

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
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November 1, 2012

Opinion No. 12-102

Valuation of Certified Green Energy Production Facility Machinery and Equipment

**QUESTION**

Is Tenn. Code Ann. § 67-5-604(d) constitutional in setting the value of machinery and equipment used to produce electricity in a certified green energy production facility at no more than one-half percent (0.5%) of the acquisition value of such machinery and equipment for purposes of ad valorem taxation?

**OPINION**

In 1986, this Office issued an opinion concluding that Tenn. Code Ann. § 67-5-604, which limits the value of pollution control facilities for property tax purposes to no more than one-half percent (0.5%) of the facilities' acquisition value, was of doubtful constitutionality. *See* Tenn. Att'y Gen. Op. No. 86-142 (Aug. 12, 1986). In 2010, the valuation applied to pollution control facilities was extended to include machinery and equipment used to produce electricity in certified green energy production facilities. *See* Tenn. Code Ann. § 67-5-604(d). As there have been no legal developments since 1986 to change this Office's analysis, the extension of Tenn. Code Ann. § 67-5-604 to limit valuation of certified green energy production facilities in the same manner as valuation of pollution control facilities would be subject to the same concern.

**ANALYSIS**

Your request concerns the valuation of machinery and equipment used to produce electricity in a certified green energy production facility. A certified green energy production facility is a facility certified by the Department of Environment and Conservation as "producing electricity for use and consumption off the premises using clean energy technology." Tenn. Code Ann. § 67-4-2004(9). Clean energy technology includes "technology used to generate energy from geothermal, hydrogen, solar, and wind sources." *Id.*

In 1985, the General Assembly enacted Tenn. Code Ann. § 67-5-604, which limited the value of pollution control facilities for property tax purposes. The statute provides that the value of pollution control facilities is "deemed to be its salvage value," and this salvage value "shall never exceed one-half percent (0.5%) of the [property's] acquisition value." Tenn. Code Ann. § 67-5-604(b)(1). In 2010, Tenn. Code Ann. §67-5-604 was amended to provide that "[t]he valuation applied to pollution control facilities under this section shall also apply to machinery and equipment used to produce electricity in a certified green energy production facility." Tenn. Code Ann. § 67-5-604(d); *see* 2010 Tenn. Pub. Acts ch. 1134, § 41.

This Office has previously opined that the valuation method contained in Tenn. Code Ann. § 67-5-604 as it pertains to pollution control facilities, whereby the value of certain property is “deemed” to be its “salvage value” and capped at 0.5% of its acquisition value, is of doubtful constitutionality. *See* Tenn. Att’y Gen. Op. 86-142 (Aug. 12, 1986). The extension of this valuation method to machinery and equipment used to produce electricity in certified green energy production facilities would be subject to the same concerns.

The Tennessee Constitution subjects “[a]ll property, real, personal or mixed” to taxation and provides that “[t]he ratio of assessment to value of property in each class or subclass shall be equal and uniform throughout the State, the value and definition of property in each class or subclass to be ascertained in such manner as the Legislature shall direct.” Tenn. Const. art. II, § 28. Apart from the specific exempt uses described in the Constitution, the Legislature is not authorized to “carve out exemptions by legislative enactment.” Tenn. Att’y Gen. Op. No. 86-142 (citing *University of the South v. Franklin County*, 506 S.W.2d 779 (Tenn. Ct. App. 1974)).

In opining that the valuation method applicable to pollution control facilities was of doubtful constitutional validity, this Office explained that

this “salvage value” standard, in itself, creates an irrebuttable presumption that pollution equipment is worth only its salvage value. While wornout pollution control equipment might be worth a mere salvage value, there is no basis in fact to presume that all such equipment has no greater value in actuality. While legislative determinations as to certain facts may be conclusive in some circumstances, “[a] court is not required to assume the existence of any fact that cannot be reasonably conceived.” *Peay v. Nolan*, 157 Tenn. 222, 235 (1928). The end result of such an attempt to limit the value of pollution control equipment to its “salvage value” is the “practical equivalent of an exemption from property taxation,” which cannot be justified under Article II, section 28 of the Tennessee Constitution.

Tenn. Att’y Gen. Op. No. 86-142.

As there have been no legal developments to the contrary in the intervening time, this Office continues to adhere to this opinion. As with pollution control equipment, there is no basis to presume that all machinery and equipment used to produce electricity in a certified green energy production facility is of negligible value. Under Tenn. Code Ann. § 67-5-604, as written, certified green energy production facility property, like pollution control facility property, is “deemed” to be worth no more than 0.5% of its acquisition value, regardless of the property’s actual worth, current use, or level of depreciation. The statute contains no findings that would support this valuation method, and it requires property assessors to cap the property’s value at 0.5% regardless of whether this amount has any relation to the property’s true value. Under these circumstances, the valuation method set forth in Tenn. Code Ann. § 67-5-604 effectively gives certain business owners a property tax exemption that is not authorized by the Constitution.

While the General Assembly has broad power to establish methods to ascertain the value of property for ad valorem tax purposes, those methods must have as their goal the determination of actual value of the property. That value will, of course, be affected if the property has a restricted use. *See Marion County v. State Board of Equalization*, 710 S.W.2d 521, 523 (1986) (upholding Greenbelt valuation methodology). This Office has indicated that Tenn. Code Ann. § 67-5-601(e), pertaining to the valuation of property that generates electricity using wind as its energy source, is constitutionally defensible. *See* Tenn. Att’y Gen. Op. 03-068 (May 27, 2003). In contrast to Tenn. Code Ann. § 67-5-604, that statute provides a credible rationale for setting the value of such property at “one-third of its total installed costs” because of its restricted use. Tenn. Code Ann. § 67-5-601(e). Moreover, the statute instructs local assessors to take this rationale into account in appraising the property, but it does not impose an absolute cap on the appraisals, nor does it establish an amount so low that it effectively creates an exemption.

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