



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

OFFICE OF THE CHIEF COUNSEL

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Dear _____ :

Senator Barbara Mikulski has asked me to respond to your letter to her dated April 6, 2010, about the income tax treatment of the purchase and installation of caulk products for air sealing of a home. You requested that the IRS issue additional guidance to the public about whether certain caulk products are eligible for the tax credit for nonbusiness energy property. This tax credit provides that a taxpayer may be eligible for a tax credit of 30 percent of the taxpayer's expenditures for energy efficient building envelope components including qualifying insulation materials or systems (section 25C of the Internal Revenue Code). This letter describes well-established interpretations and principles of tax law without applying them to a specific set of facts. It is advisory only and has no binding effect with the Internal Revenue Service.

I understand that publication of additional public guidance on this issue is very important to you. Each year the Office of Tax Policy and the IRS prepare a Guidance Priority List to identify and prioritize the tax issues to address through regulations, revenue rulings, revenue procedures, notices, and other published administrative guidance. My office is now considering issues for the Guidance Priority List for the period from July 2010 through June 2011. You and other taxpayers have asked many questions about the tax credit for nonbusiness energy property. The Office of Tax Policy and the IRS must balance the need for public guidance in this and many other areas. We will consider your request for additional public guidance in this process.

The current guidance on this tax credit, Notice 2009-53, provides a procedure allowing manufacturers to certify that a product, such as an insulation material or system, satisfies the required efficiency standards in the law. The IRS based this procedure on the belief that taxpayers would face difficulty in determining whether the property that they purchase would satisfy the statutory efficiency standards; instead, the IRS believes that manufacturers can better determine if the products that they manufacture meet the technical requirements in the law.

To qualify for this tax credit, an insulation material or system must be specifically and primarily designed to reduce the heat loss or gain when installed in or on a home. The law also requires the insulation material or system to meet the criteria that the 2009 International Energy Conservation Code (IECC) established. A caulking product may qualify as an insulation material eligible for this tax credit if the product is:

- Designed specifically and primarily to reduce heat loss or gain when installed in or on a home.
- Expected to remain in use for at least five years.
- Considered in determining that the building satisfies the building thermal envelope requirements that the IECC established. The IECC requires, in part, durable sealing of the building thermal envelope to limit air infiltration and requires caulking or otherwise sealing of specific building features.

Thus, a durable caulking product may qualify for the section 25C credit.

I hope this information is helpful. If you have any questions about this matter, please contact _____ at _____.

Sincerely,

Curt G. Wilson
Associate Chief Counsel
(Passthroughs & Special Industries)

cc: The Honorable Barbara A. Mikulski
Attention: