

THE POTOMAC EDISON COMPANY

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IN THE

vs.

*

MARYLAND TAX COURT

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COMPTROLLER OF THE TREASURY

*

No. 12-SU-OO-0644
& 12-SU-OO-0645

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MEMORANDUM AND ORDER

This case arises from a dispute between the Comptroller of the Treasury (“Comptroller”) and the Potomac Edison Company (“Potomac Edison”) regarding a claim for refund of sales and use tax for machinery and equipment. The appeal was bifurcated for efficiency reasons and the present issue for the Court to decide is whether the transmission of electricity qualifies as a production activity under Md. Code Ann., Tax-General Article 11-210(b)(1):

“(b) Production generally.- The sales and use tax does not apply to a sale of:

(1) tangible personal property used directly and predominantly in a production activity at any stage of operation on the production activity site...”

Potomac Edison contends that certain items it purchased in connection with the transmission of electricity in Maryland should be exempt from sales and use tax. Potomac Edison’s expert opined that the transmission of electricity that takes place in a generation plant continues in the transmission lines that delivers electricity to customers. The Court disagrees with the Petitioner’s expert opinion and finds that the issue to be primarily one of statutory interpretation in which the facts are undisputed.

Based on the statutory interpretation of the evidence presented, the Court

disagrees with Potomac Edison's contention that the "processing" that takes place in the course of transmitting electricity is similar to the "processing" that takes place in the generation of electricity. "Production activity" is defined under Tax-General Article 11-101(f)(1)(i) as "except for processing food or a beverage by a retail food vendor, assembling, manufacturing, processing, or refining tangible property for resale". The transmission and distribution of electricity to consumers is not a production or manufacturing activity and thus does not qualify as manufacturing or processing under Tax-General Article 11-210(b).

A review of the various Maryland tax statutes supports Comptroller's position that generating electricity and processing electricity are separate and distinct. The Court agrees with the Comptroller that the Tax-General Article distinguishes between "processing" and "generating" electricity. Following the deregulation of electricity, there was a concern that the definition of "Taxable price" in Tax-General Article 11-101(l)(3)(i)(1) would render changes for transmission of electricity exempt from tax. To address that concern, legislation was enacted that narrowed the definition of "production activity" in Tax-General Article 11-101(f)(1)(ii) to "generating electricity for sale or for use in another production activity" and expanded the definition of "taxable service" in Tax-General Article 11-101(k)(11) to include "a transportation service for transmission, distribution, or delivery of electricity or natural gas, if the sale or use of the electricity or natural gas is subject to the sales and use tax." Thus, the transmission of electricity is a taxable service and not a production activity and the issues remaining due to bifurcation need not be addressed.

Accordingly, it is this *22nd* day of *January*, 2015 that the assessment is **AFFIRMED** and Potomac Edison's request for refund is denied.

cc: Steven M. Gevarter, Esq.
Scott A. Browdy, Esq.
Donald Krohn, Esq.

CERTIFIED TRUE COPY
TEST: John T. Hearn, Clerk

NOTICE: You have the right of appeal from the above Order to the Circuit Court of any County or Baltimore City, wherein the property or subject of the assessment may be situated. The Petition for Judicial Review **MUST** be filed in the proper Court within thirty (30) days from the date of the above Order of the Maryland Tax Court. Please refer to Rule 7-200 et seq. of the Maryland Rules of Court, which can be found in most public libraries.