**Opinion Letter**

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| **Letter Number:** | **O-2016-001** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Solar Power Purchase Agreements** |
| **Keywords:** |  |
| **Effective Date:** | **01/25/2016** |

**Body:**

January 25, 2016

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RE: Your e-mail received on January 19, 2016

Dear XXXX:

Thank you for your recent e-mail. You ask how Kansas sales tax applies to solar-generated electricity that is sold to a Kansas homeowner under solar power purchase agreement that is entered into by the homeowner and an entity other than the Kansas public utility that is authorized by the Kansas Corporation Commission ("KCC") to provide electric service to that homeowner.

A solar power purchase agreement (PPA) is a financing agreement where a developer contracts for the design, permitting, financing, and installation of a solar energy system on a customer’s property at little to no cost. The developer agrees to sell the power generated by the solar installation to the host customer at a fixed rate that is typically lower than the local utility’s retail rate. This lower electricity cost serves to offset the customer’s purchase of electricity from the utility while the developer receives the income from its charges to the customer for electricity as well as any tax credits and other incentives generated from the system. PPAs typically range from 10 to 25 years and the developer remains responsible for the operation and maintenance of the system for the duration of the agreement. At the end of the contract term, the customer may be allowed to extend the PPA, have the developer remove the system, or choose to buy the system from the developer.

Your company is not authorized to enter into a PPA and provide electric services to Kansas residents. An FAQ published on the Kansas Corporation Commission website instructs:

**Can I purchase power from a third party, other than myself or the investor owned electric utilities, for instance, if a third party installed a solar array on my property to sell energy to me?**

No. The Retail Electric Suppliers Act (RESA) prohibits the furnishing of retail electric service by any person or company other than the certified public utility for a particular territory. (K.S.A. 66-1,170 to 66-1,176c). K.S.A. 66-104 defines a public utility. A company could venture into the process of being certified as a public utility, but it involves an extensive process. If an entity is not a "public utility" it cannot sell retail power in the state of Kansas, which is what such a transaction would be if the power is sold to a retail customer. Therefore, a certified public utility or the customer-generator itself must have an ownership interest in the generating equipment used for net metering.

[*http://www.kcc.state.ks.us/energy/net\_metering\_faq.htm*](http://www.kcc.state.ks.us/energy/net_metering_faq.htm)

Because your company cannot lawfully enter into a PPA with a Kansas resident, your question about the taxability of the charges that you will bill to a Kansas customer under a PPA presents a question that cannot currently arise under current Kansas law, and therefore has no practical significance. Accordingly, the department declines to speculate about what the answer might be if the Kansas legislature acts sometime in the future to authorize companies like yours to lawfully enters into a PPA agreement with a Kansas resident.

New York state law allows PPAs to be entered into by New York homeowners and third-party developers like your company. New York Technical Memorandum TSB-M-15(5)S discusses how New York sales tax applies to electricity that is billed to a homeowner under a such PPA agreement. The Memorandum identifies and discusses other the tax issues that can arise from such third-party PPA agreements.

If the Kansas legislature acts to legalize such PPA agreements, please resubmit your question if it has not been directly answered by the new legislation, and the department will attempt to answer it.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 01/27/2016 Date Modified: 01/27/2016**