

# STATE OF COLORADO



DEPARTMENT OF REVENUE  
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John W. Hickenlooper  
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GIL-14-006

April 28, 2014

XXXXXXXXXXXXXXXXXX  
Attn: XXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

Re: Alternating Current Electricity

Dear XXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXXXXXXXX ("Company") a request for guidance regarding the applicability of sales and use tax on components used in creating alternating current electricity at a power plant in Colorado.

The Colorado Department of Revenue ("Department") issues general information letters and private letter rulings. A general information letter provides a general overview of the relevant tax issues and is not binding on the Department. A private letter ruling provides a specific determination for a specific set of facts, is binding on the Department but not on the taxpayer, and requires payment of a fee. For more information about general information letters and private letter rulings, please see Department Rule 24-35-103.5 at [www.colorado.gov/revenue/tax](http://www.colorado.gov/revenue/tax) > Tax Library > Rulings.

The Department initially treats your request as one of a general information letter. If you would like the Department to issue a private letter ruling on the issues you raise, you can resubmit a request and fee in compliance with Department Rule 24-35-103.5. It is important to remember that general information letters, such as this one, are general discussions of tax law and are not a determination of the tax consequence of any particular action or inaction.

## Issue

1. Is certain equipment used in a natural gas power plant in Colorado eligible for the exemption to components used in the production of alternating current electricity from a renewable energy source?
2. Are components used in creating alternating current electricity at a power plant in Colorado eligible for the general manufacturing machinery exemption?

## Background

Company may furnish and install tanks to be part of a combined cycle project at a power plant in Colorado. A combined cycle is an assembly of heat engines that work in tandem from the same source of heat. More specifically, the excess waste heat from the first natural gas turbine engine is captured and converted to steam, which powers a steam turbine to generate additional electricity. The overall net efficiency of the system may be increased by 50 to 60 percent. The tanks furnished by Company will only be used in the steam turbine generation. The two tanks Company will furnish to the power plant include a demineralized water tank and a cooling tower tank, which are integral to combined cycle process.

## Discussion

Colorado levies sales tax on the sale, use, storage or rental of tangible personal property, but does not generally levy sales tax on the sale of services.<sup>1</sup> However, Colorado exempts from sales tax components used in the production of alternating current electricity from a renewable energy source.<sup>2</sup>

"Renewable energy" means useful electrical, thermal, or mechanical energy converted directly or indirectly from resources of continuous energy flow or that are perpetually replenished and whose utilization is sustainable indefinitely. The term includes, without limitation, sunlight, the wind, geothermal energy, hydrodynamic forces, and organic matter available on a renewable basis such as forest residues, agricultural crops and wastes, wood and wood wastes, animal wastes, livestock operation residue, aquatic plants, and municipal wastes.<sup>3</sup>

The definition of "renewable energy" does not include burning of natural gas. Natural gas is not perpetually replenished and the use of the natural gas is not sustainable indefinitely because its supply is limited. The fact that a combined cycle is able to capture some of the thermal heat from the combustion of natural gas does not, itself, make it a renewable energy source.

Company also asks whether the tanks Company sells for the combined cycle system qualify for the manufacturing machinery exemption. The *Public Service Company of Colorado v Department of Revenue of the State of Colorado, No. 10CA1026*, in which the Colorado Court of Appeals concluded that the sale of electricity is tangible personal property and equipment used to generate the electricity is exempt under the manufacturing machinery exemption. The court of appeals decision was appealed to the Colorado Supreme Court where it is pending. The Department is unable to provide an answer as to whether the

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<sup>1</sup> §39-26-104(1)(a), C.R.S. You can view statutes on the Department's website at [www.colorado.gov/revenue/tax](http://www.colorado.gov/revenue/tax) > tax library > statutes.

<sup>2</sup> §39-26-724, C.R.S.

<sup>3</sup> §40-1-102 (11), C.R.S.

generation of electricity is manufacturing until the Colorado Supreme Court has made a final decision.

### **Miscellaneous**

This letter represents the good faith opinion of Department personnel who are knowledgeable on state taxes issues. However, the Department does not make a specific determination here on any of the issues raised and the Department is not bound by this general information letter.

The Department administers state and state-administered local sales and use taxes. This letter does not address sales and use taxes administered by home-rule cities and home-rule counties. You may wish to consult with local governments which administer their own sales or use taxes about the applicability of those taxes. Visit our web site at [www.colorado.gov/revenue/tax](http://www.colorado.gov/revenue/tax) for more information about state and local sales taxes.

Enclosed is a redacted version of this letter. Pursuant to statute and regulation, this redacted letter will be made public within 60 days of the date of this letter. Please let me know in writing within that 60 day period whether you have any suggestions or concerns about this redacted letter.

Sincerely,

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