



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

GRETCHEN WHITMER
GOVERNOR

RACHAEL EUBANKS
STATE TREASURER

March 26, 2021

[REDACTED]

Dear [REDACTED]:

RE: Request for Technical Advice Letter – Sales/Use Tax
Assets to be purchased under the industrial processing exemption.

Thank you for your letter dated January 4, 2021 seeking a written opinion from the Michigan Department of Treasury (“Department”) on behalf of [REDACTED] (“Company”). You requested a technical advice letter regarding the eligibility, in whole or in part, for an industrial processing exemption for certain tangible personal property as provided for under the General Sales Tax Act, MCL 205.54t and the Use Tax Act, MCL 205.94o. Your request meets the requirements for issuance of a Technical Advice Letter pursuant to Revenue Administrative Bulletin 2016-20.

Facts. The Company is planning and designing [REDACTED] [REDACTED] alternating current photovoltaic solar power plants. [REDACTED] subsidiaries will operate the plants. Equipment used by electricity providers is eligible for an industrial processing exemption, but the equipment must be apportioned¹ between the exempt function of conditioning electricity² and the taxable function of distributing electricity.³

The Company has provided a list of equipment and has proposed a tax-exempt apportionment percentage based on the location of the equipment within the generation, transmission and distribution system. The Company’s proposed percentages are based on the Department’s approved apportionment percentages for electricity and gas providers that were published in Revenue Administrative Bulletin 2018-4.

¹ MCL 205.54t(2); MCL 205.94o(2).

² MCL 205.54t(1); MCL 205.94o(1).

³ MCL 205.94t(6)(b); MCL 205.94o(6)(b).

The Company's field equipment is in the electrical generation portion of the system and is 100% eligible for the industrial processing exemption.

Field Equipment The equipment is used to generate electricity before transmission and distribution.	Company's Proposed Exemption	Treasury Response
Photovoltaic Modules or Panels	100% exempt	100% exempt
Steel Piles support Photovoltaic Modules	100% exempt	100% exempt
Photovoltaic Field Racking Equipment (rotate the modules toward the sun)	100% exempt	100% exempt
Photovoltaic Field Inverter/Transformers (transform DC current to AC and step up the voltage to 34.5 kV)	100% exempt	100% exempt
Combiner system (collect current from modules)	100% exempt	100% exempt

The Company has labeled the substation equipment as "transmission and distribution equipment." To the extent that the substation is part of distribution, the equipment is eligible for a 90% tax exemption. Equipment used for transmission is eligible for a 60% tax exemption. Whether the equipment is used in the transmission phase or the distribution phase depends on its Federal Energy Regulatory Commission (FERC) code.

Transmission and Distribution Equipment – Substation	Company's Proposed Exemption	Treasury Response Based on FERC code
Main Power Transformer (change from medium to high voltage to send to the grid)	90% exempt	60% if transmission 90% if distribution
Substation Control Building (communication and control to the substation)	90% exempt	60% if transmission 90% if distribution
Cap Bank Switcher (conditions power for use on the grid)	90% exempt	60% if transmission 90% if distribution
Capacitor Bank (conditions power for use on the grid)	90% exempt	60% if transmission 90% if distribution
Instrument Transformers (CTs/VTs) (measure the current and voltage)	90% exempt	60% if transmission 90% if distribution
Steel Structures (supports and protects the Substation's equipment)	90% exempt	60% if transmission 90% if distribution See Note.
Emergency Generator (supports Substation Control Room)	90% exempt	60% if transmission 90% if distribution

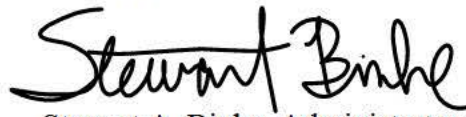
Note: The phrases “Substation Control Building” and “Steel Structures” are assumed to reference tangible personal property not affixed to real property.

The Company has labeled the miscellaneous equipment as “transmission and distribution equipment.” To the extent that the equipment is part of distribution, the equipment is eligible for a 25% tax exemption. Equipment used for transmission is eligible for a 60% tax exemption. Whether the equipment is used in the transmission phase or the distribution phase depends on its Federal Energy Regulatory Commission code.

Transmission and Distribution Equipment – Miscellaneous	Company’s Proposed Exemption	Treasury Response Based on FERC code
Conductors (transmit the power)	25%	60% if transmission 25% if distribution
High Voltage Breakers (protects the HV system against power surges)	25%	60% if transmission 25% if distribution
Medium Voltage Breakers (protects the MV system against power surges)	25%	60% if transmission 25% if distribution
Surge Arresters (protects the system against power surges)	25%	60% if transmission 25% if distribution
HV/MV Disconnect Switches (used to disconnect the system for maintenance and protection)	25%	60% if transmission 25% if distribution

Please contact me if you have any further questions regarding this matter.

Sincerely,



Stewart A. Binke, Administrator
Tax Policy Division



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GRETCHEN WHITMER
GOVERNOR

RACHAEL EUBANKS
STATE TREASURER

November 9, 2021

[REDACTED]

Re: July 15, 2021, Email Request for Additional Guidance Concerning March 26, 2021, Technical Advice Letter (Industrial Processing Exemption for Solar Power Projects)

Dear [REDACTED]:

The Department of Treasury received an email, dated July 15, 2021 (“email request”), from [REDACTED], seeking additional guidance for [REDACTED] (“[REDACTED]”), concerning the application of the industrial processing exemptions under Michigan’s General Sales Tax Act and Use Tax Act to various assets relating to your [REDACTED] solar power projects in Michigan. [REDACTED]

[REDACTED]

The email request submitted “follow-up” questions to supplement a prior request for technical advice to which the Department issued a Technical Advice Letter dated March 26, 2021 (the “TAL”) regarding other assets involved in these projects.

Specifically, the email request seeks the Department’s position concerning the eligibility under the industrial processing exemptions, described above and in the TAL, for the following additional items: “Fencing that surrounds the field equipment” and “MV cables and fiber” that is “used

[REDACTED]

connect field and substation items.” The email asserts that these additional items should be classified as 100% exempt under the industrial processing exemptions.

Because the email request submitted “follow-up” questions to supplement the TAL, this reply incorporates the TAL by reference and is intended to be read with, supplement, and (as applicable) clarify the Department’s position as expressed in the TAL in lieu of the issuance of a second technical advice letter concerning these projects’ assets.

The Department’s supplemental determinations are provided below:

A) Fencing.

The email request explains that this fencing “surrounds the field equipment” and is a “structure” that is “necessary to protect the system and ensure efficient production ...” Because the “field equipment” was described in the TAL as referring to assets that “would be fully utilized in industrial processing / solar electric generating activities,” the email asserts that the fence should be classified as “100% exempt.”

Department’s Response: In general, facts and characterizations presented in a request for a technical advice letter are assumed to be true and the Department relies on that assumption when issuing a technical advice letter. Accordingly, the TAL generally relied on the characterization presented that the “field equipment” is used to generate electricity before transmission and distribution. Although the request asserts that the fencing should be classified as “field equipment,” the appropriate classification of the fencing appears to be that of a fixture to real property. The Department’s Revenue Administrative Bulletin (“RAB”) 2016-4 sets forth how the Department will determine whether property constitutes tangible personal property or a fixture to real estate for sales and use tax purposes. This determination is particularly relevant in the context of the industrial processing exemption because of the exclusion from eligibility for the exemption for property described in subsection 5(a).² The Department’s audit manual characterizes “fencing” as real property which is fully taxable.³ Under the facts presented, the tax treatment described in the audit manual is equally applicable to the fences at issue. Accordingly, the fencing would be 100% taxable as it would not qualify for the industrial processing exemption.

B) MV Cables and Fiber. The email request does not provide detail as to what these items are other than to explain that they “may be used to connect field and substation items.” Despite this explanation, the email request claims that these items are “used at the field level” and should be “exempt at 100%.”

Department’s Response: As an initial matter, the Department assumes that the reference to “MV Cables and Fiber” refers to cables that are “medium voltage” (as described by the

² See MCL 205.54t(5)(a) and MCL 205.94o(5)(a). In this regard, any of the assets described in this reply, or in the original TAL, would be excluded from eligibility for the industrial processing exemption if they fall within either of these subsections.

³ [Industrial Processing Audit Manual \(michigan.gov\)](https://www.michigan.gov/industrial-processing-audit-manual) (page 63).

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November 9, 2021

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U.S. Department of Energy in its July 2015 *Electric Industry Primer*).⁴ Because the email request explains that these cables are “used to connect field and substation items,” and given their medium voltage rating, it appears that these cables are used in relation to the “step up” of voltage which RAB 2018-4 describes as the point at which “transmission” generally begins.⁵ Accordingly, based on the representations contained in the email request, these cables are likely to be eligible for a 60% exemption.

In addition to these additional items, the Department questions whether the Photovoltaic Field Inverter/Transformers which “step up the voltage to 34.5kV” (i.e., medium voltage) are entitled to a 100% exemption as previously stated in the TAL. Upon further review, the Inverter/Transformers appear to be involved in transmission which limits the exemption to 60%. Accordingly, the TAL is amended to reduce the exemption for the Inverter/Transformers from 100% to 60% exempt.

Please contact me if you have any further questions regarding this matter.

Sincerely,

/s/ Stewart Binke

Stewart A. Binke, Administrator
Tax Policy Division

⁴ See <https://www.energy.gov/sites/prod/files/2015/12/f28/united-states-electricity-industry-primer.pdf> (page 15).

⁵ [RAB 2018-4 IP Exemption for Electric and Gas Providers \(michigan.gov\)](#) (page 3).