

BUILDING OWNER FAQ

ACCOUNTING TREATMENT

- Q.** Are C-PACE assessments considered “off balance sheet”? Is there clarity on the treatment of C-PACE as an operating expense from the perspective of the accounting industry?
- A.** Building owners are encouraged to consult their accountants on this matter.
- Q.** From an accounting perspective, have any auditing firms concluded that the tax lien (which supports the financing) is not a liability of the owner or the building?
- A.** There has been no specific ruling by the Financial Accounting Standards Board on this issue.

COMMERCIAL LEASES AND C-PACE

- Q.** In a lease where the owner is responsible for capital expenses but tenants pay their portion of property tax bill, is pass through of capital expenses on tax bill a breach of lease?
- A.** To answer this question, the precise wording of the lease must be reviewed. The property tax payment has a principal and an interest component. Notwithstanding, in any “pass-through” arrangement, it would make sense to discuss what you plan to do (energy efficiency wise) with your tenants, and how it will benefit them.
- Q.** Most triple net leases do not allow pass-through of interest and principal. Have tenants successfully disputed the pass-through of C-PACE payments?
- A.** This issue is highly dependent on whether C-PACE payments are considered debt-service or operating expenses. Please see the questions in “Accounting Treatment.” In the short term, building owners are encouraged to consult their accountants on this matter and the specific wording of the lease would need to be reviewed by your attorney to make this determination. Nationally, there have been PACE transactions in which the owner passed through the payments – for example, see this description of a PACE deal in San Francisco [here](#).
- Q.** How does tax lien financing work for building owners using gross leases?
- A.** If a building owner only has tenants on gross leases, it generally means that the lease rate over the lease term is all-inclusive—including taxes, insurance, maintenance and utilities, except for any agreed-upon escalation clauses. This may make it difficult to pass through energy efficiency investment costs to tenants, except when the lease is renewed or a new lease signed. However, we are aware of gross leases that contain an escalation clause enabling capital recovery for systems installed to reduce operating costs. Notwithstanding, the energy efficiency investment would result in reduced building operating costs (presumably less than included in the calculation of the gross lease rate with the tenant) and this would be a direct benefit to the building owner—the savings would effectively be the difference between the energy cost included in the calculation of the gross lease rate (currently being paid by the tenant) and the payment being made for the investment (via the property tax). So there still may be direct financial benefit to owners.



CONNECTICUT TAX LIEN PROTOCOL

Q. When is the lien placed on the property?

A. Upon closing on financing, Green Bank instructs the municipality to record a lien on the land records.

Q. How is the lien enforced? Has Green Bank researched the market for commercial tax deed sales in the major local jurisdictions where the C-PACE program will be offered?

A. State statutes dictate the procedures to be followed for the billing and collection of taxes and the record keeping involved. Statutes govern when and how bills are sent; what notice is to be given or published concerning taxes; the rate and applicability of interest; how liens are applied; what means of delinquent collections are permitted; and so forth. Those statutes are can be found [here](#) for Local Levy and Collection of Taxes and [here](#) for Municipal tax Liens.

State statutes provide various means of collection enforcement that may be used by municipal tax collectors. Some methods are used for collecting past due real estate taxes and other charges relating to real property (such as sewer charges); others deal specifically with motor vehicles, personal or business property; and some deal with all taxes in general. One of the most compelling tools of collection is the statutory interest rate of 18% per year, which is charged on all delinquent taxes. This charge is meant to be a penalty for late payment.

Tax collectors are required to file liens to secure unpaid real estate taxes and sewer use charges. Liens are statutorily valid for 15 years, longer if the lien is to secure taxes deferred under a tax relief program. Generally, taxes that are not satisfied after 15 years are deemed uncollectible in Connecticut, with several exceptions. Most towns file liens not only for real estate taxes but for sewer charges also. Some towns file liens to secure motor vehicle and personal property taxes as well.

The collection of taxes secured by liens may be accomplished by numerous means, including foreclosure of the liens, assignment of the liens to a third party, or by tax sale. Foreclosure is a process handled by an attorney who brings an action in court on behalf of the municipality. Assignment of tax liens is a process which in Connecticut is governed by a relatively brief (1 paragraph) statute which gives broad leeway to the town to negotiate the amount paid, subject only to approval by the town's legislative body. Liens may be assigned individually or as a package ("bulk"); the arrangement may be securitized or not. Those statutes are can be found [here](#) for Local Levy and Collection of Taxes and [here](#) for Municipal tax Liens.

Tax Sale is a more complicated but highly effective method whereby the town, after a series of notifications to the property owner and other lienholders, seizes the actual tax delinquent property and sells it at a public auction to the highest bidder. The owner then has a six month redemption period during which he may redeem by paying the amount of the minimum bid, plus 1.5% per month interest on the overbid (the amount bid in excess of the minimum bid), if any. The tax sale statute places the decisions concerning tax sale in the hands of the collector, who has discretion to decide what to sell or what not to sell, and when, as well as the right to adjourn the sale. The statute includes a strict timetable of notifications, which must be followed with regard to the owner and the other lienholders, because if the property is sold and not redeemed within the six month redemption period, the property passes to the bidder free of prior liens. The tax collector may establish the rules of the auction and is responsible for the handling of all funds received, including potential overbids, which are either returned to the bidder in the case of redemption or turned over to the superior court for distribution, in the case of a property that passes to the bidder.



Connecticut does not have any procedure for the automatic perfecting of liens or any provision for the automatic imposition of a tax sale or other collection enforcement. The tax collector is responsible for initiating these actions. Attempting to maintain a high collection rate and accepting the responsibility of one's position generally act as sufficient incentive for tax collectors to either initiate foreclosure or tax sale proceedings, or in some cases, assignment of liens.

Many tax collectors use what are called Alias Tax Warrants, which are basically a demand notice delivered to a state marshal or a local constable, to be served on their behalf against the taxpayer. The marshal has 60 days to serve the warrant and must return funds collected as directed by the tax collector. Tax collectors are permitted to seize property, including bank accounts, as well as to garnish wages for delinquent taxes. Marshals serving an alias tax warrant by extension have these same powers. Marshals may also conduct tax sales on behalf of the tax collector.

Q. Does Green Bank have specific details on municipal-level collection policies?

A. Yes, Green Bank has some specifics on the tax collection policies in the towns that have opted in.

Q. Is there a standard auction procedure in the state?

A. Yes. Auctions occur under judicial proceedings—in other words, you must sue in order to go to auction.

CONSTRUCTION FINANCING

Q. How do you expect the financing to be structured to cover the costs of the project during the work and before the financing is released at the completion of the project? How does Green Bank plan to address default risk during the construction period?

A. Green Bank has a construction facility of \$40M that C-PACE can draw upon to finance projects off its own balance sheet. Alternatively, building owners can work with a commercial bank or outside lender to secure financing for projects.

In addition, Green Bank will work with capital providers and our legal counsel to determine if these risks lie outside of the C-PACE structure and are best addressed through pre-judgment remedies in case of default, performance/completion bonding, guarantees, the financing agreement between the capital provider and the borrower or other measures.

INCENTIVES

Q. Are the energy savings from C-PACE factored into the savings required to meet CT's energy efficiency resource standard? Which party owns the Renewable Energy Certificates associated with the renewable energy investments?

A. If the C-PACE project is taking rebates from CT Energy Efficiency Fund (CEEF), then for those activities CEEF will take 75% and the project will get 25%. If the C-PACE project is leading to measures that are outside of CEEF rebates, then the project could claim them, generally by the owner of the equipment generating the RECs, but the ownership can be negotiated between the capital provider and building owner.



Q. In regards to photovoltaic and other on-site Class I renewable energy systems, does the property owner keep the Federal Investment Tax Credits and REC monies?

A. The owner of the system would generally receive the ITC if the technology is eligible per federal guidelines, and unless it has been otherwise contracted, any REC ownership and revenues. Should the project receiving financing from Green Bank (as opposed to subsidies) or participate in C-PACE with private capital, then the project would be eligible to compete for long-term contracts for RECs through the EDC managed ZREC and LREC programs.

Q. How does C-PACE financing interact with utility incentives?

A. Green Bank has worked closely with utilities on our technical standards, and on wrapping in and coordinating incentives. The interests of the utilities are very much aligned with Green Bank, and they can buy down costs of eligible energy measures prior to PACE financing - this would help improve the Savings-to-Investment Ratio of a given project.

INSURANCE

Q. Are there performance guarantee requirements?

A. Green Bank does not require performance guarantees at this point for the anticipated energy savings. The goal is to maintain focus on the asset, not the owner, and Green Bank is in the discovery phase — determining what barriers to address in terms of risk, and which to leave to the private players. For financing during construction, Green Bank will, in most instances, require a construction bond.

Many owners will have projects that are straightforward and for which they determine energy savings insurance is not necessary. Other projects may be sufficiently complex where energy savings insurance can be a useful risk mitigation tool. Owners should consult with a qualified professional engineer in this regard.

Q. Can energy savings insurance (ESI) lower the interest rate and partially offset the cost of the insurance?

A. Whether or not ESI will be viewed as a credit enhancement is a decision the capital provider will have to make.

Q. Who pays for the insurance to protect the lender's interests in the event of a casualty loss?

A. Generally, the owner of the property to which the C-PACE benefit assessment is related will pay for the insurance, but there could be circumstances, such as a solar PPA, where the owner of the assets, not the property owner, would most likely pay for the insurance.

MORTGAGE LENDER APPROVAL

Q. Why does lender consent happen before C-PACE approval?

A. By statute, the consent of the mortgage holder(s) is mandatory to approve a C-PACE transaction. We suggest that building owners engage with their mortgage holders early to gauge receptivity. However, typically, lenders learn about the terms of C-PACE financing when an application is in process and are asked to provide consent.

Q. How would the program process change for properties without mortgages?

A. Those buildings without a mortgage would go through the same process, but without the lender consent step.

Q. Has Green Bank researched the contact and approval process for conduit investment vehicles that might hold the debt on a property in a larger capital markets transaction?

A. We are exploring the ability to secure consent from a CMBS structure. When we have guidance, we will provide it.

Q. What are the C-PACE issues related to commercial properties that are held in a REIT structure?

A. Generally, there is little difference between a REIT and any other owner of multiple commercial properties. REITs can be treated as a property owner, as long as a Trustee has signatory power. Green Bank still requires a letter of consent from the existing mortgage holder.

PROJECT AND FINANCING STRUCTURES

Q. Does Green Bank anticipate pooling C-PACE transactions, for example in a bonded facility?

A. The “owner-arranged financing approach” detailed in this RFQ supports three key objectives of Green Bank at this stage with the C-PACE program: (1) Promote the program and generate interest with the major stakeholders; (2) successfully complete several C-PACE financings; and (3) identify “bumps” in our process and guidelines, so that as the program builds volume, we resolve these issues and develop a standardized transaction mechanism that will facilitate the pooled C-PACE financing program or a bonded facility. Green Bank is engaged in discussions with capital providers regarding the possible development of a long-term strategy for capital-provider standardization and financing of C-PACE transactions.

Q. What is the process for building owners that already have a capital provider?

A. The goal of the program is to be “open market”— each capital provider can (and should) have their own marketing and outreach to originate C-PACE deals. Green Bank will encourage our CP partners, utilities and contractors to source deals. If a property owner has already sourced a capital provider, the process would be the same, without the added step of Green Bank distributing the deal to our CP partners.

Q. Are there guidelines for average deal size?

A. C-PACE is typically best suited for projects over \$100,000 due to transaction costs. However, we have recently unveiled boiler lite (conversion to gas or high-efficiency boiler) and solar lite (small solar PV) program offerings for deals under \$100,000. Deal size is highly dependent on the number and types of energy conservation measures proposed, as well as property type. Smaller deals may also qualify for the “Small Business Energy Advantage” programs offered by Connecticut Light & Power [here](#) and United Illuminating [here](#).

Q. Would new construction qualify for C-PACE financing?

A. New construction potentially qualifies in unique circumstances, such as an improvement or renovation that exists within an already planned development. Green Bank would need two designs for the property to demonstrate that the clean energy renovation or retrofit is a separate and distinct undertaking from the original build-out. Additionally, the building would need to be in development before the assessment is placed on the property. The existing mortgage holder would also be involved in the process, because their consent to the C-PACE financing is required. It may be more cost effective to include such clean energy improvements in the original development financing plans.

Q. What are the required O&M and M&V periods and can those cost be capitalized into the financed amount?

A. As recommended to Green Bank by the utilities, the O&M period is up to five years. During this time, the O&M cost can be capitalized into the amount financed through C-PACE. We will not consider a lack of O&M an event of default. Please review our technical standards on enforcement. M&V costs can be capitalized, and the reporting period and costs vary, depending on the energy measures involved in the project.

Q. After you have done an energy efficiency project through C-PACE, can you do another project years later?

A. Yes. You can also do more than one project concurrently.

Q. Do non-profits qualify for C-PACE financing?

A. Yes, non-profits, such as independent schools, churches and houses of worship, certainly qualify for C-PACE. Each building in a town has a unique property identification number, regardless of whether or not the owner pays property taxes. Accordingly, the tax collector can issue a separate bill with C-PACE assessment.

Q. Can properties make partial payments on their C-PACE assessments?

A. C-PACE assessment is treated similarly to a property tax, so a partial payment could trigger delinquency.

Q. Are solar power purchase agreements (PPAs) covered?

A. Yes, Green Bank has determined that this is permissible. Additionally, the Green Bank has a Solar Lease fund available for building owners who wish to finance projects through 3rd party lease structure but cannot otherwise monetize tax benefits (e.g., non-profits, small business owners). For more information, please contact Ben Healey at benjamin.healey@ctcleanenergy.com.