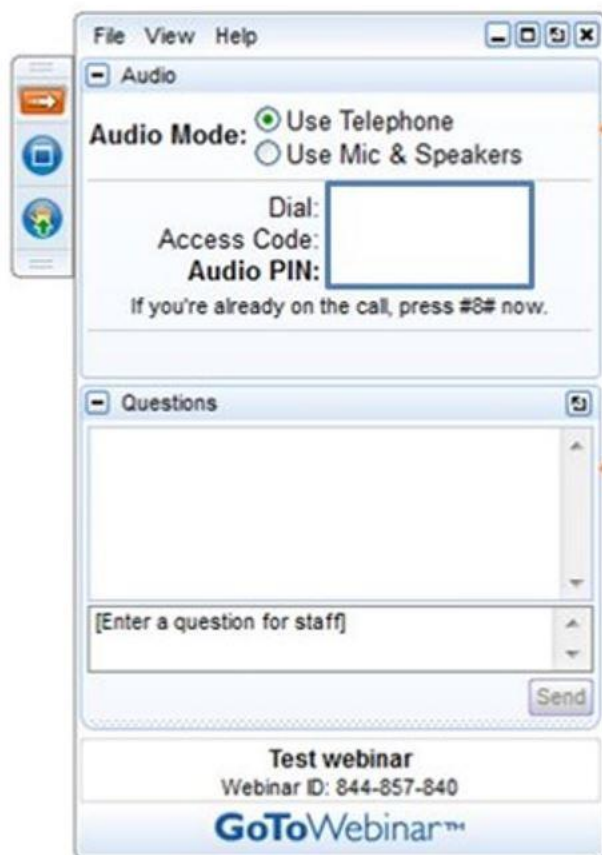


## Clean Energy States Alliance Webinar

# Federal Residential Tax Credit Eligibility for Community-Shared Solar Panel Owners

Hosted by  
Nate Hausman, Project Manager, CESA  
September 22, 2015

# Housekeeping



The screenshot shows the GoToWebinar interface. The top section is titled 'Audio' and contains the following options: 'Audio Mode:' with two radio buttons, 'Use Telephone' (selected) and 'Use Mic & Speakers'. Below this are fields for 'Dial:', 'Access Code:', and 'Audio PIN:'. A note at the bottom of the Audio section says 'If you're already on the call, press #8# now.' The bottom section is titled 'Questions' and contains a large text area for entering questions, a smaller text area with the placeholder '[Enter a question for staff]', and a 'Send' button. At the very bottom, it says 'Test webinar' and 'Webinar ID: 844-857-840'.

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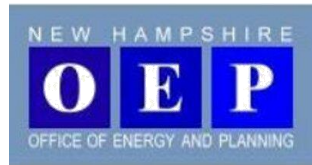
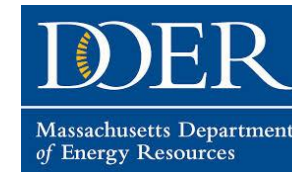
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# About CESA

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 Members



# 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 property.
- Community-shared solar is often facilitated by a supportive state policy such as virtual or group net metering. Thirteen states and Washington, D.C. have established policies for community-shared renewable energy development. And, the market is growing.

# CESA's Involvement

- CESA is engaged in efforts to reduce the non-hardware costs of solar PV. As part of this work, CESA convened a New England solar industry stakeholder meeting in early 2014.
- At this meeting, industry representatives noted uncertainty about whether an individual owner of solar panels installed in an offsite community-shared solar array qualifies for income tax credit under Section 25D of the tax code.





In collaboration with partners in Massachusetts and Vermont, CESA decided to take up the issue. CESA found an appropriate petitioner and facilitated a private letter ruling request using Foley Hoag attorneys Adam Wade and Nicola Lemay.

# Today's Guest Speakers

- **Adam Wade**, Attorney, Foley Hoag
- **Nicola Lemay**, Attorney, Foley Hoag







## Federal Residential Tax Credit Eligibility for Community-Shared Solar Panel Owners: IRC Section 25D and PLR 201536017



Tuesday, September 22, 2015

1PM to 2PM

Nicola M. Lemay, Esq.  
Adam D. Wade, Esq.  
Foley Hoag LLP

## IRC Section 25D Tax Credit: In General

- Section 25D generally provides as follows:

In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 30% of the qualified solar electric property expenditures made by the taxpayer during such year.

The term “qualified solar electric property expenditures” means an expenditure for property which uses solar energy to generate electricity for use in a dwelling unit located in the United States and used as a residence by the taxpayer.

- Termination date:

The credit allowed under Section 25D shall not apply to property placed in service after December 31, 2016.

- Carryover of credit:

If the 30% credit generally allowable under Section 25D exceeds the amount of such credit that the individual taxpayer actually can use with respect to a taxable year (as determined under Section 25D), such excess shall be carried to the succeeding taxable year and added to the Section 25D credit allowable for such succeeding taxable year.

## IRS Notice 2013-70 (11/18/2013)

- The IRS issued Notice 2013-70, in part, to provide guidance with respect to the Section 25D tax credit.
  - The Notice addresses various issues in a Question and Answer (Q/A) format.
- **Q/A-25:** Generally clarifies that an individual taxpayer can claim the Section 25D tax credit for solar electric property that he/she installs **other than directly on his/her home** if that solar electric property generates electricity **directly** for his/her home.
- **Q/A-26:** Addresses a scenario under which solar electric property is not located on the same property as the individual taxpayer's residence.
  - Q/A-26 confirmed that off-site solar potentially can qualify for the Section 25D tax credit, but the specific facts addressed in Q/A-26 were quite narrow.

## IRS Notice 2013-70, Q/A-26

**Question 26:** **A taxpayer** purchases solar panels that are placed on an off-site solar array and connected to the local public utility's electrical grid that supplies electricity to the taxpayer's residence. **The taxpayer enters into a direct contractual arrangement with the local public utility** that supplies electricity to the taxpayer's residence to allow the taxpayer to provide electricity to the grid **using a net metering system** that measures the amount of electricity produced by the taxpayer's solar panels and transmitted to the grid and the amount of electricity used by the taxpayer's residence and drawn from the grid. **The contract states that the taxpayer owns the energy transmitted by the solar panels to the utility grid until drawn from the grid at his residence.** Absent unusual circumstances, the panels will not generate electricity for a specified period in excess of the amount expected to be consumed at the taxpayer's residence during that specified period. Can the taxpayer claim the Section 25D tax credit?

## IRS Notice 2013-70, Q/A-26

**Answer 26:** Yes. Section 25D(d)(2) defines a qualified solar electric property expenditure, in part, as an expenditure for property that uses solar energy to generate electricity for use in a dwelling unit used as a residence by the taxpayer. The taxpayer's expenditure for off-site solar panels under this type of contractual arrangement with a local public utility that supplies electricity to the taxpayer's residence meets the definition of qualified solar electric property expenditure.



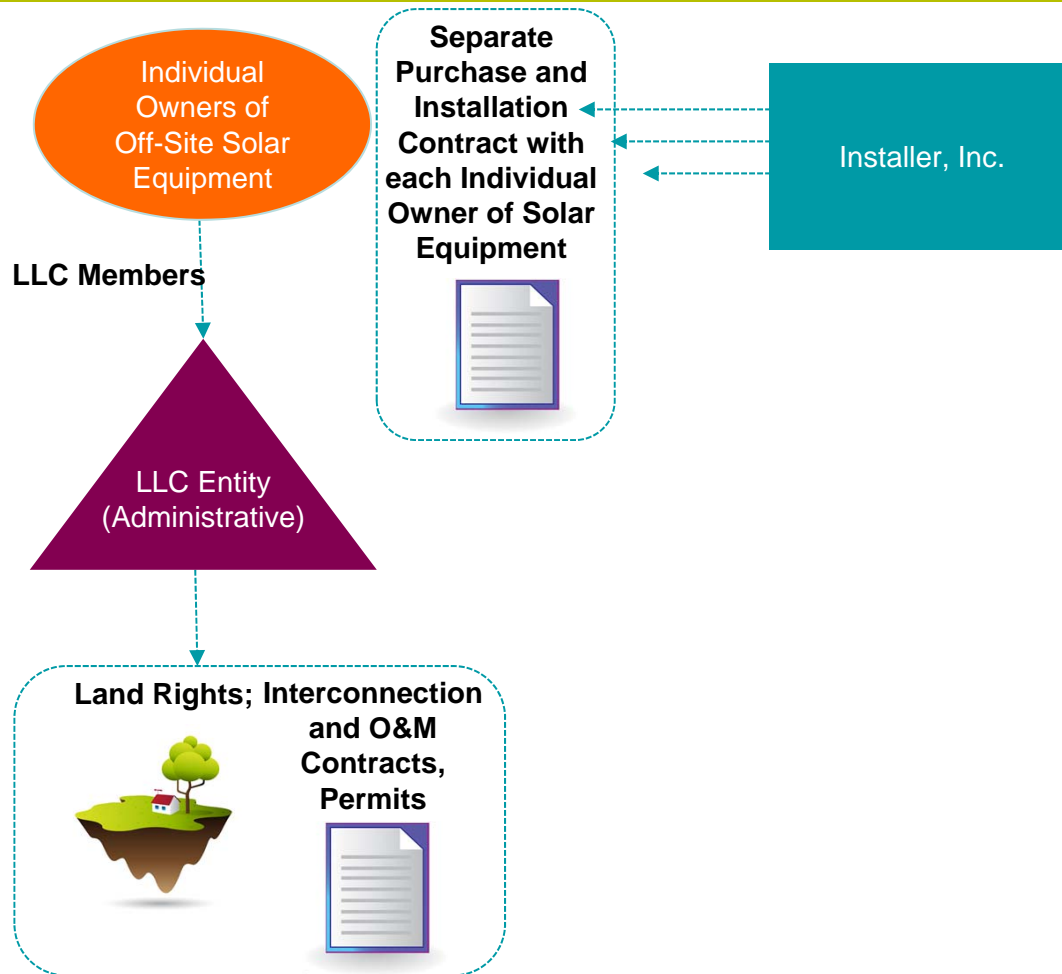
## Questions Raised by Q/A-26

- In the case of off-site net metered solar installations, was Q/A-26 intended to limit eligibility for the Section 25D tax credit to those situations in which:
  - (1) there is a single individual owner of 100% of the off-site solar installation; and
  - (2) the applicable state net metering statute provides that the electricity generated by the off-site installation is owned by the individual taxpayer until it is drawn from the grid at the taxpayer's residence?
- Given this uncertainty, Q/A-26 was of limited use as guidance for the structuring of off-site net metered community solar projects.
- In conversation, IRS indicated an unwillingness to revisit or clarify the intended scope of Q/A-26.
- This led to the submission of a private letter ruling request.
  - In discussions, the IRS clarified that Q/A-26 only addressed a specific scenario that had been presented to them, and that Q/A-26 was not intended to limit the availability of the Section 25D tax credit to off-site solar installations that satisfied those particular facts.

# What is a Private Letter Ruling?

- It is a request by a particular taxpayer as to the tax consequences to that taxpayer of a particular transaction.
- In general, private letter rulings (“PLRs”) cannot be used or cited as precedent by any other taxpayers.
- However, PLRs still provide insight into the IRS view on specific transactions.
- As such, PLRs generally give guidance as to how the IRS could view similar transactions; they can be viewed as a constructive tool or “persuasive authority” used by courts, IRS personnel, and taxpayers generally.

## PLR 201536017: General Overview of Structure



- Installer, Inc. develops a solar array on land located in Vermont.
- Each participating individual taxpayer enters into a separate purchase and installation agreement with Installer, Inc.
- Pursuant to each such agreement, the individual taxpayer purchases specified solar panels and an undivided interest in racking, inverters, etc.
- All power generated by the solar array is delivered to the utility.
- The utility supplies electricity to each participating individual taxpayer's residence in Vermont.
- A limited liability company ("LLC") provides administrative services; it does not own any solar equipment.

## PLR 201536017: Calculation of Net Metering Credit

- Pursuant to the applicable tariff in Vermont, the utility calculates a net metering credit based on the aggregate amount of electricity delivered to the utility from the solar array.
  - Under this tariff, the aggregate net metering credit generally is equal to the product of the number of kilowatt hours of electricity delivered to the utility from the solar array, multiplied by (i) the same per-kilowatt-hour tariff rate applicable to the utility's service at an individual taxpayer's residence plus (ii) an additional amount per kilowatt hour attributable to an individual taxpayer's use of solar.
- A participating individual taxpayer's net metering credit is then calculated as a percentage of the solar array's aggregate net metering credit based on the number of the solar panels owned by the individual relative to the total number of all solar panels in the solar array.
  - The utility applies this portion of the aggregate net metering credit as a credit against amounts due under invoices issued by the utility under the participating individual taxpayer's billing account associated with the utility's provision of electric service to the individual taxpayer's residence.

## PLR 201536017: Amount of the Individual Taxpayer's Net Metering Credit Relative to Electricity Used

- The number of solar panels purchased by an individual taxpayer is estimated by the installer and the individual taxpayer to have a capacity to produce approximately 90% of the aggregate amount of electricity consumed at the individual taxpayer's residence.
- Accordingly, it is expected that the individual taxpayer's solar panels will not generate electricity in excess of the amount of electricity that will be consumed at the individual taxpayer's residence.
  - It also is expected that the individual taxpayer's net metering credit generally will not be in excess of the amounts that the individual taxpayer owes the utility for the provision of electric service to the individual taxpayer's residence.



## PLR 201536017: Role of the LLC (Administrative Entity)

- Each individual taxpayer is a member of an LLC. The LLC does not hold any ownership interest in the solar panels or any of the ancillary equipment or wiring.
- The LLC was formed solely to represent the common interests of its members in managing certain administrative and financial matters in connection with the members' ownership of the solar equipment included in the solar array.
- The LLC also communicates with the utility to provide information needed by the utility for the calculation of the portion of the net metering credit allocable to the individual taxpayers' respective utility accounts.
- The LLC periodically collects funds from and disburses such funds on behalf of its members to pay (i) third parties for the procurement of liability and casualty insurance covering the solar array, (ii) state and municipal taxes applicable to the solar array, and (iii) for services from qualified third parties who will perform maintenance on the solar array on behalf of the from time to time.
- Note: An LLC was used as the administrative vehicle in this particular solar project. Choice of entity for the administrative vehicle should take into account federal and state securities regulations.

## PLR 201536017: Some Takeaways

- The PLR shows that Notice 2013-70 was not intended as a statement of the IRS position on the requirements for off-site net metered solar installations to qualify for the Section 25D tax credit.
- An off-site net metered solar array with multiple individual taxpayers as owners potentially can qualify for the Section 25D tax credit. *But note:*
  - The PLR does not address joint ownership of solar panels; under the facts of the PLR, any single solar panel in the off-site solar array only has one owner.
  - There is proportionate shared ownership in racking, inverters and other portions of the solar array.
- The individual taxpayer does not necessarily have to be a party to a direct contract with the utility or retain legal title to the electricity generated by the off-site net metered solar array.
  - The PLR also permits allocation of the electricity produced by the solar array based on the number of panels owned by the taxpayer (rather than direct tracking of the electricity produced by those solar panels).
- Administrative entity (such as the LLC in the PLR) or other contractually-based administrative arrangement potentially can be used, which could include pooling of funds from the individual owners of the solar panels for operation and maintenance costs. In some jurisdictions, consumer cooperative corporations may be useful vehicles.

## Opportunities for Community-Shared Solar

- The PLR could make the Section 25D tax credit available to a broader pool of individual taxpayers, including individuals who (i) do not have solar-appropriate roofs on their homes, (ii) do not own their own roofs (such as, condominium owners and renters) or (iii) otherwise are not permitted to install solar on their roofs.
  - Such taxpayers potentially could buy solar panels in a community-shared solar array, claim the 30% Section 25D tax credit for their costs and use their share of the net metering credit to reduce their electric bills for their residence.
  
- Potential opportunity for individuals to borrow the purchase price.

## Opportunities for Community-Shared Solar

- Other community solar structures frequently monetize the Section 48 ITC and MACRS depreciation with a tax equity investor.
- From the customer's perspective, such structures resemble power purchase agreements or pre-paid power purchase agreements.
- Individuals may either purchase net metering credits up front or as-generated by the third party-owned system.
- Purchasing a portion of a community-shared solar array potentially could offer better economics to an individual taxpayer.
- Economies of scale (more solar generated for less investment dollars than under the typical rooftop solar transaction) could improve economics relative to rooftop installations.

## Questions



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# Thank you for attending our webinar

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