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OFFICE OF
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CC:ITA:4:

The Honorable Ann Kirkpatrick
Member, U.S. House of Representatives
240 South Montezuma Street Suite 101
Prescott, AZ 86303

Attention:

Dear Congresswoman Kirkpatrick:

I am responding to your inquiry dated November 19, 2009 on behalf of your constituent, . He wrote about limitations on the tax credit for qualified solar electric property.

received from for of qualified solar electric property that he purchased. His view is that his tax credit is based on (rather than , excluding the from) because the American Recovery and Reinvestment Tax Act (ARRTA) repealed the limitation on the credit for amounts financed with subsidized energy financing.

As explained below, current law requires an individual to exclude any nontaxable energy conservation subsidy the individual receives from a public utility in determining the amount of the credit for qualified solar electric property.

Qualified solar electric property credit. Federal law allows a tax credit for qualified solar electric property (section 25D of the Internal Revenue Code (the Code)). Before the enactment of ARRTA, an individual could not take a credit for the part of a qualified solar electric property expenditure made from subsidized energy financing (former section 25D(e)(9)). Congress repealed this limitation for taxable years beginning after December 31, 2008 (section 1103 of ARRTA).

Nontaxable energy conservation subsidy. 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). However, 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 energy conservation measure expenditure to the extent it is from a subsidy that section 136(a) of the Code excludes from the individual's gross income (section 136(b) of the Code).

Thus, although Congress repealed the limitation on the qualified solar electric property credit financed with subsidized energy financing, it did not repeal the limitation on that credit for the part of the property financed with a nontaxable energy conservation subsidy from a public utility.

We do not have enough information to determine whether the received from _____ is a nontaxable energy conservation subsidy. If it is, however, he must exclude it in determining the allowable tax credit for qualified solar electric property.

I hope this information is helpful. If you have additional questions, please contact me or at _____ .

Sincerely,

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