

Property Tax

Wind Turbine Ruled Exempt From Property Tax in Rhode Island

The Rhode Island Supreme Court has ruled that a wind turbine located on residential property which produces energy that is sold to National Grid is manufacturing equipment and is therefore exempt from local property taxation under state statute (*DePasquale v. Cwiek*, R.I., No. 2015-83-Appeal, 1/14/16).

The court said in its seven-page opinion issued Jan. 14 that the wind turbine in question is used exclusively for the purpose of transforming raw material—wind—into a finished product—electricity—and as a result the taxpayer meets the definition of a manufacturer, making the turbine eligible for tax-exempt status.

The decision comes in an appeal from Linda Cwiek in her capacity as Tax Assessor for the town of North Kingstown, R.I.

Assessed at \$1.9 Million. The town had assessed a wind turbine built on property owned by Mark DePasquale at a value of \$1.9 million and issued a tax bill seeking the payment of annual tangible personal property taxes. DePasquale took the position that the turbine was tax-exempt and appealed the assessment to two local tax boards, both of which denied the appeal.

DePasquale appealed the matter to the Rhode Island Superior Court which found that the wind turbine is manufacturing equipment and thus exempt and granted DePasquale's motion for summary judgment.

The town appealed that decision to the Rhode Island Supreme Court.

Town Argues 'Wholesale.' In its opinion, the supreme court rejected the town's argument that the manufacturing exemption allowed under state statute was inapplicable because DePasquale's sale of electricity from the turbine to National Grid constitutes a "sale at wholesale," which would place the turbine within the exclusion from the definition of manufacturing equipment.

The court also rejected the town's contentions based on a separate statute which allows that municipalities

may, by ordinance, exempt from taxation any renewable energy system located in the city or town. Citing the statute, the town argued that renewable energy systems are tax exempt *only* if a municipality enacts an ordinance to that effect.

The town also argued that this statute reflects legislative intent that renewable energy systems are generally taxable and that, in adopting this statute, lawmakers gave municipalities that authority to exempt such systems from taxation should the municipality choose to do so.

Grant Tax Exemption. But the court said, contrary to the town's argument, the state statute "merely grants the various cities and towns the authority to grant tax exemption to renewable energy systems **in addition to** the tax exemptions already provided" under statute.

Providence, R.I. attorney Lauren E. Jones, who represented DePasquale before the supreme court, told Bloomberg BNA that they were pleased with the court's decision. And he noted that importantly, the decision applies state-wide to alternative energy sources and not just to the single turbine located in North Kingstown.

Providence Attorney Seth Handy, who also represented DePasquale, told Bloomberg BNA Jan. 21 that they had offered to settle with the town by agreeing to the payment of a fee in lieu of taxes, but that North Kingstown has declined to settle the case. Handy said he is working with state legislators and municipal officials to develop legislation creating a state program under which cities and towns would receive a host payment. This would allow the communities in Rhode Island to receive a fee, but in a manner that is consistent across the state and in a way that wouldn't discourage the development of alternative forms of energy.

The town was represented by James H. Reilly of Kelly, Kelleher, Reilly & Simpson in Providence. He couldn't be immediately reached for comment.

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