



OFFICE OF THE CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
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The Honorable Tammy Baldwin
Member, U.S. House of Representatives
10 East Doty Street, Suite 405
Madison, Wisconsin 53703

Attention:

Dear Congresswoman Baldwin:

I am responding to your inquiry dated November 2, 2011, on behalf of your constituent, _____, asked about the tax credit for qualified solar photovoltaic property.

_____ plans to install a photovoltaic solar system on his property in Madison, Wisconsin. His property is a three-story building with three units that he leases to tenants for residential use.

Two different credits are available for solar photovoltaic property—a 30 percent tax credit (residential credit) for solar electric property that a taxpayer uses at a residence and a 30 percent business energy credit (business credit) for solar property that a taxpayer uses in a trade or business or for the production of income. In addition, as a result of the American Recovery and Reinvestment Act of 2009, the law provides a third type of incentive for solar energy systems (ARRA cash payment) for business or the production of income. Instead of claiming the business credit, a taxpayer can apply for and receive from the Department of Treasury an ARRA cash payment for 30 percent of the cost of a qualifying solar energy system.

The information from _____ does not indicate whether he lives in one of the units in the building. If _____ resides in one of the units, he may qualify for the residential credit for the portion of the solar electric property allocable to the residence and for the

business credit on the portion of the cost allocable to business or rental use. Otherwise, may qualify for either the business credit or an ARRA cash payment from the Treasury.

Residential Energy Efficient Property Credit

Taxpayers can take a personal tax credit under section 25D of the Internal Revenue Code (the Code) for purchasing and installing certain qualified residential energy efficient property. (See enclosed section 25D.) Qualified residential energy efficient property includes qualified solar electric property. The tax credit is 30 percent of the cost of qualified solar electric property and the labor costs properly allocable to the onsite preparation, assembly, and original installation of the qualifying property and for piping or wiring to interconnect the qualifying property to the home.

Qualified solar electric property uses solar energy to generate electricity for use in a home in the United States that the taxpayer uses as a residence. Therefore, to qualify for the credit, a property must use solar energy to generate electricity.

To qualify for this credit, a taxpayer must also use the home on which he or she installed the solar electric property as a residence. A second home or vacation home may be eligible for this tax credit. The law, however, provides an allocation rule that requires a taxpayer to take a reduced credit if he or she uses more than 20 percent of qualified solar electric property for business purposes. In this case, the taxpayer can only take the portion of the expenditures that is properly allocable to use for nonbusiness purposes.

Therefore, if business use of the solar electric property is more than 20 percent, he should exclude the costs of the qualified solar electric property allocable to the business use when calculating the 30 percent residential credit.

Business Energy Credit

The law provides a business credit for a specified percentage of the basis of certain energy property that a taxpayer places in service during a taxable year. (See enclosed section 48 of the Code.) The business credit is not a personal credit for a residence but is part of the general business credit. It provides a 30 percent credit for the cost of equipment that uses solar property to produce electricity. Generally, those costs that qualify for the residential credit will qualify for the business credit.

The business credit is only available for property that a taxpayer can depreciate (section 48(a)(3)(C) of the Code). Generally, a taxpayer can take a depreciation deduction for property used in a trade or business or property held for the production of income, such as a rental property. A taxpayer using a dwelling unit as a residence may only depreciate the portion of the dwelling unit that he or she also uses in a trade or business

or for the production of income.

Although _____ may not be able to include the full cost of the solar electric system in calculating the 30 percent residential credit, he may be eligible for the 30 percent business credit for the cost of the solar system allocable to his use of the system in a trade or business or for the production of income.

ARRA Cash Payment

The law also provides a cash payment for 30 percent of the basis of equipment that uses solar energy to produce electricity that a taxpayer places in service by December 31, 2011, or begins construction on by December 31, 2011, and places in service by December 31, 2016 (section 1603 of the American Recovery and Reinvestment Act). For more information about the cash payments, _____ should visit the Department of Treasury's website, <http://www.treas.gov/recovery/1603.shtml>.

I hope this information is helpful. If _____ or you have further questions on this matter, please contact _____ or me at () _____ for further assistance.

Sincerely,

Charles B. Ramsey
Chief, Branch 6
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)