

NEBRASKA DEPARTMENT OF REVENUE

**Repeal Unnecessary Regulations Governing Nameplate Capacity
Taxes**

Title 316, Neb. Admin. Code Ch. 13 §§ 001, 002, and 003 are repealed outright.

REG-13-001 Purpose and Definitions

~~001.01 The purpose of the nameplate capacity tax levied under Neb. Rev. Stat. § 77-6203 is to replace property taxes that would otherwise be imposed on wind infrastructure.~~

~~001.02 For purposes of these regulations:~~

~~001.02A Commercial operation means the wind energy generation facility is connected to the electrical grid;~~

~~001.02B Commissioned means the wind turbine of a wind energy generation facility has been in commercial operation for at least 24 hours;~~

~~001.02C Customer generator means an electricity customer that generates electricity on the customer's side of the meter from a qualified facility as defined in Neb. Rev. Stat § 70-2002.~~

~~001.02D Nameplate capacity means the manufacturer's rated capacity of a wind turbine to generate electricity as measured in megawatts, including fractions of a megawatt;~~

~~001.02E Owner means the person holding legal title to the wind energy generation facility on the date the facility is commissioned, or January 1 of the year for which the nameplate capacity tax is due, whichever is later;~~

~~001.02F Wind energy generation facility (or facility) means a facility that generates electricity using wind as the fuel source.~~

~~(Section 70-2002, R.R.S., 2009, and Sections 77-6201 and 77-6202, R.S. Supp., 2010. June 6, 2011.)~~

REG-13-002 Calculating the Nameplate Capacity Tax

~~002.01 The owner of a wind energy generation facility must pay a nameplate capacity tax equal to the total nameplate capacity of the commissioned wind energy generation facility multiplied by a tax rate of \$3,518 per megawatt.~~

~~002.02 The nameplate capacity tax is imposed annually beginning the first calendar year the facility is commissioned. A facility commissioned prior to July 15, 2010, is subject to the tax on January 1, 2010 and each year thereafter.~~

~~002.02A The nameplate capacity tax for the first calendar year the facility is commissioned is prorated based upon the number of days remaining in the calendar year after the facility is commissioned.~~

~~002.02B For the first year in which additional commissioned nameplate capacity is added to a facility, the nameplate capacity tax on the additional nameplate capacity is prorated based upon the number of days remaining in the calendar year after the additional nameplate capacity is commissioned.~~

~~002.02C When a facility is decommissioned or made nonoperational by a change in law or decertified under Neb. Rev. Stat. § 70-1014.02(8) during a tax year, the nameplate capacity tax is prorated based upon the number of days during the calendar year in which the facility was commissioned or operational.~~

~~002.02D When the capacity of a facility to produce electricity is reduced but is not decommissioned, the nameplate capacity of the facility is deemed to be unchanged.~~

~~002.03 Any property tax previously paid from the date of commissioning until January 1, 2010, on a facility commissioned prior to July 15, 2010, which is greater than the amount that would have been paid under section 002.01 of these regulations, may be taken as a credit against any other tax due under Chapter 77 of the Nebraska Revised Statutes. Any amount that could be taken as a credit that is unused in any tax year may be carried forward to subsequent tax years until fully utilized.~~

~~002.04 No nameplate capacity tax may be imposed on a wind energy generation facility that is:~~

~~002.04A Owned or operated by the federal government, the state, a public power district, a public power and irrigation district, a municipality, a registered group of municipalities, an electric membership association, or a cooperative; or~~

~~002.04B Owned by a customer generator.~~

(Section 77-6203, R.S. Supp., 2010. June 6, 2011.)

REG-13-003 Collecting and Distributing the Nameplate Capacity Tax

~~003.01 On March 1 of each year, the owner of a wind energy generation facility must file with the Department of Revenue (Department) a report on the nameplate capacity of the facility for the previous calendar year. The owner of a facility is responsible for the nameplate capacity tax with respect to the facility, whether or not the owner of the facility is also the owner of the land on which the facility is located.~~

~~003.02 Nameplate capacity taxes for any calendar year are due on April 1 of the following year. One fourth of the nameplate capacity taxes due for the prior year becomes delinquent on April 1, and an additional one fourth becomes delinquent on the following July 1, October 1, and January 1. Any delinquencies are assessed interest at the rate in Neb. Rev. Stat. § [45-104.02](#)~~

~~003.03 Failure to file a report required by section 003.01 of these regulations, filing this report late, failure to pay nameplate capacity taxes that are due, or underpayment of these taxes, results in a penalty of five percent of the amount due for each calendar quarter the report is overdue or the payment is delinquent, except that the penalty may not exceed \$10,000.~~

~~003.04 The owner of a facility is subject to the same audit, assessment, deficiency, protest, and appeal provisions as a taxpayer under the Nebraska Revenue Act.~~

~~003.05 The Department will identify the proceeds from the nameplate capacity tax separately for each wind energy generation facility and pay the proceeds related to each facility over to the county treasurer of the county where that wind energy generation facility is located within 30 days after receipt.~~

~~003.05A If a facility is located in more than one county, the nameplate capacity tax collected from the facility will be divided between each county where the facility is located based on the portion of the total nameplate capacity of the facility that is located in each county.~~

~~003.05B The Department will not retain any of the proceeds from the nameplate capacity tax for administration.~~

~~003.06 The county treasurer must distribute all nameplate capacity tax revenue received to local taxing entities which, but for the personal property tax exemption, would have received personal property tax revenue from depreciable personal property located at the facility.~~

~~003.06A The distribution to each eligible local taxing entity is calculated by determining the amount of taxes that the eligible local taxing entity levied during the taxable year and dividing this amount by the total tax levied by all of the eligible local taxing entities during the year. Each eligible entity's resulting fraction is then multiplied by the revenue distributed to the county treasurer by the Department to determine the portion of the revenue due each local taxing entity.~~

(Sections 77-6203 and 77-6204, R.S. Supp. 2010. June 6, 2011.)