
TAX - SOUTH DAKOTA

Valley Power Systems v. South Dakota Department of Revenue

Supreme Court of South Dakota - December 13, 2017 - N.W.2d - 2017 WL 6380678 - 2017 S.D. 84

Industrial-engine distributor sought review of the Department of Revenue's certificate of assessment that required distributor to pay alternate contractor's excise tax, use tax, interest, and a penalty in regards to new exhaust manifolds installed on mobile power units that a utility company used to provide supplemental power at one of its power plants.

The Sixth Judicial Circuit Court affirmed. Distributor appealed.

The Supreme Court of South Dakota held that:

- The mobile power units were "fixtures" so as to subject distributor to excise contractor's tax, and
- Distributor was subject to use tax on the exhaust manifolds.

Power units that were used by utility company to generate supplemental electricity during peak-load-electrical usage and for which industrial-engine distributor provided and installed new exhaust manifolds with diesel oxidation catalysts were "fixtures," and thus distributor was subject to excise contractor's tax; each power unit weighed 110,000 pounds, each unit sat in a fenced enclosure where it was connected to a fuel source and the electrical transmission grid, units had not been moved in the last 20 years, and units' actual use reflected utility company's intention to constructively annex them to the land for purposes of providing supplemental power at its power plant.

Industrial-engine distributor was subject to use tax on the exhaust manifolds that it installed on utility company's mobile power units; distributor was a contractor under statutes on realty improvements contractor's excise tax, and the exhaust manifolds were tangible personal property used in the performance of distributor's contract with utility company.

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