

Chapter 13

Tax Benefits and Obligations for Wind Development

I. Be Aware of Tax Consequences of Wind Projects

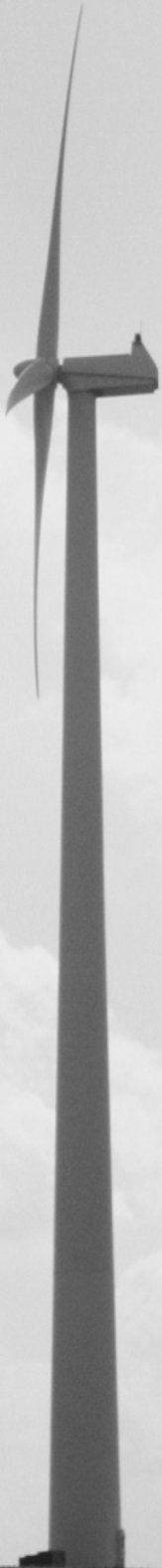
Receiving any kind of financial benefit, or suffering any loss, as a result of a wind energy development may have significant income tax consequences for farmers. If a farmer invests directly in a wind project, any return on that investment will likely be counted as income for federal and state income tax purposes. However, exactly how these revenues will be treated will depend on many factors, including the form of the business entity (if any) used for the wind project, and whether any of the generated energy is used on-site.

Even if a farmer does not own a wind project directly, but rather negotiates property agreements with a wind developer, payments received under those agreements will affect a farmer's income taxes.

The primary intent of this chapter is to highlight various tax *incentives* that can be available to wind project owners. However, farmers must keep in mind that wind projects can also result in complicated new tax *obligations* not detailed in this chapter. Furthermore, this chapter cannot answer questions about the details of state and federal income tax consequences for a specific project. Instead, it is crucial for farmers to find expert advice on the tax consequences of their particular wind project.

II. Income Tax Incentives for Wind Energy Development

As has been mentioned several times throughout this guide, many of the government incentives that have encouraged wind energy development in the U.S. over the last several years are in the form of income tax credits or other income tax relief. These have presented unique challenges for farmers who do not always have sufficient tax liability to take full advantage of tax incentives. However, farmers and other individual community members have developed some creative business models to allow projects to take full advantage of federal and state production tax credits; see the chapters in this guide on financing



(Chapter 8) and business structures (Chapter 10) for more information about these business models.

This section provides an introduction to the major federal and state income tax incentives for wind energy generation.

A. Production Tax Credits

Production tax credits (PTCs) are a form of government support for renewable energy. PTCs allow project owners to reduce their income tax liability based on a per kWh credit for energy generated by the facility.

1. Federal Production Tax Credit

The federal government provides a PTC to reduce the income tax liability of the owner of any qualified renewable energy facility, including wind turbines.¹ The federal PTC has been a significant incentive for wind project owners who are able to use the credit, and many projects have relied on full use of the federal PTC to make the project profitable. In fact, the federal PTC has been credited with making large commercial projects economically feasible.²

For the 2006 tax year, the federal PTC was 1.9 cents per kWh.³ The amount is adjusted each year to account for inflation.⁴ Turbine owners can claim the credit for the first 10 fiscal years of the facility's operation.⁵ The incentive is currently available for projects in service by December 31, 2008, at which

¹ 26 U.S.C. § 45(a)(1), (c)(1)(A) (2006).

² See Phil Davies, "Fickle like the Wind" from *Fed Gazette* (Fed. Reserve Bank of Minneapolis Nov. 2005), available at <http://minneapolisfed.org/pubs/fedgaz/05-11/wind.cfm> (last visited June 5, 2007).

³ IRS Form 8835, "Renewable Electricity, Refined Coal, and Indian Coal Production Credit" 3 (2006), available at <http://www.irs.gov/pub/irs-pdf/f8835.pdf> (last visited June 5, 2007).

⁴ 26 U.S.C. § 45(b)(2) (2006).

⁵ 26 U.S.C. § 45(a)(2)(A)(ii) (2006).

time Congress will have to extend the credit to ensure continued availability for new projects.⁶

Farmers and other individual investors face challenges in using the federal PTC directly. Many individuals simply do not have sufficient tax liability to take advantage of credits of this size.

Internal Revenue Service (IRS) *passive income* rules create an additional hurdle for most individual owners of wind facilities. Unless an owner or investor actively manages the wind project, the wind project will be considered a *passive* activity for tax purposes; and tax credits acquired through passive activity can only be applied against income from other passive activities, such as investing in other businesses that do not require the owner's material participation or renting out other properties.⁷ This makes the PTC attractive only to wind project owners who have substantial passive income—a significant limitation for most farmers or other community members for whom the vast majority of income comes from production agriculture, off-farm jobs, and other *active* sources.

Wind project owners must also be aware of the federal PTC's *double-dipping* provision, which may undercut the value of other federal and state incentives for wind power by reducing the federal PTC. The amount that a

The Federal PTC's Boom-and-Bust Cycle

The federal PTC has been subject to off-and-on availability. Congress has historically authorized the PTC in two-year increments, with gaps in funding before subsequent renewals. However, wind projects typically take more than two years to plan and put into production. If the federal PTC is not renewed for the period in which a wind project is expected to begin, a wind project owner cannot take advantage of the PTC unless the project is delayed until it has been renewed. This has resulted in what the Government Accountability Office (GAO) in 2004 called a distinct "boom-and-bust cycle in the installation of new wind power capacity." Recently, the industry has suffered fewer disruptions because the federal PTC has been more stable. Congress "seamlessly" renewed the tax credit in the Energy Act of 2005, and extended it again in 2006 to be available through the end of 2008.

⁶ Tax Relief and Health Care Act of 2006, 109 Pub. L. 432, Div A, Title II, §§ 201, 207, 120 Stat. 2944, 2946 (Dec. 20, 2006) (to be codified at 26 U.S.C. §§ 45(d)(1), 48(c)(2)(E)).

⁷ IRS Pub. 925, "Passive Activity and At-Risk Rules" 2 (2006), available at <http://www.irs.gov/pub/irs-pdf/p925.pdf> (last visited June 5, 2007).

project's federal PTC will be reduced is based on the amount of state and federal incentive funding and the capital cost of the project. The incentives most likely to trigger the federal double-dipping provision are federal and state grants that reduce the up-front capital costs of the project, government loan programs offering below-market interest, and other forms of subsidized financing.⁸ State tax credits do not offset the federal PTC,⁹ and production incentive payments, other state tax incentives, grants for operational costs, and loan guarantees are unlikely to trigger the federal double-dipping rules.¹⁰ Accordingly, USDA Section 9006 grants, described in chapter 12 of this guide, will trigger the double-dipping provision, while federal loan guarantees will not.¹¹

2. State Production Tax Credits

A few states have PTCs that a wind project owner can apply toward state income tax liability. For example, Iowa has two separate PTCs for wind and renewable energy production. The Wind Energy Production Tax Credit (WEPTC) applies only to wind facilities, while the more recent Renewable Energy Production Tax Credit (REPTC) applies to a variety of renewable energy sources.

⁸ 26 U.S.C. § 45(b)(3)(A)(ii), (iii) (2006); *see also* Ryan Wisser and Mark Bolinger, *Analyzing the Interaction Between State Tax Incentives and the Federal Production Tax Credit for Wind Power* 2, 5, 9 (Lawrence Berkeley Nat'l Lab. Sept. 2002), available at <http://eetd.lbl.gov/ea/emp/reports/51465.pdf> (last visited June 5, 2007).

⁹ IRS Rev. Rul. 2006-9, 2006-9 I.R.B. 519, available at http://www.irs.gov/irb/2006-09_IRB/ar06.html (last visited June 17, 2007) (reducing the federal PTC by "any other credit allowable," held to apply only to federal tax credits, not state tax credits); *see also* U.S.C. § 45(b)(3)(A)(iv) (2006).

¹⁰ Ryan Wisser and Mark Bolinger, *Analyzing the Interaction Between State Tax Incentives and the Federal Production Tax Credit for Wind Power* 5 (Lawrence Berkeley Nat'l Lab. Sept. 2002), available at <http://eetd.lbl.gov/ea/emp/reports/51465.pdf> (last visited June 5, 2007); IRS Priv. Ltr. Rul. 138756-01 (No. 200206034) (Nov. 8, 2001), available at <http://www.irs.gov/pub/irs-wd/0206034.pdf> (holding that a conditional refund of the Colorado state sales and use tax did not reduce the federal PTC) (last visited June 17, 2007)). Although this private letter ruling only applies in that particular case, it indicates the IRS interpretation of the statute.

¹¹ Mark Bolinger, *Avoiding the Haircut: Potential Ways to Enhanced the Value of the USDA's Section 9006 Program* 8-9 (Berkeley Nat'l Lab. July 2006), available at <http://eetd.lbl.gov/ea/EMS/reports/61076.pdf> (last visited June 5, 2007).

Iowa's WEPTC provides a tax credit equal to 1 cent per kWh of electricity sold for the first 10 years of a wind project placed in operation between July 2005 and June 2008.¹² This credit is available to wind facilities in Iowa without regard to size or ownership structure;¹³ but to be eligible, the project must be approved by the board of supervisors in the county in which it is located.¹⁴ If a facility is receiving the WEPTC, it is not eligible for other Iowa tax incentives—such as a special valuation for property tax purposes or an exemption from retail sales tax¹⁵—and a person may not own more than two qualifying facilities.¹⁶

Real World Example

The Trimont Area Wind Farm in Minnesota reportedly generates a PTC valued at about \$6.5 million annually. However, the Minnesota farmers who initially developed the project were not able to utilize a tax credit of that size, and the “revenue” from the credit was needed to make the project profitable. The farmers ultimately sold the project to PPM Energy of Portland, Oregon, in return for development fees, a percent of gross revenues, and standard lease payments for the turbine sites. This deal is described in more detail in the article, *Fickle like the Wind*, by Phil Davies from the November 2005 Fed Gazette, available online at <http://minneapolisfed.org/pubs/fedgaz/05-11/wind.cfm>.

Other farmers have used creative business models, such as the so-called “Minnesota flip,” to retain an ownership interest in a wind project while partnering with an outside equity investor who can make use of the passive tax credits generated from the wind as part of the return on the investment. These are discussed in more detail in the financing (Chapter 8) and business structures (Chapter 10) chapters of this guide.

¹² Iowa Code §§ 476B.1(4)(c), 476B.2, 476B.3 (2006).

¹³ Iowa Code § 476B.1(4)(b) (2006).

¹⁴ Iowa Code § 476B.6(1)(a) (2006).

¹⁵ Iowa Code § 476B.4(1) (2006).

¹⁶ Iowa Code § 476B.5(5) (2006); *see also* Iowa Admin. Code r. 199-15.19 (2006).

Iowa's REPTC provides a tax credit equal to 1.5 cents per kWh of electricity generated and sold and may be claimed for 10 years of operation, so long as the facility remains eligible.¹⁷ To qualify for the REPTC, a wind facility must be at least 51 percent owned by one or more Iowa residents—which may be an individual, farm or family farm corporation, limited liability company, family farm limited liability company, or cooperative, among others.¹⁸ In addition, the facility must have at least one Iowa resident owner for each 2.5 MW of generating capacity, and none of these owners may own more than two eligible renewable energy facilities.¹⁹ Unlike the WEPTC, credit under the REPTC is not contingent on county approval. Instead, the project owners apply directly to the Iowa Utilities Board for approval.²⁰

Unlike the federal PTC, both WEPTC and REPTC credits may be transferred to another person, but only once.²¹ The Iowa Department of Revenue issues certificates for tax credits and coordinates a registration system that will track transfers.²² This ability to sell these credits makes their benefit to wind farmers much more flexible and accessible than the federal PTC.

Each Iowa incentive program has a limited amount of total credits that can be claimed, and once the limit has been reached, new projects are not eligible for the credit unless additional credits become available. The WEPTC is capped at 450 MW of eligible projects.²³ The REPTC is capped at 180 MW of wind projects and 20 MW of other renewable facilities.²⁴ During periods when the tax credits are fully pledged, new projects are put on a waiting list.²⁵

¹⁷ Iowa Code § 476C.2(1), (5) (2006).

¹⁸ Iowa Code § 476C.1(6)(b) (2006).

¹⁹ Iowa Code §§ 476C.1(6)(c), 476C.3(5) (2006).

²⁰ Iowa Code § 476C.3 (2006).

²¹ Iowa Code §§ 476B.7, 476C.6(2) (2006).

²² Iowa Code §§ 476B.7-.9, 476C.4-6 (2006).

²³ Iowa Code § 476B.2 (2006).

²⁴ Iowa Code § 476C.3(4) (2006).

²⁵ Iowa Utilities Board, *Renewable Energy Tax Credits*, http://www.state.ia.us/government/com/util/energy/renewable_tax_credits.html (last visited June 5, 2007).

B. Accelerated Depreciation

Under federal tax law, taxpayers who buy equipment for a business purpose, with a useful life extending beyond the tax year of the purchase, are allowed to take a tax deduction representing the depreciation of the equipment over its useful life.²⁶ Wind projects are eligible for the Modified Accelerated Cost-Recovery System (MACRS) depreciation method.²⁷ This allows equipment to be depreciated over 5 years instead of the typical 15 years, resulting in a larger annual depreciation deduction in the early years of the project.

However, like the PTC, taxpayers can only use this benefit if they have sufficient offsetting taxable income.²⁸ Additionally, federal or state incentives that provide tax-free capital funding for the project, such as grants, will reduce the depreciable basis of the property, thus reducing the overall depreciation deduction.²⁹

Many states permit the federal depreciation schedule to also be used for state income tax purposes, and farmers should consult a tax professional in their area to learn what provisions will apply to their particular case.

C. Tax Credits Based on Installation Costs

Rather than offering production-based tax credits, some states provide tax incentives to wind energy producers that are based on the project's initial

²⁶ 26 U.S.C. § 167 (2006).

²⁷ 26 U.S.C. § 168(e)(3)(B)(vi) (2006); *see also* IRS Pub. 946, "How to Depreciate Property" (2006), available at <http://www.irs.gov/pub/irs-pdf/p946.pdf>; IRS Form 4562, "Depreciation and Amortization" (2006), available at <http://www.irs.gov/pub/irs-pdf/f4562.pdf>; IRS Instructions for Form 4562 (2006), available at <http://www.irs.gov/pub/irs-pdf/i4562.pdf> (all sites last visited June 17, 2007).

²⁸ Charles Kubert, *Community Wind Financing: A Handbook by the Environmental Law and Policy Center* (2004), available at <http://www.elpc.org/documents/WindHandbook2004.pdf> (last visited June 17, 2007).

²⁹ 26 U.S.C. § 1016(a)(1) (2006); *see also* Mark Bolinger and Ryan Wiser, *A Comparative Analysis for Business Structures Suitable for Farmer-Owned Wind Power Projects in the United States* 8 & n.10 (Lawrence Berkeley Nat'l Lab. Nov. 2004), available at <http://eetd.lbl.gov/ea/ems/reports/56703.pdf> (last visited June 5, 2007).

installation costs. Examples of such incentives from North Dakota and Oregon will be discussed briefly.

1. North Dakota Wind Energy Tax Credit

A North Dakota taxpayer may claim a state income tax credit for the cost of a wind energy device installed before January 1, 2011.³⁰ If the device was installed before January 1, 2001, the taxpayer can claim a credit of 5 percent of the acquisition and installation costs each year for 3 years.³¹ If the device was installed after December 31, 2000, the taxpayer can claim a credit of 3 percent of acquisition and installation costs every year for 5 years. If the income tax credit exceeds the amount of tax owed, the taxpayer can carry the credit forward for up to 5 years.³²

Prior to 2007, small farmers and other wind energy producers with limited tax liability had difficulty taking advantage of this incentive. But in its 2007 session, the North Dakota legislature enacted changes intended to make the incentive more accessible.³³ Wind energy producers can now sell or assign any excess tax credit from this incentive to: (1) the person or entity that purchases the taxpayer's electricity, or (2) another North Dakota taxpayer who constructs or expands an electricity transmission line in the state after August 1, 2007.³⁴

2. Oregon Energy Tax Credit

Oregon taxpayers may benefit from a Business Energy Tax Credit (BETC) and a Residential Energy Tax Credit (RETC), both of which are based on the installation costs of wind energy projects.

³⁰ N.D. Cent. Code § 57-38-01.8(1) (2007).

³¹ N.D. Cent. Code § 57-38-01.8(1) (2007).

³² N.D. Cent. Code § 57-38-01.8(6) (2007).

³³ 2007 N.D. Laws (Ch. 515, H.B. 1233, § 1) (to be codified at N.D. Cent. Code § 57-38-01.8(7)).

³⁴ 2007 N.D. Laws (Ch. 515, H.B. 1233, § 1) (to be codified at N.D. Cent. Code § 57-38-01.8(7)). This second option is intended to foster development of new transmission lines, a problem for current wind development in North Dakota.

The Oregon BETC is available to individuals, corporations, and other business associations.³⁵ Eligible wind projects are those producing energy for sale or for on-site use, if the project displaces 10 percent of non-renewable energy sources used on-site.³⁶ The amount of the tax credit is 35 percent of eligible project costs, with a maximum credit of \$3.5 million per project.³⁷ In each of the first and second years that the credit is claimed, it may be 10 percent of eligible costs, and in each year thereafter, 5 percent.³⁸ For projects under \$20,000, the entire credit may be taken in the first year.³⁹ If an available credit cannot be used in the tax year, it may be carried forward for up to 8 years.⁴⁰

Oregon taxpayers who install residential wind energy equipment are eligible for the RETC.⁴¹ This tax credit is equal to 60 cents per estimated kWh saved during the first year of the installation, up to a maximum credit of \$1,500.⁴² The amount of the credit may not exceed qualifying costs associated with the project, such as turbines and other necessary equipment.⁴³ The total credit may be taken in the first year or carried forward for up to 5 years.⁴⁴

A special feature of the Oregon tax credits is their pass-through option, which provides an innovative solution to the problem of tax incentives benefiting only those entities with significant tax liability. Oregon allows an owner of a wind facility to *pass through* its tax credits to another taxable

³⁵ Or. Rev. Stat. §§ 469.185 to 469.225 (2006); Or. Rev. Stat. § 315.354 (2006); Or. Admin. R. 330-090-0105 to 330-090-0150 (2006).

³⁶ Or. Admin. R. 330-090-0110(54)(a) (2006).

³⁷ Or. Rev. Stat. § 315.354(3) (2006); Or. Admin. R. 330-090-0150(1) (2004) (allows \$10 million in eligible costs).

³⁸ Or. Rev. Stat. § 315.354(1)(a) (2006).

³⁹ Or. Rev. Stat. § 315.354(1)(b) (2006).

⁴⁰ Or. Rev. Stat. § 315.354(5) (2006).

⁴¹ Or. Admin. R. 330-070-0010 to 330-070-0097 (2006) (interpreting Or. Rev. Stat. §§ 469.160 to 469.180).

⁴² Or. Admin. R. 330-070-0022(2)(a) (2006).

⁴³ Or. Admin. R. 330-070-0022(2)(a) (2006).

⁴⁴ Or. Admin. R. 330-070-0024(2) (2006).

entity in exchange for a lump-sum cash payment.⁴⁵ The amount of the payment from the pass-through partner must be equal to the *net present value* of the tax credit. (Net present value converts the value of tax credits that will be received in the future into a corresponding current value for the lump-sum payment. The basic idea is that money in the future is worth less than money today.) The Oregon Department of Energy sets the rate to determine a tax credit's net present value.⁴⁶ Currently, the 5-year BETC pass-through rate is 25.5 percent, and the 1-year BETC pass-through rate is 30.5 percent.⁴⁷ This means that, for example, a project using the 5-year pass-through with \$100,000 of eligible project costs would receive a \$25,500 lump-sum payment from its pass-through partner. The partner in return would be able to claim the 35 percent BETC tax credit over the next five years, for a total credit of \$35,000.⁴⁸

III. Property Tax Issues for Wind Energy Development

Developing a wind project is likely to have some effect on the taxable value of a farmer's land.⁴⁹ Granting an easement or lease to a wind developer may also

⁴⁵ Or. Rev. Stat. § 469.206 (2006); Or. Admin. R. 330-090-0110(4)(a), (b) (2006); Or. Admin. R. 330-090-0140(1)(b) (2006) (BETC); Or. Admin. R. 330-070-0014 (2006) (RETC); *see also*, Or. Dept. of Energy, *RETC Pass-Through Option*, <http://www.oregon.gov/ENERGY/CONS/RES/tax/passthrough.shtml> (last visited June 5, 2007).

⁴⁶ Or. Admin. R. 330-090-0110(31), (34) (2006); Or. Admin. R. 330-090-0140(1)(b) (2006) (BETC); *see also* Or. Admin. R. 330-070-0014 (2006) (RETC).

⁴⁷ Or. Dept. of Energy, *Business Energy Tax Credits*, <http://www.oregon.gov/ENERGY/CONS/BUS/BETC.shtml>; *see also* Or. Dept. of Energy, *Business Energy Tax Credit Pass-Through*, <http://www.oregon.gov/ENERGY/CONS/BUS/tax/pass-through.shtml> (both sites last visited June 5, 2007).

⁴⁸ Or. Dept. of Energy, *What You Need to Know about Being a Business Energy Tax Credit Pass-through Partner*, <http://egov.oregon.gov/ENERGY/CONS/BUS/docs/BETCprospectus1.pdf> (last visited June 18, 2007).

⁴⁹ Interestingly, studies have shown wind projects have neutral to slightly positive effects on the values of neighboring properties within view of the turbines. *See* George Sterzinger, et al., *The Effect of Wind Development on Local Property Values 2* (May 2003), *available at*

impact property tax assessments to some degree. And some states impose a property tax based on the value of wind energy equipment.⁵⁰

To counteract the increased assessments that would typically result from a property improvement, some states offer tax relief for any increases in land value due to a wind energy project. However, these tax exemptions may only be available for a certain number of years. For example, in Iowa, wind energy installations do not increase the actual, assessed, or taxable values of the underlying real estate for five assessment years.⁵¹ In lieu of this complete five-year property tax exemption, Iowa cities and counties can elect to adopt an alternative assessment scheme that does not increase the taxable value of the land in the first year of the project, but increases the taxable value incrementally over a number of years by a maximum of 30 percent.⁵²

Other states, including Minnesota and North Dakota, offer tax relief for the property taxes that are assessed on the value of the wind energy equipment. While the Minnesota law imposes no time limit,⁵³ North Dakota's exemption lasts for five years.⁵⁴ After the initial five-year exemption period in North Dakota, turbines constructed before January 1, 2011, with a nameplate generation capacity of 100 kW or more, are taxed at 3 percent of their assessed value; turbines constructed in 2005 and 2006 that meet other eligibility requirements will be taxed at only 1.5 percent of their assessed value.

IV. Sales or Use Taxes on Wind Energy Equipment

Most states have sales or use taxes that could apply to any wind energy equipment purchased or used in the state. Local sales and use taxes may also apply. Taken together, these tax rates tend to be 4 to 8 percent of the equipment

http://www.crest.org/articles/static/1/binaries/wind_online_final.pdf (last visited June 18, 2007).

⁵⁰ See Warren Ault, *Property Taxation of Wind Generation Assets* (N. Am. Wind Power May 2006), available at <http://www.windustry.org/news/NAW0506.pdf> (last visited June 14, 2007).

⁵¹ Iowa Code § 441.21(8)(b) (2006).

⁵² Iowa Code § 427B.26 (2006).

⁵³ Minn. Stat. § 272.02(22) (2006).

⁵⁴ N.D. Cent. Code § 57-02-08(27) (2007).

value, which can add up to a large tax obligation when buying high-cost equipment.

Some states provide express sales tax exemptions for the purchase of wind energy equipment. In Iowa and Minnesota, sales of wind energy equipment and materials used to manufacture, install, or construct a wind facility are exempt from retail sales tax.⁵⁵ North Dakota recently enacted legislation exempting wind facilities completed before January 1, 2011, with a nameplate capacity of at least 100 kW, from any sales or use tax on production or environmental upgrade equipment delivered on or after January 1, 2007.⁵⁶

Other states, such as Colorado, provide a sales tax refund for wind turbines.⁵⁷ Colorado's refund is subject to the availability of funding each year.

V. Energy Generation or Sales Taxes

Finally, farmers should be aware that some states impose a tax on the generation or sale of energy. Wind energy generation may be exempt from or specifically included in such a tax.

In Iowa, for example, generators of electricity normally pay a replacement generation tax of .06 cents per kWh.⁵⁸ However, electricity generated by wind facilities is exempt from this tax.

In contrast, Minnesota has implemented a special small energy production tax that specifically applies to wind projects.⁵⁹ Projects larger than 12 MW are taxed 0.12 cents per kWh produced; projects over 2 MW and up to 12 MW are taxed 0.036 cents per kWh; projects over 250 kW and up to 2 MW are taxed 0.012 cents

⁵⁵ Iowa Code § 423.3(54) (2006); Minn. Stat. § 297A.68(12) (2006).

⁵⁶ Sales tax exemption: 2007 N.D. Laws (Ch. 530, H.B. 1365, § 1); 2007 N.D. Laws (Ch. 516, S.B. 2298, § 2) (to be codified at N.D. Cent. Code § 57-39.2-04.2). Use tax exemption: 2007 N.D. Laws (Ch. 530, H.B. 1365, § 2); 2007 N.D. Laws (Ch. 516, S.B. 2298, § 5) (to be codified at N.D. Cent. Code § 57-40.2-04.2).

⁵⁷ Colo. Rev. Stat. §§ 39-26-501, 39-26-502 (2006); *see also* Colo. Rev. Stat. § 25-6.5-201 (2006) (including wind turbines in the definition of pollution control equipment).

⁵⁸ Iowa Code § 437A.6(1)(c) (2006).

⁵⁹ Minn. Stat. § 272.029 (2006).

per kWh; and projects with a capacity of 250 kW or less are exempt.⁶⁰ However, a city, town, or county government seeking to attract wind development to its area may negotiate an alternative payment from a wind project in lieu of the energy production tax.⁶¹



⁶⁰ Minn. Stat. § 272.029, subd. 2(a), 3 (2006).

⁶¹ Minn. Stat. § 272.028 (2006).