



Janice K. Brewer
Governor

John A. Greene
Director

TAXPAYER INFORMATION RULING LR13-001

March 12, 2013

The Department issues this taxpayer information ruling in response to your letters received on September 19, 2011 and November 21, 2012, requesting a ruling on behalf of an undisclosed taxpayer. Specifically, you request the Department to rule on 1) whether a solar leasing limited liability company "LLC" taxed as a partnership may claim a solar energy device tax credit under Arizona Revised Statutes "A.R.S." § 43-1085 and 2) does the cost of the solar energy device for purposes of claiming a solar energy device tax credit include the installed costs.

Statement of Facts:

The following background information is based on written materials provided by the taxpayer.

The Company is a solar equipment leasing company. The Company is organized as an LLC and taxed as a partnership. The Company desires to install, completely at its own cost, a ground mounted solar energy device on the premises of a single family residential property. The Company will operate the device under a "Power Generating Agreement" between the Company, the Power Company and the residential owner. The Company also desires to install, completely at its own cost, a roof mounted solar generating device on the roof of a commercial building and operate the device under a similar Power Generating Agreement.

Questions Presented by Taxpayer:

- 1) Does solar property owned by members of an LLC taxed as a partnership qualify for the solar energy device credit under 43-1085 where the solar energy device is leased to another person or entity and installed on the property owned by the lessee?
- 2) Is the amount of the solar energy device credit based on the installed cost, including all components of the installed device?

Applicable Law:

A.R.S. § 29-857 provides that "for purposes of title 43, a domestic or foreign limited liability company and its members shall be taxed as if the limited liability company is either a

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partnership or a corporation or is disregarded as an entity as determined pursuant to the internal revenue code as defined in section 43-105”.

A.R.S. 42-5001(15) defines "Solar energy device" as “a system or series of mechanisms designed primarily to provide heating, to provide cooling, to produce electrical power, to produce mechanical power, to provide solar daylighting or to provide any combination of the foregoing by means of collecting and transferring solar generated energy into such uses either by active or passive means, including wind generator systems that produce electricity. Solar energy systems may also have the capability of storing solar energy for future use. Passive systems shall clearly be designed as a solar energy device, such as a trombe wall, and not merely as a part of a normal structure, such as a window”.

A.R.S. § 43-1085 provides:

A. For taxable years beginning from and after December 31, 2005 through December 31, 2018, a credit is allowed against the taxes imposed by this title for a taxpayer who is either:

1. Installing one or more solar energy devices, as defined in section 42-5001 and certified pursuant to section 41-1510.01, during the taxable year for commercial, industrial or any other nonresidential application in the taxpayer's facility located in this state.

2. The third party organization that financed, installed or manufactured the solar energy device that qualifies for the credit under paragraph 1 of this subsection if the taxpayer or an entity exempt from taxation under chapter 12 of this title who otherwise would qualify for this credit transfers the credit on a form prescribed by the department to the third party organization.

B. The amount of the credit is equal to ten per cent of the installed cost of the device.

C. The person who provides or installs the device shall furnish the taxpayer with an accounting of the cost to the taxpayer.

D. The taxpayer may not cumulate total tax credits under this section exceeding twenty-five thousand dollars with respect to the same building in the same year or fifty thousand dollars in total credits in any year.

E. If the allowable credit exceeds the taxes otherwise due under this title on the claimant's income, or if there are no taxes due under this title, the amount of the claim not used to offset taxes under this title may be carried forward for not more than five consecutive taxable years as a credit against subsequent years' income tax liability.

F. Co-owners of a business, including partners in a partnership and shareholders of an S corporation, as defined in section 1361 of the internal revenue code, may each claim only the pro rata share of the credit allowed under this section based on the ownership interest or financial investment in the system. The total of the credits allowed all such owners may not exceed the amount that would have been allowed a sole owner.

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Conclusion:

- 1) Does solar property owned by members of an LLC taxed as a partnership qualify for the solar energy device credit under A.R.S. § 43-1085 where the solar energy device is leased to another person or entity and installed on the property owned by the lessee?

Under A.R.S. § 43-1085(A)(1) only a taxpayer who has a solar energy device installed in their facility for commercial, industrial or any other nonresidential application qualifies for the solar energy device tax credit. The solar property arrangement presented by the Company is a lessor and lessee relationship where the lessor owns the solar property and installs it in the lessee's facility. The lessor in this arrangement owns the solar property, however the lessor is not eligible for the solar energy device credit because the property is not installed in the lessor's facility.

The Company argues that the phrase "solar energy device" should be treated as "facility" in A.R.S. § 43-1085(A)(1) in order to allow a solar leasing company to claim the solar energy device tax credit. "Solar energy device" is a statutorily defined term under A.R.S. § 42-5001 while the term "facility" is defined by using its ordinary dictionary definition. According to the Company it is common in the solar industry to use the terms solar energy device and solar facility interchangeably. As a result, the Company argues the terms solar energy device and facility should be treated similarly for purposes of interpreting A.R.S. § 43-1085(A)(1). Such a statutory interpretation is inappropriate when one term "solar energy device" is specifically defined in statute and the other term "facility" is not. Furthermore, a plain reading of the statute makes it clear that the term facility refers to the taxpayer's property upon which the solar energy device is installed and not the solar energy device itself. Therefore, in the facts before us the lessor is not eligible for the credit under A.R.S. § 43-1085.

- 2) Is the amount of the solar energy device credit based on the installed cost, including all components of the installed device?

A taxpayer information ruling is the Department's interpretation of the law or rules as they apply to the taxpayer that requested the ruling and the particular facts contained in the request. It was established in the Department's response to Question 1 that the Company is not eligible to claim the solar energy device tax credit under A.R.S. § 43-1085. Because the taxpayer is not eligible to claim the credit, this question could not apply to the taxpayer and the facts contained in the request. Therefore the Department will not address the second question presented in this ruling.

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This response is a taxpayer information ruling (TIR) and the determination herein is based solely on the facts provided in your request. The determinations are subject to change should the facts prove to be different on audit. If it is determined that undisclosed facts were substantial or material to the Department's making of an accurate determination, this taxpayer information ruling shall be null and void. Further, the determination is subject to future change depending on changes in statutes, administrative rules, case law, or notification of a different Department position.

If the Department is provided with required taxpayer identifying information and taxpayer representative authorization before the proposed publication date (for a published TIR) or date specified by the Department (for an unpublished TIR), the TIR will be binding on the Department with respect to the taxpayer that requested the ruling. In addition, the ruling will apply only to transactions that occur or tax liabilities that accrue from and after the date the taxpayer receives the ruling. The ruling may not be relied upon, cited, or introduced into evidence in any proceeding by a taxpayer other than the taxpayer who has received the taxpayer information ruling. If the required information is not provided by the specified date, the taxpayer information ruling is non-binding for the purpose of abating interest, penalty or tax.

Lrulings/13-001-D