

Alternative & Renewable Energy Tax Newsalert

Dual-use solar energy property may qualify for energy tax credits

As companies move to deploy renewable energy technologies, many are looking to building equipment that not only serves as a structural component of a building but also supports the production of renewable energy. Although the rules underlying the investment tax credit (ITC) generally allow taxpayers to claim credits only for costs that are directly related to eligible energy property, in two recent rulings, the IRS has permitted taxpayers to claim ITCs for the full cost of such "dual-use" property.

Background

Section 48(a) of the Internal Revenue Code provides for an energy credit generally equal to 30 percent of the cost basis of qualifying energy property placed in service during a taxable year. Energy property includes equipment that uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat.

Treas. Reg. § 1.48-9(d) provides that solar energy property includes equipment and materials (and parts related to the functioning of such equipment) that use solar energy directly to: generate electricity, heat or cool a building or structure, or provide hot water for use within a building or structure. Solar energy property includes equipment that uses solar energy to generate electricity, and includes storage devices, power conditioning equipment, transfer equipment, and parts related to the functioning of those items. Such property, however, does not include any equipment that transmits or uses the electricity generated.

Treas. Reg. § 1.48-1(e) generally provides that buildings and structural components are not eligible for the ITC. The term "structural components" include such parts of a building as walls, partitions, floors and ceilings, as well as any permanent coverings; windows and doors; all components (whether in, on, or adjacent

to the building) of a central air conditioning or heating system; plumbing and plumbing fixtures; electric wiring and lighting fixtures; chimneys; stairs, escalators, and elevators; sprinkler systems; fire escapes; and other components relating to the operation or maintenance of a building. However, Treas. Reg. § 1.48-9(b) provides that structural components of a building may qualify for the energy credit without specifying the circumstances under which this might be the case.

In guidance issued in 1979, the IRS provided an exception to these general rules, ruling that where a structural component of a building is so specifically engineered that it is in essence part of the machinery or equipment with which it functions, the cost of that component will be eligible for the ITC (Rev. Rul. 79-183, 1979-1 C.B. 44).

Photovoltaic curtain walls

Photovoltaic (PV) curtain walls are exteriors that help solar energy generate electricity to help power a commercial building and also attach to the floor slabs to enclose a building. In effect, they act as tinted windows for a building while also serving as solar panels. In a recently released IRS private letter ruling (PLR 201043023), a taxpayer that owned and rented a commercial building purchased a PV curtain wall from a developer. The taxpayer requested a ruling on whether the purchase price of the PV curtain wall could be treated as energy property under section 48 that is eligible for the ITC.

The IRS ruled that although structural components of buildings are generally excluded from the definition of "section 38 property" for purposes of the ITC, the PV curtain wall itself was equipment used to produce solar energy, and had been specifically designed and engineered for the taxpayer's commercial building. Thus, while the PV curtain wall served a dual purpose

to generate electricity through solar energy and to enclose the building or structure, all of the elements of the PV curtain wall would be considered energy property under section 48.

Reflective roof coatings

Many roof-mounted solar installations include a reflective roof coating. The roof coating allows the solar array to collect solar energy from both sides of the solar panel and can improve the efficiency of the overall installation; it also serves in lieu of a standard roofing membrane. In a previously release private letter ruling (PLR 200947027), the IRS applied reasoning similar to that described above to conclude that reflective roof surface installed over an existing roof, serving a dual purpose, would be considered energy property under section 48.

Observations

Both of these IRS private letter rulings are welcome developments and will help allay uncertainty over whether some form of cost allocation must be applied to dual-use property. Companies that are seeking to install PV curtain walls or reflective roofs can take comfort from these IRS rulings, and companies looking at developing or installing other forms of dual-use property may be able to apply similar principles in determining their eligibility for the ITC.

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