S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
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March 26, 2013

Opinion No. 13-28

Valuation of Certified Green Energy Production Facility Property

QUESTION

Is a proposed amendment to Senate Bill 1000/House Bill 0062 of the First Session of the 108th Tennessee General Assembly (hereinafter "SB1000") constitutionally defensible in the manner in which it sets forth guidelines for valuing certified green energy production facility property?

OPINION

Yes.

ANALYSIS

The proposed amendment to SB1000, a copy of which is attached to this opinion, would delete subsection (e) of Tenn. Code Ann. § 67-5-601 and substitute the following language:

> (1) The general assembly finds that any property that generates electricity using 'green' sources such as geothermal, hydrogen, solar or wind, is generally capable of producing less electricity than conventional sources due to uncertain or intermittent energy sources or other factors, that net operating income will be affected by unusual cost and market conditions, and that the commercially competitive disadvantage of these 'green' energy source properties evidences that their sound, intrinsic and immediate value is significantly less than their total installed costs. The general assembly further finds that unless these circumstances are considered in the determination of value for tax purposes under this chapter, investment in property to generate electricity from 'green' sources will be unreasonably discouraged, denying the citizens of Tennessee the environmental benefits associated with the greater use of these domestic renewable energy sources for power generation.
>
> (2) Based on the foregoing findings, the sound, intrinsic and immediate value of 'green' energy source property should not

> initially exceed a percentage of total installed costs equal to the ratio of projected electricity output over a period of one (1) year to the maximum capacity of the property, as follows:
>
> > (i) The sound, intrinsic and immediate value of wind source property should not initially exceed one-third (1/3) of total installed costs;
> >
> > (ii) The sound, intrinsic and immediate value of solar source property should not initially exceed twelve and one-half percent (12.5%) of total installed costs; and
> >
> > (iii) The sound, intrinsic and immediate value of other 'green' source property should not initially exceed its appropriate capacity factor as determined by the state board of equalization in consultation with the department of environment and conservation.
>
> (3) The assessor of property, or the comptroller of the treasury, in the case of public utility property, shall take the foregoing findings into account in determining the sound, intrinsic and immediate value of 'green' source property when the property is initially appraised and each time the property is reappraised. A copy of the green energy production facility certification issued by the department of environment and conservation, or filing of a schedule or statement pursuant to § 67-5-1303, effective as of January 1 of the year for which valuation under this subsection is claimed, shall be required and shall be provided by the property owner to the comptroller's office by March 1 of the first year for which valuation under this subsection is claimed. The department of environment and conservation shall report each month to the comptroller a listing of certifications approved in the preceding month, and shall provide copies of certification records to the comptroller on request. On or before the scheduled reappraisal in each county, the comptroller shall advise the assessor of known locations of certified or other 'green' energy property and whether the property is assessable locally or centrally.

This amendment is similar in language and structure to another proposed amendment to SB1000, which this Office opined to be constitutionally defensible in Tenn. Att'y Gen. Op. 13-19 (Mar. 11, 2013). Consistent with the analysis in that opinion, the above amendment likewise is constitutionally defensible. The language of the above amendment, like the previous version, sets forth a credible rationale for establishing lower values for certified green energy production facility property, reciting the uncertain or intermittent nature of green energy sources and the fact that net operating income from such property is affected by unusual market conditions. The amendment sets forth a reasonable valuation method that takes into account the property's

projected electricity output over a one-year period as compared to the property's maximum capacity for that time period. Moreover, in giving the State Board of Equalization authority initially to establish the value of green energy production property other than wind and solar facilities, the amendment sets reasonable guidelines based on the facilities' capacity to generate electricity, in light of the restrictive manner to which its use is limited. *See* Tenn. Att'y Gen. Op. 13-19, at 3.

This approach is consistent with the rationale upon which the Tennessee courts have found that the limited use of greenbelt property justifies a reduction in its valuation. *See Marion County v. State Bd. of Equalization*, 710 S.W.2d 521, 523 (Tenn. 1986). This approach has been held to be in accordance with article II, section 28, of the Tennessee Constitution, which carefully specifies how ad valorem property taxes are to be administered and narrowly limits the circumstances when exemptions are permitted. *Id.* In addition, the proposed amendment requires the local assessors and the comptroller to take the General Assembly's findings into account in appraising certified green energy production facility property, but, as we interpret its provisions, the amendment does not impose an absolute cap on appraisals of such property. Under these circumstances, the proposed amendment is constitutionally defensible as written.

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Amendment No._____

FILED	
Date	
Time	
Clerk	
Comm. Amdt.	

_____
Signature of Sponsor

AMEND Senate Bill No. 1000 **House Bill No. 62***

by deleting Section 1 as amended and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 67-5-601, amended by deleting subsection (e) and substituting instead the following:

(e)

(1) The general assembly finds that any property that generates electricity using 'green' sources such as geothermal, hydrogen, solar or wind, is generally capable of producing less electricity than conventional sources due to uncertain or intermittent energy sources or other factors, that net operating income will be affected by unusual cost and market conditions, and that the commercially competitive disadvantage of these 'green' energy source properties evidences that their sound, intrinsic and immediate value is significantly less than their total installed costs. The general assembly further finds that unless these circumstances are considered in the determination of value for tax purposes under this chapter, investment in property to generate electricity from 'green' sources will be unreasonably discouraged, denying the citizens of Tennessee the environmental benefits associated with the greater use of these domestic renewable energy sources for power generation.

(2) Based on the foregoing findings, the sound, intrinsic and immediate value of 'green' energy source property should not initially exceed a percentage of total installed costs equal to the ratio of projected electricity output over a period of one (1) year to the maximum capacity of the property, as follows:

(i) The sound, intrinsic and immediate value of wind source property should not initially exceed one-third (1/3) of total installed costs;

(ii) The sound, intrinsic and immediate value of solar source property should not initially exceed twelve and one-half percent (12.5%) of total installed costs; and

(iii) The sound, intrinsic and immediate value of other 'green' source property should not initially exceed its appropriate capacity factor as determined by the state board of equalization in consultation with the department of environment and conservation.

(3) The assessor of property, or the comptroller of the treasury, in the case of public utility property, shall take the foregoing findings into account in determining the sound, intrinsic and immediate value of 'green' source property when the property is initially appraised and each time the property is reappraised. A copy of the green energy production facility certification issued by the department of environment and conservation, or filing of a schedule or statement pursuant to § 67-5-1303, effective as of January 1 of the year for which valuation under this subsection is claimed, shall be required and shall be provided by the property owner to the comptroller's office by March 1 of the first year for which valuation under this subsection is claimed. The department of environment and conservation shall report each month to the comptroller a listing of certifications approved in the preceding month, and shall provide copies of certification records to the comptroller on request. On or before the scheduled reappraisal in each county, the comptroller shall advise the assessor of known locations of certified or other 'green' energy property and whether the property is assessable locally or centrally.