

# SCHOOL TAX EXEMPTIONS AND REFUNDS (APPROVED AND ELIGIBLE HYDROELECTRIC POWER PROJECTS) REGULATION

**Authority:** *School Act*, s. 131.1  
*Taxation Statutes Amendment Act, 2005*, s. 36 (Bill 8)

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Lieutenant Governor in Council Order

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## Definitions

**1** In this regulation;

“**Act**” means the *School Act*;

“**authority**” has the same meaning as in section 1 of the *Hydro and Power Authority Act*;

“**professional engineer**” has the same meaning as in section 1 (1) of the *Engineers and Geoscientists Act*.

## Approved class of alternative energy power projects

**2** Hydroelectric power projects are approved alternative energy power projects for purposes of section 131.1 of the Act.

## What types of approved hydroelectric power projects are eligible for school tax exemptions and refunds?

**3** (1) Subject to this regulation, the following are designated as eligible hydroelectric power projects for purposes of this regulation:

- (a) a newer run-of-river hydroelectric power project if the head pond storage capacity of the power project is no more than 24 hours of average annual flow;
- (b) a newer hydroelectric power project that is not a run-of-river hydroelectric power project described in paragraph (a).

(2) A newer run-of-river hydroelectric power project under subsection (1) (a) or a newer hydroelectric power project under subsection (1) (b) is one that did not begin production of electricity before January 1, 2002.

## What property is tax exempt?

**4** (1) Subject to the conditions set out in section 5, the following improvements in respect of an eligible hydroelectric power project referred to in section 3 (1) (a) are exempt from school taxes:

- (a) intake facilities and trash racks;
- (b) tunnels and tunnel linings;
- (c) penstocks, penstock foundations and penstock support structures;
- (d) weirs and associated control structures.

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- (2) Subject to the conditions set out in section 5, the following improvements in respect of an eligible hydroelectric power project referred to in section 3 (1) (b) are exempt from school taxes
  - (a) intake facilities and trash racks;
  - (b) tunnels and tunnel linings;
  - (c) penstocks, penstock foundations and penstock support structures.
  
- (3) Nothing in subsection (2) provides a school tax exemption for a dam, a weir or any part of either.

### **Are there conditions to be met to get the exemption?**

- 5** (1) Subject to subsection (2) and (3), an exemption from school taxes under section 4 does not apply in a taxation year unless the following conditions are met:
- (a) the eligible hydroelectric power project is, as of October 31 in the year preceding the taxation year,
    - (i) licensed to display the EcoLogo™ as certified by the Environmental Choice™ Program of the government of Canada, and
    - (ii) a current licensee in good standing with that program, as confirmed by the owner or a senior executive officer of the power project;
  - (b) if the eligible hydroelectric power project is one referred to in section 3 (1) (a), a professional engineer has certified that, as of October 31 in the year preceding the taxation year, the head pond storage capacity of the power project is no more than 24 hours of average annual flow.
- (2) Subject to subsection (3), the conditions in subsection (1) (a) do not apply to an eligible hydroelectric power project referred to in section 3 (1) (a) if
- (a) the power projects has, as of October 31 in the year preceding the taxation year referred to in subsection (1), a contract with the authority to sell the authority power produced by the power project,
  - (b) the contract referred to in paragraph (a) was made before January 1, 2005 and its term is no less than 10 years from the date it was made, and
  - (c) the owner or a senior executive officer of the power project confirms the facts described in paragraphs (a) and (b).
- (3) In addition to the conditions and requirements set out in subsections (1) and (2),
- (a) a confirmation under subsection (1) (a) (ii) or 2 (c) must be
    - (i) in writing,
    - (ii) made to the assessor of the assessment area in which the power project is located, and
    - (iii) made by November 30 in the year preceding the taxation year in which the exemption is to apply, and

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- (b) a copy of a certificate under subsection (1) (b) must be provided
  - (i) to the assessor of the assessment area in which the power project is located, and
  - (ii) by November 30 in the year preceding the taxation year in which the exemption is to apply.

### **School tax refunds for previous taxation years on becoming EcoLogo™ certified**

**6** (1) In this section:

**“final determination under the *Assessment Act*”** means a determination on the assessment roll for a taxation year, subject to any change that is finally determined under the *Assessment Act* by revised assessment roll, by supplementary assessment roll or on further appeal;

**“first exempt taxation year”** means, in relation to an eligible hydroelectric power project referred to in section 3, the first taxation year in which the power project’s improvements are, on a final determination under the *Assessment Act*, exempt under section 4 as a result of the conditions set out in section 5 (1) being met.

(2) Subject to this section, if on a final determination under the *Assessment Act* improvements of an eligible hydroelectric power project referred to in section 3 become exempt under section 4 as a result of the conditions set out in section 5 (1) being met, the minister of revenue may, on application by the taxpayer, refund to the taxpayer school taxes paid by the taxpayer before the first exempt taxation year.

(3) For purposes of subsection (2),

- (a) if the eligible hydroelectric power project is one referred to in section 3 (1) (a), the refund under subsection (2) of this section is limited to the school taxes previously paid by the taxpayer in respect of the improvements referred to in section 4 (1),
- (b) if the eligible hydroelectric power project is one referred to in section 3 (1) (b), the refund under subsection (2) of this section is limited to the school taxes previously paid by the taxpayer in respect of the improvements referred to in section 4 (2), and
- (c) the refund is limited to those school taxes paid by the taxpayer in the 3 taxation years immediately preceding the first exempt taxation year.

(4) An application for a school tax refund under this section may not be made more than 3 years after January 1 of the first exempt taxation year.

(5) A refund under this section is not available for school taxes payable in the 2004 taxation year or any taxation year before 2004.

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### **Exemptions for 2005 taxation year**

**7** (1) Despite anything in section 4 or 5 but subject to the conditions set out in subsections (2) and (3) of this section, the following improvements in respect of an eligible hydroelectric power project referred to in section 3 (1) (a) are exempt from school taxes for the 2005 taxation year:

- (a) intake facilities and trash racks;
  - (b) tunnels and tunnel linings;
  - (c) penstocks, penstock foundations and penstock support structures;
  - (d) weirs and associated control structures.
- (2) An exemption under this section applies only if
- (a) a professional engineer has certified that, as of October 31, 2004, the head pond storage capacity of the power project is no more than 24 hours of average annual flow,
  - (b) the power project has, as of October 31, 2004, a contract with the authority to sell the authority power produced by the power project,
  - (c) the term of the contract referred to in paragraph (b) is no less than 10 years from the date the contract was made, and
  - (d) the owner or a senior executive officer of the power project confirms the facts described in paragraphs (b) and (c).
- (3) In addition to the conditions and requirements set out in subsection (2),
- (a) a copy of a certificate under subsection (2) (a) must be provided
    - (i) to the assessor of the assessment area in which the power project is located, and
    - (ii) by August 2, 2005, and
  - (b) a confirmation under subsection (2) (d) must be
    - (i) in writing,
    - (ii) made to the assessor of the assessment area in which the power project is located, and
    - (iii) made by August 2, 2005.
- (4) The exemptions from school taxes provided under this section apply for the purposes of the 2005 taxation year and this regulation is retroactive to the extent necessary to apply for the purposes of that taxation year.