

Title 18. Public Revenue

Sales and Use Tax Regulation 1521, *Construction Contractors*, regarding the classification of solar panels as materials or fixtures.

FINAL STATEMENT OF REASONS Overview/Non-Controlling Summary

Update

Proposed revisions to Regulation 1521 discuss the classification of solar cells, solar panels, and solar modules either as materials or fixtures for the purposes of the Sales and Use Tax Law as it applies to construction contracts.

Specific Purpose

The purpose of the proposed regulation is to interpret, implement, and make specific Revenue and Taxation Code sections 6009, 6012, 6015 and 6016. The proposed regulation adds guidance to Regulation 1521 by explaining the application of the Sales and Use Tax Law to the sale and installation of solar cells, solar panels, and solar modules. The guidance provided explains that photovoltaic cells, solar panels, and solar modules are considered materials when they function in the same manner as other materials such as roofing, windows, or walls and are incorporated into, attached to, or affixed to real property and as such lose their identity by becoming an integral and inseparable part of the real property. Other types of photovoltaic cells, solar panels, and solar modules however are considered fixtures when they are accessory to a building or other structure and do not lose their identity as accessories when installed.

Necessity

This regulation is necessary to provide guidance to assessors and taxpayers affected by these statutes. Based upon submissions from the California Solar Energy Industries Association, it has come to the attention of the Board of Equalization that there is uncertainty within the solar energy industry regarding the application of tax to construction contracts providing for the furnishing and installation of photovoltaic systems. The California Solar Energy Industries Association expressed concern that Regulation 1521 was not sufficiently clear in its explanation of how tax applies to these construction contracts. Solar energy is an emerging industry, and, given the increased emphasis on alternative energy sources, it is anticipated that there could be a substantial increase in construction contracts involving solar power. Accordingly, this amendment is necessary to explain how the general rules regarding tax and construction contracts apply to specific examples involving construction contractors furnishing and installing solar cells, solar panels and solar modules, in order to ensure more accurate reporting of sales and use tax liabilities.

Factual and Evidentiary Basis

Regulation 1521 discusses the application of sales and use tax to construction contractors. The impetus for the amended regulation is reported industry uncertainty regarding the application of the sales and use tax to solar panels and photovoltaic cells when they are furnished and installed as part of a construction contract

Subdivision (c) (13) defines a solar energy system construction contract. Subdivision (c)(13)(A) defines “materials” used in solar energy systems. Subdivision (c) (13) (B) defines “fixtures” used in solar energy systems. The guidance provided in the proposed amendment is based upon Board staff legal and appraisal expertise. Pursuant to Government Code section 11346.5, subdivision (a) (8), the Board of Equalization finds that the adoption of the proposed regulation will not have a significant adverse economic impact on private businesses or persons. The proposed amendment does not effect a change in the Sales and Use Tax Law, but instead merely provides clarification and explanation with respect to existing law and offers specific guidance on the application of such existing law to the solar energy industry. The regulation is proposed to interpret, implement, and make specific the authorizing statutes. These changes provide guidance with respect to the interpretation and administration of the current sales and use tax laws. Therefore, in its expert opinion, the Board has determined that these changes will not have a significant adverse economic impact on private businesses or persons.

Local Mandate Determination

The Board of Equalization has determined that the regulation does not impose a mandate on local agencies or school districts.

Response to Public Comment

On February 1, 2007, the Board’s Business Taxes Committee in a public hearing addressed the issue of: “Should Regulation 1521, *Construction Contractors*, be amended to provide that solar panels and photovoltaic cells are “materials” when they are furnished and installed as part of a construction contract for a solar energy system?” Representatives Ms. Karri Rozario and Mr. Les Nelson from the California Solar Energy Industries Association and Mr. Murray from Aztec Solar addressed the Committee and explained why they believe all solar panels should be considered “materials” under the provisions of Regulation 1521. Staff explained its position that solar panels should be considered materials when they function in the same manner as other materials such as roofing shingles, skylights, wall panels or windows, but that other solar panels are accessory to a building and should be considered fixtures. Upon motion by Ms. Yee, seconded by Ms. Chu, the Committee approved and authorized for publication Alternative 1 – Staff Recommendation.

On Friday, June 1, 2007, the Board held a public hearing on Proposed Regulation 1521, Construction Contracts. Ms. Sue Kateley, Executive Director, California Solar Energy Industries Association appeared at the hearing. Ms. Kateley expressed concern about assembly/installation labor issues in the proposed regulation. Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, the Board deferred consideration of the matter, directing staff to work with industry regarding Ms. Kateley's concerns.

On September 12, 2007 revised language that addressed Ms. Kateley's concerns was approved for amendment to proposed regulation 1521. The amended regulation was made available to the public for 15 days. No public comments were received during the public comment period. On October 24, 2007 the Board adopted amended regulation 1521.

Small Business Impact

The Board of Equalization has determined that the proposed regulation will not have a significant adverse economic impact on small businesses.

Adverse Economic Impact on Private Persons/Businesses Not Including Small Business

No impact.

Federal Regulations

Proposed Regulation 1521 has no comparable federal regulations.

Alternatives Considered

By its motion, the Board determined no alternative to promulgating the regulation would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation.