

1992 WL 532116 (Conn.A.G.)

\*1 Office of the Attorney General

State of Connecticut  
Opinion No. 92-027  
October 6, 1992

William J. Cibes  
Secretary  
Office of Policy and Management  
80 Washington Street  
Hartford, CT 06106

Honorable Allan A. Crystal  
Department of Revenue Services  
92 Farmington Avenue  
Hartford, CT 06105

Dear Secretary Cibes and Commissioner Crystal:

I am writing in response to your request for an advisory opinion regarding the imposition of sales and use taxes on certain utility companies' purchases of goods to be installed in state facilities in performance of energy conservation measures mandated by [Conn.Gen.Stat. § 16a-37a](#) and 1991 Conn.Pub.Act No. 91-6 (June Spec.Sess.).

After reviewing this matter, it is our opinion that the costs associated with implementing the conservation measures mandated under [Conn.Gen.Stat. § 16a-37a](#) and 1991 Conn.Pub.Act No. 91-6 are exempt from sales and use taxes because the goods and services provided or procured by the public service companies are procured or provided exclusively for the State of Connecticut in fulfillment of a statutory mandate imposed on both the utility companies and the Office of Policy and Management (OPM).

In enacting [Conn.Gen.Stat. § 16a-37a](#) and 1991 Conn.Pub.Act No. 91-6, the Connecticut General Assembly enunciated a public policy consistent with the State's commitment to reducing its energy costs by improving the energy performance of state facilities. [Conn.Gen.Stat. § 16a-37a](#) and 1991 Conn.Pub.Act No. 91-6 create a unique relationship between the State and the public service companies in the implementation of conservation measures for State facilities. The utility companies are not contracting to perform services for the State; rather, they procure goods to fulfill a statutory obligation imposed on the State and the utility companies jointly.

Under both [Conn.Gen.Stat. § 16a-37a](#) and 1991 Conn.Pub.Act No. 91-6, each public service company with over 75,000 customers "in cooperation with the Office of Policy and Management" is mandated to submit "a plan for approval to the Secretary of the Office of Policy and Management" describing each company's plan to improve the energy performance of state facilities. In 1990, the year [Conn.Gen.Stat. § 16a-37a](#) was enacted, each company's plan was limited to a one-year program of relamping and retrofitting light fixtures that was to achieve \$4 million in savings for the State. Under the 1991 Act, each company's plan encompasses a four-year program of procuring and installing equipment, and testing and managing the conservation projects. The cost of the four-year program "shall be shared equally by the State and the participating public service companies as conservation measures directly and solely related to electric savings." 1991 Conn.Pub.Act No. 91-6 § 1(b). Additionally, the State Bond Commission is authorized to issue bonds to provide funds "for the state's share of the program." 1991 Conn.Pub.Act No. 91-6 § 3(b).

\*2 Although the State cooperates with the public service companies to develop their energy conservation plans, the General Assembly clearly intended that the State alone be the ultimate recipient of the goods procured by the public service companies

under the plans. The State of Connecticut takes title to all goods procured by the utility companies when they are installed in state facilities.

Under [Conn.Gen.Stat. § 12-412\(1\)](#), sales of tangible personal property or services to the State of Connecticut are exempt from sales and use taxes. Under [Conn.Gen.Stat. § 12-407\(2\)\(a\)](#), “sale” means “any transfer of title, exchange or barter conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for consideration.” Because the participating public service companies installed and transferred title to electric light bulbs and fixtures procured for state facilities, without reimbursement or compensation in 1990, and because the state is obligated under the 1991 legislation to share the cost incurred by the utility companies in fulfilling the plan, the State is the “transferee” of the goods procured for it by the public service companies.

While we are not unmindful that in circumstances in which entities acting as contractors purchase goods to be used by them in fulfilling contracts with the State, [White Oak Corporation v. Department of Revenue Services, 198 Conn. 413 \(1986\)](#), the Connecticut Supreme Court has imposed a sales and use tax obligation on such contractors only when title to the goods purchased are not transferred to the State. Under the energy conservation programs, title to the light bulbs and fixtures passes to the State upon installation: White Oak is not controlling because the public service corporations' circumstances are distinguishable.

Taxation statutes granting exemptions are strictly construed against the party claiming such exemption, [Renz v. Monroe, 162 Conn. 559, 562 \(1972\)](#), but taxation statutes are not read so as to undermine the policy behind the granting of the exemption. [Hartford Hospital v. Hartford, 160 Conn. 370, 375 \(1971\)](#). It is our opinion that the utility companies' procurement of goods for the State, pursuant to [Conn.Gen.Stat. § 16a-37a](#) and 1991 Conn.Pub.Act No. 91-6, are the equivalent of direct sales of goods to the State and are exempt from sales and use taxes under [Conn.Gen.Stat. § 12-412\(1\)](#) given the sui generis relationship created not by contract but by statute.

Very truly yours,

Richard Blumenthal  
Attorney General  
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