MEMORANDUM

TO: New Mexico State Legislature
2017 Interim Committee on Revenue Stabilization and Tax Policy

FROM: Ty Storm Field, Member, Daisy Renewables, LLC
Rocky Ray, Member, Daisy Renewables, LLC
Luigi Resta, EVP, Utility Solar Development, Onyx Renewable Partners L.P.
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DATE: October 31, 2017

SUBJECT: **NMSA §7-9-112**; Gross Receipts and Compensating Tax – Deduction; Gross Receipts; Solar Energy Systems

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This memorandum relates the perplexing experience of its co-authors in trying to obtain interpretive certainty regarding the eligibility for a "solar energy system" to qualify for the deduction from New Mexico gross receipts and compensating tax set forth in §7-9-112 NMSA 1978 (the "112 Deduction") , the corresponding administrative regulations found at 3.2.247.1 through 3.2.247.9 NMAC (the "3.2.247 Regulations"), various administrative bulletins, rulings and forms[1] (collectively, the "Administrative Guidance") and informal oral and email guidance provided by various employees of the New Mexico Taxation and Revenue Department ("TRD").

The co-authors are developers of privately-owned and operated, large (sometimes called utility-scale) solar photovoltaic (PV) projects in New Mexico and other states. Typically, the sole source of revenue for this type of project is received under a wholesale power purchase agreement ("PPA") with a regulated investor owned utility, publicly owned utility or electric cooperative, making such off-taker the project's sole customer (a "Wholesale Project"). The deduction from New Mexico gross-receipts tax previously provided by §7-9-114 NMSA 1978 (the "114 Deduction") expired on December 31, 2015, leaving the co-authors and other developers of Wholesale Projects struggling to understand whether and under what facts and circumstances the 112 Deduction may be available instead, were they to site and structure their projects to meet the applicable criteria.

The full language of the 112 Deduction can be found on Exhibit B attached hereto, but the key phrase for our projects is "an installation that is used to provide space heat, hot water or *electricity to the property in which it is installed* and…that *utilizes solar panels*…, *including the solar panels and all equipment necessary for the installation and operation of the solar panels*" (emphasis added). The statute does not contain any words that require the electricity to be used on site or for any particular use, or that it be provided to the end user (not for resale) or to any types of persons or entities. Similarly, the 3.2.247 Regulations, the full text of which is attached hereto as Exhibit B, include no such words of limitation. The only reference in them to "use" is not a restriction on types or locations of uses but rather an exclusion from the components of the system eligible for the deduction that are "components of systems related to the use of the energy.

[1] See, e.g.: FYI-105, "Gross Receipts & Compensating Taxes: An Overview," July 1, 2016 – June 30, 2017; Ruling 420-16-1 Issued May 19, 2016; and NM Taxation and Revenue Department Form RPD-41341, Solar Energy Systems Tax Deduction – Purchase and Use Statement

Examples of use would include the pipes carrying heated water to a faucet or the electrical wire carrying electricity to an outlet."[2]

When asked by email on a no-name basis whether the 112 Deduction would be available to large solar energy systems under a hypothetical set of facts, a TRD Tax Information and Policy Specialist said that "there is nothing in the statute that separates out specific types of businesses or types of governments that can or cannot claim the deduction. As long as the transaction fits the requirements of the deduction it could be claimed."

The co-authors described the following fact pattern to TRD in an informal request for interpretation without naming the taxpayer or the solar PV project and not as a formal request for a letter ruling. The project owner has secured a lease/purchase option with the landowner. The project owner has entered into a 20-year power purchase agreement with the local electric utility. The delivery point for solar energy is within the boundaries of the project premises at the revenue meter where the utility owns all high-side infrastructure and delivery equipment (slack span, concrete pole and circuit switcher). In other words, the project's sole customer comes onto the project premises to install its equipment and take delivery of the project's electrical energy product, from where the utility exports the power for its own use and that of its downstream retail customers.

At a meeting on May 12, 2017, Mr. Duane Spitzer in TRD's Audit and Compliance Division, expressed to Rocky Ray (in person) and Luigi Resta (by conferencing in) that in his opinion the 112 Deduction should be available to a Wholesale Project where the point of sale and delivery to the utility is located on the same property on which the solar energy system is installed, and that resale of the energy offsite by the utility does not disqualify the project. One week later, however, the Tax Information and Policy Specialist quoted above wrote:

> "We have looked at the information in your original email to tax policy. Based on the information you provided, we do not believe that the system you have described meets the qualification for the "solar energy system" as defined in Section 7-9-112 NMSA 1978.
>
> 7-9-112. DEDUCTION--GROSS RECEIPTS--SOLAR ENERGY SYSTEMS. -- A. Receipts from the sale and installation of solar energy systems may be deducted from gross receipts. B. As used in this section, **"solar energy system"** means an installation that is used to provide space heat, hot water or electricity **to the property in which it is installed** and is: (1) an installation that utilizes solar panels that are not also windows, including the solar panels and all equipment necessary for the installation and operation of the solar panels; (2) a dark-colored water tank exposed to sunlight, including all equipment necessary for the installation and operation of the water tank as a part of the overall water system of the property; or (3) a non-vented trombe wall, including all equipment necessary for the installation and operation of the trombe wall.
>
> From your email, we believe that the installation of the panels is being done in order to sell the energy to the local utility company for resale. Feel free to send us any further information on the system, property, or end use of the system if it will provide further clarification to our office."

[2] 3.2.247.7.H NMAC

(Emphasis in original).

Subsequent communications, oral and by email, to try and reconcile this lack of consensus within TRD as to whether any Wholesale Projects might be eligible have been unfruitful. Mr. Mark Gaiser of the New Mexico Department of Energy, Minerals and Natural Resources, also believes the 112 Deduction should not be limited to projects generating electicity for retail sales or for use onsite. No reports from the bill sponsor, committees, legislative analyst or other legislative intent documentation reviewed have shed light on the question, however, and no additional TRD rulings or tax court cases have been found on point. No formal request for a letter ruling has been made, while the co-authors have conducted some outreach within the political arena for possible legislative solutions, including a possible revivor of the 114 Deduction. The co-authors note that TRD has a series of FAQs on its website about various matters, including a few on gross receipts and compensating tax deductions generally, but none on the specific question of what constitutes a qualifying solar energy system under the 112 Deduction.

The co-authors believe that the 112 Deduction can and should fairly extend beyond the easy case residential and small commercial projects to include:

a. any commercial retail or wholesale solar energy facility that is not owned by a regulated public utility, or is exempt from such regulation;
b. which sells power to its customer, whether a utility or otherwise, at a metered point of delivery and point of sale that is located on the same property as the solar energy system (including possibly on adjoining legal parcels if they are owned or leased by the same party, whether that party be the project owner or the customer); and
c. which does not itself provide electricity to any other property from such solar energy system.

To apply the 112 Deduction any other way would be prejudicial, perhaps even discriminatory, against independent power producers simply because, as wholesale commercial enterprises, their only product is the subject electricity. Immediately following this page as Exhibit A is a mock up of some FAQs involving situations that can arise in a clean energy economy, including presumed or recommended answers based on a plain reading of the statute and common sense, contrasting different scenarios to demonstrate logically why this interpretation should be correct and the conclusion inescapable.

The co-authors respectfully request, for the common good of New Mexicans and the New Mexico solar and other clean energy industries, that the Committee consider what legislative action it or any standing committees can initiate, or oversight guidance any of them might provide to TRD, to address this situation. Thank you for your time and effort to consider this request.

EXHIBIT A

MOCK UP OF FAQs

Q1: Municipality M owns, operates and maintains a public shower facility at a lakeside park in southern New Mexico and charges users a nominal fee to take hot showers. The water has historically been heated using a gas boiler. M wants to install a solar thermal system on the roof of the shower facility, and a hot water storage tank inside, to reduce the cost of gas service to the boiler which will be kept in service for standby purposes. The hot water from the new system will be used by guests onsite. No other services or amenities will be provided for a fee at the shower facility other than hot showers. Does the solar thermal system and storage tank qualify as a "solar energy system" under §7-9-112 NMSA 1978?

A1: Yes. The components of the system that are eligible, however, do not include the pipes carrying heated water to the shower heads pursuant to 3.2.247.7.H NMAC. This is true whether or not the standby boiler uses the same pipes to the faucets. The taxpayer may also want to consider whether the exemption provided by §7-9-54.3 NMSA 1978 applies, for sales of solar generation equipment to a government.

Q2: Same fact pattern as Q1, except the shower facility is privately owned and operated, either as a concession at the lakeside park or at a private club. Does the answer change from A1?

A2: No, the system is still eligible, as the form of ownership, public or private, and use by public or private members, is not a criteria for eligibility for the deduction under §7-9-112 NMSA 1978.

Q3: Same fact pattern as Q1, except M is located high in the Rocky Mountain region of northern New Mexico, and the lake freezes over in winter. M closes the lakeside park in winter, including the shower facility. To defray annual operating costs, M is considering installing the solar thermal system, but including an alternate off-take pipe that would deliver the winter production across the fenceline to a different legal parcel owned by private laundromat L, the owner of which would like to reduce his water and energy costs by paying M at a rate per gallon of hot water that is less than his combined cost of water and energy from the local water and gas & electric utility companies. M would own the alternate pipe system all the way onto L's property. Would M's "closed for winter" hot water sales program disqualify the solar thermal system from the deduction under §7-9-112 NMSA 1978?

A3: Yes, under §7-9-112 NMSA 1978, all of the hot water must be provided to the property where the system is installed. Under your facts, some of the hot water (all in winter) would be provided by M to a neighboring property under different ownership and occupancy, which is not permitted and would disqualify the system from the deduction. This is not guidance on whether the exemption provided by §7-9-54.3 NMSA 1978 applies, for sales of solar generation equipment to a government.

Q4: National coffee house chain P sells hot and cold coffee and tea for consumption onsite or for carry out. In addition to individual servings, they also offer catered brewed coffee to go boxes which serve 18 cups of coffee. For catered tea to go, they provide the same insulated box of hot water and a selection of tea bags for self-serve preference at the catered site. Historically, the water for the tea has been heated in their electric pots using power supplied at line voltage from the local electric utility. P desires to "go solar" and install solar thermal systems on its store roofs and hot water storage tanks inside its café kitchens to save on electricity costs, including lowering demand charges from the utility that are too high at some suburban stores due to spikes in morning demand on weekends. The hot water may also be used for washing or other purposes. Does the solar thermal system and storage tank qualify as a "solar energy system" under §7-9-112 NMSA 1978, even though the end use of the hot water provided in catered boxes will be offsite?

A4: Yes, the water heated on the roof is provided to the property where the solar thermal system is installed, if the catered boxes are filled from a faucet within the same or an adjacent building on the same property. Carry out and use offsite of some of the hot water as described will not disqualify the system.

Q5: Under same fact pattern as Q4, does it matter whether the catered box is picked up by the customer at the coffer house or delivered by P to the catered site?

A5: No, it does not matter. The hot water leaves P's plumbing system on the property where the solar energy system is installed. Transportation of the product beyond that point, incuding offsite, may be by any party. The system still qualifies for the deduction.

Q6: Under same fact pattern as Q4, does it matter whether P's customer is a homeowner throwing her own Sunday brunch party for her guests or a professional caterer serving a small wedding reception offsite who purchases at wholesale and then charges his customer a flat fee or at cost plus margin on all food and beverages consumed at the event?

A6: No it, does not matter. The solar energy system still qualifies for the deduction.

Q7: Commercial office building owner O has installed a rooftop solar PV system to serve the building load behind-the-meter, and on a net-metered basis with the local electric utility U. O provided a Form RPD-41341 to its installation contractor C to take the deduction for the new "solar energy System" under §7-9-112 NMSA 1978. During the course of construction, C has proposed, and O is interested in accepting, a change order to add two electric vehicle charging stations in the parking lot of the building, on the same legal parcel. O will be able to set the price for the electricity sold to the vehicle owners when they charge up, and the charging stations will become an additional profit center for the building. O could isolate the EV chargers from the building, putting them on a separate circuit, but that would require a separate service meter to be installed by U, and O's profit would be reduced by having to pay U for the source energy. O has asked tax accountant A to confirm whether the deduction will be lost if the EV charging stations are integrated with the building electrical system so that some of the solar energy produced will flow into car batteries and, accordingly, be used offsite when the vehicles drive off. Will the deduction be lost because the end use of some of the electricity from the solar PV system will be offsite?

A7: No, the point of delivery and sale for the electricity sold to the vehicle owners is on the same property where the solar energy system is installed. The deduction still applies.

Q8: All-electric vehicle manufacturer T provides its automobile customers to charge up at various locations around the country, including New Mexico, owned or leased by T. Multi-user charging stations are being installed at intervals along major highways and in urban markets. T could pay the local electric utility U for the power at a commercial tariff rate, and does so at many locations in New Mexico, but in keeping with the spirit of its clean energy brand, T does and will continue to install solar PV canopy structures at its EV charging stations across the country. Customers pay for the alternating current (AC) charge by the kilowatt-hour (kWh) sold, or for the time elapsed while the vehicle is charging, according to an electic meter on the charging unit, typically delivered at 240 V for faster charging than would occur at 110 V line voltage. No other products are available for sale and delivery at many of these charging stations. Do the solar PV systems qualify as a "solar energy system" under §7-9-112 NMSA 1978, even though the end use of electricity stored in the vehicle batteries will be offsite, and even though T provides no other products or services at some of these sites besides electricity?

A8: Yes. The customers bring their vehicles to the property. The converted and conditioned solar photovoltaic energy is metered at the same location, and the owners are charged for the power delivered to them onsite. The electricity is therefor provided to the property where the solar energy systems are installed, and the deduction applies.

Q9: Same fact pattern as Q8, except now T engineers are designing new vehicle models and charging systems that will transfer power even faster, at 480 V. Does the answer in A8 change?

A9: No. The statute is silent, and there is no limit, on the voltage level at which the electricity from the solar energy system can be provided to the property.

Q10: Local publicly-owned gas and electric company U owns and leases a very large fleet of aging cars, light trucks, boom trucks and other heavy vehicles used by its field maintenance crews and other employees. U has adopted a program to phase these out in favor of clean energy vehicles including liquid natural gas, hybrid electric and plug-in electric vehicles. When not in use the vehicles in this fleet are parked at a central vehicle pool, a large parking lot on one 40-acre parcel. The solar irradiance at this site is good, and currently not being utilized. U's engineers and accountants have determined that it can save operating costs by installing solar PV canopies in the lot. But being a non-taxable entity, U must look to a third party solar finance company to own and operate the solar PV systems and sell the power to U under a long-term PPA, and a lease or license covering the canopy structure locations. Private equity fund manager E has agreed to provide the solar financing. E's special purpose project company for this project will own all of the sytems, will not sell any electricity to anyone except U, and will not sell any other products or services to U other than the electricty and the related renewable energy credits generated by the solar PV systems. In due diligence, E has asked for legal advice on whether the deduction from gross receipts under §7-9-112 NMSA 1978 applies, even though the owner of the property and off-taker under the PPA is a regulated electric utility company, the solar energy systems will cover much of a 40-acre parcel, and the primary end use of the power will be to move electric vehicles all around U's service territory in service calls to its retail customers. Does it apply?

A10: The deduction applies because the electricity will be provided to the property where the solar energy systems are installed. It does not matter that the end use of the power in the vehicles will be elsewhere, or that the power customer of E is a regulated electric utility as that is not a requirement of the statute or the regulations. The size of the project or any systems within it, and the acreage they cover, do not matter.

Q11: Independent solar PV power company S leases land from the owner of a 50-acre tract of ranch land through which passes an overhead, 69kV transmission line, within the boundaries of a 60-foot wide easement across the property held by the local transmitting utility T. The project owner has entered into a 20-year PPA with an affiliate of T, electric utility U. The point of delivery and sale of solar energy to U is within the boundaries of the project premises leased by S, at the revenue meter within S's new collector substation, but wherein T owns all infrastructure and delivery equipment on the high side of S's generator station unit transformer (i.e., the slack span, concrete pole and circuit switcher). T has access rights to S's substation to install and maintain its equipment, and U has rights to use T's equipment to meter and purchase solar electric energy from S at the point of delivery and sale on the property. Does the deduction from gross receipts under §7-9-112 NMSA 1978 apply, even though the off-taker under the PPA is a regulated electric utility company, the solar energy system will cover much of an 50-acre parcel, and the primary end use of the power will be to meet the local retail load within U's service territory?

A11: Yes, The deduction applies because the electricity will be provided to the property where the solar energy system is installed. It does not matter that the ultimate end users are located elsewhere, or that the power customer of E is a regulated electric utility as that is not a requirement of the statute or the regulations. The size of the project or any systems within it, and the acreage they cover, do not matter. Pursuant to 3.2.247.7.H NMAC, however, the components of the solar energy system eligible for the deduction do not include any electrical wire carrying electricity to the point of delivery and sale on the property to the extent such components are designed to serve other uses and demands for the electricity generated on the property (parasitic load), and therefore are considered use.

Q12: Same fact pattern as Q11, but the point of delivery and sale of the electricity to U is one mile away from the property where the solar energy system is installed. S has developed, constructed and owns and operates a 1-mile generator tie line to an existing substation owned and operated by T. S does not own or lease any property in or around T's substation, but does have non-exclusive access easements over a pole-line route from the project property to the substation, partially along private property and partially within a county road and T's electric distribution line easement. It is S's responsibility and risk to deliver the net output from the solar energy system to T's substation, where U meters the input and pays S for the energy product delivered to that point, after all pole-line losses, the cost of which is absorbed by S. Does the deduction from gross receipts under §7-9-112 NMSA 1978 apply, even though the off-taker under the PPA is a regulated electric utility company, the solar energy system will cover much of a 50-acre parcel, and the primary end use of the power will be to meet the local retail load within U's service territory?

A12: No, the deduction is not available because the electricity does not leave S's complete system, including delivery infrastructure, on the same property where it is

generated. Thus, the electricity will not be provided by S to the property where the solar energy system is installed as required by the statute, and is instead provided by S to another property which is not adjacent to the property where the solar energy system is located and is not owned or occupied by S. The generator tie line would be considered a component of use under 3.2.247.7.H NMAC, and would not be part of a solar energy system, if the system otherwise qualified. Therefore the tying in of the generator tie line at the substation property does not place any part of a qualifying solar energy system at S's point of delivery and sale. It does not matter that S has easement rights for the generator tie-line, or whether the ownership of such easement corridor tracts is private or public.

Q13: Same fact pattern as Q11, but instead of owning the solar energy system and delivering power under a long-term PPA, S agrees to sell the project to U at commencement of commercial operations. Does the deduction from gross receipts under §7-9-112 NMSA 1978 apply, even though the project is still on the same property as the point of interconnection to the utilities' transmission grid?

A13: No, the deduction is not available because there is no point of delivery or sale on the property that can be recognized for income tax purposes as a taxable transaction, nor for a deduction from gross receipts, because there is no change of ownership of the energy to demarcate that it has been provided to any third party on the property where the solar energy system is installed. The first party to whom it is provided by U is its retail customers, none of which own or occupy the property and have not come onto the property to accept delivery.

EXHIBIT B

Section 7-9-112 - Deduction; gross receipts; solar energy systems.

Universal Citation: NM Stat § 7-9-112 (2016)

7-9-112. Deduction; gross receipts; solar energy systems.

A. Receipts from the sale and installation of solar energy systems may be deducted from gross receipts.

B. As used in this section, "solar energy system" means an installation that is used to provide space heat, hot water or electricity to the property in which it is installed and is:

(1) an installation that utilizes solar panels that are not also windows, including the solar panels and all equipment necessary for the installation and operation of the solar panels;

(2) a dark-colored water tank exposed to sunlight, including all equipment necessary for the installation and operation of the water tank as a part of the overall water system of the property; or

(3) a non-vented trombe wall, including all equipment necessary for the installation and operation of the trombe wall.

History: Laws 2007, ch. 204, 10.

EXHIBIT C

TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS TAXES
PART 247: DEDUCTION - GROSS RECEIPTS TAX - SOLAR ENERGY SYSTEMS

3.2.247.1 ISSUING AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630
[3.2.247.1 NMAC - N, 3/14/08]

3.2.247.2 SCOPE: This part applies to each person engaging in business in New Mexico.
[3.2.247.2 NMAC - N, 3/14/08]

3.2.247.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[3.2.247.3 NMAC - N, 3/14/08]

3.2.247.4 DURATION: Permanent.
[3.2.247.4 NMAC - N, 3/14/08]

3.2.247.5 EFFECTIVE DATE: 3/14/08, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[3.2.247.5 NMAC - N, 3/14/08]

3.2.247.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.
[3.2.247.6 NMAC - N, 3/14/08]

3.2.247.7 DEFINITIONS: The terms and phrases defined in 3.2.247.7 NMAC apply to the implementation of the deduction pursuant to Section 7-9-112 NMSA 1978.

A. **Equipment:** “Equipment” means an essential machine, mechanism, or a component or fitting thereof, used directly and exclusively in the installation or operation of a solar energy system. Equipment is included in the solar energy system when the cost can be included in the basis of the solar energy system as established under the applicable provisions of the Internal Revenue Code of 1986.

B. **Trombe wall:** A “trombe wall” is a sun-facing wall built from material that can act as a thermal mass, such as stone, concrete, adobe or water tanks, combined with an air space and glass to form a solar thermal collector.

C. **Solar panel:** A “solar panel” is a solar thermal collector, such as a solar hot water or air panel used to heat water, air or otherwise collect solar thermal energy. “Solar panel' may also refer to a photovoltaic system.

D. **Solar thermal collector:** A “solar thermal collector” means an energy system that collects or absorbs solar energy for conversion into heat for the purposes of space heating, space cooling or water heating.

E. **Solar thermal energy:** “Solar thermal energy” is a technology for harnessing solar power for practical applications from solar heating to electrical power generation.

F. **Photovoltaic system:** A “photovoltaic system” means an energy system that collects or absorbs sunlight for conversion into electricity.

G. **Installation of a solar energy system:** The “installation of a solar energy system” includes replacement of some part of the system, or a similar change to the system that would qualify as an adjustment to basis for federal income tax purposes. Labor for maintenance or service of a solar energy system does not qualify for the deduction in the absence of an installation of some part of the system. Labor to perform post-installation adjustments to the solar energy system qualifies for the deduction when the adjustments are performed to optimize the operation of the solar energy system as part of the initial installation and are performed within one year of the initial installation.

H. **Solar energy system:** A “solar energy system” as defined in Subsection B of Section 7-9-112 NMSA 1978, includes components or systems for collecting and storing energy, but does not include components or systems related to the use of the energy. Examples of use would include the pipes carrying heated water to a faucet or the electrical wire carrying electricity to an outlet.
[3.2.247.7 NMAC - N, 3/14/08]

3.2.247.8 WRITTEN STATEMENT

A. Receipts from selling equipment or installation services to persons who state in writing that they are purchasing the equipment or installation services for the exclusive use in installation and operation of a solar energy system pursuant Section 7-9-112 NMSA 1978, may be deducted from the seller's gross receipts pursuant to Section 7-9-112 NMSA 1978 if the statement:

(1) contains a declaration that the purchaser-signer will be using the equipment or component part in a qualified solar energy system pursuant to Section 7-9-112 NMSA 1978;

(2) that the equipment purchased or installed is an essential machine, mechanism, or a component or fitting thereof, used directly and exclusively in the installation or operation of a solar energy system;

(3) that the equipment or component part can be included in the basis of the qualified solar energy system as established under the applicable provisions of the Internal Revenue Code of 1986;

(4) is personally signed by the purchaser or the purchaser's agent who makes the statement, and

(5) is accepted in good faith by the seller.

B. Receipts from selling or installing solar energy systems pursuant to Section 7-9-112 NMSA 1978 may not be deducted from gross receipts unless the sale is made to a person who makes a written statement which is in compliance with 3.2.247.8 NMAC, or can provide evidence acceptable to the department that the service or equipment is purchased solely for use in a qualified solar energy system.

C. For the purposes of Section 7-9-112 NMSA 1978 it is sufficient if the seller receives one written statement from each purchaser. The one written statement may cover multiple purchases of equipment or installation services used solely in a qualified solar energy system provided the seller maintains that statement on file.

[3.2.247.8 NMAC - N, 3/14/08]

3.2.247.9 GOOD FAITH ACCEPTANCE OF BUYER'S WRITTEN STATEMENT

A. When a seller accepts in good faith a person's written statement that the person is purchasing the service or equipment for the sole use of the sale and installation of a solar energy system pursuant to Section 7-9-112 NMSA 1978, the written statement shall be conclusive evidence that the proceeds from the transaction with the person having made this statement are deductible from the seller's gross receipts.

B. Example 1: X is installing a non-vented trombe wall in his home. Y sells adobe blocks to X for the trombe wall. X gives Y the proper written statement that the block is for the sole use of installing a solar energy system. X may deduct the gross receipts received from the sale of the adobe blocks.

C. Example 2: Same facts as example 1, but some of the adobe blocks being purchased from Y are to be used for the construction of a block wall around the perimeter of X’s property. X is not using the adobe blocks solely to construct a non-vented trombe wall in his home. X gives Y the proper written statement that the block is for the sole use of installing a solar energy system. Y accepts the statement in good faith and may deduct the gross receipts received from the sale of the block. Because X is not using the block for the sole use of installing a solar energy system, X will be liable for the compensating tax on the value of the block and may be liable for making false statements.

D. Example 3: C buys a tractor from E, to haul materials used to construct a non-vented trombe wall in his personal residence. The equipment is not is an essential machine, mechanism, or a component or fitting thereof, used directly and exclusively in the installation or operation of a solar energy system and is not includable in the basis of the solar energy system to which the equipment is installed under the provisions of the Internal Revenue Code of 1986; E may not take the deduction.

E. Example 4: S is a contractor who performs construction services which includes the sale and installation of solar energy systems. S purchases materials and services from T. S may provide T with a buyers written statement pursuant to 3.2.247.8 NMAC. T cannot substantiate the deduction for the solar energy system materials and installation services with a nontaxable transaction certificate for the sale of construction materials that will become ingredients or components of a construction project pursuant to Section 7-9-51 NMSA 1978, or for construction services performed on a construction project pursuant to 7-9-52 NMSA 1978, because the next sale is not subject to gross receipts tax upon completion of the construction project.

F. Example 5: Same facts as example 4. When S sells the completed construction project to home owner H, S may deduct the materials and installation costs of the solar energy system pursuant to Section 7-9-112 NMSA 1978, with sufficient documentation to include the written statement pursuant to 3.2.247.8 NMAC, or other evidence acceptable to the department that the service or equipment is sold for the sole use of the sale and installation of a qualified energy system.

[3.2.247.9 NMAC - N, 3/14/08]

History of 3.2.247 NMAC: [RESERVED]