



Private Letter Ruling on the Eligibility of an Individual Panel Owner in an Offsite, Net-Metered Community-Shared Solar Project to Claim the Section 25D Tax Credit

The Internal Revenue Service has issued the enclosed Private Letter Ruling concluding that a particular owner of PV panels in an offsite, community-shared solar array is eligible for the residential tax credit under section 25D of the U.S. tax code. While the IRS's 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 may open up project opportunities for direct ownership of community-shared solar systems by multiple individuals. This packet contains three documents: 1) an Energy and Cleantech Alert discussing the legal significance of the private letter ruling from Foley Hoag, the law firm which provided the legal work to obtain the IRS ruling, 2) the private letter ruling issued to the petitioning solar panel owner in the Boardman Hill Solar Farm, and 3) a Clean Energy States Alliance (CESA) Frequently Asked Questions leaflet on community-shared solar.

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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.

IRS Issues Favorable PLR Allowing an Individual Panel Owner in an Offsite, Net-Metered Community-Shared Solar Project to Claim the Section 25D Tax Credit

Written by Nicola Lemay, Adam Wade

August 31, 2015

The Internal Revenue Service has issued a private letter ruling to an individual owner of solar panels installed in an offsite net-metered community-shared solar project confirming the individual's eligibility for the income tax credit under Section 25D of the Internal Revenue Code. A redacted copy of the PLR is **available here**. (As of the date of this Alert, the IRS has not provided its release number for the PLR.) This PLR provides significant insight into the IRS view on the application of Section 25D to community-shared solar projects. Foley Hoag attorneys **Nicola Lemay** and **Adam Wade** provided the legal work to obtain the PLR on behalf of its clients, the individual taxpayer and the Clean Energy States Alliance (CESA).

The Section 25D Tax Credit

Section 25D allows individual taxpayers a federal income tax credit equal to 30% of the qualified solar electric property expenditures made by the taxpayer. The term "qualified solar electric property expenditure" generally means an expenditure for property which uses solar energy to generate electricity for use in the individual taxpayer's residence within the United States. The Section 25D tax credit is the income tax credit that typically is claimed by an individual taxpayer who purchases a rooftop solar system for his or her residence directly from an installer.

Prior Section 25D Guidance

Interpretations before 2013 suggested that the Section 25D tax credit was only available for expenditures incurred for onsite (e.g., rooftop) installations. In Q/A-26 of Notice 2013-70, released November 18, 2013, the IRS clarified that the Section 25D tax credit potentially could be available for expenditures incurred for net-metered offsite solar installations. The practical impact of the Notice for structuring community-shared solar projects has been limited, however, because the Notice only addresses a narrow scenario in which (i) the offsite solar installation is 100% owned by a single individual taxpayer, and (ii) the individual taxpayer enters into a net-metering contract with the local utility that specifically recites that the taxpayer retains legal title to electricity generated by the offsite solar installation until it is delivered to the taxpayer's residence. Many, if not most, net metering laws and tariffs do not address title to electricity in this way.

Significance of the PLR

The new PLR provides written clarification of the IRS's view on the availability of the Section 25D tax credit for offsite, net-metered community-shared solar installations. In particular, the PLR clarifies that (i) an offsite solar installation that includes solar panels owned by an individual taxpayer, as well as solar panels owned by other individuals, potentially can qualify for the Section 25D tax credit, and (ii) an allocation of net metering credits by the offsite solar installation to an individual taxpayer's residential utility bill that is based on the number of solar panels in the installation that are owned by the individual and that is generally sized to approximate the amount of such bills can satisfy Section 25D's requirement that the electricity generated by the solar property be used in the individual taxpayer's residence. It should be noted that the PLR assumes that the offsite solar installation and the taxpayer's residence are located in the same state and subject to the jurisdiction of the same public utility.

Significance of the Section 25D Tax Credit for Community-Shared Solar

Taking into account the Section 25D tax credit, individuals who are able to fund the upfront costs of acquiring direct ownership of solar assets (whether through personal cash savings, home equity lines of credit or other emergent solar-specific individual financing) may be able to realize greater value and shorter payback periods than the economics offered under third-party solar power purchase agreements (PPAs) or lease transactions.

Pairing the value of the Section 25D tax credit with the lower installed cost and economies of scale offered by community-shared solar holds tremendous potential to further enable direct ownership of solar assets by individuals in utility territories with supportive net metering programs.

Community-shared solar is not defined by any one particular type of transaction or financial structure. Many community-shared solar transactions, for example, have made successful use of the 30% business investment tax credit under Section 48 of the Internal Revenue Code. However, the use of the Section 48 tax credit for community-shared solar transactions has clear limitations. The Section 48 tax credit is typically unavailable directly to individual taxpayers because it is a business tax credit, and individuals' indirect access to the tax credit through investment in an entity that owns a community-shared solar installation is complicated by limitations on the ability of individuals to use tax credits derived from passive activities and "accredited investor" requirements. Further, to monetize the Section 48 investment tax credit, developers generally must negotiate complex transactions with third-party tax equity investors. With the insights offered by the new PLR, individual taxpayers who acquire direct ownership of solar panels in a properly-structured offsite community-shared solar transaction may have an opportunity to approximate what may have been gained had they been able to benefit from the Section 48 tax credit.

Legal Status of the PLR

Under the specific facts presented in the PLR, the IRS has agreed with the individual taxpayer that his or her purchase of solar panels that are part of an offsite, net-metered community-shared solar installation qualifies for the Section 25D tax credit. Community-shared solar project developers and individuals should review the PLR with their own tax counsel, accountants, and tax preparers in light of their own specific facts. Although, by law, this PLR 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' by courts, IRS personnel and practitioners. In general, private letter rulings also may be used by the IRS in its own interpretations, including by IRS employees who might consider it in issuing private letter rulings to similarly situated taxpayers.

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Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Index Number: 25D.00-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No.

Telephone Number:

In Re: Ruling under § 25D of the Internal Revenue Code

Refer Reply To:
CC:PSI:B6
PLR-111860-15
Date: July 28, 2015

LEGEND:

Taxpayer =

State =

Public Utility =

Year =

Date =

LLC 1 =

LLC 2 =

a =

b =

c =

Dear :

This letter is in response to your letter dated Date and subsequent correspondence submitted by your authorized representatives, requesting rulings under § 25D of the Internal Revenue Code.

The facts and representations submitted are as follows:

Taxpayer, an individual, is a resident of State. Taxpayer uses the cash method of accounting and is a calendar year taxpayer.

In Year, Taxpayer purchased a solar photovoltaic panels from LLC 1. The solar panels are placed on a ground-mounted, offsite solar array located in State. The array includes other solar photovoltaic panels that are owned by other individuals. Taxpayer also purchased a partial ownership in racking equipment, inverter equipment, and wiring and other equipment and installation services required for the integration of the panels in the array and the interconnection of the array to Public Utility's electric distribution system. Taxpayer paid \$b for the panels and the related equipment and installation services. Taxpayer and the other owners are the initial owners of the array and related equipment, and LLC 1 completed installation of the array in Year.

All of the electricity that Taxpayer's solar panels and the array generate is delivered to Public Utility. Taxpayer is a customer of Public Utility. Pursuant to the terms of Public Utility's tariff, Public Utility calculates a net metering credit based on the aggregate amount of electricity delivered to Public Utility from the solar array. Public Utility then applies a portion of that net metering credit against amounts due from Taxpayer for Public Utility's provision of electric services to Taxpayer's residence.

Taxpayer and LLC 1 estimate that Taxpayer's solar panels will produce approximately c% of the aggregate amount of electricity that Taxpayer consumes at Taxpayer's residence. Accordingly, Taxpayer and LLC 1 expect that Taxpayer's net metering credit generally will not offset more than the amounts that Taxpayer owes Public Utility for the provision of electric service to Taxpayer's residence.

Taxpayer and each of the other owners of the solar panels included in the array are members of LLC 2. LLC 2 does not hold any ownership interest in Taxpayer's panels, the array, or any of the related equipment or wiring. LLC 2 was formed to represent the common interests of its members in managing certain administrative and financial matters in connection with ownership of the panels included in the array. LLC 2 also communicates with Public Utility to provide the information Public Utility needs to calculate the net metering credit allocable to Taxpayer's and the other owners' respective Public Utility accounts.

Taxpayer believes that the costs related to the purchase of a solar panels are eligible for an income tax credit under § 25D. Therefore, Taxpayer plans to claim an income tax credit in an amount equal to 30% of the \$b purchase price in Year.

Accordingly, you requested the following rulings:

1. The \$b purchase price constitutes a "qualified solar electric property expenditure" as defined under § 25D(d)(2) of the Code for Year; and

2. Taxpayer shall be allowed a credit against the income tax imposed under Chapter 1 of Subtitle A of the Code for Year in an amount equal to 30% of the \$b purchase price.

Law and Analysis

Section 25D(a)(1) of the Code allows an individual a credit against the income tax imposed for the taxable year in an amount equal to 30% of the qualified solar electric property expenditures made by the taxpayer during such year.

Section 25D(d)(2) defines the term “qualified solar electric property expenditure” as 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.

Section 25D(e)(1) allows the expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the qualified solar electric property and for piping or wiring to interconnect such property to the dwelling unit to be taken into account for purposes of § 25D.

Under § 25D(e)(8)(A), generally, for purposes of determining the tax year when the credit is allowed, an expenditure with respect to an item shall be treated as made when the original installation of the item is completed.

Section 5.02, Q&A No. 26, of Notice 2013-70, 2013-47 I.R.B. 528, provides that under certain circumstances, a purchase of solar panels that are placed on an off-site solar array may meet the definition of qualified solar electric property expenditures for purposes of § 25D.

In the current situation, Taxpayer represents that Public Utility supplies electricity to Taxpayer’s residence located in State and Taxpayer’s off-site solar panels provide electricity exclusively to Public Utility’s electrical grid. Public Utility provides Taxpayer with a credit against Taxpayer’s utility account in accordance with the net metering arrangement described above in this ruling. Furthermore, the solar panels are not expected to generate electricity in excess of the amount of electricity that will be consumed at Taxpayer’s residence.

Accordingly, based solely upon the facts submitted and representations made, we conclude that Taxpayer’s expenditure for the solar panels and the related equipment and installation services mentioned in this ruling constitute a “qualified solar electric property expenditure” under § 25D(d)(2), and Taxpayer is eligible to claim an income tax credit under § 25D in an amount equal to 30% of such expenditure in Year.

We based the rulings contained in this letter upon information and representations submitted by your representatives and accompanied by penalties of perjury statements

executed by you. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically set forth above, we express or imply no opinion regarding the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

We are sending a copy of this letter ruling to the appropriate Small Business/Self-Employed Division office. In accordance with the Power of Attorney on file with this office, we are also sending a copy of this letter ruling to your authorized representative.

Sincerely,

Jaime C. Park
Chief, Branch 6
(Passthroughs & Special Industries)

Enclosure (1):
Copy for § 6110 purposes

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.



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's 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.