



September 23, 2009

Hon. Douglas Shulman  
Commissioner  
Internal Revenue Service  
U.S. States Department of the Treasury  
1111 Constitution Avenue, N.W.  
Washington, D.C. 20224

Hon. Michael Mundaca  
Acting Assistant Secretary (Tax Policy)  
U.S. Department of the Treasury  
1500 Pennsylvania Ave. NW  
1010 MT  
Washington D.C. 20220

**Re: Request for additional clarification**

Dear Commissioner Shulman and Secretary Mundaca:

On behalf of the Solar Energy Industries Association (SEIA), and its more than 1000 members, I want to thank you for your efforts to make the “Treasury Grant” program under Section 1603 of the American Recovery and Reinvestment Act of 2009 (“ARRA”) readily understandable and accessible to our industry.

Established in 1974, SEIA is the national trade association of the solar energy industry. As the voice of the industry, SEIA works to make solar a mainstream and significant energy source by expanding markets, removing market barriers, strengthening the industry and educating the public on the benefits of solar energy.

To protect the integrity of this important grant program, it is essential that the associated rules are clear to installers and consumers. As such, I am writing to request additional guidance on the issues outlined in the attached Addendum to this letter.

SEIA is engaged in an effort to educate its members, and the broader solar community, on these rules and the attached “issues list” represent the most frequently asked questions we receive. Ideally, Treasury or IRS would issue an additional notice or announcement clarifying these issues.

If you should have any questions, please contact SEIA’s General Counsel, John Stanton at 202-556-2870.

Thank you for your consideration of and prompt attention to this request. I look forward to hearing from you.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Rhone A. Resch". The signature is fluid and cursive, with the first name "Rhone" being the most prominent part.

Rhone A. Resch  
President & CEO

## **Addendum**

### **Treasury Grant Program Under Section 1603 of ARRA** **Issues Requiring Clarification in Supplemental Guidance**

#### Application Process

1. If an applicant is denied a Treasury Grant due to missing documentation (and failure to provide such documentation within 21 days), does that preclude the taxpayer from resubmitting an application when such information is available?

#### Eligible Entities

1. Can an ineligible entity wholly-own a blocker corporation and will the blocker corporation be eligible for a Treasury Grant? Supplemental guidance should confirm that the tax-exempt controlled entity rules under Section 168(h)(6)(F) do not apply to the Treasury Grant.

#### Eligible Basis

1. Is the 80/20 test applied on a “facility” or “specified energy property” basis?
2. Do “other federal and state grants and rebates” that are taxable to the recipient reduce the eligible basis of property? Only non-taxable grants or rebates should reduce eligible basis. The attached paper explains why taxable grants or rebates should not reduce eligible basis and requests that the instructions to the accountant’s certification be clarified.

#### Documentation

1. How long must an applicant maintain records to support its claim that it is entitled to a Treasury Grant in the amount received?
2. If an Interconnection Agreement is not required, should the applicant include a statement explaining why such an agreement is not required in order to prevent a Treasury Grant application from being denied/delayed?

#### Other

1. Is the Buy American Act, which is only applicable to Division A of the ARRA, also applicable to the Treasury Grant program? Because Treasury Grants are in Division B of ARRA, the Buy American Act should not apply. Supplemental guidance should clarify this point.

2. Guidance provides for property that is manufactured, constructed, or produced for the applicant under a binding written contract that is entered into prior to the manufacture or construction of the property that construction begins when physical work of a significant nature begins under the contract. A contract may contain contingencies that prevent it from being treated as a binding contract prior to the beginning of manufacture or construction. Supplemental guidance should clarify that the “binding contract rule” will apply so long as the contract is binding on the taxpayer by December 31, 2010 and physical work of a significant nature has begun under the contract by such date.
3. The statute and the guidance provides that the Treasury Grant is not taxable income to the recipient. The guidance further provides that a Treasury Grant can be assigned by the recipient to a third party. Some taxpayers have raised the issue whether the Treasury Grant is non-taxable to the assignee. Supplemental guidance should clarify that the recipient of a Treasury Grant who assigns the grant to a third party is treated as receiving the grant and paying the proceeds of the Treasury Grant to the assignee. Thus, the character of the proceeds of the Treasury Grant when received by the assignee are the same as if the grant recipient had paid cash to the assignee.
4. Do the Treasury Grant proceeds increase the partners’ outside bases in their partnership interests; how is eligible basis allocated amongst the partners; is outside basis reduced similar to Section 50(c)(5); and how are capital accounts affected?
5. If a sale/leaseback is entered into within 3 months of the placed in service date, can the lessor and lessee elect not to apply the deemed new placed in service date rule and if so, how is the election made?
6. AMT. The Treasury Grant is non-taxable to the recipient. There is a technical issue, however, whether the Treasury Grant could be taxable for purposes of the AMT if receipt of the grant is an adjustment for the Adjusted Current Earnings component of the AMT. The Treasury Grant is provided in lieu of the ITC. Given that the ITC is a credit reducing the AMT, the fact that a Treasury Grant could create AMT seems contrary to the intent of the program. Supplemental guidance should clarify that the non-taxable Treasury Grant is not an inclusion for ACE/AMT.
7. We understand that the AICPA has raised issues regarding the standard of review and testing for purposes of the accountant’s certification of projects. We endorse the views of the AICPA with respect to such standards and urge Treasury to provide clarification in supplemental guidance.