



North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

Kenneth R. Lay
Secretary

June 10, 2010

Account ID: [REDACTED]
FID: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: [REDACTED]

Dear [REDACTED]:

We are in receipt of your letter dated December 17, 2009 requesting a private letter ruling on behalf of your above referenced client regarding the application of sales and use taxes and privilege tax to purchases of solar power generating equipment and related devices.

Facts

It is our understanding [REDACTED] is one of the largest electrical power companies in the United States, and is a disregarded LLC wholly owned by [REDACTED]. "As part of its long term environmental sustainability initiative, [REDACTED] plans to develop and implement the [REDACTED] (the 'Solar Program'). As part of this program, [REDACTED] will install between 100 and 400 electricity-generating solar power facilities in North Carolina over the next two years... [REDACTED] will purchase, install, own, operate and maintain the solar photovoltaic (PV) equipment during its estimated 25-year useful life. The equipment installations will be performed by specialized contractors or sub-contractors pursuant to performance contracts with [REDACTED]. [REDACTED] will also own all electricity generated by the solar equipment, all related Renewal Energy Certificates ('REC's') and any other environmental attributes that are created as a result of the production of 'green power' by the solar PV systems."

"The solar equipment will be installed on building rooftops or land owned by individuals or other entities in various parts of [REDACTED] service area in North Carolina. [REDACTED] will enter into written lease agreements with these entities to use the rooftops or land for the installation and operation of the solar equipment for a period of 25 years..."

"The solar equipment will be purchased from different manufacturers and suppliers, but all equipment will utilize similar technology to use solar energy to generate electricity that will then be

converted to usable electrical current and transferred directly to the electrical grid system owned by [REDACTED]. The electricity generated from solar energy will not be used by the lessor of the rooftop or land and will be sold to [REDACTED] customers along with other distributed electrical power . . . the solar equipment will remain the property of [REDACTED] at all times during the term of the rooftop and land leases and that the equipment is not being leased to the building or land owners.”

“On May 6, 2009, the [REDACTED] issued a revised order allowing [REDACTED] to proceed with its Solar Program and to install solar panels on the rooftops and grounds of homes, schools, office buildings, shopping malls, warehouses and industrial plants... [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The electricity generated from solar energy will be sold to [REDACTED] customers from the power grid along with its other distributed electrical power.”

“Each solar technology installed may utilize slightly different but similar related devices that will be required to attach the equipment to the leased rooftop for roof mount systems, or, in the case of ground mount systems, to attach the equipment to the leased land. [REDACTED]

[REDACTED]

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“The type of equipment used for this process will include the rooftop and ground mounting systems, solar PV panels, combiner boxes, inverters, disconnect switches, wiring, conduit, wire management systems, controls, meters, etc...the overall function and purpose of each system is to generate electricity from solar energy, convert it to usable AC current, and transmit it to [REDACTED] power grid for distribution to its customers.”

Issues

Issue # 1: “Does all of the solar energy equipment described above including solar photovoltaic panels, rooftop and ground mounting systems, wiring, conduit, disconnect switches, wire management systems, combiner boxes, inverters, and metering equipment that will be purchased, owned and operated by [REDACTED] [REDACTED] meet the definition of mill machinery or accessories as that term is used in N.C.G.S. 105-187.51(a) and (b) if it is used by [REDACTED] [REDACTED] in North Carolina to generate electricity for distribution and sale to [REDACTED] [REDACTED] customers?”

Answer: Yes, provided the items are purchased for use by [REDACTED] [REDACTED] to generate electricity from solar energy, convert it to usable AC current, and transmit it to [REDACTED] [REDACTED] power grid for distribution to customers. [REDACTED] [REDACTED] is responsible for remitting the Manufacturing Machinery and Equipment Privilege Tax to the Department.

Issue # 2: “Is the sale or use in North Carolina of all the solar energy equipment described above including solar photovoltaic panels, rooftop and ground mounting systems, wiring, conduit, disconnect switches, wire management systems, combiner boxes, inverters, and metering equipment that is purchased, owned and operated by [REDACTED] [REDACTED] to generate electricity for distribution and sale to [REDACTED] [REDACTED] customers exempt from the North Carolina Sales and Use Tax pursuant to N.C. G.S 105-164.13(5a)?”

Answer: Yes, provided the items are purchased for use by [REDACTED] [REDACTED] to generate electricity from solar energy, convert it to usable AC current, and transmit it to [REDACTED] [REDACTED] power grid for distribution to customers. In order to claim such exemption, [REDACTED] [REDACTED] should execute Form E-595E Streamlined Sales and Use Tax Agreement Certificate of Exemption to registered vendors in order not to pay sales and use tax at the time of purchase.

Issue # 3: “Does all of the solar energy equipment described above including solar photovoltaic panels, rooftop and ground mounting systems, wiring, conduit, disconnect switches, wire management systems, combiner boxes, inverters, and metering equipment qualify for the 1% privilege tax rate, \$80 per article maximum tax if it is purchased, installed, owned and operated by [REDACTED] [REDACTED] in North Carolina and used to generate electricity for distribution and sale to [REDACTED] [REDACTED] customers?”

Answer: The items included in this question would qualify for the 1% privilege tax rate on each article at the time of purchase provided the items are used by [REDACTED] [REDACTED] to generate electricity from solar energy, convert it to usable AC current, and transmit it to [REDACTED] [REDACTED] power grid for distribution to customers. The \$80.00 per article maximum tax would apply to the purchase of each article; however, there is no maximum tax on the purchase of a wire management system or roll of wiring and conduit.

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Issue # 4: “Does all of the solar energy equipment described above including solar photovoltaic panels, rooftop and ground mounting systems, wiring, conduit, disconnect switches, wire management systems, combiner boxes, inverters, and metering equipment that will be owned and operated by [REDACTED] [REDACTED] as explained above qualify for the 1% privilege tax and \$80 per article maximum tax pursuant to N.C.G.S. 105-187.51(b) if the equipment is purchased and installed by contractors or subcontractors in North Carolina pursuant to performance contracts with [REDACTED] [REDACTED] or purchased and installed by subcontractors in North Carolina pursuant to performance contracts with general contractors who have contracts with [REDACTED] [REDACTED] if that solar energy equipment is used to produce electricity for distribution and sale to [REDACTED] [REDACTED] customers?”

Answer: The purchases of the above stated equipment by contractors or subcontractors will be subject to the 1% privilege tax with a maximum tax of \$80.00 per article pursuant to N.C.G.S. 105-187.51(a)(3) with the exception of the wire management system, wiring and conduit on which the tax rate will be 1% with no maximum tax applicable to each purchase. In order for purchases of such items by contractors and subcontractors to qualify for the 1% rate of tax, title to the items must be transferred to [REDACTED] [REDACTED] and used by [REDACTED] [REDACTED] to generate electricity from solar energy, convert the electricity to usable AC current, and transmit the electricity to [REDACTED] [REDACTED] power grid for distribution to customers.

Contractors and subcontractors may obtain the **Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form E-595E**, from the North Carolina Department of Revenue website or the Taxpayer Assistance Division to be executed by them and furnished to their vendors in connection with such purchases as the vendors' authority to exempt the transaction from the sales and use tax.

Issue #5: You have asked that we also provide a written determination regarding what constitutes an “article” for purposes of N.C.G.S. 105-187.51(b) as that definition applies to the solar photovoltaic panels, rooftop and ground mounting systems, wiring, conduit, disconnect switches, wire management systems, combiner boxes, inverters, and metering equipment.

In our responses, we have advised that it is the Department’s interpretation that purchases of rolls of electrical wiring, conduit, and wire management system components do not qualify for the \$80.00 maximum tax. As it relates to other items, we do not have sufficient information to give you an in-depth response. Please note however, that TB 58-2 states the following:

- A. “Persons purchasing articles subject to the \$80.00 maximum tax shall not treat as one article two or more articles which, when joined together, make a functional unit or operating system. Each single article within the functional unit or operating system is subject to the 1% privilege tax with a maximum tax of \$80.00 per article.
- B. A manufacturer or processor which purchases various components of mill machinery or equipment, otherwise taxable at the 1% rate, is not purchasing a single article of mill machinery, as such, even though the assembled machinery or equipment constitutes a single article. The purchaser has made numerous purchases of components of machinery or equipment and the tax is

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due on each purchase at the rate of 1%, and if the cost of any one component does, in fact, exceed \$8,000, the \$80.00 maximum tax would be applicable thereto. If any one article, as such, is purchased by a manufacturer, it does not lose its identity as a single article because it is too large or cumbersome to be shipped as **“one” single article** and has to be disassembled for shipping purposes or is billed on more than one invoice. The single article limitation does not apply to numerous purchases from the same or different vendors, even though the various components so purchased may be assembled by the purchaser into a single article. The purchase of a quantity of repair parts necessary to recondition or upgrade mill machinery is not the purchase of a single article.”

This ruling is based solely on the facts submitted to the Department of Revenue for consideration of the transactions described. If the facts and circumstances given are not accurate, or if they change, then the taxpayer requesting this ruling may not rely on it. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material aspect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that this document is not to be cited as precedent and that a change in statute, a regulation, or case law could void this ruling.

Sincerely,

Director of Sales and Use Tax Division

cc: Assistant Director of Sales and Use Tax Division