

Declaratory Ruling 2019-02

Request for Ruling Regarding the Applicability of R.I. Gen. Laws § 44-18-30(57) to Certain Components Used in Renewable Energy Products

Request for Ruling

The Taxpayer requests a ruling as to whether its purchases of certain components to be used in, and permanently incorporated into, certain renewable energy products that are constructed by the Taxpayer are exempt from the Rhode Island Sales and Use Tax by R.I. Gen. Laws § 44-18-30(57).

Facts

The facts set forth below are taken from the statement of facts presented in the Ruling Request dated November 14, 2018 and additional documentation subsequently provided by Taxpayer's counsel.

The Taxpayer is a domestic limited liability company that does not make sales at retail and does not hold a permit to make sales at retail. The Taxpayer is engaged in the business of constructing, installing, and/or affixing to real estate: (a) solar voltaic modules or panels, (b) other modules and/or panels that generate electricity from light, (c) wind turbines, and (d) towers used to mount turbines in accordance with specifications designated by and/or using materials supplied by wind turbine manufacturers. The items in (a) through (d) are collectively referred to as the "Products".

The Taxpayer acquires by purchase and/or lease ("Site Control") access to real estate upon which the Taxpayer locates the Products. The Taxpayer acquires Site Control from one or more affiliate(s), which are separate entities that hold legal title to the Products constructed and installed by the Taxpayer. The relationship between the Taxpayer and each affiliate is established by a service agreement. After construction of a Product for an affiliate, the affiliate retains ownership of and operates the Product. Each affiliate is a special purpose entity for each Product project and is under common control with the Taxpayer. The Products are connected to transmission lines (the "Grid") owned by a utility company (the "Utility"). The electricity generated by the Products is distributed by the Utility in the ordinary course of its business operations.

The Taxpayer does not directly sell the electricity it produces. The Taxpayer derives revenue from the operation of the Products in the following manner. Legal title to each Product (e.g., wind turbine or solar array) is vested in a separate entity or affiliate that is under common control with the taxpayer. An affiliate of the Taxpayer may enter into a Net Metering Credit Arrangement with a public entity pursuant to which the Products receive net metering credits commensurate with energy produced each month. The net metering credits are then applied to reduce the public entity's energy costs payable to the Utility in exchange for separate compensation paid to the Taxpayer and/or its affiliate. Alternatively, an affiliate of the Taxpayer may enter into

a long-term tariff pursuant to the Renewable Energy Growth Program established by R.I. Gen. Laws § 39-26.6-1 *et seq.* permitting the Taxpayer to sell its Products' generation output at fixed prices. Either way, the affiliate ultimately sells or distributes the energy to the Utility, which then sells or distributes the energy to others.

The Taxpayer's business of constructing, installing, and/or affixing Products to real estate requires that the Taxpayer purchase materials for incorporation into the Taxpayer's Products including, without limitation: (a) structural metal, (b) concrete, (c) aggregate, (d) lumber, (e) wire, (f) fasteners, (g) welding gases, rod and stick, (h) oils, greases, lubricants, and (i) electronic products such as circuits, transistors, capacitors, supervisory control and data acquisition hardware and software, and similar items. The items in (a) through (i) are collectively referred to as the "Components".

The Components represent an integral part of the Taxpayer's Products and, after incorporation into the Products constructed by the Taxpayer, the Components do not represent a separable and/or independently identifiable item of tangible property. The Taxpayer does not issue any form of sales tax exemption certificate in connection with the purchase of the Components. Certain retailers of Components located in Rhode Island and selling Components to the Taxpayer for the Taxpayer's incorporation into its Products collect the sales and use tax on the sale of the Components to the Taxpayer while other retailers of Components do not collect the sales and use tax based on the non-collecting retailers' assumption that the Taxpayer's construction of its Products is exempt from the Rhode Island Sales and Use Tax by R.I. Gen. Laws § 44-18-30(57).

The Components purchased by the Taxpayer are specialized materials manufactured pursuant to express specifications designated by wind turbine and solar voltaic module manufacturers. In particular, the Components purchased by the Taxpayer, such as concrete, have limited use and/or application beyond use as a base and/or anchor for wind turbines due to the specific characteristics of the concrete and its specialized chemical composition. Additionally, the installation of the unique concrete purchased by the Taxpayer requires specialized tools and knowledge to ensure compliance with turbine manufacturer specifications. Employees of the turbine manufacturer regularly travel to Taxpayer worksites to oversee and participate in the installation of this specialized concrete.

The Taxpayer provided the following example of a representative transaction which it would enter into as follows. The Taxpayer contracts with an affiliate to gain Site Control. Then the Taxpayer constructs and installs a wind turbine in Rhode Island real estate owned by the affiliate and leased to the Taxpayer, after which the affiliate operates the wind turbine. The Taxpayer purchases applicable Components including, without limitation, a wind turbine and items necessary to construct the support tower for the wind turbine. The Taxpayer also purchases Components to affix the wind turbine and tower to real estate, including specialized concrete and aggregate necessary to create a foundation to anchor the wind turbine support tower base. The Product consists of the wind turbine, support tower, and foundation. Without any constituent Component, the wind turbine would be unable to function for its intended purpose.

Ruling Requested

The Components that the Taxpayer purchases for constructing, assembling, and/or installing its Products are exempt under R.I. Gen. Laws § 44-18-30(57) if (a) they are specified and/or sold by the same manufacturer of the renewable energy products, listed in § 44-18-30(57), to which the Components apply and (b) they are consumed in and/or incorporated into the construction or assembly of the renewable energy products, listed in § 44-18-30(57), to which the Components apply.

Pertinent Local Statutory and Regulatory Law

R.I. Gen. Laws § 44-18-18 imposes a tax on all sales at retail in the state of Rhode Island. R.I. Gen. Laws § 44-18-20 imposes a complementary use tax on all tangible personal property that is stored, used, or otherwise consumed in Rhode Island. R.I. Gen. Laws § 44-18-16 defines tangible personal property as “personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses,” including electricity. R.I. Gen. Laws § 44-18-25 presumes that the gross receipts and use of tangible personal property in Rhode Island are subject to tax until the taxpayer proves otherwise.

Under Regulation C (“Contractors and Subcontractors”), Regulation 280-RICR-20-70-54, formerly Regulation SU 91-27, a company that contracts to perform a job, and acquires materials to complete the job, must pay the sales or use tax at the time it acquires the materials, except where the contractor acts as a retailer. *See* Declaratory Ruling 2000-03. R.I. Gen. Laws § 44-18-30(57) provides exemptions for certain renewable energy products while §§ 44-18-30(7) and 44-18-30(22) provide exemptions to the Rhode Island Sales & Use Tax for manufacturing purposes. Regulation 280-RICR-20-70-19 (“Manufacturing, Property and Public Utilities Service Used In”), formerly Regulation SU 07-58, further clarifies the manufacturing exemptions provided by R.I. Gen. Laws §§ 44-18-30(7) and 44-18-30(22).

R.I. Gen. Laws § 44-18-30(57) provides as follows:

(57) Renewable energy products. Notwithstanding any other provisions of Rhode Island general laws, the following products shall also be exempt from sales tax: solar photovoltaic modules or panels, or any module or panel that generates electricity from light; solar thermal collectors, including, but not limited to, those manufactured with flat glass plates, extruded plastic, sheet metal, and/or evacuated tubes; geothermal heat pumps, including both water-to-water and water-to-air type pumps; wind turbines; towers used to mount wind turbines if specified by or sold by a wind turbine manufacturer; DC to AC inverters that interconnect with utility power lines; and manufactured mounting racks and ballast pans for solar collector, module, or panel installation. Not to include materials that could be fabricated into such racks; monitoring and control equipment, if specified or supplied by a manufacturer of solar thermal, solar photovoltaic, geothermal, or wind energy systems or if required by law or regulation for such systems but not to include pumps, fans or plumbing or electrical fixtures unless shipped from the manufacturer affixed to, or an integral part of, another item specified on this list; and solar storage tanks that are part of a solar domestic hot water system or a solar space heating system. If the tank comes with an external heat exchanger it shall also be tax exempt, but a standard hot water tank is not exempt from state sales tax.

R.I. Gen. Laws § 44-18-30(7) states as follows:

(7) Purchase for manufacturing purposes.

(i) From the sale and from the storage, use, or other consumption in this state of computer software, tangible personal property, electricity, natural gas, artificial gas, steam, refrigeration, and water, when the property or service is purchased for the purpose of being manufactured into a finished product for resale and becomes an ingredient, component, or integral part of the manufactured, compounded, processed, assembled, or prepared product, or if the property or service is consumed in the process of manufacturing for resale computer software, tangible personal property, electricity, natural gas, artificial gas, steam, refrigeration, or water. (Emphasis added.)

(ii) "Consumed" means destroyed, used up, or worn out to the degree or extent that the property cannot be repaired, reconditioned, or rendered fit for further manufacturing use.

(iii) "Consumed" includes mere obsolescence.

(iv) "Manufacturing" means and includes: manufacturing, compounding, processing, assembling, preparing, or producing.

(v) "Process of manufacturing" means and includes all production operations performed in the producing or processing room, shop, or plant, insofar as the operations are a part of and connected with the manufacturing for resale of tangible personal property, electricity, natural gas, artificial gas, steam, refrigeration, or water and all production operations performed insofar as the operations are a part of and connected with the manufacturing for resale of computer software.

(vi) "Process of manufacturing" does not mean or include administration operations such as general office operations, accounting, collection, or sales promotion, nor does it mean or include distribution operations that occur subsequent to production operations, such as handling, storing, selling, and transporting the manufactured products, even though the administration and distribution operations are performed by, or in connection with, a manufacturing business.

R.I. Gen. Laws § 44-18-30(22) provides in pertinent part:

(22) Manufacturing machinery and equipment.

(i) From the sale and from the storage, use, or other consumption in this state of tools, dies, molds, machinery, equipment (including replacement parts), and related items to the extent used in an industrial plant in connection with the actual manufacture, conversion, or processing of tangible personal property, or to the extent used in connection with the actual manufacture, conversion, or processing of computer software as that term is utilized in industry numbers 7371, 7372, and 7373 in the standard industrial classification manual

prepared by the Technical Committee on Industrial Classification, Office of Statistical Standards, Executive Office of the President, United States Bureau of the Budget, as revised from time to time, to be sold, or that machinery and equipment used in the furnishing of power to an industrial manufacturing plant. For the purposes of this subdivision, "industrial plant" means a factory at a fixed location primarily engaged in the manufacture, conversion, or processing of tangible personal property to be sold in the regular course of business; (Emphasis added.)

(ii) Machinery and equipment and related items are not deemed to be used in connection with the actual manufacture, conversion, or processing of tangible personal property, or in connection with the actual manufacture, conversion, or processing of computer software as that term is utilized in industry numbers 7371, 7372, and 7373 in the standard industrial classification manual prepared by the Technical Committee on Industrial Classification, Office of Statistical Standards, Executive Office of the President, United States Bureau of the Budget, as revised from time to time, to be sold to the extent the property is used in administration or distribution operations;

(iii) Machinery and equipment and related items used in connection with the actual manufacture, conversion, or processing of any computer software or any tangible personal property that is not to be sold and that would be exempt under subdivision (7) or this subdivision if purchased from a vendor or machinery and equipment and related items used during any manufacturing, converting, or processing function is exempt under this subdivision even if that operation, function, or purpose is not an integral or essential part of a continuous production flow or manufacturing process;

(iv) Where a portion of a group of portable or mobile machinery is used in connection with the actual manufacture, conversion, or processing of computer software or tangible personal property to be sold, as previously defined, that portion, if otherwise qualifying, is exempt under this subdivision even though the machinery in that group is used interchangeably and not otherwise identifiable as to use.

Taxpayers claiming statutory tax benefits must demonstrate not only that a tax exemption or deduction exists but that they clearly and unequivocally come within the ambit of its provisions. *Cookson v. Clark*, 610 A.2d 1095, 1098 (R.I. 1992); *Rhode Island Lithograph Corp. v. Clark*, 519 A.2d 589, 591 (R.I. 1987). Furthermore, statutes conferring such tax benefits must be strictly and narrowly construed, *Fleet Credit Corp. v. Frazier*, 726 A.2d 452, 454 (R.I. 1999); *Rice Machinery Co. v. Norberg*, 391 A.2d 66, 70 (R.I. 1978); *Red Fox Gingerale Co. v. Norberg*, 217 A.2d 466, 467 (R.I. 1966), with all doubts and ambiguities resolved against the taxpayer and in favor of the taxing authorities. *Roger Williams General Hospital v. Littler*, 566 A.2d 948, 950 (R.I. 1989); *American Hoescht Corp. v. Norberg*, 462 A.2d 369, 371 (R.I. 1983).

Discussion

The Taxpayer advances four (4) arguments in support of its claim that the purchase of the Components are exempt from sales and use tax under R.I. Gen. Laws § 44-18-30(57). First, the Taxpayer asserts that the purchase of the Components are exempt from sales and use tax under

R.I. Gen. Laws § 44-18-30(57) if the Components are designed for incorporation into the Products. Alternatively, the Taxpayer argues that the Components purchased by the Taxpayer for use in connection with the construction and installation of the Products are exempt under R.I. Gen. Laws § 44-18-30(57) if the Components become an integral and inseparable part of the Products. Third, the Taxpayer claims that R.I. Gen. Laws § 44-18-30(57) should be interpreted identically or similarly to R.I. Gen. Laws § 44-18-30(7) and Regulation 280-RICR-20-70-19 (formerly SU 07-58) such that the purchase of Components by the Taxpayer for incorporation into the Products is not subject to Rhode Island sales and use tax. Finally, the Taxpayer states that if the Taxpayer is required to pay sales and use tax on its purchase of Components, then R.I. Gen. Laws § 44-18-30(57) is rendered nugatory because sales and use tax would be indirectly collected on the renewable energy products listed in the statute.

Here, tangible personal property such as the Components would not be subject to sales and use tax under R.I. Gen. Laws § 44-18-30(57) if (a) they are specified by and/or sold by the same manufacturer that also sells the renewable energy products, listed in the statute, to which the Components apply and (b) they are consumed in and/or incorporated into the construction or assembly of the renewable energy products, listed in the statute, to which the Components apply. If a Component is not specified by and/or sold by the same manufacturer as its associated renewable energy product listed in § 44-18-30(57), or a Component is not consumed in and/or incorporated into the construction or assembly of its associated renewable energy product listed in § 44-18-30(57), that Component is subject to Rhode Island sales and use tax.

The Taxpayer's argument that R.I. Gen. Laws § 44-18-30(57) should be interpreted identically or similarly to R.I. Gen. Laws § 44-18-30(7) and Regulation 280-RICR-20-70-19 would render R.I. Gen. Laws § 44-18-30(57) superfluous. Courts will not ascribe to the legislature an intent to enact legislation that is meaningless, unnecessary, or devoid of any purpose. *State v. Santos*, 870 A.2d 1029, 1034 (R.I. 2005). Furthermore, the General Assembly is presumably aware of the state of existing relevant law when it enacts or amends a statute. *Horn v. S. Union Co.*, 927 A.2d 292, 296 (R.I. 2007). The manufacturing exemptions under §§ 44-18-30(7) and 44-18-30(22) are separate and distinct sales tax exemptions from § 44-18-30(57). There may be some overlap in the types of property that the statutes exempt, but the intent of each exemption is different and the provisions cannot be construed as identical or similar.

It is worth noting that some Components that the Taxpayer purchases may also be exempt under R.I. Gen. Laws § 44-18-30(22) and Regulation 280-RICR-20-70-19. Under R.I. Gen. Laws § 44-18-30(22) and Regulation 280-RICR-20-70-19, some Components may qualify as equipment or related items used in an industrial plant (e.g., a solar energy or wind power production facility) in connection with the actual manufacture of electricity to be sold. The Taxpayer may review Declaratory Order 2018-01 for additional guidance as to whether certain Components qualify for exemption under R.I. Gen. Laws § 44-18-30(22) and Regulation 280-RICR-20-70-19.

Ruling

The Components that the Taxpayer purchases for constructing, assembling, and/or installing its Products are exempt under R.I. Gen. Laws § 44-18-30(57) if (a) they are specified and/or sold by the same manufacturer of the renewable energy products, listed in § 44-18-30(57),

to which the Components apply and (b) they are consumed in and/or incorporated into the construction or assembly of the renewable energy products, listed in § 44-18-30(57), to which the Components apply. Some Components may also qualify for the manufacturing exemption under R.I. Gen. Laws § 44-18-30(22) and Regulation 280-RICR-20-70-19. Each Component would have to be reviewed on an individual basis.

This ruling is limited to the facts stated herein and may be relied upon by the Taxpayer and shall be valid unless expressly revoked because (1) the applicable statutory provisions of law are amended in a manner that requires a different result; (2) the underlying facts described herein materially change; or (3) a decision on point has been issued by the Rhode Island or Federal courts.

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Tax Administrator
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