



**Revenue Ruling  
No.13-006  
June 28, 2013  
Sales Tax**

**Taxability of Solar Panels Held For Lease or Rental**

La. R.S. 47:6030 provides a refundable tax credit against the income tax for the cost of purchase and installation of a wind energy system or solar energy system, or both, by a taxpayer at his residence located in this state, by the owner of a residential rental apartment project, or by a taxpayer who purchases and installs such a system in a residential rental apartment project which is located in Louisiana. The credit may be claimed in cases where the resident individual purchases a newly constructed home with such a system already installed or where such a system is purchased and installed at an existing home, or where such systems are purchased and installed in new or existing residential rental apartment projects.

**Purpose**

The purpose of this Revenue Ruling is to address the taxability of solar panels in those situations where the tax credit is being claimed by a taxpayer other than the homeowner and the solar panel is subject to a lease or rental agreement.

**Law**

La. R.S. 47:301(16)(l) provides “For purposes of the sales and use tax imposed by the state of Louisiana, by a political subdivision whose boundaries are coterminous with those of the state, or by all political subdivisions of the state and without regard to the nature of the ownership of the ground, tangible personal property shall not include other constructions permanently attached to the ground which shall be treated as immoveable property.”

La. R.S. 47:301(16)(a) defines the term “tangible personal property,” in pertinent part as “...personal property which may be seen, weighed, measured, felt or touched, or is in any other manner perceptible to the senses.” In *South Central Bell Telephone Co. v. Barthelemy*, 94-0499 (10/17/94), 643 So.2d 1240, the Louisiana Supreme Court ruled that “tangible personal property” is equivalent to corporeal moveable property as defined in Article 471 of the Louisiana Civil

Code. There, the Civil Code describes “corporeal moveables” as “...things, whether animate or inanimate, that normally move or can be moved from one place to another.”

The provisions which govern the classification of objects as either “moveable” or “immoveable” for purposes of the lease/sales tax are contained in the Louisiana Civil Code. La. C.C. art. 462 provides that “tracts of land, with their component parts, are immoveables.” La. C.C. art. 463 further provides that “buildings...and...other constructions permanently attached to the ground...are component parts of a tract of land when they belong to the owner of the ground.” Further expounding on the concept of permanency, La. C.C. art. 465 provides that “things incorporated into...a building, or other construction, so as to become an integral part of it, such as building materials, are its component parts.” Finally, La. C.C. art. 466 provides that “things that are attached to a building and that, according to prevailing usages, serve to complete a building of the same general type, without regard to its specific use, are its component parts. Component parts of this kind may include...plumbing heating, cooling, electrical and similar systems...” La. C.C. art. 466 further provides “...Other things are component parts of a building or other construction if they are attached to such a degree that they cannot be removed without substantial damage to themselves or to the building or other construction.”

### **Facts/Analysis**

Photovoltaic panels are commonly used for the purpose of converting sunlight to electrical energy for connection and use by an electrical load. Such a system constitutes a solar electric system. In addition, photovoltaic panels are also used for the purpose of converting sunlight to thermal heat which is subsequently used for the purpose of heating water, space heating or space cooling. Such a system constitutes a solar thermal system. Both solar electric and solar thermal energy systems are often the subject of a lease/rental agreement whereby the homeowner/lessee waives and transfers its right to a solar energy system tax credit to the lessor/owner of the installed solar panels. Thereafter, the lessor/owner claims the solar energy tax credit and the homeowner/lessee pays a monthly lease for the right of use of the installed solar panels. At the end of the lease period, the homeowner has the option of extending the lease, purchasing the equipment for the fair market value, or returning the equipment to the lessor.

### Scenario I: Roof-Mounted Systems

La. R.S. 47:301(7)(a) defines the term “lease or rental,” in pertinent part, as “the leasing or renting of tangible personal property and the possession or use thereof by the lessee or renter, for a consideration, without transfer of the title of such property.” Determining whether installed solar panels subject to such an agreement constitutes tangible personal property, i.e. corporeal moveable property-which is subject to lease tax-or immoveable property-which is immune from lease tax-largely depends upon the facts and circumstances surrounding the installation of the solar panels. Typically, the leased solar panels are installed on the roof or other structure of a homeowner’s residence in such a manner that their removal, should the lessee choose not to extend the lease or fail to timely submit its lease payment, may be done in an expedient manner which does not cause injury to the solar panels or the residence to which it is attached. This type of transiency has already been found to render an object as moveable. In *Bridges v. National Financial Systems, Inc.*, 06-0957 (La. App. 1 Cir. 3/23/07), 960 So.2d 202, *writ denied*, 07-1600 (La. 11/2/07), 966 So.2d 602, the court considered the classification of modular banking units which were attached to concrete slabs and leased to banks and federally assured financial institutions desiring to open branch locations in rural and urban areas. Upon termination of the lease agreement, the modular units were capable of being removed and leased to another client. In reaching its determination that the modular units were moveable property, and thus subject to lease tax, the court held “although arguably the structures at issue herein have some degree of permanency once they are set in place, they are not permanent, nor are they intended to be permanent...when moved onto a leased site, the modular banking units are not meant to stay at that location permanently, but only for the term of the lease.” Considering the transient nature of leased solar panels, such solar panels do not appear to be attached in such a manner that would render them an “integral” or “component part” of the building or that they “...cannot be removed without substantial damage to themselves or to the building or other construction.”

When considering the frequency with which solar panels are installed and removed, it is important to point out that solar panels are typically installed for the purpose of supplementing the electrical or thermal energy needs of a lessee, not replacing the already present hardwiring which serves the residence through the power grid. When the solar panels are removed, the residence continues to be served with electricity through the already present hardware, only without the aid of the solar panels producing supplemental electricity which can be used to

reduce the amount of electrical or thermal energy needed from the power grid. As such, leased solar panels do not appear to constitute the kind of "...heating, cooling,...or electrical...system" which would "serve to complete a building of the same general type" thereby rendering it a "component part."

#### Scenario II: Ground Mounted Systems

Aside from the customary roof-mounted systems discussed above, a taxpayer may also install a "ground mounted system." Such a system typically consists of one or more poles which are mounted in the ground near the grid serving the residence, but separate and apart from the residence. After the poles are mounted in the ground, the solar panels are attached to the poles. In the event the lessee chooses not to extend the lease agreement or fails to submit timely payment, the lessor may remove the solar panels from the poles.

Clearly, the "ground mounted system" does not constitute the kind of "...heating, cooling,...or electrical...system" which would "serve to complete a building of the same general type" as the system is not attached to the residence but exists separately on a ground mounted pole. Further, the solar panels may be easily removed from the pole to which they are attached should the lessee choose not to extend the lease agreement or fail to submit timely payment. As such, the ground mounted panels are clearly not installed in such a manner that they "...cannot be removed without substantial damage to themselves or to the building or other construction." Finally, as with roof-mounted systems, the solar energy generated therefrom serves to supplement the already existing electrical system which consists of the hardwiring found inside the residence. Accordingly, the ground-mounted system would not be considered a "component part."

#### Conclusion

Absent a showing of facts and circumstances that are materially different from those recited above, solar panels which are subject to the above-described lease agreement are treated as moveable property and any lease payments submitted thereunder are subject to lease tax. In addition, under the above-referenced lease agreement, the assignment of the solar energy tax credit in exchange for the right of use of the installed solar panels constitutes "consideration" as provided in R.S. 47:301(7)(a). Further, because the gross proceeds of the lease may not be broken into component parts or nontaxable elements, the entire amount of the assigned tax credit is subject to lease tax. *McNamara v. Electrode Corporation*, 418 So.2d 652 (La.App. 1 Cir.

1982), *writs denied*, 420 So.2d 986 (La. 1986) Finally, should the lessee choose to exercise its option to purchase the solar equipment for its fair market value, the entire sales price, as that term is defined in R.S. 47:301(13)(a), will be subject to sales tax.

Tim Barfield  
Secretary

A Revenue Ruling is issued under the authority of LAC 61:III.101 C. A Revenue Ruling is written to provide guidance to the public and to Department of Revenue employees. It is a written statement issued to apply principles of law to a specific set of facts. A Revenue Ruling does not have the force and effect of law and is not binding on the public. It is a statement of the Department's position and is binding on the Department until superseded or modified by a subsequent change in statute, regulation, declaratory ruling, or court decision.