

# New York State Passes Budget that Continues Tax Incentives for Solar Installations

This week's Industry Current is written by **David Burton**, partner, and **Richard Page**, associate at **Akin Gump Strauss Hauer & Feld** in New York. Burton and Page, who specialize in tax structures focused on energy transactions, examine the effects of the New York State budget on solar tax incentives.



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Last week, New York State enacted a budget for the fiscal year 2015-16 (i.e., April 1, 2015 to Mar. 31, 2016) that continues two tax incentives for the installation of solar energy systems: (1) tax credits conferred to partially offset the costs of such installations, and (2) a sales tax exemption for the retail sale and installation of residential and commercial solar equipment.

In 2012, we expected New York State's solar energy tax incentives to spur a significant increase in solar energy systems across the state. That expectation has materialized. From 2012 to present, more solar energy equipment was installed in New York State than in the entire decade prior. In 2014, enough solar power was installed in New York State to power 25,000 homes. According to the **Solar Energy Industries Association**, only six states added more solar energy capacity in 2014. In the order of capacity added, these states are California, North Carolina, Nevada, Massachusetts, Arizona, and New Jersey. This article briefly summarizes the continuing tax-related solar incentives provided by New York State.

## TAX CREDIT

New York State taxpayers can claim a tax credit against state income tax liability to partially offset the costs of solar energy equipment installed on a principal residence located within the state. A taxpayer is entitled to the credit if the taxpayer either:

(1) purchases solar energy equipment

installed at the taxpayer's residence,

(2) enters into a written lease agreement of at least 10 years with respect to solar energy equipment installed at the taxpayer's residence, or

(3) enters into a written power purchase agreement to buy solar energy power for at least 10 years from another party that installs solar energy equipment at the taxpayer's residence.

In the case of purchasing the equipment, the credit is worth 25% of qualified expenditures on the equipment, which includes labor costs but not any financing or interest charges. In the case of a taxpayer entering into a lease, the credit is worth 25% of all of the lease payments to be made over the course of the lease agreement. Yet, the credit is still fully available in the year the equipment is placed in service. And in the case of a taxpayer entering into a power purchase agreement, the credit is worth 25% of payments made in a given tax year, but only through the 15<sup>th</sup> year of the agreement. Under all three scenarios, a taxpayer may not include as costs any payments made with non-taxable federal, state, or local grants.

The credit is capped at \$5,000 per taxpayer with respect to a given solar energy system. Any unused credits in the year the property is placed in service can be carried forward for a period of five years. For example, if a taxpayer earns \$5,000 in credits in the year the property is placed in service, but only has \$4,000 of taxable income that year, the

unused \$1,000 of credits may be carried forward and used in one of the subsequent five years. The credits are not refundable—the credits are only payable as a reduction of taxable income.

If the solar energy equipment is installed by a condominium management association or a cooperative housing corporation, a resident may attribute a proportionate share of solar energy equipment expenditures with respect to his/her unit. The credits cannot be earned with respect to second homes.

When a taxpayer produces electricity using solar energy equipment, the taxpayer must enter into a "net energy metering" contract with the taxpayer's utility company or otherwise comply with the utility company's net metering schedule. Without such compliance, tax credits will not be conferred. A "net energy meter" is a meter that measures the reverse flow of electricity from a taxpayer to a utility company for purposes of determining how much electricity the utility company has provided to the taxpayer.

New York State taxpayers who would also like to claim the federal solar tax credit for homeowners may "double dip" by claiming both state and federal credits. The federal tax credit of 30% of the eligible cost of solar equipment purchased by homeowners is not reduced by state tax credits, and the New York State tax credit is not reduced by federal tax credits. That is, a New York State homeowner may claim both the federal tax credit of 30% and the state tax credit of 25%, subject to the state's \$5,000 tax credit ceiling, for a total of 55%.

## SALES TAX EXEMPTION

The New York State Tax Law section 1115 describes the state's sales tax (and use tax) exemptions. It notes: "[t]he following shall be exempt from tax . . . [r]eceipts from the retail sale of . . . residential solar energy systems equipment . . . [and] [r]eceipts from the retail sale of . . . commercial solar energy systems equipment." ■