Internal Revenue Service

Number: **201426013**
Release Date: 6/27/2014

Index Number: 48.00-00, 50.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B05
PLR-140343-13
Date:
March 19, 2014

Legend:

X =

Y =

Z =

Possession =

Year =

Dear :

This responds to the letter dated September 12, 2013, and related correspondence, submitted on behalf of X, requesting rulings under § 50 of the Internal Revenue Code.

FACTS

The facts represented are as follows. X was a wholly-owned domestic limited liability company, treated as a disregarded entity for federal tax purposes. Y, a domestic corporation, was the sole member of X. Y has not elected to be exempt from federal income tax pursuant to § 936.

Z, also a domestic corporation, made a capital contribution to X in exchange for a membership interest in X. Y and Z intended that, upon the capital contribution of Z, X would convert from a disregarded entity to a partnership for federal tax purposes. Z has not elected to be exempt from federal income tax under § 936.

X's primary business is to acquire, operate, and manage solar energy facilities located in Possession (hereinafter, each such facility will be referred to as "Project"). X will acquire a number of the Projects and place them in service in Year. X will use the Projects to generate electricity with solar energy and sell all of the electricity produced by each Project to a host customer under a power purchase agreement. The Projects are not eligible for production tax credits under § 45. At no time will any portion of the Projects be used: (i) for lodging, (ii) by a tax-exempt organization described in § 50(b)(3) or (iii) by governments or foreign persons. X intends that each Project constitute "equipment which uses solar energy to generate electricity" within the meaning of § 48(a)(3)(A)(i) and qualify for the tax credit under § 48 ("energy credit"). X will not elect to depreciate any portion of a Project under the alternative depreciation system under § 168(g).

X requests the following rulings: (1) assuming that X will be regarded as a valid partnership for federal tax purposes and that each partner of X will be regarded as a valid partner, each partner will be regarded as an owner and user of the Projects to the extent of its respective share of the basis of each Project for purposes of § 50(b)(1)(B) and, therefore, will be entitled to a share of the energy credit in accordance to § 1.46-3(f); and (2) to the extent each partner is so regarded, the Projects will not be ineligible for the energy credit by § 50(b)(1)(A).

LAW AND ANALYSIS

Section 48(a) 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) 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.

Section 1.48-9(a)(2) of the Income Tax Regulations provides that in order to qualify as "energy property" under § 48, 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) 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) 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 1.46-3(f)(1) provides, in part, that in the case of a partnership, each partner shall take into account separately, for his taxable year with or within which the partnership taxable year ends, his share of the basis of partnership new § 38 property and his share of the cost of partnership used § 38 property placed in service by the partnership during such partnership taxable year. Each partner shall be treated as the taxpayer with respect to his share of the basis of partnership new § 38 property and his share of the cost of partnership used § 38 property.

Section 50(b)(1)(A) provides that, except as provided in § 50(b)(1)(B), no credit is determined with respect to any property which is used predominantly outside the United States. Section 50(b)(1)(B) provides that § 50(b)(1)(A) does not apply to any property described in § 168(g)(4).

Section 168(g)(1)(A) provides that any tangible property used predominantly outside the United States during the taxable year must be determined under the alternative depreciation system of § 168(g).

Section 168(g)(4) lists exceptions to § 168(g)(1)(A) for certain property used outside the United States. Section 168(g)(4)(G) provides that property will not be treated as used predominantly outside the United States if the property is owned by a domestic corporation (other than a corporation which has an election in effect under former § 936) or by a United States citizen (other than a citizen entitled to the benefits of § 931 or § 933) and which is used predominantly in a possession of the United States

by such a corporation or such a citizen, or by a corporation created or organized in, or under the law of, a possession of the United States.

The background of § 168(g)(4) provides insight in determining whether § 168(g)(4)(G) applies to domestic partnerships where all of the partners are domestic corporations (none of which has an election in effect under § 936) or United States citizens (none of whom is entitled to the benefits of § 931 or § 933). The rules in § 168(g)(4) are derived from former § 48(a)(2)(B). Prior to 1990, § 168(g)(4) provided, in relevant part, that for purposes of § 168(g)(4), rules similar to the rules under § 48(a)(2) (including the exceptions contained in § 48(a)(2)(B)) shall apply in determining whether property is used predominantly outside the United States. When former § 48 was repealed in 1990, § 168(g)(4) was amended to incorporate the enumerated exceptions contained in former § 48(a)(2)(B). See § 11813 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508 (the "Act"). The language of § 168(g)(4)(G) is the same as the language in former § 48(a)(2)(B)(vii) prior to its repeal in 1990.

The Senate Finance Committee stated the following comments, in relevant part, on the reason for the enactment of former § 48(a)(2)(B)(vii):

> "Your committee's amendment extends the application of the investment credit provision to property used in a possession by a U.S. person or by a corporation organized in a possession provided the property would otherwise have qualified for the investment credit. This rule is not extended if the property is owned or used in the possession by U.S. persons who are presently exempt from U.S. tax due to the application of the special provisions of the Code which exempt U.S. persons who derive substantially all of their income from a U.S. possession (section 931, 932, 933, 934(b))." S. Rep. No. 1707, 89th Cong., 2d Sess. 58 (1966), 1966-2 C.B. 1100.

Based on the Senate Report, it appears that Congress intended former § 48(a)(2)(B)(vii) to apply to United States persons even though the literal language of former § 48(a)(2)(B)(vii) applied to United States citizens or domestic corporations. When former § 48(a)(2)(B)(vii) was enacted in 1966, the term "United States person" was defined under § 7701(a)(30) as meaning: (A) a citizen or resident of the United States, (B) a domestic partnership, (C) a domestic corporation, and (D) any estate or trust (other than a foreign estate or foreign trust within the meaning of § 7701(a)(31)).

Similar to former § 48(a)(2)(B)(vii), the literal wording of § 168(g)(4)(G) applies to domestic corporations or United States citizens, but not to domestic partnerships. However, the repeal of the former provision and the amendment to § 168(g)(4) by § 11813 of the Act were not intended to be substantive changes in the tax law. H.R. Rep. No. 101-894, 101st Cong., 2d Sess (Oct. 17, 1990).

Section 7701(a)(30) defines the term “United States person” as: (A) a citizen or resident of the United States, (B) a domestic partnership, (C) a domestic corporation, (D) any estate (other than a foreign estate, within the meaning of § 7701(a)(31)), and (D) any trust if a court within the United States is able to exercise primary supervision over the administration of the trust, and one or more United States persons have the authority to control all substantial decisions of the trust.

In light of the legislative history of § 168(g)(4) and former § 48(a)(2)(B)(vii), we believe that § 168(g)(4)(G) is intended to apply to a domestic partnership where all of its partners are domestic corporations that do not have an election in effect under § 936 or are United States citizens that are not entitled to the benefits of § 931 or § 933.

X represents when the Projects are placed in service and begin commercial operations, X will be a domestic partnership and the partnership will own and operate the Projects. Therefore, provided that X is a domestic partnership where all of its partners are domestic corporations (other than a corporation which has an election in effect under § 936) or United States citizens (other than a citizen entitled to the benefits of § 931 or § 933), the Projects that are owned by X for depreciation purposes and are used by X only in Possession is property described in § 168(g)(4)(G).

CONCLUSION

Based solely upon the facts submitted and representations made, we conclude that: (i) assuming that X will be regarded as a valid partnership for federal tax purposes and that each partner of X will be regarded as a valid partner, each partner will be regarded as an owner and user of the Projects to the extent of its respective share of the basis of each Project for purposes of § 50(b)(1)(B) and, therefore, will be entitled to a share of the energy credit in accordance to § 1.46-3(f); and (ii) to the extent each partner is so regarded, the Projects will not be ineligible for the energy credit by § 50(b)(1)(A).

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the above-described facts under any other provision of the Code. In particular, we express no opinion as to whether X is a valid partnership and that each partner of X is a valid partner for federal tax purposes. Further, we express no opinion as to whether each partner of X will be regarded as an owner and user of the Project for purposes of any provision of the Code other than § 50(b)(1)(B).

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 with this office, copies of this letter ruling will be sent to your authorized representatives.

Sincerely,

Nicole R. Cimino
Senior Technician Reviewer, Branch 5
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)

Copy of this letter
Copy for § 6110 purposes

cc: