

# Compliance Corner

## Leasing Your Farmland for Solar Energy

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NYFB's Legal Affairs and Public Policy Departments field calls weekly from members who have had representatives from solar companies knock on their doors with offers to lease their land for solar panels. Conduct an internet search on solar on farms, and your first several hits are paid ads from solar panel companies. Encouraged by a mandate from Gov. Cuomo's administration for half of electric generation to be from renewable sources by 2030, arrays of solar panels are being hailed by some as the ultimate cash crop.

However, FB members should be aware that these are complex business transactions which can result in unintended consequences. These leases can be one-sided, benefitting the company installing the solar panels. Language within some lease agreements have been inconsistent, so it is important to be aware of your rights and the restrictions that will come when you sign a lease. Landowners must do their due diligence to make sure their rights and property are protected.

Please be aware that it is not the intention of this article to cover every aspect of leasing your farmland for solar. These are only a few areas to consider. Every case is different. While we will discuss some of the important aspects to consider in making your decision, we cannot stress enough the importance of consulting an attorney prior to signing a contract.

**Tax Implications**  
In New York, a solar energy system is "real property" once it has been permanently affixed to land or a structure. As such, it is taxable unless it qualifies for an exemption. Section 487 of the Real Property Tax Law provides for the tax exemption of solar and wind energy systems along with farm waste systems. Generally, this law provides a 15-year exemption from real property taxation for the increase in value resulting from the installation of a qualifying system.

**Municipalities & Tax Exemption**  
It is important to understand

that municipalities in New York may decide for themselves whether to offer the tax exemption. The exemption is structured as an opt-out. That means that the exemption is automatically in effect within a municipality unless it has adopted a local law, ordinance, or resolution providing that the exemption shall not be available therein. In municipalities that have taken no action one way or the other, the exemption is in effect.

**Conversion Fees**  
When leasing land to a solar company, if you currently have an agriculture assessment, you will be responsible for a conversion payment to the town, county, and school district based upon taxes saved in the last year of your agriculture assessment. The reason for this is that the land was previously in an agriculture district and enjoyed lower taxes and you are now converting its purpose.

Computation of the conversion fee for land in an agricultural district that received an agricultural assessment within the past five years is based upon taxes saved in the last year of the assessment, times the number of acres converted, times five, plus interest of 6 percent compounded annually for each year in which an agricultural assessment was granted, not to exceed five years.

Conversion of land not in an agricultural district within eight years from the time an agricultural assessment was last received is subject to a conversion fee equal to five times the taxes saved in the last year in which land benefited from an agricultural assessment, plus interest of 6 percent compounded annually for each year in which an agricultural assessment was granted, not to exceed five years.

Your tax assessor can help you determine what the penalty payment will be.

**Your Local Tax Assessor**  
NYFB recommends that you sit down with your local tax assessor during the planning stages of your solar energy system to go over the tax implications of installing solar panels. Items to review with your assessor include whether

your municipality offers the tax exemption, an estimate of the exemption based on the system you are installing, and whether you would be taking agricultural land out of production that is currently under agricultural assessment and would be subject to conversion fees.

**Land Assessments**  
Land removed from agricultural production is assessed at its current use. The new use may be classified as a commercial use or something similar. The fair market value of the converted property may increase if there is a difference between the agricultural value and the commercial value of land within the town.

**Local Law**  
Some local laws currently require building permits, site plan review, and/or special use permits for solar devices. Some current and proposed local laws have included provisions that require a farm operator to complete a Long Environmental Assessment Form (EAF) and visual impact assessments. Such requirements can be expensive and can cause delays in the installation of the solar device.

**Farm Access**  
Solar installation is complicated and is accomplished in several phases. Make sure such things as the access road and power poles leading to the solar facility do not interfere with your ability to farm the rest of your property.

**Rights-of-Way and Easements**  
Conflicts over rights-of-way and easements for power line development may result from development of solar farms.

**Dismantling the Facility**  
Your contract should contain a provision that determines who is responsible for the dismantling of the facility if the company is no longer in business or if the solar facility ages out and is no longer viable.

As you can see, there is a myriad of things to consider when contemplating leasing your farmland to a solar energy company, and the preceding information discusses only some of them. NYFB highly recommends its members consult an attorney prior to signing a lease. Legal Affairs has

**Member Book Revisions Coming**  
Several revisions to labor law both state and federal are on the horizon. Members who have purchased NYFB's Farm & Home Guide to Labor and Employment Laws will also receive updates on the following: changes in minimum wage, overtime pay, and family leave; other NYS wage rates, and anticipated changes in Fair Labor Standards Act overtime exemption rules. Changes also are coming to New York State law on the Farm Endorsement for farm vehicles. Members who have purchased NYFB's Farm & Home Guide to Land & Farm Implement Laws & Regulations will also receive an update this summer. So please watch your mailbox.

a Legal Referral Service for NYFB members. If you would like to consult an attorney for a solar lease (or any other legal issue), contact the Legal Affairs Department at 1-800-342-4143 for a referral.

More information on the tax implications of leasing land for solar from the NYS Department of Taxation and Finance may be found at: <https://www.tax.ny.gov/pdf/publications/orpts/legal/raq2.pdf>.

An Application for Tax Exemption of Solar or Farm Waste Energy Systems, RP-487, may be accessed at: [https://www.tax.ny.gov/pdf/current\\_forms/orpts/rp487\\_fill\\_in.pdf](https://www.tax.ny.gov/pdf/current_forms/orpts/rp487_fill_in.pdf).

NYFB's Fact Sheet on this topic is available at: [www.nyfb.org](http://www.nyfb.org).

*The information contained in this article is provided for informational purposes only. It is not intended to be, nor should it be considered, a substitute for legal advice rendered by a competent attorney. If you have any questions about the application of the issues raised in this article to your particular situation, seek the advice of a competent attorney.*

## N.Y. Appeals Court Hears Property Rights Case

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More than a year ago, in April 2015, the NYFB Board of Directors approved participating in a "friend of the court" brief prepared by the Pacific Legal Foundation ("PLF") and the Property Rights Foundation of America in the case of Friends of Thayer Lake, et al. v. Brown and NYSDEC, et al. This case relates to the extent that "recreational use" (i.e. canoeing, kayaking, etc.) of a waterway contributes to the commercial use test of navigability-in-fact of waters under New York State law. The lawsuit was filed with the NYS Court of Appeals in early February.

In this case, owners of land in the Adirondacks sued a canoeist, Phil Brown, in trespass to prevent

him from canoeing through a private waterway running through their land. The waterway involved significant portages which required the canoeist to carry his canoe across private property to continue on the waterway. The New York State Department of Environmental Conservation declared the waterway "navigable-in-fact" and, as a result, burdened by an easement for public transportation, allowing the public to freely traverse this previously private waterway. Both the State Supreme Court and the Appellate Division determined that, since the waterway was suitable for recreational travel, it was navigable-in-fact. The landowners appealed to New York's highest court, the NYS

Court of Appeals. Our friend of the court brief presented arguments on two main points. First, the amicus parties, including NYFB, argued that should the result of the lower court stand, the decision amounts to a judicial "taking" in violation of state and federal constitutions. Second, the brief analyzed the traditional commercial use test versus the recreational use test of navigability. These lines of analysis mirror both NYFB policies related to private property rights and the arguments that NYFB made as amicus curiae in Adirondack League Club, a similar case back in the 1990s, which resulted in recreational use being considered a component of the traditional commercial use test

for navigability. The NYS Court of Appeals heard oral arguments in this case on March 24, 2016. The attorneys for both sides faced a hot bench with both sides being peppered with questions by an animated panel of judges. The questions posed by the judges in this case demonstrated that they were knowledgeable about the facts of the case, and a few of the judges appeared to be supportive of the landowners. The breadth of the Adirondack League case was vigorously contested by the parties and several of the judges' questions. How the case will be decided is unknown. When a decision is issued, NYFB will provide an update.