



STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE

300A Outlet Pointe Blvd., Columbia, South Carolina 29210  
P.O. Box 12265, Columbia, South Carolina 29211

SC REVENUE RULING #15-14

**SUBJECT:** Solar Energy Facility – Sale of Electricity  
(Sales and Use Tax and Electric Power Tax)

**REFERENCES:** S.C. Code Ann. Section 12-36-910 (2014)  
S.C. Code Ann. Section 12-36-1310 (2014)  
S.C. Code Ann. Section 12-36-60 (2014)  
S.C. Code Ann. Section 12-36-110 (2014)  
S.C. Code Ann. Section 12-36-120 (2014)  
S.C. Code Ann. Section 12-23-10 (2014)

**AUTHORITY:** S.C. Code Ann. Section 12-4-320 (2014)  
S.C. Code Ann. Section 1-23-10(4) (2005)  
SC Revenue Procedure #09-3

**SCOPE:** The purpose of a Revenue Ruling is to provide guidance to the public. It is an advisory opinion issued to apply principles of tax law to a set of facts or a general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

**Overview**

The building of utility size solar energy facilities is on the rise in the United States and the Southeast. These facilities can involve substantial acres of land, and the cost of construction can exceed \$100 million. These utility size solar energy facilities sell electricity exclusively to electric utilities or electric cooperatives for resale to customers.

This advisory opinion addresses how South Carolina's sales and use tax and electric power tax apply to the electricity generated and sold by utility size solar energy facilities.

**Questions**

1. Is the sale of electricity by a utility size solar energy generating facility to electric utilities or electric cooperatives for resale subject to the South Carolina sales and use tax?
2. Is the sale of electricity by a utility size solar energy generating facility to electric utilities or electric cooperatives for resale subject to the South Carolina electric power tax?

## **Conclusions**

1. The sale of electricity by a utility size solar energy generating facility to electric utilities or electric cooperatives for resale is a wholesale sale and, therefore, is not subject to the South Carolina sales and use tax.
2. The sale of electricity by a utility size solar energy generating facility to electric utilities or electric cooperatives for resale is subject to the South Carolina electric power tax, provided that the sale is not otherwise exempt.

## **Discussion**

### 1. Sales and Use Tax

Code Section 12-36-910 imposes a sales tax on the gross proceeds of sales on every person engaged or continuing within this State in the business of selling tangible personal property at retail. Code Section 12-36-1310 imposes a use tax on the use, storage, or consumption of tangible personal property purchased at retail for storage, use, or consumption in South Carolina, regardless of whether the retailer is engaged in business in South Carolina.

Code Section 12-36-60 defines the term “tangible personal property” and states, in part:

“Tangible personal property” means personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses. It also includes ... sales of electricity ....

Code Section 12-36-110 defines the terms “retail sale” and “sale at retail” to mean, in part:

... all sales of tangible personal property except those defined as wholesale sales. The quantity or sales price of goods sold is immaterial in determining if a sale is at retail.

Code Section 12-36-120 defines the terms “wholesale sale” and “sale at wholesale” to mean, in part, a sale of:

(1) tangible personal property to licensed retail merchants, jobbers, dealers, or wholesalers for resale, and do not include sales to users or consumers not for resale[.]

Based on the above, the sale of electricity by a utility size solar energy generating facility sold to electric utilities or electric cooperatives for resale is a wholesale sale and, therefore, is not subject to South Carolina sales and use tax.

2. Electric Power Tax

Code Section 12-23-10 imposes an electric power tax and provides, in part:

In addition to all other taxes of every kind imposed by law:

(1) every person, except the State, a county, a municipality, or an agency or political subdivision of it, engaged in the business of selling electric power for resale within the State is subject to the payment of an excise, license, or privilege tax of five-tenths of one mill upon each kilowatt hour of electric power sold for resale within the State, except upon such electric power purchased from a vendor, however remote, previously taxed under this subsection. ...

(Emphasis added.)

Therefore, the sale of electricity by a utility size solar energy generating facility to electric utilities or electric cooperatives for resale is subject to the South Carolina electric power tax, provided that the sale is not otherwise exempt.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Rick Reames III

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Rick Reames III, Director

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Columbia, South Carolina