

Internal Revenue Service

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Washington, DC 20224

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August 11, 2009

LEGEND:

Taxpayer =

Developer =
Manufacturer =
State a =

Dear

This letter responds to your letter dated , submitted by your authorized representative, requesting rulings concerning the application of section 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.

Since , Taxpayer has been involved in the knitwear industry. Taxpayer operates manufacturing facilities in State a and employs approximately employees. The operation of Taxpayer’s manufacturing facilities in State a requires significant amounts of electricity. Taxpayer has sought to establish a brand image as an environmentally friendly domestic manufacturer. In order to control its electricity costs and further establish its brand image as an environmentally friendly manufacturer,

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Taxpayer is considering the purchase of a rooftop photovoltaic solar generation system

Ruling Requested

The Reflective Roof Surface, when installed in connection with the System, constitutes energy property under § 48 of the Internal Revenue Code (the Code).

Law and Analysis

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.

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Treasury Reg. § 1.48-9(a)(2) provides that in order to qualify as “energy property” under section 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 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)(2) specifically excludes “passive solar systems” from qualification as “energy property.” A passive solar system is defined as a “system [that] is based on the use of conductive, convective, or radiant energy transfer.”

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.

The System generates electricity from sunlight. Because of the cylindrical configuration of the photovoltaic cells, a large portion of the aggregate generating surface of the panels is oriented toward the underside of each panel. The design of the panels allows sunlight to shine through the spaces between each cylinder and reflect upon the underside of the panels from the surface on which the panels are installed. By orienting energy-generating surface toward the underside of the panel and allowing sunlight to shine through the spaces between the cylinders, the panels generate electricity using sunlight reflected from the surface on which the panels rest.

When installed upon a highly reflective surface such as the Reflective Roof Surface, the System generates significant amounts of electricity from reflected sunlight. Because the Reflective Roof Surface enables the generation of significant amounts of electricity from reflected sunlight, the Reflective Roof Surface constitutes equipment that uses solar

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energy to generate electricity when installed in connection with the System. The Reflective Roof Surface also satisfies, when installed in connection with the System, the definition of energy property under Treasury Reg. §§ 1.48-9(d)(1) and 1.48-9(d)(3), because the Reflective Roof Surface is part of the equipment and materials that use solar energy to directly generate electricity.

Accordingly, we conclude that the Reflective Roof Surface, when installed over an existing roof in connection with the System, constitutes 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 Friedman
Senior Technician Reviewer
(Passthroughs & Special Industries)
Office of the Associate Chief Counsel

cc: