

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201043023**
Release Date: 10/29/2010
Index Number: 48.00-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B6
PLR-124183-09
Date:
October 23, 2009

LEGEND:

- Taxpayer =
- Developer =
- State a =
- A =
- B =
- C =

Dear

This letter responds to your letters dated May 6 and June 26, 2009, submitted by your authorized representatives, requesting rulings concerning the application of § 48 of the Internal Revenue Code (the Code) to the facts described below.

Facts

The facts are represented by Taxpayer to be as follows.

Taxpayer uses a calendar taxable year accounting period, and the accrual method of accounting for maintaining its accounting books and records and filing its federal income tax return. Taxpayer was established on September 25, 2001. The three members and ownership percentages of Taxpayer are:

PLR-124183-09

<u>Name</u>	<u>Percentage</u>
-------------	-------------------

ABC

Taxpayer owns and rents a commercial building in State a. Taxpayer purchased a photovoltaic (PV) curtain wall from Developer for _____ on March 9, 2009. The PV curtain wall uses solar energy to generate electricity that will help power the commercial building. The purchase price of the PV curtain wall is broken down as follows:

<u>Description</u>	<u>Amount</u>
--------------------	---------------

With regard to the above, frameless PV panels are secured to aluminum framing members with special sealants and gaskets that electrically isolate the panels.

The PV curtain wall is the glass exterior that is attached to the floor slabs of a building and encloses the structure. _____ curtain wall systems are those which can be preassembled and glazed off site and progressively installed on a building. _____ systems are most suitable for large projects, i.e. high-rise building or projects in locations that have higher seismic design requirements.

PV curtain wall is a new technology and is a highly specialized application of curtain wall and PV technology. As the surface area of a high-rise building wall greatly exceeds the surface area of its roof, incorporating solar technology into the side of a building maximizes the energy production potential of a system installed on the structure.

PLR-124183-09

With PV curtain wall, some or all of the glass is substituted with PV panes, and typically comes in one of two solar configurations (Silicon and Thin Film) and one of two glass configurations (Vision and Spandrel). Both solar configurations and both glass configurations may be utilized on the PV curtain wall. Current and developing PV technology creates a “tinted” glass that one can see through while it is still generating electricity. Developing PV technology enables virtually 100% of the surface area of the side of a building to generate electricity without impairing the occupants’ view outside or the basic configuration of the building for space planning purposes.

It provides for both vertical and horizontal wiring to accommodate various building techniques and solar requirements.

PV curtain wall is shipped to the jobsite for installation.

Ruling Requested

The elements of the purchase price of the PV curtain wall, as described above, constitute energy property under § 48 of the Internal Revenue Code (the 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.

Treasury Reg. § 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.

Treasury Reg. § 1.48-9(d)(1) 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

PLR-124183-09

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.

Treas. Reg. § 1.48-9(d)(3) 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.

Treas. Reg. § 1.48-1(e) 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.

In Rev. Rul. 79-183, 1979-1 C.B. 44, the Internal Revenue Service (the Service) provided an exception of 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.

In Rev. Rul. 70-236, 1970-1 C.B. 8, the Service concluded, in part, that installation costs qualified as “section 38 property” for purposes of the investment tax credit. Rev. Rul. 70-236 was modified by Rev. Rul. 83-146, 1983-2 C.B. 17 with regard to a separate issue.

The PV curtain wall is made up of various component parts, substantially all of which are directly involved in the production of

PLR-124183-09

electricity through the use of solar energy.

PV curtain wall is sold as one complete product that uses solar energy to generate electricity.

Although structural components of buildings are generally excluded from the definition of “section 38 property” for purposes of the investment tax credit, the PV curtain wall has been specifically designed and engineered for the taxpayer’s commercial building. PV curtain wall in and of itself is machinery or equipment used to produce solar energy. It is only when these are connected to each other and to other structural components of the building that the character or nature of the is potentially transformed. Thus, PV curtain wall, in essence, serves a dual purpose: (1) to generate electricity through the use of solar energy; and (2) to enclose the building or structure. Moreover, the regulations specifically address the fact that structural components may qualify as energy property.

Accordingly, we conclude that the elements of the purchase price of the PV curtain wall, as described above, constitute energy property under § 48 of the Code.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed whether Taxpayer qualifies for the investment credit under § 46 of the Code, or whether the energy property otherwise qualifies under § 48 of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file in this office, a copy of this letter will be sent to your authorized representatives.

Sincerely yours,

Peter C. Friedman
Senior Technician Reviewer
(Passthroughs & Special Industries)
Office of the Associate Chief Counsel