



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

OFFICE OF
CHIEF COUNSEL

January 8, 2010

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UIL: 136.00-00, 25D.00-00

CONEX-152472-09
CC:ITA:4:

The Honorable John McCain
United States Senator
5353 North 16th Street, Suite 105
Phoenix, AZ 85016

Attention:

Dear Senator McCain:

I am responding to your letter of October 27, 2009, on behalf of your constituent, [redacted] wrote about the limitation on the tax credit for qualified solar electric property (section 25D and section 136(b) of the Internal Revenue Code).

As you requested, we responded directly to [redacted]. I have enclosed a copy of the letter to [redacted].

I hope this information is helpful. If we can assist you further, please contact me or [redacted] at [redacted].

Sincerely,

Michael J. Montemurro
Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosure



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Dear

Senator John McCain has asked us to respond to your letter to him dated September 19, 2009. Your letter asserts that under the American Reinvestment and Recovery Tax Act of 2009 (ARRTA), an individual is allowed a tax credit equal to the 30 percent of the cost of a qualified solar electric expenditure, including the part a public utility provides to the individual through a nontaxable energy conservation subsidy.

Your assertion is not correct. To determine the amount of the credit, Congress requires an individual to exclude any nontaxable energy conservation subsidy the individual receives from a public utility. Federal law provides a tax credit for qualified solar electric property expenditures (section 25D of the Internal Revenue Code (Code)). Prior to the enactment of ARRTA, an individual could not take a credit for the portion of a qualified solar electric property expenditure that was made from subsidized energy financing. As you correctly note, in ARRTA, Congress repealed this limitation for taxable years beginning after December 31, 2008.

Congress, however, has not repealed the limitation on the section 25D credit when the individual receives a nontaxable energy conservation subsidy from a public utility under section 136 of the Code. An individual who purchases or installs any energy conservation measure does not include in gross income the value of any subsidy that a public utility provides (directly or indirectly) for that expenditure (section 136(a) of the Code).

Section 136(b) of the Code is titled "Denial of Double Benefit" and provides that—

- An individual may not take a tax credit under any other provision of subtitle A of the Code (which includes section 25D of the Code) for an expenditure for an energy conservation measure to the extent the expenditure is from a subsidy that section 136(a) of the Code excludes from the individual's gross income.
- An individual must reduce the adjusted basis in the acquired property by the amount that section 136(a) of the Code excludes from income.

To summarize, Congress continues to limit the tax credit for qualified solar electric property expenditures if part of the expenditure is from a nontaxable energy conservation subsidy (section 136(b) of the Code). The statute does not contain any exceptions or grant the Internal Revenue Service authority to make exceptions to this rule. Any changes to this rule would require legislative action by Congress.

Thus, if the _____ in financing that _____ provided to you was a nontaxable energy conservation subsidy under section 136 of the Code, you must exclude it in determining your allowable tax credit for qualified solar electric property. We do not express an opinion on whether that _____ is a nontaxable energy conservation subsidy.

I hope this information is helpful. If we can assist you further, please contact me or _____ at _____

Sincerely,

Michael J. Montemurro
Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

CC: The Honorable John McCain