

Information Guide

January 2022

Community-Based Energy Development (C-BED) Projects Wind, Solar, Biomass, and Landfill Gas

Overview

Purchases of qualified property for use in the manufacture, installation, construction, repair, or replacement of qualified community-based energy development (C-BED) projects are exempt from Nebraska and local sales taxes. To claim the exemption the project developer must file the Community-Based Energy Development Application with the Nebraska Department of Revenue (DOR) and receive approval before making purchases. A Certificate of Exemption will be issued with an effective date once the approval process is complete.

This guidance document is advisory in nature but is binding on the Nebraska Department of Revenue (DOR) until amended. A guidance document does not include internal procedural documents that only affect the internal operations of DOR and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

This guidance document may change with updated information or added examples. DOR recommends you do not print this document. Instead, sign up for the [subscription service](#) at revenue.nebraska.gov to get updates on your topics of interest.

Terms

Biomass. Biomass is non-fossil, organic plant material including, but not limited to, agricultural food and feed crops, crop waste and residues, wood waste and residues, and aquatic plants.

C-BED Project. A C-BED project or community-based energy development project is a new energy generation project using wind, solar, biomass, or landfill gas as the fuel source. At least twenty-five percent of the gross power purchase agreement payments must flow to the qualified owners or as payments to the local community. The project must show local support through a resolution of support or zoning approval adopted by the county board of each county where the C-BED project is to be located, and that has adopted zoning regulations that require a planning commission, county board, county commission approval for the C-BED project or by the tribal council if a C-BED project is located within the boundaries of an Indian Reservation.

C-BED Project Developer. A C-BED project developer is both the person arranging and organizing the C-BED project, and any person who is operationally responsible for the C-BED project.

6-539-2022

Electric Supplier. An electric supplier is a public power district, a public power and irrigation district, an individual municipality, a registered group of municipalities, an electric membership association, or an electric cooperative.

Gross Power Purchase Agreement Payments. The gross power purchase agreement payments are the total amount of payments during the first twenty years of the agreement.

Payments to the Local Community. Payments to the local community include, but are not limited to, lease and easement payments to property owners made as part of a C-BED project, contract payments for concrete, steel, gravel, towers, turbines, blades, wire, or engineering, procurement, and construction, geotechnical, environmental, meteorological, or legal services. Payments to the local community also include payments for other components, equipment, materials, or services that are necessary to permit or construct the C-BED project if the components, equipment, materials or services are provided by a company that has been organized or incorporated in Nebraska under Nebraska law and has employed at least five Nebraska residents for at least eighteen months prior to the date of the application. Payments to the local community also include payments that are for physical parts, materials, or components that are manufactured, assembled, or fabricated in Nebraska. Payments for goods and services need not be made directly from power purchase agreement revenue and may be made from other funds in advance of receiving power purchase agreement revenue.

Qualified Owner. Qualified owner is a Nebraska resident, a limited liability company that is organized under the Nebraska Uniform Limited Liability Company Act and that is made up of members who are Nebraska residents, a Nebraska nonprofit corporation organized under the Nebraska Nonprofit Corporation Act, a tribal council, a domestic corporation organized in Nebraska under the Business Corporation Act or the Nebraska Model Business Corporation Act and domiciled in Nebraska, or a cooperative corporation organized under [Neb. Rev. Stat. §§ 21-1301 to 21-1306](#) and domiciled in Nebraska. A qualified owner is also a public power district, a public power and irrigation district, a municipality, a registered group of municipalities, an electric cooperative, or an electric membership association, except that the qualified ownership by an electric supplier in a single C-BED project is limited to no more than fifteen percent either directly or indirectly and a combined total of 25% either directly or indirectly by multiple electric suppliers.

Qualified Property. Qualified property is any personal property used to manufacture, install, construct, repair, or replace a device used in a C-BED project. Examples of qualified property are in the section titled Certificate of Exemption.

Exemption Application

A C-BED project developer must submit a [Community-Based Energy Development Application](#) to DOR when all required documentation is available and can accompany the application. The required documentation includes, but is not limited to:

- ❖ Ownership Structure, (Page 2 of the application);
- ❖ Power purchase agreement;
- ❖ Proposed distribution structure of the payments made under the power purchase agreement;
- ❖ Project financial Pro Forma;
- ❖ Articles of incorporation;
- ❖ Operating agreements;
- ❖ Adopted resolution of support or zoning regulation approved by the planning commission, county board, county commission, or tribal council where the project is located;

- ❖ Nebraska Power Review Board Letter of Approval;
- ❖ A description of the payments to the qualified owners and the local community; and
- ❖ Written documentation demonstrating that an offer to become a qualified owner has been made to each owner on whose property a C-BED project will be located, and to the governing body of the municipality or county where the turbine will be located.

When an application is approved by the Tax Commissioner, DOR will send an approval letter and the Community-Based Energy Development Sales and Use Tax Certificate of Exemption (C-BED certificate of exemption) to the C-BED project developer.

C-BED Certificate of Exemption

Qualified project owners, its contractors, and subcontractors may use the C-BED certificate of exemption to make purchases of qualified property tax free. To purchase qualified property without paying sales tax, they must complete and issue to each seller a [Nebraska Resale or Exempt Sale Certificate, Form 13](#), section B, Category 2 and attach a copy of the C-BED certificate of exemption.

When a seller receives a completed Form 13 and the C-BED certificate of exemption, it is conclusive proof that the seller is relieved of the responsibility of collecting the state and local sales tax on taxable sales of qualified personal property.

A C-BED project developer or its contractors may claim and receive a refund of any sales or use taxes paid for purchases of qualified property made after DOR has received the application for the Certificate of Exemption, and before the DOR has issued the Certificate of Exemption if the project met all the requirements of a C-BED project at the time of the purchase.

Examples of **Qualified Property** include but are not limited to:

- ❖ Wind generation C-BED project – wind charger, windmill, or wind turbine including the substation, power lines connecting these devices together and connecting the project to the electrical grid system, and personal property used to construct the pads that support the wind chargers, windmills, wind turbines, windmill towers, and substations.
- ❖ Solar generation C-BED project – solar panels, solar collectors, solar tiles, photovoltaic cells, batteries, static inverters, charge controllers, power lines connecting the project to the electrical grid system, and personal property used to construct the pads that support the qualified property.
- ❖ Biomass or Landfill Gas C-BED project – fuel storage structures, handlers, collectors, purifiers, burners, boilers, turbines, electric generators, and personal property used to construct the pads that support the qualified property. Qualified property also includes stack and emission control equipment, even if the equipment would have been eligible for the air and water pollution control facility refund.

Nonqualified personal property includes, but is not limited to: motor vehicles; maintenance equipment and tools; communication systems (for example, meteorological towers and data recorders-computer systems that are; information centers); related security systems (for example, cameras and recorders); erosion control systems (for example, landscaping, grass seed, sod, and irrigation systems); office and maintenance buildings; computer equipment that is not an integral part of generating electricity; office equipment; signage of any kind; furnishings; roads; bridges; gates; fencing; site lighting; and any materials for the electrical grid system. These purchases are taxable.

Examination of Payments and Recovery of Sales Tax

DOR may examine the distribution of the power purchase agreement payments to qualified owners and the local community to determine if the projected distributions were met. If the power purchase agreement payments to qualified owners and the local community do not meet the requirements of [Neb. Rev. Stat. § 77 2704.57](#), DOR may recover the amount of the sales or use tax that should have been paid on property used at the project from the C-BED project developer at any time up to and including three years after the end of the power purchase agreement.

The amount due under this section includes the sales and use taxes that would have been paid if no Certificate of Exemption had been granted, and interest at the rate specified in [Neb. Rev. Stat. § 45-104.02](#), from the date the tax was due until the date the sales and use tax is paid.

At any time before the end of the power purchase agreement, the C-BED project developer may voluntarily surrender the Certificate of Exemption granted by the Tax Commissioner and pay the Department the amount of sales and use tax that should have been paid, plus interest at the rate specified in Neb. Rev. Stat. § 45-104.02.

Actions that Require DOR Notification

The Tax Commissioner must be notified by the C-BED project developer if there is any change in the documentation supporting an approved C-BED exemption application:

- ❖ **Ownership Structure.** If the ownership structure changes after DOR's approval of the application a new application must be submitted to DOR. If the new application is not approved, all purchases of materials after the change in ownership structure are taxable.
- ❖ **Power Purchase Agreement.** The C-BED project developer must notify the Tax Commissioner of any amendments in the power purchase agreement or of a termination of the agreement. If the power purchase agreement is amended, a new application must be submitted. If the distribution of the gross power purchase agreement payments no longer meets the statutory requirements, and the new application is not approved, DOR may recover the amount of the sales or use tax that should have been paid on materials used at the project from the C-BED project developer.
- ❖ **Documents Supporting the Application.** The C-BED project developer must notify the Tax Commissioner of any changes in any of the other documents supporting the application during the life of the power purchase agreement. The Tax Commissioner will determine if a new application must be submitted based on the changes made.

If at any time a new application is not approved DOR will notify the C-BED project developer of the consequences and if necessary, instruct them how to remit the Nebraska and local sales tax due for materials because the changes to the application no longer qualify the project for the C-BED exemption.

Resource list

Nebraska Statutes

- ❖ [Power Districts and Corporations, Neb. Rev. Stat. §§ 70-1901 through 70-1909](#)
- ❖ [Revenue and Taxation, Neb. Rev. Stat. § 77-2704.57](#)
- ❖ [Interest, Loans, and Debt, Neb. Rev. Stat. § 45-104.02](#)
- ❖ [Corporations and Other Companies, Neb. Rev. Stat. §§ 21-1301 to 21-1306](#)

Forms

- ❖ [Community-Based Energy Development \(C-BED\) Application](#)
- ❖ [Claim for Refund of Sales and Use Tax, Form 7](#)

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