**Private Letter Ruling**

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| **Ruling Number:** | **P-2006-013** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Kansas turbine wind farm.** |
| **Keywords:** |  |
| **Approval Date:** | **09/19/2006** |

**Body:**

Office of Policy and Research

September 19, 2006

XXXX
XXXX

Re: Private Letter Ruling Request

Dear XXXX:

You have requested a private letter ruling whether a Kansas turbine wind farm would be considered a “plant or facility,” for purposes of the manufacturing machinery and equipment sales tax exemption at K.S.A. 2005 Supp. 79-3606(kk), so that purchases of the machinery and equipment that is part of the turbine wind farm, including the wind turbine towers, concrete bases for the towers, cabling between the towers and the substation located within the complex of towers, would qualify for the sales tax exemption.

Kansas sales tax law defines tangible personal property as including electricity but taxes retail sales of electricity as sales of utility services. Compare *K.S.A. 2005 Supp. 79-3602 (pp)* and *K.S.A. 2005 Supp. 79-3606(c)*. K.S.A. 2005 Supp. 79-3606(kk) makes clear that electricity power generation facilities are intended to qualify as manufacturing operations. While electricity generation facilities qualify as manufacturing operations, electricity distribution systems, which consist of transmission lines and substations, do not qualify for exemption. See e.g.*K.S.A. 2005 Supp. 79-3606(kk)(2)(C); K.S.A. 2005 Supp. 79-3606(kk)(2)(D); K.S.A. 2005 Supp. 79-3606(kk)(3); K.S.A. 2005 Supp. 79-3606(kk)(5)(C).* While utility-scale windmill electricity generation is not a typical production-line manufacturing operation, electricity power generation is considered to be a manufacturing operation under the integrated plant exemption. The department has determined that the exemption includes a utility-scale, wind-power electric generation facility, that consists of a network of large windmills, such as what you have described in your letter. The exemption does not extend to smaller wind generators that are used by homes and businesses.

This exemption covers the purchases of the generators, blades, power lines which link the wind mills to the substation, the transformers and other equipment at the substation, the meteorological monitoring equipment, the supervisory control and acquisition system, the support towers, and any optical cable in the supervisory control system. This assumes that the substation is located within the network of windmills, so is owned as and remains part of the “plant or facility,” and is not located at some distance away from that network so that it would become part of the distribution system, which is not exempt under (kk). Repair and replacement parts for exempt equipment are also exempt, as are repair services. Concrete for the support pads can be purchased tax exempt if a joint exemption certificate is completed by the facility's owner and the contractor who is purchasing the concrete.

While the exemption applies, it is not a *carte blanche* exemption. Taxable purchases include purchases of the materials and services used to construct the access and service lanes. Taxable purchases also include purchases of the materials used to construct any building that is located at the facility. While services to construct a new building would qualify for the original construction exemption, the materials used to construct the building are taxable as are any subsequent repairs to an existing building. A building includes such things as lighting, HVAC systems, plumbing, doors, windows, and so forth. When repairs are done to the access lanes, the materials and installation services are taxable whether the lane is new construction or has been in place for some time.

This is a private letter ruling pursuant to Kansas Administrative Regulation 92-19-59. It is based solely on the facts provided in your request. If it is determined that undisclosed facts were material or necessary to an accurate determination by the department, this ruling is null and void. This private letter ruling will be revoked in the future by operation of law without further department action if there is a change in the statutes, administrative regulations, or case law, or a published revenue ruling, that materially affects this ruling.

Very truly yours,

Richard Cram
Director, Office of Policy and Research

**Date Composed: 09/20/2006 Date Modified: 09/20/2006**