

Solar Energy: Arizona Appellate Court Addresses Whether Panels are Subject to Taxation



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The Arizona Court of Appeals (“Court of Appeals”) addressed the taxation of solar energy panels in a May 18th opinion. See *SolarCity Corp. v. Ariz. Dep’t of Revenue*, 396 P.3d 631 (Ariz. Ct. App. 2017).

A key issue was whether the panels constituted “renewable energy equipment” subject to taxation under the Arizona statutes.

The Arizona Department of Revenue (“Department”) issued a memorandum in 2017 that concluded solar energy panels owned by solar power companies and leased on customer property constituted taxable renewable energy equipment under the relevant Arizona statutes.

Affected solar power companies, including SolarCity Corporation, sought a declaratory judgment in tax court. They argued the panels were not taxable because they were used for customers’ personal on-site consumption and therefore had no value for taxation purposes.

The relevant Arizona statutes specifically state that “grid-tied” systems designed primarily for on-site consumption “are considered to have no value and add no value to the property” and that “renewable energy equipment” includes equipment “not intended for self-consumption.”

Panels like SolarCity’s operate “behind the meter:” they generate electricity for the property on which they are placed without drawing from a traditional utility company. Because the energy must be used as it is generated, any unused energy travels to the traditional utility power grids. Each panel system is tailored to the particular property’s needs.

The solar power companies consider the systems to be clearly designed for self-consumption. They moved for summary judgment.

The tax court granted the motion in part. It agreed with the solar companies that the Department lacked a statutory basis to consider the panels renewable energy equipment. However, the court denied summary judgment on the valuation disputes, finding that the solar energy statute violated the Exemptions and Uniformity Clauses of the Arizona Constitution. To the tax court, the statute effectively exempted certain panels from taxation and taxed panels differently based on their primary use and the amount of electricity consumed.

The Court of Appeals affirmed in part and reversed in part. Like the tax court, it agreed that the Department erred in considering the panels “renewable energy equipment used in electric generation facility.” The plain language of the Arizona statutes excluded equipment like the companies’ panels: the

companies were not in the business of operating an electric generation facility and the panels' primary purpose is self-consumption (energy supplied to traditional utilities is "simply a secondary function").

The court reversed the tax court's decision that the solar energy systems statute is unconstitutional. It found that the statute did not exempt property from taxation or treat similarly-situated property differently.

First, the provisions do not truly "exempt" the panels from taxation but rather serve as a legislative "directive to assess and tax a specific property class in a particular way." Second, the solar power companies are not functionally equivalent to local utilities or electric generation facilities such that taxing them differently is improper. The solar companies and the owners of renewable energy equipment provide different services to different customer bases on different types of property. Further, the statute does not apply differently based on actual electrical use: the relevant question is whether the system is primarily designed for self-consumption, not the actual consumption.

Therefore, the Court of Appeals held that solar panels could not be assessed as taxable under the electric generation statute and renewable energy equipment statutes.

[A copy of the opinion can be downloaded here.](#)