PRIVATE TAXPAYER RULING LR17-010

Douglas A. Ducey
Governor

David Briant
Director

April 28, 2017

Thank you for your letter dated December 8, 2016, requesting private taxpayer rulings ("PTR") on behalf of your client, *** and its wholly owned special purposes entities ("Taxpayer"). Specifically, you requested the rulings for a determination regarding what portion of income derived by Taxpayer from the development of solar power plants for certain projects is deductible from its tax base. For purposes of convenience, the Department has consolidated the rulings and issues two rulings with respect thereto. This ruling relates to the ***** Solar Project**.

Pursuant to Arizona Revised Statutes (A.R.S.) § 42-2101, the Department may issue private taxpayer rulings to taxpayers and potential taxpayers on request.

ISSUES:

To determine what portion of Taxpayer's gross proceeds of sales or gross income derived from the development of solar energy plants is deductible, the following issues must be examined:

1. Whether the mounting and module system and the electrical collection system include machinery and equipment used directly in producing electrical power.
2. Whether the substation and gen-tie systems include machinery and equipment used directly in producing or transmitting electrical power.
3. Whether the battery energy storage system ("BESS") includes machinery and equipment used directly in producing or transmitting electrical power.
4. Whether the exempt machinery or equipment also have independent functional utility ("IFU") and qualify for the exemption under A.R.S. § 42-5075(B)(7).

RULING:

The Department Rules as follows:

Pursuant to A.R.S. § 42-5061(B)(4),[1] Taxpayer may *not* purchase certain machinery and equipment tax exempt; additionally pursuant to A.R.S. § 42-5075(B)(8)(b), Taxpayer may

[1] A.R.S. § 42-5061(B)(4) provides an exemption for machinery, equipment or transmission lines used directly in producing or transmitting electrical power, but *not* distribution. Arizona Administrative Code ("A.A.C.") R15-5-128 provides that the machinery and

not deduct from its tax base the income it receives to cover the purchase of such exempt machinery and equipment as detailed below. Taxpayer may also *not* deduct gross income derived from a contract for the installation of exempt machinery under 42-5075(B)(7) as detailed below.

1. In this case, the mounting and module system and electrical collection system constitute the solar electrical generation plant, as that is the part of the system that is essential for electrical power generation. However, the electrical generation only has the potential to produce 12kV. As a result, none of machinery and equipment used in the mounting, module and collection systems constitute machinery and equipment used directly in producing electrical power for purposes of A.R.S. § 42-5061(B)(4).
2. The *** solar plant power is connected to and transfers power to the *** substation. However, it only has the capacity to produce 12kV. Because the voltage capacity of the *** project is 12kV and does not change because it does not have a substation attached to it, the gen-tie system would not be part of a transmission system since it does not meet the 34.5kV threshold. It is presumptively categorized as a distribution system.
3. The BESS does not produce electrical power, and it does not qualify as a transmission system under A.A.C. R15-5-128(C) because it does not change the voltage of the power and it does not augment, integrate or tie together the sources of power supply since the power plant may operate without it. It stores electricity generated by the solar power plant so that it can be released to the grid at a later, scheduled time. Therefore, it is not used directly in producing or transmitting electricity.
4. None of the systems installed as part of the *** Project qualify for the exemption under A.R.S. § 42-5061(B)(4) and therefore none of the systems could be considered as having IFU.

SUMMARY OF FACTS:

The following is a summary of the relevant facts based on your letter dated December 8, 2016, and subsequent correspondence with the Department dated January 27, 2017:

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equipment used to generate electricity may be considered part of a transmission or distribution system. Generally, systems that generate up to 34,500 volts (34.5kV) are considered part of a distribution system,[1] and systems that generate more than 34,500 volts (34.5kV) may be either a distribution or transmission system depending on the use of equipment. The Department has interpreted this to mean that a generation system must generate at least 34.5kV to qualify for the exemption.

Taxpayer is a Delaware LLC registered to do business in Arizona. It provides engineering, procurement and construction ("EPC") services to customers. It has entered into the following EPC agreement with the following wholly owned special purpose entity to develop a solar electric power generation facility as detailed:

Illustration 1

Project	*Entity*	*Power Purchase Agreement*	*Anticipated start date*	*Anticipated completion date*	*Potential voltage*	*County*
***	***	N/A	***	***	12.47 kV	***

The project will not be located within any incorporated Arizona city or town. The location site is leased to ***. Taxpayer will provide engineering services, procure equipment and construct the solar power plant.

Solar power plants are large assemblies of photovoltaic ("PV") modules that are electrically connected to transmit electricity to the utility grid. The PV modules produce energy when exposed to sunlight. Regardless of a solar plant's configuration, every plant has certain common components. A brief summary:

- PV modules are installed on mounting systems which are repeated to form *arrays*. Mounting systems may be either fixed (non-rotating) or tracking (rotating to the sun).

- PV modules generate direct current ("DC") electricity and are electrically connected together into units known as *strings.* The strings are electrically connected by various methods to boxes within the arrays, and the arrays may be connected to a DC collection system or directly to an inverter.

- A DC collection system collects the electricity generated by the arrays and transmits it to inverters for conversion from DC power to alternating current ("AC") power. DC collection systems may be underground or aboveground.

- Collection and transmission systems may have conductors installed aboveground or underground and may include other components such as switchgear, combiner boxes and sectionalizing cabinets.

- Substations that have transformers increase or "step up" the voltage of the electricity for more efficient collection or to match the voltage of the transmission system for

interconnection to the grid (from lower to higher voltages). Not all power plants have substations.

- Generation interconnection tie lines ("gen-tie") deliver energy from the substation to the grid at the Point of Interconnection ("POI").

- PV power plant control ("PPC") equipment is typically installed in temperature controlled enclosures near the substation to operate the facility safely.

A solar power plant may include a BESS as part of its configuration. When included, the plant is referred to as a photovoltaic plus storage ("PVS") plant. The BESS utilizes batteries to store the solar generated energy until it is released to the grid at a later time. BESS may be connected to solar plants using either AC-coupled or DC-coupled configuration. Batteries and control equipment are typically installed in temperature-controlled enclosures. The need for a BESS to be included in a solar power plant will depend on a customer's power purchase agreement ("PPA"). If the PPA requires Taxpayer to provide energy on a scheduled basis outside of typical solar hours, then the BESS is required so that the power delivery can be controlled.

The solar power plant involves the furnishing and installation of certain machinery and equipment, as well as the construction of related access and support facilities. *Installation* of the *** Project comprises the following steps:

- Site preparation prior to installation of the plant.
- Mounting system and module installation:
    - Driving steel posts into the ground (for both tracker and fixed mounting systems) or, if not supported by the topography, using an embedded foundation to support the posts. Depending on the mounting system required either a tilt bracket or a bearing and torque tube is installed. Steel table frames are bolted to the bracket or torque tube and then the PV modules are mechanically fastened to the table frames or the PV modules may include a frame which can be directly fastened to the mounting system.
- Electrical collection system installation:
    - The DC collection system which includes combiner boxes, converters and other equipment may be mounted on posts, concrete pads or vaults.
    - The AC collection system which includes conductors installed either overhead or underground, switchgear, sectionalizing cabinet or combiner boxes are installed on concrete foundations or vaults.

        - For both the AC and DC collection systems, conduit may be installed with cabling for protection. Cabling may be buried underground and if cabling transitions overhead, this is usually done via a riser pole embedded in the ground or on a concrete foundation.
    - Power Conversion Station ("PCS") equipment which includes inverters, transformers and monitoring equipment is typically installed on a pre-cast concrete vault.
    - Meteorological stations are installed either on posts or on towers which have concrete foundations that may extend to a depth of 4 feet depending on conditions.
    - Fiber optic communications lines are also installed.
- Gen-tie installation:
    - Includes construction of transmission lines and engineered support structures designed to comply with requirements for transmission lines.
- BESS Installation:
    - Includes battery racks, batteries, power conversion system including bi-directional inverters and transformers and a controls platform.
    - Equipment is housed in one or more insulated steel enclosures set on concrete pads or vaults and may be separately fenced.
- Other construction:
    - Construction of a perimeter and access roads, security fencing, lighting, operations and management facilities, storm water management facilities, water and wastewater systems, communications infrastructure.

The anticipated useful life of the solar equipment is 30 years with a possible repowering that could extend the useful life to 50 years. At the end of the useful life, the property owner could ask Taxpayer to decommission the site and remove the solar arrays and facilities. After removal, the PV modules may be returned to the manufacturer for recycling.

Taxpayer is not requesting a ruling on the taxability of site preparation, other construction or decommissioning contracting work.

DISCUSSION AND LEGAL ANALYSIS:

A.R.S. § 42-5075 imposes TPT on "the business of prime contracting." Fundamentally, prime contracting TPT can be understood as a tax on service activities. The tax base for the prime contracting classification is sixty-five percent of a prime contractor's gross receipts derived from the business. See A.R.S. § 42-5075(B). The tax base for TPT generally includes gross sales without any deductions for any business expense. Any

deductions, exemptions, or exclusions from TPT must be specifically provided for in statute and they are unique to each classification, so they cannot simply be read into another tax classification.

The term “contracting” means “engaging in business as a contractor.” A.R.S. § 42 5075(R)(3) provides that a “contractor" is synonymous with the term "builder" and means any person or organization that undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does personally or by or through others, modify any building. Under A.R.S. § 42-5075(R)(6) "modification" means construction, grading and leveling ground, wreckage or demolition. Under A.R.S. § 42-5075(R)(7), "modify" means to make a modification or cause a modification to be made. In general, modification is considered ground up construction work. Taxpayer is in the contracting business; it provides, in part, construction services for its customers. In constructing solar development projects, Taxpayer is doing contracting work and all its income derived from that activity is taxable unless a statutory deduction or exemption applies.

A.R.S. § 42-5075(B), which details deductions from the prime contracting base, allows the income attributable to the *cost* of certain tangible personal property purchased in connection with prime contracting projects, and in some cases, *income* from certain contracting projects, to be deducted from the prime contracting tax base.

A.R.S. § 42-5075(B) provides a deduction from the tax base for the gross income or gross proceeds attributable to the purchase of machinery, equipment or other property that is exempt from the retail tax base[2] under A.R.S. § 42-5061(B).

A.R.S. § 42-5061(B)(4) provides an exemption for machinery, equipment or transmission lines used directly in producing or transmitting electrical power, but *not* distribution. Arizona Administrative Code (“A.A.C.”) R15-5-128 provides that the machinery and equipment used to generate electricity may be considered part of a transmission or distribution system. Generally, systems that generate up to 34,500 volts (34.5kV) are considered part of a distribution system,[3] and systems that generate more than 34,500 volts (34.5kV) may be either a distribution or transmission system depending on the use of equipment.[4]

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[2] A.R.S. § 42 5061 imposes the TPT on the business of selling tangible personal property at retail. "Selling at retail" is defined by A.R.S. § 42 5061(V)(3) as a sale for any purpose other than for resale in the regular course of business. The tax base is the gross proceeds of sales or gross income derived from the business.

[3] See A.A.C. R15-5-128(B).

[4] See A.A.C. R15-5-128(C).

Taxpayer will be constructing solar power plants as described and is seeking a ruling with respect to the following activities:

- Mounting system and Module System and its installation;
- Electrical Collection System and its installation;
- Gen-tie system and its installation;
- Battery Energy Storage System and its installation.

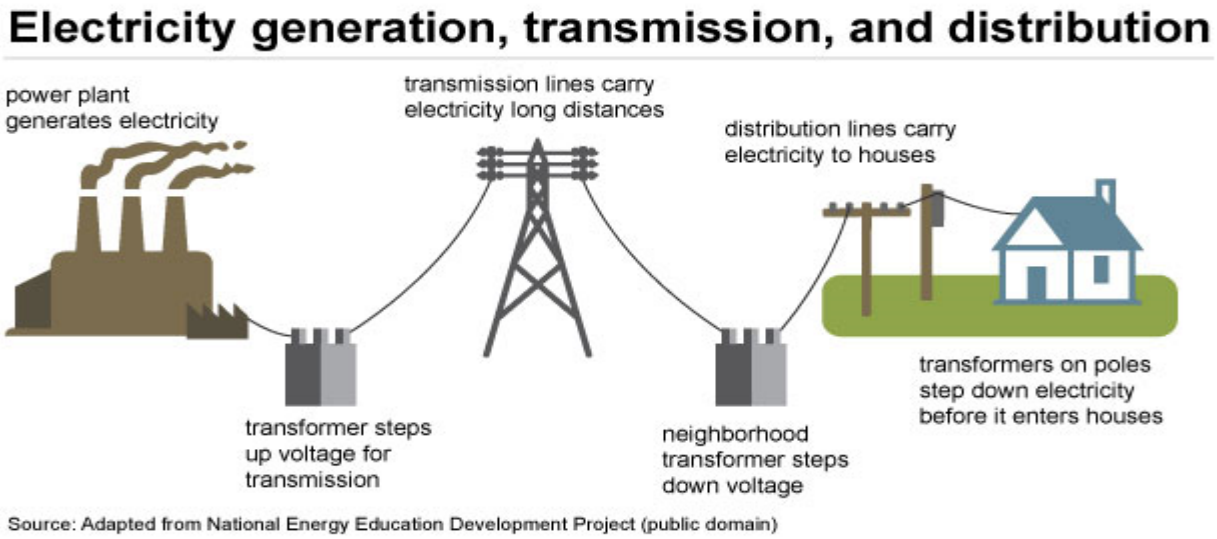
Whether Taxpayer will be entitled to any deduction from its tax base will depend primarily on whether any of the machinery and equipment comprising the systems described above is used directly in producing or transmitting electricity. If the machinery and equipment are used directly in producing or transmitting electricity, then Taxpayer may purchase such machinery tax exempt under A.R.S. § 42-5061(B)(4) and may deduct from its tax base the income it receives to cover the purchase of such machinery and equipment under A.R.S. § 42-5075(B)(8)(b). Additionally, Taxpayer's gross proceeds of sale or gross income derived from the installation of those systems may be deductible under A.R.S. § 42-5075(B)(7) if those systems are, in fact, exempt *and* have IFU.

As shown in Illustration 2[5] below, there are generally three stages in the production of electrical power: production or generation, transmission and distribution.[6]

[5] https://www.eia.gov/Energyexplained/index.cfm?page=electricity_delivery.

[6] Importantly, it should be noted that Private Taxpayer Ruling ("PTR") LR12-001 on which Taxpayer relies, also determined that that there are three stages in producing electrical power. However, the three stages apply to all instances of electrical power generation systems regardless of how such electrical power is produced.

Illustration 2



Because there are three separate stages, Taxpayer's activities must first be divided to determine whether they fall into electrical power generation, transmission or distribution. From the information provided, the solar plant's generation system is made up of the following parts:

- The PV modules which produce energy (DC energy) when exposed to the sunlight,
- The mounting system on which the PV modules are installed,
- A DC collection system which collects the electricity and transmits it to inverters to convert the DC energy into AC energy.
- An optional substation which "steps" up the voltage.
- An optional BESS which is used to store the electricity generated until it is ready to be released to the grid.

A substation may or may not be required by a power plant. Taxpayer indicated that whether or not a substation is required depends on the interconnection voltage of the project. Substations are normally required to "step up" power from a lower voltage to a higher voltage. If the voltage of the interconnection is higher than the voltage at which power is generated, then a substation is needed. Thus, a substation is not necessary in every instance and would not be included as an essential part of power generation.

Similarly, Taxpayer indicated that the need for integrating a BESS with a solar power plant will depend on the customer's power purchase agreement. If it requires Taxpayer to provide energy on a scheduled basis outside of typical solar hours, including night time hours, then the BESS is required so that Taxpayer can control the power delivery pursuant to the terms of the agreement as the delivery schedule cannot be controlled without the BESS. Thus, a BESS is not necessary in every instance.

As such, the mounting system and module installation and the electrical system will be considered together and the substation and gen-tie system will be considered separately. Likewise, the BESS will be considered separately.

1. Whether mounting system, module installation and electrical collection system installation includes machinery and equipment used directly in producing electrical power?[7]

Neither the statute nor A.A.C. R15-5-128 provides any details about what is considered an electrical production system for the purposes of clarifying the A.R.S. § 42-5061(B)(4) deduction. A.R.S. § 42-5061(B)(4) itself specifically provides a deduction for:

> Machinery, equipment or transmission lines used directly in producing or transmitting electrical power, but not including distribution. Transformers and control equipment used at transmission substation sites constitute equipment used in producing or transmitting electrical power.

This provision is relevant even though Taxpayer is conducting business under the contracting classification because A.R.S. § 42-5075(B)(8)(b) provides that a Taxpayer may deduct income attributable to the purchase of machinery and equipment that is exempt under A.R.S. § 42-5061(B).

When interpreting a statute, the language of the statute is the "best and most reliable index" of its meaning.[8] In addition, unless the legislature clearly expresses an intent to give a term a special meaning, we give the words used in statutes their plain and ordinary meaning.[9] In determining the ordinary meaning of a word, we may refer to an established and widely used dictionary.[10]

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[7] Importantly, PTR LR12-001 determined that the end of the electrical production stage signaled the beginning of the transmission stage. That ruling determined that the power generation end point was when the voltage increased to transmission levels (34.5kV). While that may have applied in that specific instance for determining what was included in the solar device in question, using such a method in all instances would lead to absurd results as it assumes that power is always "stepped up" to transmission levels after it is generated. In cases where power is not "stepped up" until after several substations or where the power generation is at a distribution substation, the analysis in PTR LR12-001 would include areas of a power system that should not be included in production and transmission for purposes of the A.R.S. § 42-5061(B)(4) deduction.

[8] *Janson v. Christensen*, 167 Ariz. 470, 471, 808 P.2d 1222, 1223 (1991).

[9] See *State v. Korzep*, 165 Ariz. 490, 493, 799 P.2d 831, 834 (1990).

[10] See *State v. Wise*, 137 Ariz. 468, 470 n. 3, 671 P.2d 909, 911 n. 3 (1983); *State v. Mahaney*, 975 P.2d 156, 158, 193 Ariz. 566, 568 (Ariz. App., 1999).

No specific definition is provided in the statute or rules for what is mean by "producing." However, a look at the dictionary meaning of "producing" shows that it means " to cause to have existence or to happen, to make, to bring about, to give being, form, or shape to."[11]

According to the International Labor Organization's ("ILO") Encyclopedia:

> Most electricity is generated at 13,200 to 24,000 volts [13.2kV to 24kV]…. When electricity comes out of a generating station, the transmission substation… "steps up" the voltages to the range of 138,000 – 765,000 volts [138kV to 765kV]… The distribution system connects the transmission system to the customer's equipment… The distribution substation reduces the transmitted electrical voltage to 2,400 – 19,920 volts [2.4kV to 19.92 kV]…[12]

Similarly, on the US Department of Labor's Occupational Safety and Health Administration ("OSHA") website the following information can be found:[13]

- Transmission system voltages are typically from 69kV up to 765kV.
- Distribution systems typically operate in a voltage range of 4kV to 46kV. However, distribution also includes secondary voltage systems, which operate at less than 1,000V (1kV), that typically connect to electric customers' homes and offices.
- Sub-transmission lines carry voltages reduced from the major transmission line system. Typically, 34.5kV to 69kV, this power is sent to regional distribution substations.

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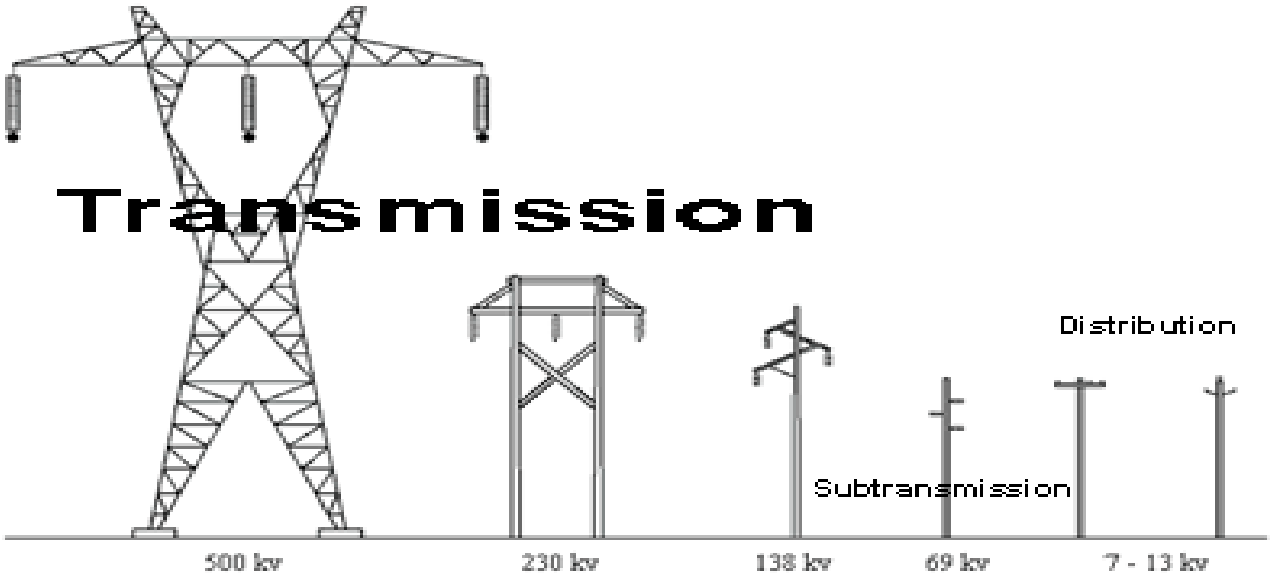
[11] "Produce." Merriam-Webster.com. Merriam-Webster, n.d. Web. 2 Mar. 2017.

[12] See http://www.iloencyclopaedia.org/component/k2/item/616-electric-power-generation-transmission-and-distribution-safety-a-us-example.

[13] https://www.osha.gov/SLTC/etools/electric_power/transmission_dist.html.

Illustration 3[14]



What is clear from the above, is that the *transmission* of electrical power takes place at higher voltages and the *distribution* of electrical power takes place at lower voltages. In addition, electrical *generation* referred to by the organizations above are in relation to commercial generation. However, technically electrical generation may take place at any level voltage. For example, an individual could use a personal generator to produce electricity to run a home or business (e.g. voltage of 1kV) or a facility may produce power only for distribution purposes (e.g. voltage generation of less than 34.5kV) or for transmission purposes (voltage generation of more than 34.5kV).

The other point is that there might be some overlap between transmission and distribution voltages as may be seen above, but such an overlap is seen in a small range. For example, the ILO describes distribution ranges from 2.4 kV to 19.92 kV and OSHA describes distribution as taking place from 4kV to 46 kV and transmission from 69kV up to 765kV. Because A.R.S. § 42-5061(B)(4) elects to provide a deduction for producing or transmitting electrical power, but *not* for distributing electrical power, the Department takes the view that the deduction under A.R.S. § 42-5061(B)(4) relates only to higher levels of electrical power *generated* (i.e. commercial generation of electrical power) for transmission and not electrical power generated for distribution or other purposes. The deduction therefore applies to systems that have the capacity to generate electricity for transmission purposes, but *not* to systems that generate electricity for distribution or other purposes (i.e.

[14] https://www.osha.gov/SLTC/etools/electric_power/illustrated_glossary/transmission_lines.html.

less than 34.5kV).[15] This interpretation is supported by A.A.C. R15-5-128 which presumptively classifies machinery and equipment used to facilitate the *production* of voltages up to 34.5kV as part of a distribution system and those used to facilitate the *production* of more than 34.5kV as part of a distribution or transmission system depending on how the machinery and equipment are used.

In this case, the mounting and module system and the electrical collection system constitute the solar electrical generation plant. The PV modules which are mounted on the mounting system generates electricity when exposed to sunlight and the collection system collects all the electrical power generated and converts it from DC to AC current. Those systems together generate electricity. However, in this case, the *** Project electrical generation plant has the potential of producing only 12.47kV[16] and there is no substation associated with the plant. As a result, none of the machinery and equipment used in the installation of the mounting, module and collection system constitute machinery and equipment used directly in producing electrical power for purposes of qualifying for the deduction under A.R.S. § 42-5061(B)(4) and to A.R.S. § 42-5075(B)(8)(b).

2. Whether gen-tie installation includes machinery and equipment used directly in transmitting or distributing electrical power?

In this case, the *** Project will not have a substation but it will have gen-tie components. Listed below are the gen-tie details:

[15] This interpretation is also in keeping with the historical context of the statute. A.R.S. § 42-5061(B)(4) was originally enacted as A.R.S. § 42-1310.01(C)(4) in 1988 by HB 2001 Section 4 (Chapter 161, 38th Legislature, Second Regular Session). A.R.S. § 42-5061(M) and corresponding A.R.S. § 42-5075(B)(13) providing deductions for solar energy devices became effective in 1996 and permitted the deduction for contracting purposes until December 31, 2016 (the retail deduction remains valid). Both the current A.R.S. § 42-5061(B)(4) and the solar energy device section provided deductions for electricity generation. However, because A.R.S. § 42-5061(B)(4) was enacted prior to the solar energy device deductions, the Department believes that A.R.S. § 42-5061(B)(4) could not have included all solar energy devices that generate electricity as that would have made A.R.S. § 42-5061(M) and A.R.S. § 42-5075(B)(13) superfluous. See *State ex rel. Ariz. Dept. of Revenue v. Capitol Castings, Inc.,* 207 Ariz. 445, 447, 88 P.3d 159, 161 (2004)(When interpreting statutes, a court strives to discern and give effect to legislative intent, construing the statute as a whole, and considering its context, language, subject matter, historical background, effects and consequences, as well as its spirit and purpose).

[16] See Illustration 1 above.

Project	*High Voltage Transformer needed?*	*Substation Capacity*	*Gen-tie Details*
***	No	N/A	1-mile 12kV gen-tie running from on-site PVIS to the *** substation.

The question here is whether the gen-tie system is part of a transmission or distribution system. The gen-tie system comprises tie lines that deliver energy from the substation to the grid at the point of interconnection.

As noted, A.A.C. R15-5-128 generally categorizes systems that generate up to 34.5kV as part of a distribution system.[17] Systems that generate more than 34.5kV may be either a distribution or transmission system depending on the use of equipment.

A.A.C. R15-5-128(C)(1) provides that a "transmission system" comprises:

a. All land, conversion structures, and equipment employed at a primary source of supply[18] *to change the voltage or frequency of electricity* for the purpose of its more efficient or convenient transmission;

b. All land, structures, lines, switching and conversion stations, high tension apparatus and their control and protective equipment *between a generating or receiving point and the entrance to a distribution center or wholesale point*; and

c. All lines and equipment whose primary purpose is to augment, integrate, or tie together the sources of power supply.

A.A.C. R15-5-128(C)(2) provides that a "distribution system" means all land, structures, conversion equipment, lines, line transformers, and other facilities employed *between the primary source of supply and of delivery to customers*, which are not includible in a transmission system whether or not such land, structures, and facilities are operated as part of a transmission system or as part of a distribution system. It also provides that stations which change electricity from transmission to distribution voltage shall be classified as distribution stations.

In this case, there is no substation, so there is no increase in voltage. Rather, it appears that the voltage produced by the *** solar plant of 12kV remains the same and is transferred from the plant to the *** substation. Because the voltage capacity of the ***

[17] See A.A.C. R15-5-128(B).

[18] A.A.C. R15-5-128(C)(3) provides that "primary source of supply" means a generating station or point of receipt in the case of purchased power.

project is 12kV and does not change, the gen-tie system would not be part of a transmission system since it does not meet the 34.5kV threshold. It is presumptively categorized as a distribution system and would not be exempt for purposes of A.R.S. § 42-5061(B)(4). Therefore, machinery and equipment used in the gen-tie system would not be deductible from Taxpayer's tax base pursuant to A.R.S. § 42-5075(B)(8) and Taxpayer could not purchase them exempt from TPT pursuant to A.R.S. § 42-5061(B)(4).

3. Whether the BESS installation includes machinery and equipment used directly in producing, transmitting or distributing electrical power?

As described, the BESS utilizes batteries to store the solar generated energy until it is released to the grid at a later time. The need for a BESS to be included in the configuration of a solar power plant will depend on a customer's power purchase agreement ("PPA"). If the PPA requires Taxpayer to provide energy on a scheduled basis outside of typical solar hours, then the BESS is required so that the power delivery can be controlled. Thus, a BESS does not produce electrical power, and it does not qualify as a transmission system under A.A.C. R15-5-128(C). It stores electricity generated by the solar power plant so that it can be released to the grid at a later, scheduled time. It is not an essential part of the generation, transmission or distribution system since its purpose is to store and deliver electricity on a set schedule. As such, a solar power plant could be operated without one. Therefore, it is not part of a system that produces or transmits electricity[19] and does not qualify for a deduction from Taxpayer's tax base.

4. Whether exempt systems also have independent functional utility and are exempt under A.R.S. § 42-5075(B)(7)?

A.R.S. § 42-5075(B)(7)(a) provides a very broad deduction from the contracting tax base for gross income or the gross proceeds of sale from income derived from a contract for the installation, assembly, repair or maintenance of machinery, equipment or other tangible personal property that is deducted from the tax base under A.R.S. § 42-5061(B) *and* that has IFU. The deduction includes gross income from:

> (i) Any activity performed on machinery, equipment or other tangible personal property with IFU.

[19] Although the definition of a "solar energy device" includes solar energy systems that *may* also have the capability of storing solar energy for future use, for purposes of the deduction under A.R.S. § 42-5061(B)(4) the only relevant question is whether the machinery, equipment etc. is used *directly* in producing or transmitting electrical power. This ruling is strictly limited to the interpretation of A.R.S. § 42-5061(B)(4) and shall not be construed as the Department's interpretation of a solar energy device or any other similar term in relation to any other taxing statute.

(ii) Any activity performed on any tangible personal property relating to machinery, equipment or other tangible personal property with IFU in furtherance of assembling, connecting or stabilizing it.
(iii) Any activity that is related to the activities described in items (i) and (ii) above, including inspecting the installation of or testing the machinery, equipment or other tangible personal property.

IFU is defined under A.R.S. § 42-5075(B)(7)(d) as "machinery, equipment or other tangible personal property that can independently perform its function without attachment to real property." However, it does not preclude attachment for the purposes of assembling, connecting to other tangible personal property or connecting to part of a system, or for stabilizing purposes."[20] A.R.S. § 42-5075(B)(7)(d) also limits the type of attachments for stabilizing purposes specifically to *nonpermanent* attachments. In addition, A.R.S. § 42-5075(B)(7)(b) provides that the deduction *does not include* the gross proceeds of sale or gross income from the portion of any contracting activity that consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance or removal of the deductible property.

As discussed above, none of the systems installed as part of the *** Project qualify for the exemption under A.R.S. § 42-5061(B)(4) and therefore none of the systems could be considered as having IFU.

This response is a private taxpayer ruling and the determinations herein are based solely on the facts provided in your request. Therefore, the conclusions in this private taxpayer ruling do not extend beyond the facts presented in your correspondence. The determinations are subject to change should the facts prove to be different on audit. If it is determined that undisclosed facts were substantial or material to the department's making of an accurate determination, this private taxpayer ruling shall be null and void. Further, the determination is subject to future change depending on changes in statutes, administrative rules, case law or notification of a different department position.

The determinations in this private taxpayer ruling are only applicable to the taxpayer requesting the ruling and may not be relied upon, cited nor introduced into evidence in any proceeding by a taxpayer other than the taxpayer who has received the private taxpayer ruling. In addition, this private taxpayer ruling only applies to transactions that occur or tax liabilities that accrue from and after the date the taxpayer receives the ruling.

[20] *Id.*