



State of Vermont
Department of Taxes
133 State Street
Montpelier, VT 05633-1401

Agency of Administration

July 26, 2012

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

Formal Ruling # 2012-04

Dear [REDACTED]

This is a formal ruling for [REDACTED] regarding the applicability of Vermont sales tax to sales of anchor bolt rings. This ruling is based upon representations in your letter of [REDACTED] and our conversations by telephone and email on [REDACTED]

RULING

Based upon the facts you present, we have determined that the sale of the rings in this case is subject to sales and use tax.

FACTS

[REDACTED] manufactures steel anchor bolt rings and sold a number of these rings to [REDACTED], to be embedded into poured concrete foundations which support wind towers at the [REDACTED]. You have asked whether the sale of these rings is subject to Vermont's sales and use tax.

The supporting base for a wind tower consists of a concrete foundation block, which may be approximately 20 feet in diameter and 6 to 8 feet deep, most of which is below ground, with perhaps a foot of the concrete structure appearing above ground. You have likened the function of this concrete foundation to the foundation slab of a house.

Embedded into and near the bottom of this concrete foundation is the anchor bolt ring, a flat, disk-like steel ring approximately 13 feet in diameter.

The embedded anchor bolt ring is used to secure steel anchor rods, which are also embedded in the concrete foundation. The anchor bolt ring surrounds the anchor rods and maintains the proper spacing of the rods in the concrete. The top portions of the anchor rods protrude above ground from the concrete foundation, and attach to the hollow steel pipe which is the tower, to hold it in place.

The tower does not move. The top of the tower is connected to the wind turbine assembly.

DISCUSSION

Vermont sales and use tax applies to sales of tangible personal property. 32 V.S.A. § 9771(1). Anchor bolts rings are "personal property which may be seen, weighed, measured, felt, touched," and so, are tangible personal property. 32 V.S.A. § 9701(7). Whether they are exempt from the tax depends not only on whether they can be said to be machinery or equipment, but also the use to which they are put in this particular case. 32 V.S.A. § 9741(14).

An exemption from the sales tax is available for sales of qualified manufacturing machinery and equipment. Id. To qualify, the item must be:

[M]achinery and equipment for use or consumption directly and exclusively, except for isolated or occasional uses, in the manufacture of tangible personal property for sale. . . . Machinery and equipment used in administrative, managerial, sales or other nonproduction activities, or used prior to the first production operation or subsequent to the initial packaging of a product, shall not be exempt from tax, unless such uses are merely isolated or occasional. Machinery and equipment shall not include buildings and structural components thereof.

Id. That is, to qualify, the rings must not only be machinery or equipment, they must be used in the manufacturing process, the use must be direct and exclusive, and the manufacturing process must produce tangible personal property for sale.

Electricity is tangible personal property. 32 V.S.A. § 9701(7). Therefore, the generation of electricity from wind is the manufacture of tangible personal property. The exemption quoted above would thus apply to "machinery and equipment" used "directly and exclusively" to generate electricity from wind.

The machinery and equipment exemption does not apply to the anchor bolt rings, however, because as they are used in this project they are not machinery or equipment and they are not used directly in the manufacturing process, as explained below.

Machinery and equipment

First, the rings as used in this project are not machinery or equipment. Instead, the rings are embedded into the poured concrete foundations which support the wind towers. In the same way as the foundation slab of a house, these poured concrete foundations are structural components and are real property. Once the rings are embedded in the concrete, they form an integral part of this real property. As provided in the last sentence of the quoted portion of Subsection (14), above, structural components are not machinery and equipment. This result is supported by a related regulation, which provides that real property, which would include rings embedded in an immovable concrete foundation, cannot qualify as machinery or equipment:

Reg. § 1.9741(14)-2 Definitions

A. "Machinery and Equipment" means tangible personal property, capital in nature, with a useful life of one year or more, and does not include real property or supplies.

Dept. of Taxes Reg. § 1.9741(14)-2(A). Since the anchor bolt rings when integrated into the concrete become real property, they are, by definition, are not machinery or equipment.

This result is also in accord with an earlier ruling by the Commissioner on the same type of electrical-generating property. In the earlier ruling, the Commissioner concluded that "The concrete pads to which the [wind towers] are bolted are not exempt. These are neither machinery nor equipment, but rather part of the real estate and do not satisfy the direct use requirement." Dept. of Taxes Formal Ruling 2010-17, December 8, 2010.

Direct use

Second, even if the rings qualified as machinery or equipment, which they do not, they would not satisfy the direct use requirement. The regulations provide the factors for determining whether a use is a "direct use:"

B. Direct Use

1. In determining whether machinery and equipment is directly used, the following factors are considered together with other relevant facts and circumstances:

(a) The active causal relationship that exists between the use of the machinery and equipment in question and the production of a product;

(b) Whether the machinery and equipment in question operates with an exempt machine or piece of equipment to complete or facilitate an integrated and synchronized system;

(c) Whether the machinery and equipment in question guarantees the integrity or quality of the manufactured product;

(d) The physical proximity of the machinery and equipment in question to the production process; lack of physical proximity by itself will not establish that a use is not direct.

2. The fact that particular machinery or equipment may be considered essential to the conduct of the business of manufacturing because its use is required either by law or practical necessity does not, of itself, mean that the machinery or equipment is "used directly" in the manufacturing operation.

* * *

Dept. of Taxes Regulation § 1.9741(14)-4(B)(1), (2). The rings in this project satisfy none of these factors:

(a) The rings are not active and do not cause production. The rings have no direct relationship to the production of electricity in the generating assembly. As a part of the concrete foundation, they indirectly support the generating unit by supporting the intervening tower.

(b) The rings do not operate with the generating assembly, and do not complete or facilitate the integrated production system which changes wind into electricity. They do not increase the power output of the wind generators in any way. They are an inextricable part of a physically remote, passive support embedded in the earth.

(c) Again, the embedded rings are not machinery. But even if they were, they do not guarantee the integrity or quality of the electricity produced.

(d) The foundations have no physical proximity to the process in the generating assembly which produces the electricity.

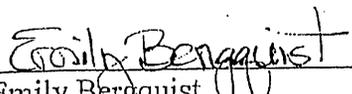
Under subsection (2) of the regulation quoted, the mere fact that the rings are essential, in the sense that they help to support the towers, is not, of itself, sufficient to meet the "direct use" test.

Since the anchor bolt rings as used in this project are not machinery and equipment and are not used directly in the manufacturing process, they do not qualify for the manufacturing equipment exemption. The sale of anchor bolt rings for this project is subject to Vermont sales tax.

GENERAL PROVISIONS

This ruling will be made public after deletion of the parties' names and any information which may identify the parties. A copy of this ruling showing the proposed deletions is attached, and you may request within 30 days that the Commissioner delete any further information that might identify the parties. The final discretion as to deletions rests with the Commissioner.

This ruling is issued solely to your firm and is limited to the facts presented, as affected by current statutes and regulations. Other taxpayers may refer to this ruling, when redacted to protect confidentiality, to determine the department's general approach, but the Department will not be bound by this ruling in the case of any other taxpayer or in the case of any change in the relevant statutes or regulations.



Emily Bergquist

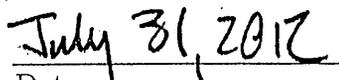


Date

Approved:



Mary N. Peterson
Commissioner of Taxes



Date