

Taxation of Solar Electricity Equipment

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Overview

- Background
- Current Taxation of Sales/Purchases of Solar Electricity Equipment
- Options



Background

- Over the past few years, the Department of Revenue has gotten more questions about the taxation of sales/purchases of solar electricity equipment
- Questions have arisen about situations that may not have been anticipated originally
- Interaction between sales/privilege tax treatment and income/franchise tax treatment
 - Tax credit statutes mention “solar energy property” rather than “solar electricity property”
 - Tax credit statutes make a distinction between residential and non-residential uses – for sales tax purposes the emphasis is on production

Background

- Factors affecting current requests for interpretation
 - SB 3 – Renewable Energy and Energy Efficiency Portfolio Standard
 - Requires utilities to meet a renewable energy standard equal to a percentage of retail sales
 - Standard may be met through generating electricity, purchasing electricity, purchasing renewable energy certificates, or efficiency savings
 - Increased interest of consumers in “Going Green”
 - Advances in the industry that make solar electricity generation more cost competitive

Treatment of Sales/Purchases of Solar Electricity Equipment

- Sales or use tax generally applies to sales/purchases of tangible personal property
- Several questions:
 - Is solar electricity equipment tangible personal property?
 - Yes.
 - Is there an exemption so that the sales or use tax would not apply?
 - Possibly.
 - No specific exemption for this type of equipment.
 - Is solar electricity equipment subject to tax under Article 5F (Mill Machinery – 1%/\$80 cap)?

Treatment of Sales/Purchases of Solar Electricity Equipment

- Article 5F – Manufacturing Fuel and Certain Machinery and Equipment
 - Definitions under sales and use tax statutes apply
 - Imposes a privilege tax on “manufacturing industry or plant that purchases mill machinery or mill machinery parts or accessories for storage, use, or consumption in this State”
 - No statutory definitions of:
 - Manufacturing industry or plant
 - Mill machinery or mill machinery parts or accessories

Treatment of Sales/Purchases of Solar Electricity Equipment

- Rules adopted under G.S. 105-262
 - No specific mention of electricity equipment
- Sales and Use Tax Bulletins adopted under G.S. 105-264
 - Section 59-4
 - **A. Purchases of the following items of 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:**
 - 1. all production machinery and accessories thereto...

Treatment of Sales/Purchases of Solar Electricity Equipment

- Is solar electricity equipment subject to tax under Article 5F?
 - Firm engaged in generating electric power?
 - To be distributed to consumers?



Application to Specific Examples

- Traditional Example A
 - Electric power company purchases solar electricity equipment
 - Solar electricity equipment is installed on property owned by electric power company
 - Electricity generated by the equipment is supplied to the grid and sold to consumers
 - Taxpayer is engaged in business of producing electric power to be distributed to consumers – Subject to tax under Article 5F and exempt from sales and use taxes

Application to Specific Examples

- Traditional Example B
 - Consumer purchases solar energy property
 - Property is used for active or passive space heating or domestic water heating
 - No actual electricity is generated
 - All energy created is used for the residence or business that installs the property
 - Taxpayer is not engaged in business of producing electric power to be distributed to consumers – sales or use tax applies

Application to Specific Examples

- New Example C
 - Electric power company purchases solar electricity equipment
 - Electric power company installs the solar electricity equipment on leased space on rooftops and grounds of homes, schools, office buildings, shopping centers, industrial facilities, etc.
 - Electric power company maintains ownership of equipment
 - Electricity generated is transferred to the grid for distribution to all customers, and no electricity is sold or transferred directly to the owner of the property on which the equipment is installed
 - Taxpayer is engaged in business of producing electric power to be distributed to consumers – Subject to tax under Article 5F and exempt from sales and use taxes

Application to Specific Examples

- New Example D
 - Large manufacturing firm (not an electric power company) purchases solar electricity equipment
 - 100% of electricity generated is sold to electric power company for resale to consumers
 - None of the electricity generated by the manufacturing firm is used directly by the firm
 - (Generally this is accomplished by the use of separate meters for the electricity produced and the electricity consumed.)
 - Taxpayer is engaged in business of producing electric power to be distributed to consumers – Subject to tax under Article 5F and exempt from sales and use taxes

Application to Specific Examples

- New Example E
 - Individual purchases solar electricity equipment for installation on roof of residence
 - 100% of electricity generated is sold to electric power company for resale to consumers
 - None of the electricity generated by the equipment is used directly by the residence
 - (Generally this is accomplished by the use of separate meters for the electricity produced and the electricity consumed.)
 - Taxpayer is engaged in business of producing electric power to be distributed to consumers – Subject to tax under Article 5F and exempt from sales and use taxes

Application to Specific Examples

- New Example F
 - Individual purchases solar electricity equipment for installation on roof of residence
 - 100% of electricity generated is used directly by the residence
 - None of the electricity generated by the equipment is sold to an electric power company or placed on the grid
 - Taxpayer is not engaged in business of producing electric power to be distributed to consumers – sales or use tax applies

Application to Specific Examples

- New Example G
 - Individual purchases solar electricity equipment for installation on roof of residence
 - Individual elects to have “net metering”
 - During times of high electricity generation/low electricity use, electricity flows from the residence to the grid
 - During times of low electricity generation/high electricity use, electricity flows from the grid to the residence
 - One meter is used for both types of electricity flows
 - The taxpayer may have net positive outflows or net positive inflows – this may vary on a period to period basis
 - Taxpayer is presumed not to be engaged in business of producing electric power to be distributed to consumers – sales or use tax applies

Issue

- Taxation of solar electricity equipment depends on one key factor: Is the person purchasing the equipment a “manufacturer” of electricity
 - Is electricity produced?
 - Is the electricity sold to consumers or used by the producer?
- Same equipment is taxed differently based on whether or how it is connected to the grid
- Small differences in technical specs can have significant tax consequences
- This leads to compliance and administrative issues



Possible actions

- Department has no specific recommendation
- No change – continue current interpretation
 - Administration issues
 - Somewhat confusing to taxpayers
 - Tax considerations may drive technical decisions
- Legislation providing guidance to the Department
 - Subject all solar electricity equipment to the 1%/\$80 privilege tax under Article 5F?
 - Clarify that the 1%/\$80 privilege tax under 5F applies only to electric power companies directly engaged in making sales to consumers?

Questions?

