

Background on the Interaction of Solar Development, Property Taxes and Agriculture

Introduction

As Wisconsin has seen a substantial increase in the development of new solar generation facilities, these energy projects have generated numerous questions regarding the transition from a property's prior use to being used for renewable energy production.

In the coming decades, the U.S. is expected to experience a surge in energy consumption, necessitating the development of additional energy generation facilities, of which most will likely be solar. This growing demand is leading to the conversion of farmland to accommodate solar projects. From an economic perspective, developers are targeting farmland because it possesses attributes that make it a highly favorable choice for siting solar installations. Its typically flat terrain, dry conditions, cleared land, and typically is near existing infrastructure, making it a cost-effective and efficient option for solar development.

Some unique situations arise with the potential conversion of farmland to solar which differ from other properties, because of the taxation and program participation that farmland may be involved in.

Background Information

Since 1995, farmland in Wisconsin has been assessed under a use-value assessment which is a distinctive manner to determine a farmland's property tax bill. This approach yields significant advantages for farmers, acting as a safeguard against the encroachment of urban development on Wisconsin's valuable farmland. By implementing a property tax formula that factors in the income generated through agricultural activities, the law ensures that farmers are taxed in proportion to the land's productive potential. This system serves as a powerful incentive for maintaining agricultural activity and fosters the continuation of farming practices. Use-value assessment plays a vital role in protecting the state's rural landscape and maintaining its agricultural heritage, effectively resisting the conversion of farmland to alternative uses.

Another program in Wisconsin that farmland may often participate in is the Farmland Preservation Program. The Department of Agriculture, Trade and Consumer Protection oversees the Farmland Preservation Program, which is designed to implement various land designations, each tailored to impose distinct land use restrictions. The primary objective of these designations is to foster agricultural investment and ensure the preservation of valuable farmland. Farmers with land under some or all of the designations are eligible for Farmland Preservation Tax Credits. There are three primary designations that land could be under: a county farmland preservation plan, a farmland preservation zoning ordinance, which municipalities may enact to keep certain lands in agricultural use, or an agricultural enterprise area, which are designated zones of agricultural development and preservation. Farmers can also voluntarily enter into an agreement with DATCP to keep land in agricultural use.

The current tax credit amount depends on the type of land designation that the property is in, and ranges from \$5-\$10 per acre. Most recently, a total of 2.1 million acres were claimed for Farmland Preservation Tax Credits.



These two programs are widely prescribed throughout the state. However, if property, which was either assessed under use-value or participated in the Farmland Preservation Program, was converted into a solar generation facility, what would happen to the property's assessed value and the tax credits it was eligible for?

In most cases relating to solar leases, taxation of the property under the general property tax will cease. This is because the property has transitioned to solar generation and will be supplying electricity. Under state statutes 70.112 (4), 76.28 (9), 76.29 (3), and 76.48 (1r), the property would become "used and useful in the operation" of a heat, light, and power company, electric wholesaler, or energy cooperative. Because of this designation under state statute, the property would become subject to license fees under ch. 76.- Taxation of Public Utilities and Insurers, in lieu of general property taxes.

Because the primary land agreements between a landowner-farmer and a solar development entity are typically governed by lease agreements, it is right to clarify that land which is leased by a company under ch. 76 qualifies as being designated as "used and useful". It is an important consideration to review a lease agreement to ensure that it contains a clause regarding who "pays" the property tax, but practically, the exemptions from property tax would apply, and the effective amount would be zero. However, the transition of the property would likely result in an increase in utility aid payments from the ch. 76 company to the given municipality.

Once the contractual obligations are met and equipment is removed, if the land is returned to agricultural production, a use-value assessment will be restored. Although, the tax year in which use-value would start may have additional context-specific determinations it eventually would be restored.

In regard to the Farmland Preservation Program, because the property is no longer in agricultural production, and thus is no longer generating income from farming, the tax credits associated with the acreage claimed under Farmland Preservation would cease. Furthermore, income generated from lease payments would be taxable under general income tax.

Because the property qualifies for treatment under ch. 76, there really is no need to analyze the tax status of the land. Despite a property's potential for limited agricultural use in cooperation with a solar generation facility, due to the ch. 76 treatment, this does not legally create a circumstance where a farmland preservation tax credit may be claimed.

Wisconsin Farm Bureau Federation Policy

- Energy (4) 41: We support research and incentives to develop alternate sources of energy, and electrical generation within the state.
- Energy (4) 44: We support allowing third party investors to develop alternate energy sources.
- Energy (4) 46: We support all alternative energy businesses to fund bonding. that would require the businesses to pay for cleanup of all equipment, waste and restoration of the land.
- Energy (4) 54: We support requiring wind and solar projects to make payments to cover municipal services.
- Energy (5) 33: We support legislation that will restrict state or federally licensed utility providers from requiring nondisclosure agreements between plaintiffs upon settlement or judgement of lawsuits.
- Farm Finance (6) 11: We support tax incentives and credits to transfer farms from older generations to younger generations or beginning farmers.

- **Farm** Bureau[®] --

- Land Use (13) 43: We support municipalities devising land use plans that minimize the loss of productive agricultural land and that achieve a balance between local goals and individual landowners' financial needs. We support ordinances that create exclusive agricultural zones in which farming is designated as the priority use and other users remain in these zones without recourse to abate the practices which are common to farming.
- Land Use (13) 48: We support notification for property owners if their property is located in an area zoned for agriculture or if farms are located nearby.
- Land Use (14) 33: We reaffirm our belief in the rights of private property ownership, and in the ability of landowners to make wise land use decisions. We support legislation requiring any governmental entity to compensate property owners when its actions reduce property values.
- Taxation (23) 12: We support use value assessment of agricultural land. We support land dedicated to
- conservation practices (i.e. wind breaks, buffer strips, etc.) or programs be assessed as farmland under use value. We support the 50 percent prorated assessment of undeveloped land and agricultural forestland.
- Taxation (24) 3: We support two-thirds state funding for local school costs. We support the present system of semi-annual or annual payment of property taxes. We support a tax exemption on all machinery and equipment on farms.

Discussion Questions

- Should it be possible to claim a farmland preservation tax credit if you are engaged in limited agricultural production on land with a solar array?
- When the contractual obligation of a solar development is met, and land is returned to agricultural production, should the land be assessed against its use in its first year?
- Should lands in Farmland Preservation Program be avoided when siting a solar facility?
- Should WFBF adopt a policy that clarifies that no property over who has leased land for solar development should have to pay a property tax?