

January 16, 2008

SALES AND USE TAX EXEMPTION FOR QUALIFIED MATERIALS FOR
USE IN A COMMUNITY-BASED ENERGY DEVELOPMENT PROJECT

Purpose. To outline the sales and use tax exemption for personal property for use in a community-based energy development (C-BED) project. For purposes of a C-BED project, the Department of Revenue and Tax Commissioner are only determining the validity of the sales tax exemption.

Definitions.

C-BED project. C-BED project or community-based energy development project means a new wind energy project that meets the ownership structure and other requirements as set forth in Neb. Rev. Stat. §§77-2704.57 and 70-1901 to 70-1909.

New wind energy project. New wind energy project includes any qualified materials used to manufacture, install, construct, repair, or replace a device, such as a wind charger, windmill, or wind turbine that converts wind energy to a form of usable energy.

Ownership Structure.

1. For a C-BED project that has more than two turbines:
 - a. The C-BED project may be developed by one or more qualified owners with an equity partner(s) who is not a qualified owner;
 - b. No single qualified owner, including a limited liability company, can own more than fifteen percent (15%) of the C-BED project;
 - c. Each single electric supplier can own no more than fifteen percent (15%) of the C-BED project and the combined ownership in the C-BED project for all electric suppliers cannot exceed twenty-five percent (25%);
 - d. At least thirty-three percent (33%) of the gross power purchase agreement payments over the life of the power purchase agreement must flow to the qualified owners or local community. Equity partners, if any, are eligible to receive the remaining payments; and
 - e. The project must be supported by a resolution adopted by the county or counties in which the C-BED project is located or by the tribal council for a C-BED project located within the boundaries of an Indian Reservation located in Nebraska.
2. For a C-BED project that has one or two turbines:
 - a. The C-BED project may be developed by one or more qualified owners with an equity partner(s) who is not a qualified owner;
 - b. Each single electric supplier can own no more than fifteen percent (15%) of the C-BED project and the combined ownership in the C-BED project for all electric suppliers cannot exceed twenty-five percent (25%);

- c. At least thirty-three percent (33%) of the gross power purchase agreement payments over the life of the power purchase agreement must flow to the qualified owners or local community. Equity partners, if any, are eligible to receive the remaining payments; and
- d. The project must be supported by a resolution adopted by the county or counties in which the C-BED project is located or by the tribal council for a C-BED project located within the boundaries of an Indian Reservation located in Nebraska.

Electric Supplier. An electric supplier as defined in Neb. Rev. Stat. §70-1001.01 is any legal entity supplying, producing, or distributing electricity within the state of Nebraska for sale at wholesale or retail.

Qualified Owner. A qualified owner means:

- a. A Nebraska resident;
- b. A limited liability company that is organized under the Limited Liability Company Act and that is entirely made up of members who are Nebraska residents;
- c. A Nebraska nonprofit corporation organized under the Nebraska Nonprofit Corporation Act;
- d. An electric supplier whose ownership in a single C-BED project is limited to no more than fifteen percent (15%). The combined total ownership by all electric suppliers in a single C-BED project cannot exceed twenty-five percent (25%); or
- e. A Tribal council of a federally recognized American Indian Tribe with a reservation located in Nebraska.

Qualified materials. Qualified materials means any materials used to manufacture, install, construct, repair, or replace a device such as a wind charger, windmill, or wind turbine including the substation, power lines connecting such devices together including the power lines connecting the project to the electrical grid system, and materials used to construct the pads that support the wind chargers, windmills, wind turbines, towers, and substations.

Nonqualified materials. The purchase and use of materials that are not qualified materials as defined above are taxable. Nonqualified materials include but are not limited to: motor vehicles; maintenance equipment and tools; communication systems (i.e., meteorological tower(s) and data recorders-computer systems that are not an integral part of the wind turbine); information centers and related security systems (i.e., cameras and recorders); erosion control systems (i.e., landscaping, grass seed, and sod and irrigation systems); office and maintenance buildings; computer equipment that is not an integral part of the wind turbine; office equipment; signage of any kind; furnishings; roads; bridges; gates; fencing; site lighting; and any materials for the electrical grid system.

Procedure and Implementation. Effective October 1, 2007, purchases of qualified materials are exempt from sales and use taxes.

The project developer must submit to the Department of Revenue a Community-Based Energy Development Project Application and other supporting documentation as required pursuant to the

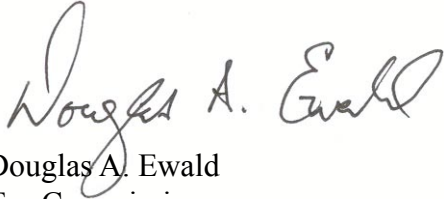
application. Subsequent to the approval of the application, the Department will issue a certificate of exemption that can be used by the project developer and contractors to purchase qualified materials tax free.

To purchase qualified materials tax free, the project developer or contractor must complete and issue to each vendor a Nebraska Resale or Exempt Sale Certificate, Form 13, section B, and attach a copy of the certificate of exemption. The basis for the exemption is exemption category 2.

Changes in Ownership Structure. If there is any change in the ownership structure after the Department has approved an application, including a change of an equity partner(s), a new application must be submitted to the Department. If the new application is not approved by the Department, all purchases of materials subsequent to the change in ownership structure are taxable.

Nebraska Sales and Use Tax Regulations 1-012, EXEMPTIONS, and 1-017, CONTRACTORS, are incomplete to the extent they do not provide for this exemption contained in Laws 2007, LB 367 and LB 629.

APPROVED:

A handwritten signature in cursive script that reads "Douglas A. Ewald". The signature is written in black ink and is positioned above the printed name and title.

Douglas A. Ewald
Tax Commissioner

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