



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

OFFICE OF THE CHIEF COUNSEL

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The Honorable John McCain
United States Senator
407 West Congress Street
Suite 103
Tucson, AZ 85701

Attention:

Dear Senator McCain:

This letter responds to your inquiry of December 13, 2010, on behalf of _____ inquired about the proper tax treatment of a payment he received from a public utility on the installation of a photovoltaic (pv) power system at his residence.

Section 61(a) of the Internal Revenue Code (the Code) provides that gross income means all income from whatever source derived, including gains derived from dealings in property, unless specifically excluded by law.

Section 136(a) of the Code permits a taxpayer to exclude from income any subsidy that a public utility provides to a customer for the purchase or installation of any residential energy conservation measure (RECM), such as _____ pv system. Section 25D of the Code permits a taxpayer to claim a tax credit for amounts paid for certain residential energy efficient property. However, a taxpayer may not claim a section 25D credit for amounts excluded from income as section 136(a) subsidies. In other words, the law does not allow a double tax benefit—section 136(a) exclusion and section 25D credit—for the same amount.

Not every payment that a public utility makes to a customer is a subsidy excludible from gross income under section 136(a) of the Code. Some payments to customers are for the purchase of renewable-sourced electricity or the purchase of renewable energy credits (RECs). These payments are not excludible section 136(a) subsidies and are generally includible in customers' taxable income. However, a taxpayer may claim a

section 25D credit for amounts the taxpayer pays for energy efficient property, including payments from a public utility that are not excludible section 136(a) subsidies.

correspondence does not indicate whether the payment he received from his utility company was an excludible section 136(a) subsidy or an includible payment for property. I hope the explanation above will help in characterizing the payment he received.

If we can assist you further, please contact or at

Sincerely,

/s/ George J. Blaine

George J. Blaine
Associate Chief Counsel
(Income Tax & Accounting)