

# Dirt Alert

January, 14 2013 • David C. Levy, Editor

**BAIRD HOLM**<sup>LLP</sup>  
ATTORNEYS AT LAW

## Congress Extends Wind Energy Tax Credits for Projects that Start in 2013

After much controversy and debate, Congress passed the American Taxpayer Relief Act of 2012 on January 1, 2013. The legislation includes a range of spending cuts and tax advantages to avert the potential “fiscal cliff” posed by expiration of tax policies. The Energy Tax Extender section of the legislation includes a long-sought extension of the wind energy Production Tax Credit.

The tax credit extensions cover all wind projects that start construction in 2013. Therefore, because it may take 18 to 24 months to develop a new wind farm, this extension is actually a two year to three year extension of the credit. It is anticipated to save up to 37,000 jobs, revive business at nearly 500 manufacturing facilities across the country and allow continued growth of wind energy in both community and offshore projects.

Wind energy generation facilities set a new record in 2012 by comprising 44 percent of all new electrical generating capacity installed in the United States in that year, according to the Energy Information Administration. Wind

is the leading electric sector compared with 30 percent for natural gas, and lesser amounts for coal and other sources. Wind is becoming one of the fastest growing U.S. manufacturing sectors with at least 472 factories currently supplying the wind industry, up from 30 factories in 2004.

Despite growth of the wind energy industry, sporadic extension and expiration of the tax credit is the source of boom-bust cycles in the wind industry since enactment of the tax credit as part of the 1992 Energy Policy Act. The threat of the tax credit expiring at the close of 2012 spurred wind energy worker layoffs and caused factories in the supply chain to idle late in the year due to lack of orders. With the temporary relief from the extension, wind energy advocates plan to campaign for a long term solution with hopes of avoiding another bust cycle. Most politicians, however, currently maintain that this most recent extension of the wind energy tax credit will be the last. ■

David C. Levy  
Amy L. Lawrenson

### Also in this issue

- 2 Nebraska Court of Appeals Affirms District Court Decision in Adverse Possession Case
- 2 Register of Deeds Recording Fees Increased
- 2 New Notice and Filing Requirements Under Iowa Mechanic's Lien Law
- 3 Additional Documentary Stamp Tax Exemptions Now Available
- 3 2013 Nebraska Legislative Update

## **Nebraska Court of Appeals Affirms District Court Decision in Adverse Possession Case**

In a decision filed December 31, 2012, the Nebraska Court of Appeals affirmed a decision of the District Court of Dakota County quieting title to land obtained by adverse possession. The land at issue was a 40-foot-wide strip of land running the length of the border between two farm properties. A family farm partnership (Neff Partnership) paid taxes on the property and owned the land based on the recorded legal description. Owners of the neighboring farm, the Garwoods, claimed title to the land by adverse possession based on their family's treatment of the land for over 125 years.

The Garwoods insisted the original recorders omitted the land from the legal description of their land when sold to their great-grandfather in 1884. The Garwood family has farmed the land since 1884 and enclosed the land with their boundary fence at some point near or prior to 1950. In 1990, the Garwoods filed affidavits of possession with the Register of Deeds claiming the Garwoods' adversely possessed the land. In 2008 and 2009, the Garwoods conveyed easements on the land and in 2009 the Garwoods sold a portion of the land. When the Garwoods requested the Neff Partnership sign a quitclaim deed to clear title to the land, the Neff Partnership filed an action to quiet title and to bar the Garwoods from claiming any right in the land.

A party claiming title by adverse possession must prove their possession is (1) actual, (2) continuous, (3) exclusive, (4) notorious, and (5) adverse for the statutory period of 10 years. Affirming the District Court decision, the Court of Appeals determined the Garwoods obtained ownership by adverse possession. The Court of Appeals cited the Garwoods' actual, continuous, exclusive, possession of the land by farming the land for over 40 years and erecting and maintaining the fence encompassing the land with their property. The Court of Appeals continued that, although payment of Real Estate Taxes is a circumstance a court should consider in adverse possession cases, payment of taxes alone is not determinative of ownership. ■

Amy L. Lawrenson

## **Register of Deeds Recording Fees Increased**

Effective January 1, 2013, register of deeds recording fees increased. LB14 (2012) increased fees required for recording instruments with the register of deeds from five dollars per page to ten dollars for the first page and six dollars for each additional page, and eliminated the fifty cents per-lot/section indexing fee. Governor Heineman approved LB 14 on April 17, 2012. ■

Amy L. Lawrenson

## **New Notice and Filing Requirements Under Iowa Mechanic's Lien Law**

Iowa Governor Branstad approved House File 675 on April 27, 2012, making significant changes to Iowa's Mechanic Lien Laws. Effective January 1, 2013, these amendments make important changes to the lien processes and rights relating to labor performed and materials furnished on residential property as part of a construction or remodel project. House File 675 requires filing of a "Notice of Commencement of Work" on a new centralized online filing system, the "State Construction Registry" (the "Registry"), within ten days of commencing work to preserve the right to subsequently assert a mechanic's lien. Previously, filing occurred with the clerks of court in each of Iowa's 99 counties. Under the new requirements, the Iowa Secretary of State administers the Registry website/database. House File 675 also revises preliminary notice requirements regarding the content of the notice and how notice must be given. Revisions provide that preliminary notices must include information similar to what is required in the Notice of Commencement of Work, filing through the Registry and delivery to the owner by personal service. Filing of the Notice of Commencement must occur before one can file a preliminary notice. ■

Amy L. Lawrenson

## Additional Documentary Stamp Tax Exemptions Now Available

As of January 1, 2013, additional documentary stamp exemptions are available in Nebraska. LB 536 (2012) expanded the exemption for deeds between husbands and wives to cover spouses or ex-spouses conveying rights to property acquired or held during marriage. LB 536 granted additional exemptions for transfer on death deeds or revocations of transfer on death deeds and certified or authenticated death certifications pertaining to transfer on death deeds. Without an exemption, documentary stamp tax applies to all transfers of interests in real property at the rate of \$2.25 for each \$1,000 value or fraction thereof and is due at the time the deed is presented for recording. Governor Heineman approved LB 536 on April 5, 2012. ■

Amy L. Lawrenson

## 2013 Nebraska Legislative Update

The First Session of the 103rd Nebraska Legislature convened on January 9, 2013. Baird Holm is actively working on various bills, and we will be tracking many others that may affect our real estate and municipal law clients. After the Legislature completes bill introduction on

January 23, 2013, we will send another Dirt Alert with notes on all of the introduced bills that we view as being of interest to our readers.

In particular, we are working on bills involving the removal of sales and use tax burden for wind energy generation facilities, economic development through income tax credits for rehabilitation of historic properties, property taxes for senior living facilities to reflect the current state of the industry, and income tax incentives to draw more wind energy development to Nebraska. We are also aware of proposals to significantly expand the zoning jurisdiction of airport authorities and to set, as a matter of State law, certain height limits for areas up to ten miles from airports, to create statutory authority for a municipal landbank authority, to amend tax increment financing statutes, and to change the requirements relating to annexation of territory. ■

David C. Levy

## DEVELOPMENT, CONSTRUCTION, ENVIRONMENTAL, REAL ESTATE, RENEWABLE ENERGY AND RELATED SERVICES

Jude J. Beller (5)  
Jon E. Blumenthal (1)  
P. Scott Dye  
John P. Heil (2)  
Ben M. Klocke (1)  
Lawrence E. Kritenbrink  
Amy L. Lawrenson (1)  
David C. Levy (4)  
Jacqueline A. Pueppke (3)

*All attorneys are admitted to practice in Nebraska unless otherwise noted.*

*(1) Also admitted to practice in Iowa*

*(2) Also admitted to practice in Florida*

*(3) Also admitted to practice in Kansas*

*(4) Also admitted to practice in California and Iowa*

*(5) Also admitted to practice in Illinois and Missouri*

*Dirt Alert* is intended for distribution to our clients and to others who have asked to be on our distribution list. If you wish to be removed from the distribution list, please notify [dirtalert@bairdholm.com](mailto:dirtalert@bairdholm.com).

For more information contact David Levy, Chair, Real Estate Section: [dlevy@bairdholm.com](mailto:dlevy@bairdholm.com); 402.636.8310



### Baird Holm

1500 Woodmen Tower  
1700 Farnam St  
Omaha, NE 68102  
402.344.0500  
402.344.0588  
[www.bairdholm.com](http://www.bairdholm.com)