Kentucky DOR Provides Guidance for Taxation of Solar Energy Equipment

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While the development of solar and alternative energy continues to grow in the United States, with its temperate climate and accessibility to energy grids, many alternative energy developers have turned their attention to the Commonwealth as a potential location for this industry. However, many Kentucky statutes and regulations related to manufacturing and solar energy do not provide clear guidance as to the tax treatment of the necessary equipment. In its first published Technical Advice Memorandum (TAM) since August 2020, the Kentucky Department of Revenue (Department) has issued additional guidance as to the state tax treatment of solar energy development equipment.

In particular, the issue addressed in the TAM is how does Kentucky classify, assess, and tax various items of equipment used in the process of developing solar energy, for both ad valorem property tax and sales and use tax purposes. For both property tax and sales and use tax purposes, the Department made clear that solar energy development is considered manufacturing, and thus, many items of equipment used to manufacture solar energy can qualify for tax exemptions afforded to other manufacturers in the Commonwealth.

After defining when the manufacturing process begins and ends in the development of solar energy, the Department also provided various examples of equipment that would or would not qualify for tax exemptions for manufacturing equipment. For example, items such as converters, inverters, and solar panels are considered exempt for both property and sales and use tax purposes. Other equipment, however, such as batteries and various monitoring systems, may be taxable for property but exempt from sales and use tax, or vice versa.

Additionally, the Department provided clarity as to the property tax assessment method of solar equipment indicating at what point the solar development facility is no longer taxed as typical real or tangible property and becomes a public service corporation in which its property is centrally assessed at unit value by the

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Department instead of the county property valuation administrator (PVA) where the property is located.

Lastly, the TAM indicates that taxpayers that generate solar power may be eligible for direct pay authorization (DPA) treatment for sales and use tax purposes. It indicates that the solar taxpayers would need to utilize the typical application process provided in 103 KAR 31:030 to initiate this service.

We will continue to monitor the development of guidance provided by the Kentucky Department of Revenue in relation to alternative energy developments in the Commonwealth. For more information on tax developments in Kentucky, visit Frost Brown Todd's Tax Law Defined Blog.

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