



North Carolina Department of Revenue

Pat McCrory
GovernorLyons Gray
Secretary

April 22, 2013

Account ID: [REDACTED]
FEIN: [REDACTED]

[REDACTED]

Re: [REDACTED]

Dear Mr. [REDACTED]:

We are in receipt of your letter dated November 3, 2010 requesting a private letter ruling on behalf of your above referenced client regarding the application of sales and use taxes and privilege tax on certain machinery and equipment to purchases of items used by your client, [REDACTED] (" [REDACTED] ") to perform construction services for its client, [REDACTED] (" [REDACTED] "), at a power generation facility.

Facts

It is our understanding that [REDACTED] has entered into a construction contract with [REDACTED] and that [REDACTED] is installing a nominal 600 MW combined cycle power plant ("Unit") to an existing power plant facility. The main power island of the Unit consists of two combustion turbines, capable of burning both natural gas and distillate oil, in a combined cycle or simple cycle arrangement utilizing a bypass damper with two heat-recovery steam generators ("HRSG") and one condensing steam turbine. Each HRSG is equipped with bypass stacks and natural gas duct firing capability.

[REDACTED], is responsible for installing major equipment provided by [REDACTED] and purchasing additional materials and supplies as required to complete the project. In conjunction with the installation of each piece of equipment, [REDACTED] is responsible for the construction of the required supports, including piping, foundations, housing, cabling, and wiring. Items purchased by [REDACTED] include:

1. Pipe and related piping materials (e.g., pumps, valves, flanges). The piping and piping materials are used in the manufacturing process to: (a) provide fuel to the generator; (b) to redirect exhaust gases from the generator; (c) to supply and reroute various lubricants and coolants throughout the process; (d) to supply water

- to the turbines; (e) move steam, water, or fuel between pieces of machinery and equipment and (f) to drain or remove waste or waste water.
2. Concrete to build the foundations for the major equipment (e.g., combustion turbines, steam turbines, cooling towers, boilers, heat exchangers and HSRGs). Due to the size, weight, operating temperature and vibration aspects of these generators, the concrete must be of a specific strength. Specific structures also are necessary to house and support the large generators and turbines, etc. These housing structures also are built of concrete and are integral to the performance of the associated equipment. Some additional concrete structures such as "blast walls" have been installed to protect the various pieces of manufacturing equipment in the unlikely event of an accident and/or explosion.
 3. Steel/rebar to lay the concrete foundations for the Unit. The steel/rebar is a component part of the concrete structures described above. Due to the size, weight, operating temperature and vibration aspects of these generators, the concrete used must be of a specific strength. The rebar incorporated into the concrete is necessary to enhance the tensile strength and stability of the concrete structure for the turbines. Some steel and rebar is also required in the housing structures, as described above.
 4. Accessories and materials to use in the construction of the foundations and housing structures for the Unit.
 5. Electrical wiring, electrical equipment, control panels, conduits, and other items to furnish power to machinery and equipment in the production process. Other electrical equipment may not be used to directly power machinery and equipment but are integrated throughout the Unit.
 6. Instrumentation and measurement equipment for use throughout the Unit. This equipment includes flow meters, switches, gauges, transmitters, etc.

Ruling Requested: Issues

Issue # 1: Confirm that the Unit will be considered a "manufacturing industry or plant" for purposes of North Carolina sales/use tax and privilege tax.

Answer: In your letter you indicate that the Unit is being installed to an existing power plant facility based on the information provided; therefore, it is unclear if the Unit itself constitutes a manufacturing industry or plant. However, Sales and Use Tax Technical Bulletin Section 59-4 A provides in part, "[p]urchases of [certain] tangible personal property by firms engaged in generating, producing or processing electric power to be distributed to consumers are subject to the 1% privilege tax with a maximum tax of \$80.00 per article." Provided the Unit is used by [REDACTED] in North Carolina to generate electricity for distribution and sale to [REDACTED] customers, purchases of qualifying items by [REDACTED] as contractor where title to such items transfer to [REDACTED] and is used in generating, producing or processing electric power qualify for the 1% privilege tax pursuant to the provisions of N.C. Gen. Stat. § 105-187.51.

Issue # 2: Confirm that the machinery and equipment, specifically, generators, turbines, and electrical components necessary to generate the electricity, added and incorporated into the power plant will be considered "mill machinery and equipment."

Answer: Provided the machinery and equipment contained within the Unit is used by [REDACTED] in North Carolina to generate electricity for distribution and sale to [REDACTED] customers, the machinery and equipment are considered "mill machinery or mill machinery parts or accessories" as used in the provisions of N.C. Gen. Stat. § 105-187.51.

Issue # 3: Confirm whether pipe and piping materials used within the Unit will be a component part of “mill machinery and equipment” and thus subject to the 1% privilege tax. Further confirm that pipe and piping materials will not be classified as a single article and that no benefit will be derived from the \$80 maximum tax per single article.

Answer: Provided the pipe and piping materials purchased by [REDACTED] are used in the electricity producing process by [REDACTED] to: (a) provide fuel to the generator; (b) to redirect exhaust gases from the generator; (c) to supply and re-route various lubricants and coolants throughout the process; (d) to supply water to the turbines; (e) move steam, water, or fuel between pieces of machinery and equipment and (f) to drain or remove waste or waste water, the pipe and piping materials within the Unit are considered mill machinery or mill machinery parts or accessories and thus subject to the 1% privilege tax. The \$80 maximum tax per single article generally will not apply; however, in the event there is a purchase of a single piece of pipe, the price of which exceeds \$8,000, the \$80 maximum tax applies to the purchase price of the specific item.

Issue # 4: Confirm whether concrete used to construct foundations and housing to support machinery and equipment will be a component part of “mill machinery and equipment” and that the concrete purchased will be subject to the 1% privilege tax. Further confirm that concrete for foundations and housing will not be classified as a single article and that no benefit will be derived from the \$80 maximum tax per single article.

Answer: Provided the concrete purchased by [REDACTED] is used to build specific foundations for the major equipment (e.g., combustion turbines, steam turbines, cooling towers, boilers, heat exchangers and HSRGs) for use by [REDACTED] to generate electricity, and such concrete foundations are necessary or critical due to the size, weight, operating temperature, and vibration aspects of the generators, such purchases of concrete are subject to the 1% privilege tax with no maximum tax. However, concrete purchased by [REDACTED] to form or build foundations for use by [REDACTED] for purposes such as “blast walls,” storage tanks, powerhouses, and powerhouse transformer stations is subject to the general State and applicable local rates of sales and use tax.

Issue # 5: Confirm whether steel and rebar used in concrete to construct foundations and housing to support machinery and equipment will be a component part of “mill machinery and equipment” and that the necessary steel and rebar purchased will be subject to the 1% privilege tax. Further confirm that steel and rebar used in concrete for foundations and housing will not be classified as a single article and that no benefit will be derived from the \$80 maximum tax per single article.

Answer: Provided the steel and rebar purchased by [REDACTED] are used to construct foundations for the major equipment (e.g., combustion turbines, steam turbines, cooling towers, boilers, heat exchangers and HSRGs) for use by [REDACTED] to generate electricity, and such steel and rebar are necessary or critical due to the size, weight, operating temperature, and vibration aspects of the generators, such purchases of steel and rebar are subject to the 1% privilege tax with no maximum tax. The \$80 maximum tax per single article generally is not applicable to such purchases; however, in the event there is a purchase of a single piece of steel or rebar, the purchase price of which exceeds \$8,000, the \$80 maximum tax applies to the specific item. However, steel and rebar purchased by [REDACTED] to form or build concrete foundations for use by [REDACTED] for purposes such as “blast walls,” storage tanks, powerhouses, and powerhouse transformer stations are subject to the general State and applicable local rates of sales and use tax.

Issue # 6: Confirm whether accessories and materials used to construct foundations and housing to support machinery and equipment will be a component part of “mill machinery and equipment”

and that the accessories and materials will be subject to the 1% privilege tax. Further confirm that accessories and materials used to construct foundations and housing will not be classified as a single article and that no benefit will be derived from the \$80 maximum tax per single article.

Answer: Provided the accessories and materials purchased by [REDACTED] are used to build specific foundations for the major equipment (e.g., combustion turbines, steam turbines, cooling towers, boilers, heat exchangers and HSRGs), for use by [REDACTED] to generate electricity, and such accessories and materials constitute a component part of "mill machinery and equipment," such purchases are subject to the 1% privilege tax. The \$80 maximum tax per single article generally is not applicable to such purchases; however, in the event there is a purchase of a single accessory or material, the price of which exceeds \$8,000, the \$80 maximum tax applies to the purchase price of the specific item. Purchases of materials to construct housing to enclose machinery and equipment typically are not considered mill machinery, mill machinery parts or accessories and are subject to the general State and applicable local rates of sales and use tax.

Issue # 7: Confirm whether electrical wiring, electrical equipment, control panels, conduits, and other items to furnish power to machinery and equipment in the production process will be a component part of "mill machinery and equipment" and will be subject to the 1% privilege tax.

Answer: Provided the electrical wiring, electrical equipment, control panels, and other related items purchased by [REDACTED] are for use by [REDACTED] for distribution of power to specific mill machinery and equipment (e.g., combustion turbines, steam turbines, cooling towers, boilers, heat exchangers and HSRGs), such items are subject to the 1% privilege tax. The \$80 maximum tax per single article generally is not applicable to such purchases; however, in the event there is a purchase of a single piece of electrical equipment, control panel, or other related item, the purchase price of which exceeds \$8,000, the \$80 maximum tax applies to the specific item.

Issue # 8: Confirm whether instrumentation materials installed throughout the Unit will be a component part of "mill machinery and equipment" and that the accessories and materials will be subject to the 1% privilege tax.

Answer: Provided the instrumentation materials purchased by [REDACTED] are for use by [REDACTED] in conjunction with other qualifying mill machinery and equipment to generate electricity for distribution and sale to [REDACTED] customers, such instrumentation materials are subject to the 1% privilege tax. Instrumentation equipment that functions as a single piece of operating equipment and is purchased as such is subject to the 1% privilege tax with a maximum tax of \$80 per article. The \$80 maximum tax per single article may apply to other individual purchases of instrumentation materials provided the purchase price of a single piece of tangible personal property exceeds \$8,000.

Issue # 9: Confirm whether the timing and/or presentation of invoices related to an item of qualifying mill machinery affect the taxability as it relates to the application of the single article subject to the maximum of \$80. For example, if multiple quantities of an item are invoiced together such that the total tax would exceed \$80, would this invoice be subject to the \$80 maximum tax limitation? Conversely, if items are billed on multiple invoices, would these purchases be subject to the \$80 maximum tax limitation?

Answer: The application of \$80 maximum tax per article pursuant to N.C. Gen. Stat. § 105-187.51(b), is dependent upon the number of articles purchased by [REDACTED]. The maximum tax of \$80 is not to be applied on an overall per-invoice basis, nor is the maximum tax of \$80 to be

applied in aggregate to various individual components, even though they may be subsequently assembled by [REDACTED] into a single article. Furthermore, purchases of separate pieces of tangible personal property by [REDACTED] that will be combined into a single depreciable item for use by [REDACTED] to generate electricity for distribution and sale to customers of [REDACTED] do not constitute a single article subject to a maximum tax of \$80. The 1% privilege tax is due at the time of purchase of each item of tangible personal property, notwithstanding, that [REDACTED] may combine the separate items into a single piece of equipment for use by [REDACTED] to generate electricity for distribution and sale to customers of [REDACTED]. If, however, a single article is billed on multiple invoices, the item purchased will still be treated as a single article and subject to the maximum tax of \$80 per 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,

[REDACTED]

Director – Sales and Use Tax Division