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**IRS Rules Favorably on Owner's Eligibility for Federal Tax Credit
for a Community-Shared Solar Project**

IRS Ruling Has Implications for Community-Shared Solar Projects

Montpelier, VT — The IRS has ruled that an owner of photovoltaic panels in an offsite, community-shared solar array is eligible to take advantage of one of the primary incentives offered to homeowners adopting solar—the 30 percent federal residential income tax credit available under Section 25D of the Internal Revenue Code, sometimes known in the industry as the “residential ITC.” Community-shared solar allows electric customers to buy an interest in an offsite solar array and to receive credit on their electricity bills for their ownership interest. While the IRS’s recent Private Letter Ruling is only legally applicable to the individual taxpayer in question—a solar panel owner in Boardman Hill Solar Farm, a member-managed 150-kW off-site solar array in Vermont—the ruling will be taken as a positive development by community-shared solar participants and project developers.

The issue of whether a residential owner of solar panels installed in an off-site, community-shared, solar array qualifies for the residential ITC has been an area of legal uncertainty, creating some confusion in the marketplace. Working with stakeholders in Massachusetts and Vermont, and with attorneys in the Boston office of law firm Foley Hoag, LLP, the Clean Energy States Alliance (CESA), a national nonprofit coalition of public agencies and organizations working on clean energy issues, arranged for the submission of a Private Letter Ruling request to the Internal Revenue Service to help clarify this issue.

“This new Private Letter Ruling represents the first instance in which the IRS has publicly weighed in on the applicability of the residential ITC to an owner of solar panels in a shared, offsite array,” said Warren Leon, the Executive Director of CESA. “The ruling suggests that the IRS may be receptive to claims for the residential ITC when a project mirrors the structure used in this case.”

"Community-shared solar has led to remarkable growth in residential solar because it allows those without roof space or solar access to participate in the solar market," observed Rhone Resch, President and CEO of the Solar Energy Industries Association (SEIA). "This ruling helps pave the way for even more growth under the widely successful federal investment tax credit."

Foley Hoag attorneys Nicola Lemay and Adam Wade provided the legal work leading to the issuance of the private letter ruling request and facilitated discussions with the IRS.

“Under the specific facts presented in this private letter ruling, the IRS has agreed with the individual taxpayer that his or her purchase of solar electric property that is part of a net-metered offsite solar installation with panels owned by multiple individuals qualifies for the section 25D tax credit,” said Nicola Lemay, Foley Hoag Partner and Chair of its Tax Department. “Although, by law, this letter ruling cannot be used or cited as precedent by other taxpayers, several cases acknowledge that a private letter ruling can be used as ‘persuasive authority’ or an ‘instructive tool,’” Lemay further noted. “In general, letter rulings like this one may also be used by the IRS in its own interpretations, including by IRS employees who might consider it in issuing letter rulings to similarly situated taxpayers.”

“This letter ruling fills an important gap. It adds a previously unavailable written resource to the growing body of authority which can be used by courts, IRS personnel, and practitioners in structuring community shared solar projects,” said Adam Wade. “Pairing the 25D credit with the lower installed cost and economies of scale of mid-scale and larger-scale distributed solar holds tremendous potential in enabling direct ownership of community-shared systems by groups of individuals in utility territories with supportive net metering and bill-crediting programs.”

The Private Letter Ruling and other documents of interest are available on CESA’s website at <http://www.cesa.org/about-us/member-news/newsitem/IRS-Community-Shared-Solar-PLR>.

For further discussion of the details and legal implications of this Private Letter Ruling, CESA will be hosting a free webinar on Tuesday, September 22th from 1 pm - 2 pm EST. Foley Hoag attorneys Nicola Lemay and Adam Wade will present. Webinar details and registration information are available at <http://www.cesa.org/webinars/showevent/federal-residential-tax-credit-eligibility-for-community-shared-solar-?d=2015-09-22>.

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About the Clean Energy States Alliance: The Clean Energy States Alliance (CESA) is a national nonprofit coalition of public agencies and organizations working together to advance clean energy. CESA members—mostly state agencies—include many of the most innovative, successful, and influential public funders of clean energy initiatives in the country. CESA works with state leaders, federal agencies, industry representatives, and other stakeholders to develop and promote clean energy technologies and markets. CESA facilitates information sharing, provides technical assistance, coordinates multi-state collaborative projects, and communicates the positions and achievements of its members. For more information, visit www.cesa.org.

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Community-Shared Solar

FREQUENTLY ASKED QUESTIONS

What Is Community-Shared Solar?

Community-shared solar allows multiple electric customers to gain the economic benefits of solar photovoltaics (PV) without having an array located on their own real estate. Simply put, community-shared solar systems provide PV benefits to multiple participants. Community-shared solar projects typically allocate the electrical generation from a jointly owned or third-party-owned PV array to offset many customers' electricity consumption. Community-shared solar is often facilitated by a supportive state policy such as virtual or group net metering. In other cases, electric utilities offer community-shared solar programs on their own.

Why Is Community-Shared Solar Important?

About half of all households and businesses in the U.S. are not viable candidates to host a PV system on their own property. Community-shared solar offers a way for these electricity customers to take advantage of the benefits of PV. Because community-shared solar can leverage economies of scale and can be installed on low-value land, and because it is accessible to renters and does not require high entry-costs to participate, it presents a powerful tool to increase PV deployment.

In the past five years, the community-shared solar market has grown markedly. Thirteen states and Washington, D.C. have established policies for community-shared renewable energy development. Already, there are over 100 community-shared solar projects in the U.S. with a combined installed capacity of more than 80 megawatts. According to a GTM Research report, the community-shared solar market in the U.S. is expected to expand sevenfold over the next two years. The GTM report predicts that by the beginning of the next decade, the community-shared solar market will produce a half-gigawatt annual installed capacity in the U.S., between a third and a half of the capacity of all the residential solar systems installed in 2014.

How Are Community-Shared Solar Projects Structured?

Community-shared solar projects can be structured in different ways. A project could be designed to offer customers the option to buy, lease, or subscribe to particular panels in an array or to provide them with an interest in a jointly owned array. Alternatively, a project could be designed to give customers the opportunity to buy a portion of the electrical generation from an array. Some projects function as if a participating customer owns PV panels on his or her own rooftop even though the panels are located in an offsite array. Other models more closely resemble a residential lease arrangement whereby customers pay a series of scheduled payments to a third-party PV array owner. A community-shared solar project can be administered by a utility, a solar developer, a nonprofit organization, or a group of electricity customers.

Do Federal Tax Credits Apply to Community-Shared Solar Projects?

The U.S. tax code currently provides a tax credit for owners of PV systems to take a one-time credit equivalent to 30 percent of qualified installed costs. The tax credit may be claimed under either **Section 48** or **Section 25D** of the tax code.

The **Section 48** tax credit can be used by businesses. As currently enacted, the Section 48 tax credit will revert to 10 percent at the end of 2016. In addition to the Section 48 tax credit, federal tax policy allows businesses to depreciate their investments in solar projects on an accelerated basis.

Community-shared solar developers may be eligible to claim the Section 48 tax credit by structuring a project so it is owned by a commercial entity. The value of the tax credit can then be passed on to individual community-shared solar participants or subscribers. However, specific organizational structures must be in place to take advantage of the Section 48 tax credit. If the commercial owner of a community-shared solar project is tax-exempt or lacks sufficient income to warrant tax relief, the tax credit may not have value.

The **Section 25D tax credit** is for taxpayers using the solar property for residential purposes. The Section 25D tax credit is currently scheduled to sunset at the end of 2016.

Until recently, it has not been clear whether an individual owner of solar panels installed in an offsite community-shared solar array qualifies for the Section 25D tax credit. The new IRS private letter ruling represents the first instance in which the IRS has publicly weighed in on the applicability of the Section 25D tax credit to an owner of solar panels in an offsite, community-shared solar array.

By law, the private letter ruling cannot be used or cited as precedent by other taxpayers, but the ruling suggests that the IRS may be receptive to claims for the Section 25D tax credit when a community-shared solar project mirrors the structure at issue in the ruling. While the Section 25D tax credit likely applies to a relatively small segment of the current community-shared solar market, this private letter ruling may open up project opportunities for direct ownership of community-shared solar systems by multiple individuals. Consult a tax professional before assuming eligibility for any tax credits for a solar energy project.



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