

TAXATION - Definition of "nonresidential structure" as used in section 15-6-201(3), MCA;

TAXATION - Entire energy generating system only is available for exemption in section 15-6-201(3), MCA;

TAXATION - Exemptions for energy generating systems under section 15-6-201(3), MCA, determined on case by case basis;

MONTANA CODE ANNOTATED - Sections 15-6-201, 15-32-102;
UNITED STATES CODE - 42 U.S.C. § 9202(1).

HELD: The exemption given each "nonresidential structure" in section 15-6-201(3), MCA, refers to each energy generating system, not to its individual parts.

22 February 1983

Karl Knuchel
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Dear Mr. Knuchel:

You have requested my opinion on the definition of "nonresidential structure" as that phrase is used in section 15-6-201(3), MCA. Section 15-6-201(3), MCA, exempts from taxation for a period of time portions of investments in nonfossil forms of energy generation, including "nonresidential structures." Your specific question is whether a "nonresidential structure" is defined to include an entire energy generating project or each individual wind-powered generator within a system.

Section 15-6-201(3), MCA, provides in relevant part:

(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property....

....

(b) \$100,000 in the case of a multifamily residential dwelling or a nonresidential structure.

Section 15-32-102(5), MCA, defines the term "recognized nonfossil forms of energy generation":

[A] system for the utilization of solar energy including passive solar systems, wind, solid wastes, or the decomposition of organic wastes for capturing energy or converting energy sources into usable sources.... [Emphasis added.]

The key words in the above definition are "system" and "utilization," for the legislative intention behind the passage of section 15-6-201(3), MCA, was to encourage, through tax incentives, the development of alternative energy systems utilizing such sources as wind. (See House Committee on Taxation minutes for 1/26/79.)

The words "system" and "nonresidential structure" are not defined in the taxation title. The latter phrase must be considered in light of the definition of "recognized nonfossil forms of energy generation" in order to harmonize the sections with the legislative intent. The issue, therefore, must be resolved by turning to the rules of statutory construction.

It is well settled that in construing a statute the intention of the Legislature is controlling. State Bar of Montana v. Krivec, 38 St. Rptr. 1322, 632 P.2d 707 (1981). The statute should be considered in its entirety with effect being given to all parts of the statute where possible, the result being a reasonable construction. Wynia v. City of Great Falls, 36 St. Rptr. 1589, 600 P.2d 872 (1979). The words used in the statute should be given their plain and ordinary

meaning. Montana Power Co. v. Cremer, 182 Mont. 277, 596 P.2d 483 (1979).

The word "system," in its ordinary context, is defined by Webster's Dictionary as "anything formed when parts are placed together to make a regular and connected whole as of one machine." A more particular definition has been developed by Congress in its legislation supporting the development of alternative energy sources. The term "wind energy system" is defined in 42 U.S.C. § 9202(1):

[A] system of components which converts the kinetic energy of the wind into electricity or mechanical power, and which comprises all necessary components, including energy storage, power conditioning, control systems, and transmission systems, where appropriate, to provide electricity or mechanical power for individual, residential, agricultural, commercial, industrial, utility, or governmental use....

Further, the emphasis on the word "system" as it affects the term "nonresidential structure" is supported by the legislative history of section 15-6-201(3), MCA. The minutes of the committee hearings held on House Bill 299, codified as section 15-6-201, MCA, contain comments regarding the exemption referring specifically to such energy sources as "commercial systems." Thus the Legislature intended to consider alternative energy sources as systems which in their entirety would function to produce energy.

Combining the legislative purpose with the above definitions makes it clear that the term "nonresidential structure" must be read in light of the function the structure performs. A nonresidential structure may or may not comprise a system depending on whether or not the structure contains all the components necessary to generate energy. If the wind-powered generator does not, by itself, actually generate energy, including storage, control, and transmission devices, then only the system which performs the entire function is available for the exemption. If, on the other hand, an individual puts up a single structure which contains all the components which generate energy, the one structure meets the "system" definition. Each exemption,

therefore, must be determined on a case by case basis. To give each structure, regardless of its role in the energy generating system, a \$100,000 exemption is to frustrate the legislative intent.

THEREFORE, IT IS MY OPINION:

The exemption given each "nonresidential structure" in section 15-6-201(3), MCA, refers to each energy generating system, not to its individual parts.

Very truly yours,

MIKE GREELY
Attorney General