Memorandum

To: Ms. Dana Crom, Esq.,
County Counsel's Office,
County of Inyo

From: Eric Myers, Esq., MuniServices

Date: February 1, 2013

Re: **Analysis of the potential exemption for the mirrors**

You asked me to research how the sales tax exemption for the manufacture of mirrors might impact the amount of sales and use tax allocated to the County's General Fund in this project. I have ignored the impact via the state-pooled funds because the amounts are trivial.

I understand that we have 4 scenarios we need to look at. I have created a matrix for them below and labeled them for ease of reference

	Manufacturer applies for the exemption or other financial assistance	**Manufacturer does not apply for the exemption or other financial assistance**
Mirrors manufactured on-site	Scenario 1	Scenario 2
Mirrors manufactured in AZ	Scenario 3	Scenario 4

Scenarios 2 and 4

Let's eliminate these simpler cases first. Since the sales tax exemption in section 6010.8 of the Rev. & Tax Code is only available for the transfer of title or lease of tangible personal property to a participating party as defined in section 26003(a)(7)(B) of the Public Resources Code, the Manufacturer's purchase of materials to manufacture the mirrors can only be exempt from tax if Manufacturer is a participating party.

Section 26003(a)(7)(B) defines a participating party as a person that seeks financial assistance from CAEAFTA for the purpose of implementing a project. If the Manufacturer does not apply for the financial assistance, as assumed in Scenarios 2 and 4, then no exemption would apply.

Scenario 3

Given that the purpose of the exemption is to promote California-jobs and California based manufacturing (See Pub. Res. §26011.8(a)), it is unlikely that Manufacturer would be granted the exemption in Scenario 3.

What remains unclear in Scenario 3 is whether sale of the mirrors from the Manufacturer to BrightSource or from Manufacturer to Prime Contractor to BrightSource would be exempt. It is possible that BrightSource could try to claim that the sale of the mirrors to them is part of a "project", as defined in section 26003(a)(8)(B) of the Public Resource Code, because the installation of the finished mirrors constitutes assembly of components in an alternative energy source. The solar-thermal plant itself seems to meet the definition of an "alternative source" under section 26003(a)(3)(A) of the Public Resource Code and the mirrors are a component of that alternative source but it is not clear that installation of the mirrors on site is the same thing as assembly of the mirrors.

If the mirrors are manufactured out of state, and the purchase by BrightSource and the installation on site are not subject to the exemption, then, under this scenario, there should be no reduction of the taxable amount because use tax should apply to the sale of the mirrors to BrightSource.

Scenario 1

If the mirrors are manufactured on-site, in Inyo County, then activity that probably qualifies for the exemption is occurring in California. So, the manufacturer's purchase of materials and equipment to manufacture the mirrors could be exempted from the sales and use tax under section 6010.8 of the Revenue and Taxation Code, if the Manufacturer applies for an exemption.

As noted in my prior answer to you, assuming the $446 million is the full taxable cost of the goods (meaning the manufacturer's cost of equipment and the retail price to BrightSource of the manufactured goods), the exemption would cost the County approximately either $1.6 million (if the jobsite is not registered) or $4.4 million (if the jobsite is registered), in money to the General Fund.

Four points of uncertainty remain in this scenario:

1. Will the manufacturer or BrightSource apply for the exemption?

2. Would BrightSource qualify for the exemption under the test for assembly of components in an alternative Source or alternative source products?
    a. Note: the Treasure in a publication on the SB 71 program states "This definition includes manufacturers of alternative source electricity generation equipment such as solar panels or wind turbines. But it excludes the purchase of that equipment for power generation." (http://www.treasurer.ca.gov/caeatfa/sb71/fact.pdf. Last accessed on January 30, 2013.) But I cannot find the language in the law that creates that restriction.
    b. In fact the definitions in section 26003 of "alternative source" and in Regulation 10031 of Title 4 of the California Code of Regulations of "Facility" and "Qualified Property" leave open the possibility that the electricity is the product and the solar facility is the facility that has the qualified property.
3. The staff estimated that the cost of the mirrors was $446 million. Was that $446 million part of the $1.05 billion in construction costs?
4. Was the $446 million the cost to the manufacturer in equipment and materials or the cost to BrightSource of the finished mirrors?

Disclaimer

As you are aware, I am an attorney but not the County's attorney. I am in-house counsel for MuniServices, which is the County's sales tax consultant. I am providing my research to you in my capacity as an employee of the County's consultant and not as an attorney for the County. I am not providing you legal advice; MuniServices does not provide legal advice. You understand that we have no attorney-client relationship and none is formed by my involvement in this matter.

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Conclusion

There are significant unknowns in estimating the impact of the potential exemption for the mirrors, not the least of which is whether the manufacturer or BrightSource will apply for an exemption. Nevertheless, below is our best guess at this time about the impact.

	Manufacturer applies for the exemption or other financial assistance	Manufacturer does not apply for the exemption or other financial assistance
Mirrors manufactured on-site	Scenario 1—approximately $1.6 million or $4.4 million (depending on status of jobsite registration) in lost general fund revenue	Scenario 2--$0
Mirrors manufactured in AZ	Scenario 3--$0 (assuming BrightSource is not granted an exemption itself)	Scenario 4--$0