



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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Honorable Howard L Berman
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Berman:

I am responding to your letter dated February 9, 2006, requesting that the IRS "explicitly permit donors to purchase solar installations for non-profits, lease them to non-profits and benefit from the tax credits and depreciation, and then sell the systems to non-profits after 5 years." Your letter discusses the advantages of such an action.

As you noted, the Internal Revenue Code (the Code) contains various provisions providing tax advantages to people investing in certain types of energy property. The law generally provides for an energy credit for taxpayers that place in service certain "solar energy property" during a taxable year (Section 48 of the Code).

However, the law prohibits an investment credit, including the credit for certain solar energy property used by a tax exempt entity such as the non-profits described in your letter (Section 50(b)(3) of the Code).

Your letter also refers to the accelerated depreciation available to people who place energy property in service. The law provides generally that solar energy property described in section 48(a)(3) of the Code may be depreciated over 5 years (Section 168(e)(3)(B)(vi)(I) of the Code). However, this accelerated period of depreciation is not available for "tax-exempt use property" (Section 168(g)(1)(B) of the Code). Tax-exempt use property includes "that portion of any tangible property (other than non-residential real property) leased to a tax-exempt entity." (Section 168(h)(1)(A) of the Code). Tax-exempt entity includes an organization exempt from federal income tax (Section 168(h)(2) of the Code). To depreciate energy property leased to a tax-exempt entity you must use the straight-line method over the longer of 12 years or 125 percent of the lease term rather than using accelerated depreciation over 5 years.

As you can see from these statutory provisions, we cannot permit purchasers of solar energy property to take the energy credit and accelerated depreciation if the purchaser leases the property to a tax-exempt entity for 5 years. I hope this information is helpful.

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If you have any questions, please contact me or

of my staff at

Sincerely,

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