

LOCAL SALES TAXES ON SOLAR-GENERATED ELECTRICITY

Hodgson Russ SALT and Renewable Energy Alert
November 15, 2021

In 2015, the New York Tax Law was amended to provide exemptions from sales and use tax for certain sales of electricity generated by residential or commercial solar energy systems and sold under a written solar power purchase agreement (“PPA”) (See N.Y. Tax Law §§ 1115(ee)(2), 1115(ii)(2); see also TSB-M-15(5)S). These exemptions were in addition to the already existing sales tax exemptions for the sale and installation of residential and commercial solar energy systems equipment (See Tax Law §§ 1115(ee)(1), 1115(ii)(1); see also TSB-M-05(11)S and TSB-M-12(14)S).

Despite these broad exemptions that generally apply to the 4% state and 3/8% Metropolitan Commuter Transportation District (MCTD) sales and use taxes, the sale of electricity from these solar systems are still subject to certain county, city, and school district sales taxes. The New York State Department of Taxation and Finance recently published the local sales and use tax rates applicable to sales of electricity from such systems effective December 1, 2021 (See Publication 718-PPA).

Note that there are 48 different rates based on location that could apply to sales of electricity generated by *residential* solar energy systems and sold under a written solar PPA. By comparison, there are 93 different rates based on location that could apply to sales of electricity generated by *commercial* solar energy systems and sold under a written solar PPA (not including the 8 jurisdictions that have elected to provide the exemption by imposing a 0% rate). Thus, significantly more local jurisdictions tax the sale of electricity from commercial systems than from residential systems.

For a discussion of additional sales tax issues and potential benefits applicable to the renewable energy industry, [click here](#).

The possible imposition of sales tax raises several issues: Does the operator need to register as a sales tax vendor? Should the operator request, collect and save exemption certificates? What are the other compliance requirements?

And it is worth noting that operators of solar energy systems might be considered “utilities” under local laws (e.g. NYC’s utility tax). Under these laws, it is possible that the operator would be subject to a tax on gross receipts *in addition to* the sales tax that the operator is required to collect and remit from its non-exempt customers.

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