

Chip,

Attached is a Word document containing all wind energy-related statutes in Montana.

All but three counties in Montana have general powers so, absent specific authority granted by the legislature, counties have close to no say in siting wind energy development. We only have a handful of counties that have any zoning in place, which would nonetheless be quite limiting anyway.

We have two statutes that limit zoning. The first 76-2-109 is for citizen initiated or petitioned zoning and the second, 7-2-209 is for county initiated zoning. While a strict read would lead one to believe that a county would have some authority to regulate wind energy development, we also have an AG Opinion (36 A.G. Op. 33 (1975) that expanded both sections to include that a county could regulate but not prohibit natural resource development, use or recovery of mining claims. By implication we believe this would also cover wind farms.

Should a county wish to attempt to regulate wind farms through zoning, they are extremely limited by the principle that counties cannot adopt single purpose zoning so they would have to adopt zoning lock, stock and barrel, which just isn't going to happen in most of Montana in our lifetimes. Single-purpose zoning is the issue in a case before our Supreme Court right now so we will have additional clarification when that Opinion is issued.

**76-2-109. Effect on natural resources.** No planning district or recommendations adopted under this part shall regulate lands used for grazing, horticulture, agriculture, or the growing of timber.

**76-2-209. Effect on natural resources.** (1) Except as provided in 82-4-431, 82-4-432, and subsection (2) of this section, a resolution or rule adopted pursuant to the provisions of this part, except 76-2-206, may not prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner of any mineral, forest, or agricultural resource.

(2) The complete use, development, or recovery of a mineral by an operation that mines sand and gravel or an operation that mixes concrete or batches asphalt may be reasonably conditioned or prohibited on a site that is located within a geographic area zoned as residential, as defined by the board of county commissioners.

(3) Zoning regulations adopted under this chapter may reasonably condition, but not prohibit, the complete use, development, or recovery of a mineral by an operation that mines sand and gravel and may condition an operation that mixes concrete or batches asphalt in all zones other than residential.

**Attorney General Opinions:**

Zoning of Patented Mining Claims: County Commissioners have the authority to zone land areas which include patented mining claims subject to the mandate that natural resources thereon be allowed to be used, developed, or recovered. 36 A.G. Op. 33 (1975).

Thanks,

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# Title 15

# TAXATION

## CHAPTER 6

### PROPERTY SUBJECT TO TAXATION

#### Part 1

#### Classification

**15-6-137. Class seven property -- description -- taxable percentage.** (1) Except as provided in subsection (2), class seven property includes:

(a) all property owned by cooperative rural electrical associations that serve less than 95% of the electricity consumers within the incorporated limits of a city or town, except rural electric cooperative properties described in 15-6-141(1)(a);

(b) electric transformers and meters; electric light and power substation machinery; natural gas measuring and regulating station equipment, meters, and compressor station machinery owned by noncentrally assessed public utilities; and tools used in the repair and maintenance of this property.

**(2) Class seven property does not include wind generation facilities and biomass generation facilities classified under 15-6-157.**

**(3) Class seven property is taxed at 8% of its market value.**

**15-6-141. Class nine property -- description -- taxable percentage.** (1) Class nine property includes:

(a) centrally assessed allocations of an electric power company or centrally assessed allocations of an electric power company that owns or operates transmission or distribution facilities or both, including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by a public agency created by congress to transmit or distribute electrical energy produced at privately owned generating facilities, not including rural electric cooperatives. However, rural electric cooperatives' property, **except wind generation facilities and biomass generation facilities classified under 15-6-157**, used for the sole purpose of serving customers representing less than 95% of the electric consumers located within the incorporated limits of a city or town of more than 3,500 persons in which a centrally assessed electric power company also owns property or serving an incorporated

municipality with a population that is greater than 3,500 persons formerly served by a public utility that after January 1, 1998, received service from the facilities of an electric cooperative is included. For purposes of this subsection (1)(a), "property used for the sole purpose" does not include a headquarters, office, shop, or other similar facility.

(b) allocations for centrally assessed natural gas distribution utilities, rate-regulated natural gas transmission or oil transmission pipelines regulated by either the public service commission or the federal energy regulatory commission, a common carrier pipeline as defined in 69-13-101, a pipeline carrier as defined in 49 U.S.C. 15102(2), or the gas gathering facilities specified in 15-6-138(5); and

(c) centrally assessed companies' allocations **except:**

(i) electrical generation facilities classified under 15-6-156;

**(ii) all property classified under 15-6-157;**

(iii) all property classified under 15-6-158 and 15-6-159;

(iv) property owned by cooperative rural electric and cooperative rural telephone associations and classified under 15-6-135;

(v) property owned by organizations providing telephone communications to rural areas and classified under 15-6-135;

(vi) railroad transportation property included in 15-6-145;

(vii) airline transportation property included in 15-6-145; and

(viii) telecommunications property included in 15-6-156.

## **(2) Class nine property is taxed at 12% of market value.**

**15-6-156. Class thirteen property -- description -- taxable percentage.** (1) Except as provided in subsections (2)(a) through (2)(g), class thirteen property includes:

(a) electrical generation facilities, except wind generation facilities and biomass generation facilities classified under 15-6-157, of a centrally assessed electric power company;

(b) electrical generation facilities, except wind generation facilities and biomass generation facilities classified under 15-6-157, owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to 42 U.S.C. 16451;

(c) noncentrally assessed electrical generation facilities, except wind generation facilities and biomass generation facilities classified under 15-6-157, owned or operated by any electrical energy producer; and

(d) allocations of centrally assessed telecommunications services companies.

**(2) Class thirteen property does not include:**

(a) property owned by cooperative rural electric cooperative associations classified under 15-6-135;

(b) property owned by cooperative rural electric cooperative associations classified under 15-6-137 or 15-6-157;

(c) allocations of electric power company property under 15-6-141;

**(d) electrical generation facilities included in another class of property;**

(e) property owned by cooperative rural telephone associations and classified under 15-6-135;

(f) property owned by organizations providing telecommunications services and classified under 15-6-135; and

(g) generation facilities that are exempt under 15-6-225.

(3) (a) For the purposes of this section, "electrical generation facilities" means any combination of a physically connected generator or generators, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power. The term includes but is not limited to generating facilities that produce electricity from coal-fired steam turbines, oil or gas turbines, or turbine generators that are driven by falling water.

(b) The term does not include electrical generation facilities used for noncommercial purposes or exclusively for agricultural purposes.

(c) The term also does not include a qualifying small power production facility, as that term is defined in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the generation or sale of electricity other than electric power from a small power production facility and classified under 15-6-134 and 15-6-138.

**(4) Class thirteen property is taxed at 6% of its market value.**

**15-6-157. Class fourteen property -- description -- taxable percentage.** (1) Class fourteen property includes:

**(a) wind generation facilities of a centrally assessed electric power company;**

**(b) wind generation facilities owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to 42 U.S.C. 16451;**

**(c) noncentrally assessed wind generation facilities owned or operated by any electrical energy producer;**

**(d) wind generation facilities owned or operated by cooperative rural electric associations described under 15-6-137;**

(e) biomass generation facilities up to 25 megawatts in nameplate capacity of a centrally assessed electric power company;

(f) biomass generation facilities up to 25 megawatts in nameplate capacity owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to 42 U.S.C. 16451;

(g) noncentrally assessed biomass generation facilities up to 25 megawatts in nameplate capacity owned or operated by any electrical energy producer;

(h) biomass generation facilities up to 25 megawatts in nameplate capacity owned or operated by cooperative rural electric associations described under 15-6-137;

(i) all property of a biodiesel production facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;

(j) all property of a biogas production facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;

(k) all property of a biomass gasification facility, as defined in 15-24-3102;

(l) all property of a coal gasification facility, as defined in 15-24-3102, except for property in subsection (1)(o) of this section, that sequesters carbon dioxide;

(m) all property of an ethanol production facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;

(n) all property of a geothermal facility, as defined in 15-24-3102;

(o) all property of an integrated gasification combined cycle facility, as defined in 15-24-3102, that sequesters carbon dioxide, as required by 15-24-3111(4)(c);

(p) all property or a portion of the property of a renewable energy manufacturing facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;

(q) all property of a natural gas combined cycle facility;

(r) equipment that is used to capture and to prepare for transport carbon dioxide that will be sequestered or injected for the purpose of enhancing the recovery of oil and gas, other than that equipment at coal combustion plants of the types that are generally in commercial use as of December 31, 2007, that commence construction after December 31, 2007;

**(s) high-voltage direct-current transmission lines and associated equipment and structures, including converter stations and interconnections, other than property classified under 15-6-159, that:**

(i) originate in Montana with a converter station located in Montana east of the continental divide and that are constructed after July 1, 2007;

(ii) are certified under the Montana Major Facility Siting Act; and

(iii) provide access to energy markets for Montana electrical generation facilities listed in this section that commenced construction after June 1, 2007;

(t) all property of electric transmission lines, including substations, that originate at facilities specified in this subsection (1), with at least 90% of electricity carried by the line originating at facilities specified in this subsection (1) and terminating at an existing transmission line or substation that has commenced construction after June 1, 2007;

(u) the qualified portion of an alternating current transmission line and its associated equipment and structures, including interconnections, that has commenced construction after June 1, 2007.

(2) (a) The qualified portion of an alternating current transmission line in subsection (1)(u) is that percentage, as determined by the department of environmental quality, of rated transmission capacity of the line contracted for on a firm basis by buyers or sellers of electricity generated by facilities specified in subsection (1) that are located in Montana.

(b) The department of revenue shall classify the total value of an alternating current transmission line in accordance with the determination made by the department of environmental quality pursuant to subsection (2)(a).

(c) The owner of property described under this subsection (2) shall disclose the location of the generation facilities specified in subsection (1) and information sufficient to demonstrate that there is a firm contract for transmission capacity available throughout the year. For purposes of the initial qualification, the owner is not required to disclose financial terms and conditions of contracts beyond that needed for classification.

(3) Class fourteen property **does not include** facilities:

(a) at which the standard prevailing rate of wages for heavy construction, as provided in 18-2-414, was not paid during the construction phase; or

(b) that are exempt under 15-6-225. *[NOTE: the exempt property referred to is for generation facilities of less than one megawatt for the first five years after generation begins.]*

(4) For the purposes of this section, the following definitions apply:

(a) "Biomass generation facilities" means any combination of boilers, generators, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power from the burning of organic material other than coal, petroleum, natural gas, or any products derived from coal, petroleum,

or natural gas, with the use of natural gas or other fuels allowed for ignition and to stabilize boiler operations.

**(b) "Wind generation facilities" means any combination of a physically connected wind turbine or turbines, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power from wind.**

(5) (a) The department of environmental quality shall determine whether to certify that a transmission line meets the criteria of subsection (1)(s), (1)(t), or (1)(u), as applicable, based on an application provided for in 15-24-3112. The department of environmental quality shall review the certification 10 years after the line is operational, and if the property no longer meets the requirements of subsection (1)(s), (1)(t), or (1)(u), the certification must be revoked.

(b) If the department of revenue finds that a certification previously granted was based on an application that the applicant knew was false or fraudulent, the property must be placed in class nine under 15-6-141. If the application was fraudulent, the applicant may be liable for additional taxes, penalty, and interest from the time that the certification was in effect.

**(6) Class fourteen property is taxed at 3% of its market value.**

**1 15-6-159. Class sixteen property -- description -- taxable percentage.** (1) Class sixteen property includes high-voltage direct-current converter stations that are constructed in a location and manner so that the converter station can direct power to two different regional power grids.

(2) Class sixteen property does not include property described in subsection (1) for which the standard prevailing rate of wages for heavy construction, as provided in 18-2-414, was not paid during the construction phase.

(3) (a) The department shall determine whether to certify that the property meets the criteria of subsection (1).

(b) If the department finds that a certification previously granted was based on an application that the applicant knew was false or fraudulent, the property must be placed in class nine under 15-6-141. If the application was fraudulent, the applicant may be liable for additional taxes, penalty, and interest from the time that the certification was in effect.

**(4) Class sixteen property is taxed at 2.25% of its market value.**

**5-6-229. Exemption for land adjacent to transmission line right-of-way easement -- application -- limitations.** (1) Subject to the conditions of this section, for tax years beginning after December 31, 2007, there is allowed an exemption from property taxes for land that is within 660 feet on either side of the midpoint of a transmission line right-of-way or easement.

(2) (a) An owner or operator of a transmission line shall apply to the department for an exemption under this section on a form provided by the department. The application must include a legal description and a digitized certificate of survey prepared by a surveyor registered with the board of professional engineers and professional land surveyors provided for in 2-15-1763 of the property in the county for which the exemption is sought and other information required by the department. A separate application must be made for each county in which an exemption is sought.

(b) An application for an exemption that would be in effect for the tax year and subsequent tax years must be filed with the department by March 1 in the tax year that the exemption is sought.

(3) (a) The owner or operator of a transmission line shall inform the department of any change in ownership of the land or other circumstances that may affect the eligibility of the land for the exemption. The department shall determine whether any changes have occurred that affect the eligibility of the land for the exemption.

(b) The exemption allowed under this section does not apply to:

(i) the boundaries of an incorporated or unincorporated city or town;

(ii) a platted and filed subdivision;

(iii) tracts of land used for residential, commercial, or industrial purposes; or

(iv) the 1 acre of land beneath improvements on land described in 15-6-133(1)(c) and 15-7-206(2).

(4) For the purposes of this section, "transmission line" means an electric line with a design capacity of 30 megavoltamperes or greater that is constructed after January 1, 2007.



## Part 30

### Electrical Generation and Delivery Facilities

**15-24-3001. Electrical generation and transmission facility exemption -- definitions.** (1) (a) Except as provided in subsections (1)(b) and (3), an electrical generation facility and related delivery facilities constructed in the state of Montana **after May 5, 2001, and before January 1, 2006, may be exempt from property taxation for a 10-year period** beginning on the date that an owner or operator of an electrical generation facility and related delivery facilities commences to construct the facility as defined in 75-20-104(6)(a) and (6)(b). In order to be exempt from property taxation, an owner and operator of an electrical generation facility and related delivery facilities shall offer contracts to sell 50% of that facility's net generating output at a cost-based rate, which includes a rate of return not to exceed 12%, to customers for a 20-year period from the date of the facility's completion.

(b) The property tax exemption allowed under subsection (1)(a) is limited to a 5-year period for generation facilities powered by oil or gas turbines.

(2) To the extent that 50% of the net generating output of the facility is not contracted for delivery to consumers for a contract term extending 5 years to 20 years from the completion of the facility, as determined by the owner, surplus capacity must be offered on a declining contract term basis for the remainder of the contract period at a cost-based rate that includes a rate of return not to exceed 12%. Surplus capacity that is not contracted for in this fashion may be sold at market rates.

(3) (a) Except as provided in subsection (3)(c), if an owner or operator of property exempt from taxation under subsection (1)(a) signs a contract to sell power as required in subsection (1) and then fails to perform the contract during the first 10-year period, the 10-year property tax exemption in subsection (1) is void and the property is subject to a rollback tax as provided in 15-24-3002.

(b) Except as provided in subsection (3)(c), if an owner or operator of property exempt from taxation under subsection (1)(b) signs a contract to sell power as required in subsection (1) and then fails to perform the contract during the first 5-year period, the 5-year property tax exemption in subsection (1) is void and the property is subject to a rollback tax as provided in 15-24-3002.

(c) If an owner or operator fails to perform the contract due to earthquakes or other acts of God, theft, sabotage, acts of war, other social instabilities, or equipment failure, the property tax exemption in subsection (1)(a) or (1)(b) is not void and the owner or operator is not subject to the rollback tax as provided in 15-24-3002.

(4) For the purposes of this section, the following definitions apply:

(a) (i) "Electrical generation facility" means any combination of a physically connected generator or generators, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce 20 average megawatts or more of electric power. The term is limited to generating facilities that produce electricity from coal-fired steam turbines, oil or gas turbines, or turbine generators that are driven by falling water.

(ii) The term does not include:

(A) electrical generation facilities used for noncommercial purposes or exclusively for agricultural purposes; or

(B) a qualifying small power production facility, as that term is defined in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the generation or sale of electricity other than electric power from a small power production facility and that is classified under 15-6-134 and 15-6-138.

(b) "Related delivery facilities" means transmission facilities necessary to deliver the energy from the electrical generation facility to the existing network transmission system.

(c) "Surplus capacity" means that portion of the 50% of net generating output not contracted for use.

(5) The department shall appraise exempt electrical generation facilities for each year that the property is exempt and determine the taxable value of the property as if it were subject to property taxation. The taxable value determined by the department must be included as taxable valuation for the purposes of county classification under 7-1-2111.

**15-24-3002. Rollback tax -- computation.** (1) (a) If an owner or operator fails to perform the contract pursuant to 15-24-3001(1), the property is subject to a rollback tax in addition to the property tax levied on the property. The rollback tax is a lien on the property and is due and payable by the owner of the property within 180 days after failure to perform the contract.

(b) As used in this section, "rollback" means the period of time that an owner or operator of an electrical generation facility was exempt from property taxes pursuant to 15-24-3001.

(2) The department shall determine the amount of rollback tax due on the property by:

(a) determining the taxable value of the property;

(b) multiplying this value by the sum of the annual mill levies that would have been levied had the property exemption pursuant to 15-24-3001 not been applied in the taxing jurisdiction in which the electrical generation property is located during the rollback period; and

(c) subtracting from this figure the actual property tax paid on the property during this period less any impact fee paid pursuant to 15-24-3005, if any.

**15-24-3003 reserved.**

**15-24-3004. Wind generation facility impact fee for local governmental units and school districts. (1)**

An owner or operator of a wind generation facility used for a commercial purpose is subject to an initial local governmental and local school impact fee for the first 3 years after construction of the wind generation facility begins. The impact fee may not exceed 0.5% of the total cost of constructing the wind generation facility.

(2) (a) Subject to subsection (2)(b), the impact fee is assessed and distributed as provided in 15-24-3005(2) and (3).

(b) Local governmental units may enter into an interlocal agreement as provided in 15-24-3005(4).

(3) (a) For the purposes of this section, "wind generation facility" means any combination of a physically connected wind turbine or turbines, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power from wind.

(b) The term does not include a wind generation facility used for noncommercial purposes or exclusively for agricultural purposes.

**15-24-3005. Electrical generation facility impact fee for local governmental units and school districts -- wind generation facility impact fee. (1) (a)** If an owner or operator of an electrical generation facility, as defined in 15-24-3001, is exempt from property taxation pursuant to 15-24-3001, the owner or operator of the facility is subject to an initial local government and local school impact fee. In the first 2 years of construction, the impact fee may not exceed 0.75% of the total cost of constructing the electrical generation facility.

(b) In the case of a generation facility powered by oil or gas turbines, the impact fee may not exceed 0.1% of the total construction cost in the remaining 3 years of the tax exemption period as provided in 15-24-3001.

(c) In the case of any other generation facility, the impact fee may not exceed 0.1% of the total construction cost in the subsequent 4 years and may not exceed 0.08% of the total construction cost in the remaining 4 years of the tax exemption period as provided in 15-24-3001.

(2) Except as provided in subsection (4), the jurisdictional area of a local governmental unit in which an electrical generation facility or wind generation facility is located is the local governmental unit that is authorized to assess the impact fee pursuant to 15-24-3004(1) or subsection (1) of this section.

(3) The impact fee must be distributed to the local governmental unit for local impacts and to the impacted school districts.

(4) Subject to the conditions of 15-24-3006 and subsection (5) of this section, if the electrical generation facility or wind generation facility is located within the jurisdictional areas of multiple local governmental units of the county or contiguous counties, the local governmental units may enter into an interlocal agreement under Title 7, chapter 11, part 1, to determine how the fee should be distributed among the various local governmental units and impacted school districts pursuant to subsection (3). The county in which the electrical generation facility or wind generation facility is located is authorized to assess the fee under the interlocal agreement.

(5) For purposes of 15-24-3004 and this section, a "local governmental unit" means a county, city, or town. If an exempt electrical generation facility or wind generation facility is located within a tax increment financing district, the tax increment financing district is considered a local governmental unit and is entitled to the distribution of impact fees under this section. A tax increment financing district may not receive a distribution of impact fees if an exempt electrical generation facility or wind generation facility is not located within the district.

(6) Impact fees imposed under 15-24-3004(2)(b) or under subsection (4) of this section must be deposited in the county electrical energy generation impact fee reserve account established in 15-24-3006 for the county in which the electrical generation facility is located. Money in the account may not be expended until the multiple local governmental units have entered into an interlocal agreement.

**15-24-3006. Electrical energy generation impact fee reserve account.** (1) The governing body of a county receiving impact fees under 15-24-3004(2)(b) or 15-24-3005(4) shall establish an electrical energy generation impact fee reserve account to be used to hold the collections. Money held in the account may not be considered as cash balance for the purpose of reducing mill levies.

(2) Money may be expended from the account for any purpose of an interlocal agreement provided for in 15-24-3004 or 15-24-3005. The county treasurer shall distribute money in the account to each local governmental unit according to the terms of the interlocal agreement.

(3) Money in the account must be invested as provided by law. Interest and income from the investment of the electrical energy generation impact fee reserve account must be credited to the account.

History: En. Sec. 4, Ch. 592, L. 2001; amd. Sec. 9, Ch. 563, L. 2005.

**15-24-3007. Electrical generation impact fund.** (1) A local governmental unit, as defined in 15-24-3005, and a school district that receives impact fees pursuant to 15-24-3004(2)(a), 15-24-3005(2), or 15-24-3006 shall establish an electrical generation impact fund for the deposit of the fees. A local governmental unit or school district may retain the money in the fund for any time period considered appropriate by the governing body of the local governmental unit or school district. Money retained in the fund may not be considered as fund balance for the purpose of reducing mill levies.

(2) Money may be expended from the fund for any purpose allowed by law.

(3) Money in the fund must be invested as provided by law. Interest and income earned on the investment of money in the fund must be credited to the fund.

(4) The fund must be financially administered as a nonbudgeted fund by a city, town, or county under the provisions of Title 7, chapter 6, part 40, or by a school district under the provisions of Title 20, chapter 9, part 5.

## Part 31.

### Property Related to Renewable Energy, New Energy Technology, and Clean Coal

**15-24-3101. Policy.** It is the policy of the state of Montana that the tax classifications, rates, abatements, and exemptions in 15-6-158, 15-6-159, and this part and amendments made by Chapter 2, Special Laws of May 2007, in 15-6-141 and 15-6-157 are to be strictly limited to new investments that qualify under the standards established in 15-6-158, 15-6-159, and this part and amendments made by Chapter 2, Special Laws of May 2007, in 15-6-141 and 15-6-157. The provisions of 15-6-158, 15-6-159, and this part and amendments made by Chapter 2, Special Laws of May 2007, in 15-6-141 and 15-6-157 do not apply to any previously existing properties or to any new investments or property that does not qualify under 15-6-158, 15-6-159, and this part and amendments made by Chapter 2, Special Laws of May 2007, in 15-6-141 and 15-6-157. It is also the policy of the state of Montana that the classifications, rates, abatements, and exemptions in 15-6-158, 15-6-159, and this part and amendments made by Chapter 2, Special Laws of May 2007, in 15-6-141 and 15-6-157 are to encourage investment in energy development that is consistent with maintaining a clean and healthful environment and that may not otherwise occur without 15-6-158, 15-6-159, and this part and amendments made by Chapter 2, Special Laws of May 2007, in 15-6-141 and 15-6-157. Sections 15-6-158 and 15-6-159 and this part and amendments made by Chapter 2, Special Laws of May 2007, in 15-6-141 and 15-6-157 are not to be interpreted as a precedent for reducing the taxation of any other property in the state or for affecting the use of any property valuation method for tax purposes established under law to meet the standards of the Montana constitution and law. The department of environmental quality and the department of revenue are directed to administer and interpret 15-6-158, 15-6-159, and this part and amendments made by Chapter 2, Special Laws of May 2007, in 15-6-141 and 15-6-157 strictly in accordance with this policy. Any ambiguities in 15-6-158, 15-6-159, and this part and amendments made by Chapter 2, Special Laws of May 2007, in 15-6-141 and 15-6-157 are to be resolved in favor of the strict reading of this policy.

**15-24-3102. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

- (1) "Biodiesel" has the meaning provided in 15-70-301.
- (2) "Biodiesel production facility" means improvements and personal property used for the production and onsite storage of biodiesel.
- (3) "Biogas" means methane gas produced through controlled biochemical processes in which bacteria digest animal, municipal, or other organic wastes in an oxygen-free environment. The term includes naturally occurring methane gas formed underground in landfills.

(4) "Biogas production facility" means improvements and personal property used for the production of biogas and the generation of electricity at the facility.

(5) "Biomass" means any renewable organic matter, including dedicated energy crops and trees, agricultural food and feed crops, agricultural crop wastes and residues, wood wastes and residues, aquatic plants, animal wastes, municipal wastes, and other organic waste materials.

(6) "Biomass gasification" means a technology that uses a thermochemical process to convert biomass into a low-Btu or medium-Btu gas for the purpose of producing electricity, methane gas, transportation fuels, or chemicals. The technology includes the pretreatment of biomass feedstock involving drying, pulverizing, and screening.

(7) "Biomass gasification facility" means improvements and personal property used for the production of fuel or chemicals and the generation of electricity from biomass at the facility.

(8) "Carbon sequestration" means the long-term storage of carbon dioxide from a plant or facility that produces or captures carbon dioxide, as defined in 15-6-158, in geologic formations, including but not limited to deep saline formations, basalt or oil shale formations, depleted oil and gas reservoirs, unminable coal beds, and closed-loop enhanced oil recovery operations.

(9) "Clean advanced coal research and development equipment" means equipment used primarily for research and development of emerging methods for pollution control, carbon capture, and carbon sequestration. The term includes equipment used for research and development of effective and efficient removal of various pollutants and the capture, storage, transportation, compression, and injection of carbon dioxide from coal combustion utility and industrial facilities and advanced coal conversion facilities.

(10) "Coal gasification" means a process that converts coal into a synthesis gas composed of carbon monoxide, hydrogen, and other gases. The coal gasification process includes the reaction of coal feedstock, prepared in either a dry or slurried form, with steam and oxygen at high temperature and pressure in a reducing atmosphere. The synthesis gas is then used to produce electricity, liquid fuels, methane gas, or chemicals.

(11) "Coal gasification facility" means improvements and personal property used for coal gasification that are used for the production of fuel or chemicals, the generation of electricity, or any combination of those things at the facility. The term includes a coal-to-liquid facility or an integrated gasification combined cycle facility.

(12) "Coal-to-liquid facility" means improvements and personal property used for the production of synthetic liquid fuels from coal. The term includes a facility that uses the Fischer-Tropsch process or other processes to convert synthesis gas produced by coal gasification into liquid fuel.

(13) "Commencement of construction" means initiation of onsite fabrication, erection, or installation of, but not limited to, the following:

- (a) building supports or foundations;
- (b) laying of underground pipework; or
- (c) construction of storage structures.

(14) "Ethanol" means nominally anhydrous ethyl alcohol that has been denatured as specified in 27 CFR, parts 20 and 21, and that meets the standards for ethanol adopted pursuant to 82-15-103.

(15) "Ethanol production facility" means improvements and personal property used for the production and onsite storage of ethanol made from cellulose or other nonfoodstuff materials.

(16) "Geothermal facility" means improvements and personal property used for the production of electricity from geothermal sources.

(17) "Integrated gasification combined cycle facility" means improvements and personal property of an electrical generation facility that uses a coal gasification process and routes synthesis gas to a combustion turbine to generate electricity and captures the heat from the combustion to drive a steam turbine to produce more electricity. The facility may also use incidental amounts of natural gas or other fuels in the combustion turbine.

**(18) "Renewable energy" includes the following:**

- (a) solar energy;
- (b) wind energy;**
- (c) geothermal energy;
- (d) energy from the conversion of biomass;
- (e) energy from biogas;
- (f) energy from fuel cells that do not require a petroleum-based fuel;
- (g) energy from waste heat; and
- (h) cellulosic ethanol.

(19) (a) "Renewable energy manufacturing facility" means improvements and personal property used by a facility with its principal business being the manufacturing of material, component parts, systems, or similar equipment for use in facilities that convert renewable energy into forms of energy useful to people, including electricity. The term includes facilities for manufacturing of electric motor vehicles or hybrid electric motor vehicles.

(b) For purposes of subsection (19)(a), "principal business" means a renewable energy manufacturing facility with at least 50%, by value, of its annual production suitable for sale as renewable energy material, component parts, systems, or similar equipment.

(20) "Renewable energy research and development equipment" means equipment used primarily for research and development of the efficient use of renewable energy sources. The term includes equipment used for research and development of electric motor vehicles or hybrid electric motor vehicles.

**15-24-3103 through 15-24-3110 reserved.**

**15-24-3111. Energy production or development -- tax abatement -- eligibility.** (1) A facility listed in subsection (3), clean advanced coal research and development equipment, and renewable energy research and development equipment may qualify for an abatement of property tax liability pursuant to this part.

(2) (a) If the abatement is granted for a facility listed in subsection (3), the qualifying facility must be assessed at 50% of its taxable value for the qualifying period.

(b) If the abatement is granted for clean advanced coal research and development equipment or renewable energy research and development equipment, the qualifying equipment, up to the first \$1 million of the value of equipment at a facility, must be assessed at 50% of its taxable value for the qualifying period. There is no abatement for any portion of the value of equipment at a facility in excess of \$1 million.

**(c) The abatement applies to all mills levied against the qualifying facility or equipment.**

(3) Subject to subsections (4) and (5), the following facilities or property may qualify for the abatement allowed under this part:

(a) biodiesel production facilities;

(b) biogas production facilities;

(c) biomass gasification facilities;

(d) coal gasification facilities for which carbon dioxide from the coal gasification process is sequestered;

(e) ethanol production facilities;

(f) geothermal facilities;

**(g) renewable energy manufacturing facilities;**

(h) clean advanced coal research and development equipment and renewable energy research and development equipment;

(i) a natural gas combined cycle facility that offsets a portion of the carbon dioxide produced through carbon credit offsets;

**(j) transmission lines and associated equipment and structures classified in 15-6-157;**

(k) converter stations classified under 15-6-159;

(l) carbon sequestration equipment as defined in 15-6-158; and

(m) pipelines classified under 15-6-158.

(4) (a) In order to qualify for the abatement under this part, a facility listed in subsection (3) must meet the following requirements:

(i) commencement of construction of the facility must occur after June 1, 2007; and

(ii) the standard prevailing rate of wages for heavy construction, as provided in 18-2-414, must be paid during the construction phase of the facility.

(b) In order to qualify for the abatement under this part, clean advanced coal research and development equipment and renewable energy research and development equipment must be placed into service after June 30, 2007.

(c) For the facility to qualify under subsection (3)(d), the carbon dioxide produced from the gasification process must be sequestered at a rate that is practically obtainable but may not be less than 65%.

(d) Integrated gasification combined cycle facilities for which a permit under Title 75, chapter 2, is applied for after December 31, 2014, do not qualify under subsection (3)(d).

(e) To qualify under subsection (3)(i), the facility shall offset carbon dioxide emissions by the percentage determined in 15-24-3116.

(5) To qualify for an abatement, the facility or clean advanced coal research and development equipment and renewable energy research and development equipment must be certified as provided in 15-24-3112.

(6) Upon termination of the qualifying period, the abatement ceases and the property for which the abatement had been granted must be assessed at 100% of its taxable value.

(7) For the purposes of this section, "qualifying period" means the construction period and the first 15 years after the facility commences operation or the clean advanced coal research and development equipment or renewable energy research and development equipment is purchased. The total time of the qualifying period may not exceed 19 years.

**15-24-3112. Certification.** (1) (a) Upon application by a taxpayer, the department of environmental quality shall determine whether a facility or equipment qualifies for a tax abatement under 15-24-3111 or rules adopted under 15-24-3116. If the department determines that a facility or equipment qualifies for abatement or a classification, it shall issue a certification of eligibility.

(b) An application for certification must be made on forms available from the department.

(c) Certification remains in effect only as long as substantial compliance with this part continues.

(2) The department of environmental quality shall identify and track compliance with this part in the use of certified property. The department may revoke a certification for failure to maintain substantial compliance with eligibility requirements in 15-24-3111 or with rules adopted pursuant to 15-24-3116. Revocation of a certificate must be reported to the department of revenue within 30 days of revocation.

(3) If a taxpayer's certification is revoked, the taxpayer forfeits the abatement or classification under 15-6-157 or 15-6-158. Upon revocation, the property must be assessed at 100% of its taxable value beginning on January 1 of the year or years for which the certification is revoked. Any remaining abatement must be forfeited. The taxpayer is immediately liable for any additional taxes, penalty, and interest resulting from the revocation.

(4) A taxpayer that has forfeited any portion of its abatement because of revocation may not reapply for an abatement under this part.

(5) A taxpayer aggrieved by a determination made by the department of environmental quality or the department of revenue has the right to the review procedures in 15-1-211 or to a hearing under Title 2, chapter 4, part 6.

**15-24-3113 through 15-24-3115 reserved.**

**15-24-3116. Rules.** (1) The department of revenue shall adopt rules for the implementation of this part, including the valuation of qualifying property and administration of property certified under 15-24-3112 or classified under 15-6-157 or 15-6-158.

(2) The department of environmental quality shall adopt rules necessary for certification, compliance, and revocation of certificates, as provided in 15-24-3112, and for classification as class fourteen property, as provided in 15-6-157, or class fifteen property, as provided in 15-6-158. The rules may include specifying procedures, including timeframes for certification application, and definitions necessary to identify property for certification and compliance. The percentage of the carbon dioxide produced by a facility that is to be sequestered or offset must be based on technology that is practically obtainable as determined by the department.