

# ADVANCE RELEASE Documents, IRS Letter Ruling 201121005, Internal Revenue Service, (Feb. 1, 2011)

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UIL No. 0048.00-00 Energy credit; Reforestation credit.

[Code Sec. 48]

LTR Report Number 1787, June 1, 2011, IRS REF: Symbol: CC:PSI:B6-PLR-138290-10

This is in response to your request for rulings, submitted by your authorized representative, concerning the federal income tax consequences of the transaction described below:

## FACTS

Taxpayer was formerly known as \*\*\*\*\*, Inc., but changed its corporate name in 2010. Taxpayer uses the calendar year as its taxable year. The ruling is requested for the taxable year \*\*\*\*\*. Taxpayer computes its income using an accrual method of accounting.

Taxpayer installs roof-mounted systems that convert solar energy into electricity. These systems are referred to collectively as the \*\*\*\*\*

\*\*\*\*\*

Taxpayer does not sell separate components of the system, but rather sells all three components as a single system.

Although Taxpayer's business includes the sale and installation of the \*\*\*\*\* product on the roofs of its customer, Taxpayer has also installed the product on its own roof at its \*\*\*\*\* location. Taxpayer intends to claim the investment credit on its 2010 return for the \*\*\*\*\* location during the 2010 calendar year. Taxpayer's 2010 federal tax return has not yet been filed.

Based on the foregoing, Taxpayer requests that we rule that the \*\*\*\*\* constitutes "energy property" for purposes of § 48(a)(3) of the Internal Revenue Code (Code).

## LAW AND ANALYSIS

Section 48(a) of the Code provides for an energy credit equal to 30 percent of the cost basis of qualifying energy property placed in service before January 1, 2017.

Section 48(a)(3)(A)(i) of the Code provides that energy property includes equipment which uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat, excepting property used to generate energy for the purposes of heating a swimming pool.

Federal Income Tax Regulations § 1.48-9(a)(2) provides that in order to qualify as "energy property" under § 48 of the Code, property must be depreciable property with an estimated useful life when placed in service of at least three years and constructed after certain dates.

Section 1.48-9(d)(1) of the regulations provides as follows:

(d) Solar energy property—(1) In general. Energy property includes solar energy property. The term "solar energy property" includes equipment and materials (and parts related to the functioning of such equipment) that use solar energy directly to (i) generate electricity, (ii) heat or cool a building or structure, or (iii) provide hot water for use within a building or structure. Generally, those functions are accomplished through the use of equipment such as collectors (to absorb sunlight and create hot liquids or air), storage tanks (to store hot liquids), rockbeds (to store hot air), thermostats (to activate pumps or fans which circulate the hot liquids or air), and heat exchangers (to utilize hot liquids or air to create hot air or water). Property that uses, as an energy source, fuel or energy derived indirectly from solar energy, such as ocean thermal energy, fossil fuel, or wood, is not considered solar energy property.

Section 1.48-9(d)(3) of the regulations provides, in part, that solar energy property includes equipment that uses solar energy to generate electricity, and includes storage devices, power conditioning equipment, transfer equipment, and parts related to the functioning of those items. Such property, however, does not include any equipment that transmits or uses the electricity generated.

Section 1.48-1(e) of the regulations generally provides, in effect, that buildings and structural components thereof do not qualify as "section 38 property" for purposes of the investment tax credit. The term "structural components" include such parts of a building as walls, partitions, floors and ceilings, as well as any permanent coverings therefore such as paneling or tiling; windows and doors; all components (whether in, on, or adjacent to the building) of a central air conditioning or heating system, including motors, compressors, pipes and ducts; plumbing and plumbing fixtures, such as sinks and bathtubs; electric wiring and lighting fixtures; chimneys; stairs, escalators, and elevators, including all components thereof; sprinkler systems; fire escapes; and other components relating to the operation or maintenance of a building. However, § 1.48-9(b) provides that, in fact, structural components of a building may qualify for the energy credit.

Rev. Rul. 79-183, 1979-1 C.B. 44 provided an exception to the structural component rule described above and concluded, in effect, that a structural component of a building, which is so specifically engineered that it is in essence part of the machinery or equipment with which it functions, will qualify as "section 38 property" for purposes of the investment tax credit.

Section 1.48-9(f)(1) of the regulations provides, in part, that specially defined energy property means only those items described in paragraph (f)(4) through (f)(14) of this section that meet the requirements of paragraph (f)(2) of this section. Section 1.48-9(f)(2) provides, in part, that to be eligible, each item described must be installed with an existing industrial or commercial facility. Section 1.48-9(f)(15) authorizes the Secretary of the Treasury to add additional items to that list. The regulation further provides, in part, that if an item performs more than one function, only the incremental cost (as defined in paragraph (k) of this section) of the equipment qualifies. Section 1.48-9(k) provides, in part, that the term "incremental cost" means the excess of the total cost of equipment over the amount that would have been expended for the equipment if the equipment were not used for a qualifying purposes.

Although structural components of buildings are generally excluded from the definition of "section 38 property" for purposes of the investment tax credit, the \*\*\*\*\* has been specifically designed and engineered for Taxpayer's commercial building. Further, even though Taxpayer manufactures, distributes and installs the \*\*\*\*\* as separate components, they are integrated and inseparable components of a single system. The \*\*\*\*\* is not sold or installed for any purpose other than in connection with the installation of the \*\*\*\*\* Consequently, the \*\*\*\*\* of a competitor may not be installed on the \*\*\*\*\* Conversely, the \*\*\*\*\* may not be sold or installed for rooftop use unless the \*\*\*\*\* is first purchased and installed on that roof.

\*\*\*\*\*

Accordingly, we conclude that the \*\*\*\*\* , as described above, constitutes energy property under § 48(a)(3) of the Code except to the extent that § 1.48-9 requires that a portion of the basis of the property is allocable to any portion of such property that performs the function of a roof, e.g. , protection from rain, snow, wind, sun, hot or cold temperatures or that provides structural support or insulation.

Except as specifically determined above, no opinion is expressed or implied concerning the Federal income tax consequences of the transaction described above.

This ruling is directed only to the Taxpayer who requested it. Section 6110(k)(3) of the Code provides it may not be used or cited as precedent. We are sending a copy of this letter ruling to the Industry Director.

Sincerely, Peter C. Friedman, Senior Technician Reviewer, Branch 6, Office of Associate Chief Counsel (Passthroughs & Special Industries).