

Memorandum

700.0280

To : Ms. Karen Hughes, Supervising Tax Auditor
Local Revenue Allocation Section – MIC:27

Date: July 15, 2003

From : John L. Waid
Senior Tax Counsel – MIC:82

Telephone: (916) 324-3828

Subject: **SR - - - - -**
Construction Contract
Wind Turbines

I am answering your memorandum to me dated April 16, 2003. You ask for advice on the local tax consequences of the installation of wind turbine generators.

You indicate that the taxpayer is a wind turbine developer and purchased the turbines for installation. The taxpayer purchased the turbines from an unregistered out-of-state vendor. As a result, the taxpayer is reporting the use tax itself. It obtained building permits from both --- County and the City of --- --- to install the turbines. You indicate that the taxpayer installed 64 turbines in the unincorporated area of --- County and 10 in the City of --- ---. It filed two individual use tax returns reporting the total purchase prices as \$15.5 million and \$32.3 million.

The taxpayer is the ultimate purchaser/consumer of the wind turbine generators. It hired the contractors to install the generators. The taxable event is thus the sale of the turbines to the taxpayer. From the context, we assume the taxpayer does not have a use tax direct pay permit. We also assume that the purchase and installation of the individual turbines was pursuant to one contract covering all of them.

OPINION

You attached to your memorandum a copy of Annotation 190.1165 that discusses whether or not wind turbines are “fixtures” or “materials” under Regulation 1521. As noted above, the taxpayer is the ultimate consumer of the turbines. The installing contractors do not obtain an ownership interest in the turbines and do not sell them to anyone. For that reason, the installation contracts do not carry sales or use tax consequences under Regulation 1521 even though the turbines are affixed to realty. The use tax is derived from the taxpayer’s purchase of

the turbines instead. The local use tax is thus allocated, without regard to that regulation, based on the use of the turbines as a whole and not on the nature of their component parts. (See, e.g., Annot. 700.0169 (1/19/96).) Based on the facts you give, we conclude that the places of use for the turbines are the jurisdictions in which they are installed.

You ask if the taxpayer should report the local use tax revenues directly to the county and the city or indirectly through the medium of the --- County-wide pool. You suggest that perhaps the revenues should be reported directly under Regulation 1802(c)(2), which provides as follows:

“Operative July 1, 1996, if a person who is required to report and pay use tax directly to the Board makes a purchase in the amount of \$500,000 or more, that person shall report the local use tax revenues derived therefrom to the participating jurisdiction in which the first functional use of the property is made.”

The taxpayer purchased the turbines from an out-of-state retailer for use in this state. Consequently, under Sections 6201 and 6401, the transaction is subject to use tax. Because the turbine vendor has no offices (we presume) in this state, it is not required to register to collect use tax under Section 6203. The taxpayer is thus required to self-report the tax. (§ 6202; Reg. 1685(a)(2).)

The intent behind subdivision (c)(2) was to permit a retailer to report the local use tax on high-end purchases for its own consumption directly to the place of use rather than through its county-wide pool when the place of use was at a location that could not be issued a seller's permit under Regulation 1699. The taxpayer presumably does not make sales at the locations of the turbines. Seller's permits thus can not be issued to those locations. (Reg. 1699(a).)

In this case, the transactions are subject to use tax for the reasons stated above. The out-of-state vendor is not registered to collect use tax, so the in-state purchaser must self-report the tax. If the contexts of the purchases are as we have assumed them, the purchase price of the whole lot is more than \$500,000. The places of use cannot be issued seller's permits. In consequence, these purchases fall squarely within the provisions of Regulation 1802(c)(2). The local use tax revenue should be reported directly to the two jurisdictions in which the turbines are affixed, based on the number of turbines set up in each.

JLW/ef

cc: --- --- District Administrator (--)