one township or city, a district must be created for each township and city and a separate application must be submitted to each township and city.

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19. Can a solar energy district include only a portion of a parcel?

No. A solar energy district can contain multiple contiguous parcels. However, if a solar energy district includes only a portion of a parcel, the assessor is advised to create a separate parcel for the portion in the solar energy district.

20. What if a solar energy district crosses school district or authority boundaries?

The specific tax distributions will be prorated to each local taxing unit based on the share of electricity generating capacity located in each local taxing unit and the millage rate levied by each local taxing unit.

21. Are special assessments impacted by the granting of a Solar Energy Facility Exemption (SEFE)?

Special assessments may be impacted. Special assessments levied under 1951 PA 33, the police and fire special assessment act, do not apply to property with an SEFE. However, the special assessments would still be applicable to the land on which the SEFE property is located. Conversely, for special assessments levied under public acts other than 1951 PA 33, property with an SEFE pays the full special assessment, the same as any “ad valorem” property.

22. How is the Solar Energy Facility Specific Tax Collected and Distributed?

The specific tax is an annual tax that becomes a lien on July 1 and is payable at the same time and to the same officer as taxes imposed under the general property tax act. Tax unpaid after September 14 is subject to interest at a rate of 1% per month or fraction thereof. The tax is disbursed by December 1 like industrial personal property tax except that for ISDs receiving special education or vocational education millage equalization funding under sections 56 or 62 of the state school aid act, the portion of the specific tax attributable to special education and vocational education mills is paid to the state school aid fund, to the extent those mills receive funding under section 56 or 62.

23. Can a Solar Energy Facility Exemption Certificate (SEFEC) be extended or renewed beyond the 20-year timeframe stated in the statute?

No. After the 20-year solar energy facility exemption certificate expires, the property returns to the ad valorem tax roll. There is no provision to extend the term of the exemption and specific tax. There can be no re-application because the application must be filed before the facility is placed in service.

24. Can a Solar Energy Facility Exemption Certificate (SEFEC) be transferred?

Yes. Within 30 days, a local governmental unit shall approve the transfer of a certificate to a new owner or lessee if the new owner or lessee consents to the

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terms of the certificate and all provision of the statute; all taxes on the qualified facility have been paid; the qualified facility has not permanently ceased commercial operation; and, in the case of a leased qualified facility, the lessee has provided a copy of the lease agreement or other document confirming that the lessee is liable for payment of the specific tax for the remaining length of the certificate and proof of that liability. The local governmental unit shall notify the STC of the transfer within 30 days after approving the transfer.

25. Can a Solar Energy Facility Exemption Certificate (SEFEC) be revoked? If yes, who holds the authority to do so?

Yes. The STC shall revoke the certificate upon request of the certificate holder if the facility has not yet been placed in service or has permanently ceased commercial operation. The local governmental unit may by resolution request the STC to revoke a certificate for any of the following reasons:

- Completion of the qualified facility has not occurred within the time authorized by the certificate and the local governmental unit has not granted an extension of that time for good cause and circumstances that are beyond the control of the certificate holder have not occurred.
- The specific tax has not been paid within 1 year after the last day the tax could be paid without interest.
- The qualified facility has permanently ceased commercial operation.

The STC shall hold a public hearing and provide notice of the hearing regarding a request to revoke a certificate. If the STC revokes the certificate, the order is effective on the December 31 next following the date of the order. The STC shall provide notice of a revocation. If the STC revokes a certificate for nonpayment of the specific tax, the holder of the certificate shall within 90 days repay all the prior years' net tax savings under the certificate. If the STC revokes a certificate for the cessation of operations, unless the cessation is due to an act of God and the owner has no intent to resume operations, the holder of the certificate is subject to a 1-time continuation payment calculated by multiplying the number of years remaining on the 20-year term of the certificate by the annual specific tax and by the following applicable percentage:

- If 11 or more years remain on the 20-year term, 25%.
- If between 6 and 10 years remain on the 20-year term, 50%.
- If less than 6 years remain on the 20-year term, 75%.

26. When does the revocation of a Solar Energy Facility Exemption Certificate take effect?

The revocation of a certificate is effective December 31 of the year in which the State Tax Commission revoked the certificate.

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27. Can a revoked certificate be reinstated?

Yes. The STC shall reinstate a revoked certificate if the local governmental unit concurs in the reinstatement request and the facility continues to qualify under the statute.

28. What is required of the Local governmental unit regarding the yearly status reporting of the Solar Energy Facility Exemptions to the Department of Treasury?

Not later than June 15 each year, each local governmental unit granting a certificate shall report to the Department of Treasury on the status of each exemption. The report must include the current taxable value of the property to which the exemption pertains.

29. Is there a date after which a new exemption under 2023 PA 108 may not be granted?

Yes. A new exemption under 2023 PA 108 must not be granted after December 31, 2031. An exemption then in effect continues until the expiration or revocation of the solar energy facilities exemption certificate.

30. What is the change to MCL 211.9f, the new personal property exemption, affecting solar facilities?

2023 PA 109, HB 4318, amends section 9f of the general property tax act to provide that after 2023, a qualified solar energy facility cannot be granted a new personal property tax exemption under MCL 211.9f. Exemptions granted before 2024 remain in effect.

31. Where can I obtain copies of previously issued Solar Energy Facilities Taxation Act Certificates?

Copies of certificates acted upon by the State Tax Commission will be available on the Department of Treasury website at www.michigan.gov/propertytaxexemptions.

Choose the exemption program under which the certificate was issued. Within the "Certificate Activity" link, the certificates are listed according to the date they were acted upon.