

**BEFORE THE BOARD OF TAX APPEALS
STATE OF KANSAS**

IN THE MATTER OF THE
APPLICATION OF NJR CLEAN
ENERGY VENTURES II FOR
EXEMPTION FROM AD VALOREM
TAXATION IN RUSH COUNTY,
KANSAS

Docket No. 2015-7546-TX

**ORDER GRANTING RECONSIDERATION
AND ORDER ON RECONSIDERATION**

Now the above captioned matter comes on for consideration by the Board of Tax Appeals of the State of Kansas. The Board finds and concludes as follows:

The Board has jurisdiction of the subject matter and the parties, an application for exemption having been filed pursuant to K.S.A. 2015 Supp. 79-213 and a timely Petition for Reconsideration having been filed pursuant to K.S.A. 2015 Supp. 74-2426 and K.S.A. 2015 Supp. 77-529.

The subject matter of this tax exemption application is described as follows:

Real estate and improvements located in Rush County, Kansas, also known as Parcel ID #s 083-154-20-0-40-13-004.00-0; 083-162-09-0-00-00-002.01-0; and 083-162-09-0-00-00-002.03-0; and 21 Siemens 2.3 MW 108m rotor diameter turbines on 80m towers, 21 pad mounted transformers, underground cabling, one 80m tubular meteorological tower and 1 substation.

The applicant requests exemption from ad valorem taxation pursuant to K.S.A. 2015 Supp. 79-201 *Eleventh*. In its original *Order* on this matter, the Board denied the tax exemption request finding the subject property was not yet in service. The applicant filed a Petition for Reconsideration offering additional evidence and arguments in support of its exemption request. The applicant indicated the subject property was put into service on December 1, 2015, and requests the exemption begin September 26, 2014. The Board concludes that the Petition for Reconsideration should be granted.

K.S.A. 2015 Supp. 79-201 *Eleventh* provides an exemption from ad valorem taxes for:

all taxable years commencing after December 31, 1998, all property actually and regularly used predominantly to produce and generate electricity utilizing renewable energy resources or technologies. For purposes of this section, "renewable energy resources or technologies" shall include wind, solar, thermal, photovoltaic, biomass, hydropower, geothermal and landfill gas resources or technologies.

K.S.A. 2015 Supp. 79-213 provides:

(j) In the event the court grants the initial request for exemption, the same shall be effective beginning with the date of first exempt use except that, with respect to property the construction of which commenced not to exceed 24 months prior to the date of first exempt use, the same shall be effective beginning with the date of commencement of construction.

The County recommends the request for exemption from ad valorem taxation be granted. The County did not request a hearing.

Upon reconsideration, based on the record evidence and the County's verified affirmative recommendation, the Board finds that the applicant uses the subject property predominantly to produce and generate electricity utilizing renewable energy resources or technologies. The Board concludes that the applicant satisfies the conditions enumerated in K.S.A. 2015 Supp. 79-201 *Eleventh* and that the exemption should begin with the commencement of construction.

IT IS THEREFORE ORDERED that the application requesting an exemption from ad valorem taxation be granted from September 26, 2014, and each succeeding year, so long as the applicant continues to use the subject property for exempt purposes. In the event the exempt property ceases to be used for exempt purposes, the applicant must report that fact to the county appraiser within 30 days. See K.S.A. 79-214.

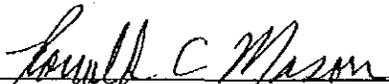
IT IS FURTHER ORDERED that any refund due and owing the applicant shall be made pursuant to K.S.A. 2015 Supp. 79-213(k), which limits the refund to the year immediately preceding the year in which the application is filed in accordance with K.S.A. 2015 Supp. 79-213(a).

This is a final order of the Board of Tax Appeals and constitutes final agency action. Any party choosing to appeal this order must do so by filing a petition for judicial review within 30 days from the date of certification of this order. See K.S.A. 77-613(c). The petition for judicial review shall be filed with the Kansas Court of Appeals. See K.S.A. 2015 Supp. 74-2426(c)(2). The Board of Tax Appeals shall not be a party to the petition for judicial review but shall receive service of a copy of the petition. Pursuant to K.S.A. 2015 Supp. 77-529(d), any party choosing to petition for judicial review of the Board's decision is hereby notified that the Secretary of the Board of Tax Appeals is to receive service of the petition for judicial review.

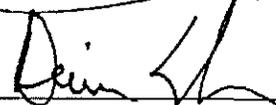
IT IS SO ORDERED

THE KANSAS BOARD OF TAX APPEALS




RONALD C. MASON, BOARD MEMBER


JAMES D. COOPER, BOARD MEMBER


DEVIN SPRECKER, BOARD MEMBER


JOELENE R. ALLEN, SECRETARY

CERTIFICATE OF SERVICE

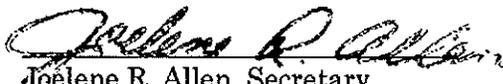
I, Joelene R. Allen, Secretary of the Kansas Board of Tax Appeals, do hereby certify that a true and correct copy of this order in Docket No. 2015-7546-TX, and any attachments thereto, was placed in the U.S. mail, on this 9th day of March, 2016, addressed to:

Glenn Lockwood, Executive Vice President
NJR Clean Energy Ventures II
1415 Wyckoff Rd
Wall, NJ 07719

Kelly DesLauriers, Rush County Appraiser
Rush County Courthouse
PO Box 57
LaCrosse, KS 67548-0057

Christie Bittel, Rush County Treasurer
Rush County Courthouse
PO Box 460
LaCrosse, KS 67548-0460

IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Topeka, Kansas.


Joelene R. Allen, Secretary

**BEFORE THE BOARD OF TAX APPEALS
STATE OF KANSAS**

IN THE MATTER OF THE
APPLICATION OF NJR CLEAN
ENERGY VENTURES II FOR
EXEMPTION FROM AD VALOREM
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KANSAS

Docket No. 2015-7546-TX

ORDER

Now the above-captioned matter comes on for consideration and decision by the Board of Tax Appeals of the State of Kansas.

The Board finds and concludes as follows:

The Board has jurisdiction of the subject matter and the parties as an application for exemption has been filed pursuant to K.S.A. 2015 Supp. 79-213.

The subject matter of this tax exemption application is described as follows:

Real estate and improvements located in Rush County, Kansas, also known as Parcel ID #s 083-154-20-0-40-13-004.00-0; 083-162-09-0-00-00-002.01-0; and 083-162-09-0-00-00-002.03-0; and 21 Siemens 2.3 MW 108m rotor diameter turbines on 80m towers, 21 pad mounted transformers, underground cabling, one 80m tubular meteorological tower and 1 substation.

The applicant requests exemption from ad valorem taxation pursuant to K.S.A. 2015 Supp. 79-201 *Eleventh*. The statute provides an exemption from ad valorem taxes for:

all taxable years commencing after December 31, 1998, all property actually and regularly used predominantly to produce and generate electricity utilizing renewable energy resources or technologies. For purposes of this section, "renewable energy resources or technologies" shall include wind, solar, thermal,

photovoltaic, biomass, hydropower, geothermal and landfill gas resources or technologies.

The applicant acquired the subject property on September 26, 2014. The applicant will use the subject property to generate electrical energy from wind; the subject property is not yet in service.

The County recommends the request for exemption from ad valorem taxation be granted. The County did not request a hearing.

In Kansas, taxation is the rule and exemption is the exception. *See Board of County Comm'rs v. Kansas Ave. Properties*, 246 Kan. 161, 166, 786 P.2d 1141 (1990) (citations omitted). Tax exemption statutes are strictly construed, and all doubts are resolved against exemption and in favor of taxation. *Id.* The applicant bears the burden of proving entitlement to exemption. *Id.*

The Board finds that the applicant has not presented evidence sufficient to satisfy the statutory requirements of K.S.A. 2015 Supp. 79-201 *Eleventh*. Specifically, the statute requires that the subject property be "actually and regularly used". In this case, the subject property is not yet in service.

Therefore, the Board concludes that the request for exemption from ad valorem taxation is denied. The Board notes that the applicant may file a Petition for Reconsideration, as directed below, and provide updated information.

IT IS THEREFORE ORDERED that the application for exemption from ad valorem taxation is denied.

Any party who is aggrieved by this order may file a written petition for reconsideration with this Board as provided in K.S.A. 2015 Supp. 77-529. *See* K.S.A. 2015 Supp. 74-2426(b). The written petition for reconsideration shall set forth specifically and in adequate detail the particular and specific respects in which it is alleged that the Board's order is unlawful, unreasonable, capricious, improper or unfair. Any petition for reconsideration shall be mailed to the Secretary of the Board of Tax Appeals. The written petition must be received by the Board within 15 days of the certification date of this order (allowing an additional three days for mailing pursuant to statute).

Rather than filing a petition for reconsideration, any aggrieved person has the right to appeal this order of the Board by filing a petition with the court of appeals or the district court pursuant to K.S.A. 2015 Supp. 74-2426(c)(4)(A). Any person choosing to petition for judicial review of this order must file the petition with the appropriate court within 30 days from the date of certification of this order.

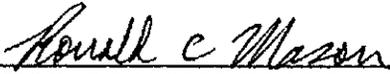
See K.S.A. 77-613(b) and (c) and K.S.A. 2015 Supp. 74-2426(c). Pursuant to K.S.A. 2015 Supp. 77-529(d), and amendments thereto, any party choosing to petition for judicial review of this order is hereby notified that the Secretary of the Board of Tax Appeals is to receive service of a copy of the petition for judicial review. Please note, however, that the Board would not be a party to any judicial review because the Board does not have the capacity or power to sue or be sued. See K.S.A. 2015 Supp. 74-2433(f).

The address for the Secretary of the Board of Tax Appeals is Board of Tax Appeals, Eisenhower State Office Building, 700 SW Harrison St., Suite 1022, Topeka, KS 66603. A party filing any petition shall also serve a complete copy of the petition on all other parties.

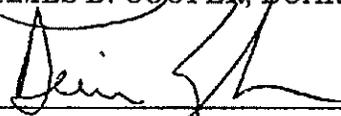
IT IS SO ORDERED

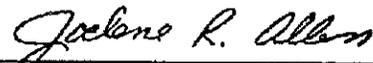
THE KANSAS BOARD OF TAX APPEALS




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CERTIFICATE OF SERVICE

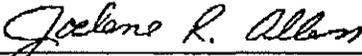
I, Joelene R. Allen, Secretary of the Kansas Board of Tax Appeals, do hereby certify that a true and correct copy of this order in Docket No. 2015-7546-TX, and any attachments thereto, was placed in the U.S. mail, on this 8th day of February, 2016, addressed to:

Glenn Lockwood, Executive Vice President
NJR Clean Energy Ventures II
1415 Wyckoff Rd
Wall, NJ 07719

Kelly DesLauriers, Rush County Appraiser
Rush County Courthouse
PO Box 57
LaCrosse, KS 67548-0057

Christie Bittel, Rush County Treasurer
Rush County Courthouse
PO Box 460
LaCrosse, KS 67548-0460

IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Topeka, Kansas.



Joelene R. Allen, Secretary