

Texas Comptroller: Certain Solar Generation Facility Equipment May Not be Exempt from Sales Tax

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On August 7, 2019, the Texas Comptroller released Policy Letter Ruling No. 201907005L (dated July 8, 2019) addressing whether certain sales tax exemptions under Texas Tax Code Section 151.318 apply to equipment purchased to construct solar and wind electric generation facilities. In this policy letter ruling, the Comptroller concluded that solar panels that convert sunlight into direct current electricity, as well as collection systems that convert the direct current into alternating current, are exempt from sales tax.

However, the Comptroller also concluded that fixed racking, tracker racking, and support posts used to position solar panels for maximum energy production are not exempt as “components of manufacturing equipment” when used to hold and support multiple solar panels—the usual configuration.

According to the Comptroller, to be a component of manufacturing equipment, and thus qualify for sale tax exemption, something must be “reasonably essential” to the functioning of a *single* item of qualifying manufacturing equipment. Because the racking and support posts are used to secure or position multiple solar panels in a row, they do not function as components of, nor are they essential to the functioning of, a *single* solar panel. Accordingly, because the racking and support posts are not components of a *single* piece of manufacturing equipment, the Comptroller concluded that these items do not qualify for exemption.

Note that a policy letter ruling (a “PLR”) is the Comptroller’s written statement of its policy regarding the application of relevant tax laws and rules to a specific set of facts submitted by a taxpayer. Although a PLR may be relied upon by the taxpayer requesting it, it is not binding on that taxpayer, or on any other taxpayer. A PLR is not the law—it is only the Comptroller’s position regarding the law—and is therefore subject to challenge.

A challenge to the Comptroller’s position in this PLR could arise from the Comptroller’s apparent overstatement of the requirement, gleaned from the authorities cited in the PLR, that racking and support posts must be components of a single piece of equipment to qualify for exemption. For example, *Southwest Airlines, Inc. v. Bullock*, 784 S.W.2d 563 (Tex.App.-Austin 1990, no writ) and Comptroller’s Decision No. 44,820 are cited by the Comptroller as requiring that “an item must be ‘reasonably essential’ to the functioning of a single item of manufacturing equipment to be considered a component of the equipment.” However, neither cited authority mentions a requirement that a component support a single item of equipment. Furthermore, exemption was denied in Decision No. 44,820 because the taxpayer failed to carry its burden of proof, not because the facts supported both a popcorn popper and a soft drink dispenser.

PLR No. 200002044L, cited by the Comptroller as stating a rule that “[s]upports that house or hold several pieces of equipment (e.g., several solar panels) are not parts or components of any one piece of equipment and do not qualify for exemption,” addresses a specific requirement under TTC 151.318(c)(1)(A) that piping and conveyor systems must be a component part of a single item of

equipment to avoid taxation as intraplant transportation equipment, and is therefore clearly distinguishable from the items, and issues, addressed in the current PLR. Additionally, PLR No. 200002044L identifies “the legs of a machine” as an example of peripheral supports that are qualifying component parts of manufacturing equipment and specifies “the framework of a plant” as an example of supports that hold several pieces of equipment and thus do not qualify for exemption. Racking and support posts seem more analogous to the legs of a machine than to the framework of a plant. Comptrollers Decision No. 42,916, cited by the Comptroller for its conclusion that “server racks holding several servers were not component parts of those servers,” determined that a server rack was taxable because it “merely props up manufacturing equipment” not because it supports multiple servers. In addition, Comptrollers Decision No. 40,495 (not cited by the Comptroller though cited in Decision No. 42,916) found that a platform supporting several pieces of exempt manufacturing equipment was taxable because “the platform is in the nature of realty, as opposed to personalty” not because it supported multiple items of equipment.

While the Comptroller’s conclusions with respect to racking and support posts may be troubling to those who construct solar generating facilities, this PLR is unlikely to be the final word on the subject and challenges to the Comptroller’s position should be expected.