Internal Revenue Service

Department of the Treasury
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Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B06
PLR-102696-10

In Re:

Date: May 19, 2010

LEGEND:

Taxpayer	=
State	=
Program	=
Public Utility	=
$a	=
b	=
$c	=
$d	=
Year	=
X	=

Dear :

This responds to a letter dated , submitted by your authorized representative, requesting rulings under § 25D, § 136(a), and § 61(a) of the Internal Revenue Code ("Code") related to the purchase of a residential solar electric system.

The facts represented are as follows:

Taxpayer is a resident of State. Taxpayer uses the cash method of accounting and is a calendar year taxpayer. Taxpayer contracted with X to purchase and install a residential alternative renewable energy system at Taxpayer's residence.

Under the State Program, retail public electric utility companies ("Utilities" or "Utility") such as Public Utility are required to generate an increasing portion of their retail electricity sales from renewable sources ("Annual Renewable Energy Requirement"). A portion of the Annual Renewable Energy Requirement must be met with Renewable Energy Credits ("RECs"), which are derived from distributed residential and non-residential applications. RECs are tradable commodities that represent proof that one kilowatt-hour ("kWh") of electricity is generated from a renewable energy source. RECs expire once a Utility uses the RECs to satisfy the Annual Renewable Energy Requirement. Utilities may transfer or purchase RECs from third parties to meet the requirements imposed by the Program.

Most Utilities have established renewable energy incentive programs to satisfy the requirements of the Program. The incentive programs typically offer residential customers, who install renewable energy resources, the opportunity to sell RECs associated with their renewable installations back to the Utility for an up-front incentive payment based on an amount of residential solar generating capacity.

In Year, Taxpayer purchased a grid-tied solar electric power system ("Residential Solar System") from X for $a that allows Taxpayer to convert sunlight into utility grade electricity. The Residential Solar System will generate electricity for Taxpayer's residence. Taxpayer is a participant in Public Utility's renewable energy incentive program whereby Taxpayer has agreed to transfer title and ownership of any "environmental credits, benefits, emissions reductions, offsets and allowances" associated with each kWh of electricity produced by Taxpayer's Residential Solar System to Public Utility for a b year term in exchange for a one-time payment of $c ("REC Payment"). Public Utility is not purchasing the Residential Solar System from Taxpayer but is purchasing the RECs associated with that system.

Taxpayer does not expect to reduce the amount of expenditure made for the Residential Solar System by the REC Payment; Taxpayer plans to calculate the tax credit on the full purchase price. Thus, Taxpayer expects to report on Taxpayer's federal income tax return for Year an income tax credit of $d pursuant to § 25D(a)(1).

Accordingly, you requested the following rulings:

1. Taxpayer will be able to obtain an income tax credit pursuant to § 25D for Year in the amount $d (30% of $a) with no reduction for the receipt of the REC payment;

2. The REC payment shall not be treated as a subsidy provided (directly or indirectly) by a public utility to a customer for the purchase or installation of any energy conservation measure as described in § 136(a); and

3. The Taxpayer shall be required to treat the REC payment as gross income pursuant to § 61(a).

Law & Analysis

Section 25D(a)(1) of the Code allows an individual a credit against the tax imposed for the taxable year in an amount equal to 30 percent of the qualified solar electric property expenditures made by the taxpayer during such year.

Section 25D(d)(2) defines the term "qualified solar electric property expenditure" as an expenditure for property which uses solar energy to generate electricity for use in a dwelling unit located in the United States and used as a residence by the taxpayer.

Section 25D(e)(1) allows the expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the qualified solar electric property and for piping or wiring to interconnect such property to the dwelling unit to be taken into account for purposes of § 25D.

Under § 25D(e)(8)(A), generally, for purposes of determining the tax year when the credit is allowed, an expenditure with respect to an item shall be treated as made when the original installation of the item is completed. Under § 25D(e)(8)(B), in the case of an expenditure in connection with the construction or reconstruction of a structure, such expenditure shall be treated as made when the original use of the constructed or reconstructed structure by the taxpayer begins.

Section 61(a) provides, that, except as otherwise provided by law, gross income means all income from whatever source derived, including gains derived from dealings in property (§ 61(a)(3)). Under § 61, Congress intends to tax all gains or undeniable accessions to wealth, clearly realized, over which taxpayers have complete dominion. Commissioner v. Glenshaw Glass Co., 348 U.S. 426 (1955).

Section 136 provides an exception to this general rule, stating that gross income does not include the value of any subsidy provided (directly or indirectly) by a public utility to a customer for the purchase or installation of any energy conservation measure. Section 136(b) provides, in relevant part, that a taxpayer may not take a tax credit (such as the credit under § 25D) for an expenditure to the extent of the amount excluded as a subsidy under § 136(a) with respect to the expenditure.

In the current situation, Taxpayer sold all of the environmental attributes associated with the RECs to Public Utility in exchange for a payment. As such, Public Utility's payment to Taxpayer is neither a rebate nor purchase-price adjustment, since Public Utility has no reasonable nexus to the cost or sale of the subject property from the vendor, X. Also, the payment is not a "subsidy" intended to facilitate the acquisition of property deemed advantageous to the payor, though Public Utility may make such

payments in other contexts. Rather, Taxpayer represents that the transaction between the parties is effectively a sale or exchange of property and property rights. Public Utility will in fact make no payment to Taxpayer absent the transfer of Taxpayer's valuable property interests (namely, the RECs associated with the Residential Solar System purchased by Taxpayer from X), and the parties specifically state that the subject payment is to be made in consideration of the transfer of such property interests.

Based solely on the information submitted and representations made, we conclude that the proceeds from this sales transaction are not within the purview of § 136. Consequently, Taxpayer must include gain from the sale of the RECs to Public Utility in Taxpayer's gross income under § 61(a). Further, Taxpayer is not required under § 136(b) to reduce the basis in the Residential Solar System. Taxpayer represents that the Residential Solar System generates electricity for Taxpayer's residence located in the United States. Thus, Taxpayer may take a credit for 30 % of the expenditures for qualified solar electric property, and Taxpayer does not have to reduce the expenditure by the amount of the REC Payment.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by Taxpayer. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination. Except as specifically set forth above, we express no opinion concerning the federal income tax consequences of the facts or transactions described above under any other provision of the Code. Specifically, we express no opinion on whether the amounts allocated to the qualified expenditures are correct and thus we express no opinion on the accuracy of the tax credit amount.

This ruling is directed only to the taxpayer who requested it. Under § 6110(k)(3) of the Code, a letter ruling may not be used or cited as precedent.

In accordance with a power of attorney on file in this office, we are sending a copy of this letter ruling to your authorized representatives.

Sincerely,

Jaime C. Park
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):
Copy
Copy for § 6110 purposes