

Ken Birrell

From: jason@orangeinsure.com
Sent: Wednesday, August 15, 2012 9:54 AM
To: Ken Birrell
Subject: Accountant Packet
Attachments: Info for Accountants_new2.pdf

Ken,

We send out the attached document to clients to help their accountants quickly understand what the program is, and how to take care of the accounting for it.

Thanks,

Jason Clement
CEO
Solartech
801-787-9788



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PLEX00355

Information for Accountants

Dear Accountant,

You are receiving this information due to your client's purchase of solar energy producing equipment to be used in both advertising and referral efforts as well as entering into an equipment rental agreement for the creation of alternative energy.

To help facilitate your tax accounting for this purchase, we are providing you with essential information about our equipment and the potential tax benefits that surround it.

1. **Equipment Qualifies for a 30% Energy Credit.** This equipment qualifies for the Energy Credit under IRC Sec 48 Energy Credit, filed on IRS Form 3468 line 12b.
2. **Energy Credit Carryback.** This Energy Credit qualifies as an Eligible Small Business Credit that fits within the proposed legislation for the five year carryback offsetting both regular tax and AMT as referenced in HR 1424 P.L. 110-343, IRC 103-105 in conjunction with the extension of the Energy Credit an allowance of Energy Credit against Alternative Minimum Tax.
3. **Equipment is Depreciable.** This equipment is considered a depreciable asset and can be depreciated based on Instructions for IRS Form 4562. The purchase qualifies for 100% Bonus Depreciation based on the American Recovery and Reinvestment Act or may be taken on a typical five year schedule or as otherwise seen fit based upon your clients tax situation.

Each piece of equipment your client purchased cost \$3,500 and your client has purchased multiple units. Your client has made an initial payment of 3% (\$105 per unit) and is committed to pay another 27% (\$945 per unit) next year to complete the down payment. The balance of 70% (\$2,450 per unit) will be paid out of based upon the payment terms of the Purchase Agreement.

Your client is expecting to recapture federal income taxes paid in the past five years to fund the 27% remaining down payment for this equipment. You may amend the previous years taxes or use IRS form 1045 to file for this refund.

Beginning this year and in future years, your client may earn income from the referral and advertising use of the equipment as well as from the rental of this equipment to be used in the creation of alternative energy.

The enclosed information provides a detailed description of the equipment as well as each tax benefit that can be leveraged for your client. We have also included some frequently asked questions. We are excited about our business relationship with your client. Please contact us directly if you have any additional questions.

Sincerely,

XSun Energy
taxquestions@xsunenergy.com
www.xsunenergy.com

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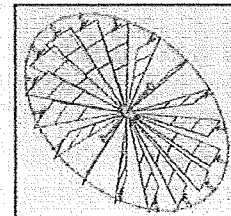
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ALTERNATIVE ENERGY SYSTEMS PURCHASE OVERVIEW

Your client has purchased Alternative Energy Systems through XSun Energy. Each system is paid for according to the following payment schedule:

Cost per Unit:	\$3,500
Up-Front Payment (3%):	\$ 105
Remaining	
Down Payment (27%):	\$945 (Due no later than July 31, 2012)
Remaining Balance (70%):	\$2,450 (Payable on terms of contract)



Terms of Contract:

The basic payment terms of contract are as follows:

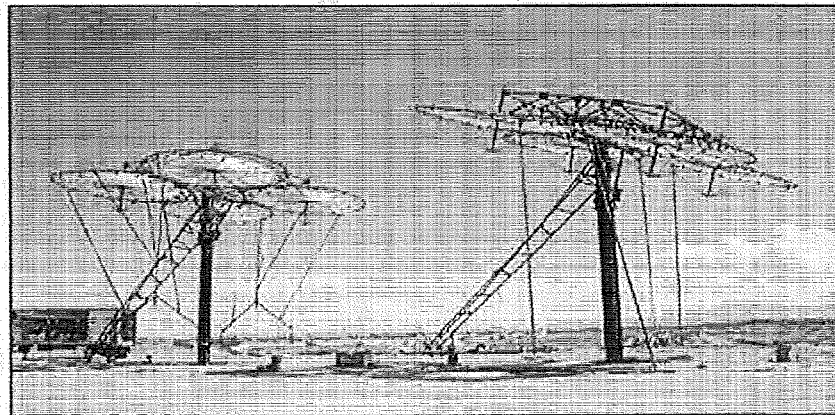
1. Payments shall begin 5 years AFTER the installation date*
**Installation date is defined as the day in which energy is produced and sold.*
2. Payments will be made in 30 annual, equal installments of \$82.00 per unit.

Your client has also chosen to enter into a referral agreement with XSun Energy immediately to aide in selling this equipment, as well as a 35-year equipment rental agreement with LTB, LLC., a Management and Operations Company that will maintain the equipment, service the warranty on the equipment, and use the equipment to generate alternative energy.

It is important to note that your client has 14 days from the time they signed the contract to cancel for any reason.

It is also noted in the contract that due to the fluctuating tax laws in 2011, that if the tax laws change, do not pass, or are otherwise impacted that governed the purchase decision of your client, they will have the right to reduce the number of units they had chosen to purchase.

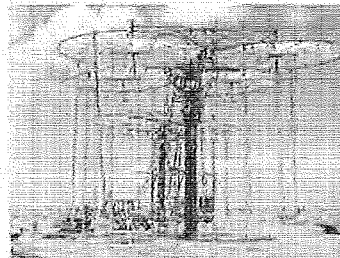
A copy of the full purchase agreement is available for your review.



ALTERNATIVE ENERGY SYSTEMS PROGRAM

ENERGY TAX CREDIT

On October 3, 2008, the House of Representatives passed H.R. 1424, the *Emergency Economic Stabilization Act of 2008* by a vote of 263-171. Soon after, President Bush signed the bill into law. The U.S. Senate passed its own version of the bill on Oct. 1, 2008. In the bill are a number of provisions supporting energy efficiency and renewable energy, including an 8-year extension of the commercial and residential solar investment tax credit of 30% allowed in the current tax year with a 1-year carryback.



To qualify for the Energy Credit, the following basic requirements must be met according to IRC Sec 48:

1. It must be equipment which uses solar energy to generate electricity, heat or cool a structure, or provide solar process heat. We qualify because we provide solar process heat, as evidenced by the video.
2. It must be acquired by the taxpayer if the original use of such property commences with the taxpayer.
3. It must be property for which depreciation is allowable.
4. It must meet the performance and quality standards, if any, at the time of acquisition. This means the equipment meets local permits, building codes, and environmental requirements, which it does.

TAX FORMS USED

IRS FORM 3468

INVESTMENT TAX CREDIT

IRS FORM 3800

GENERAL BUSINESS CREDIT

IRS FORM 4562

DEP & AMORT

IRS FORM 1045

APP FOR TENTATIVE REFUND



SOURCE: HR 1424. P.L. 110-343. IRC 103-105 Long Term Extension of Energy Investment Tax Credits (ITC). The bill amends Section 48 to extend the 30% investment tax credit for solar energy property and qualified fuel cell property January 1, 2017.

SEC. 103. ENERGY CREDIT

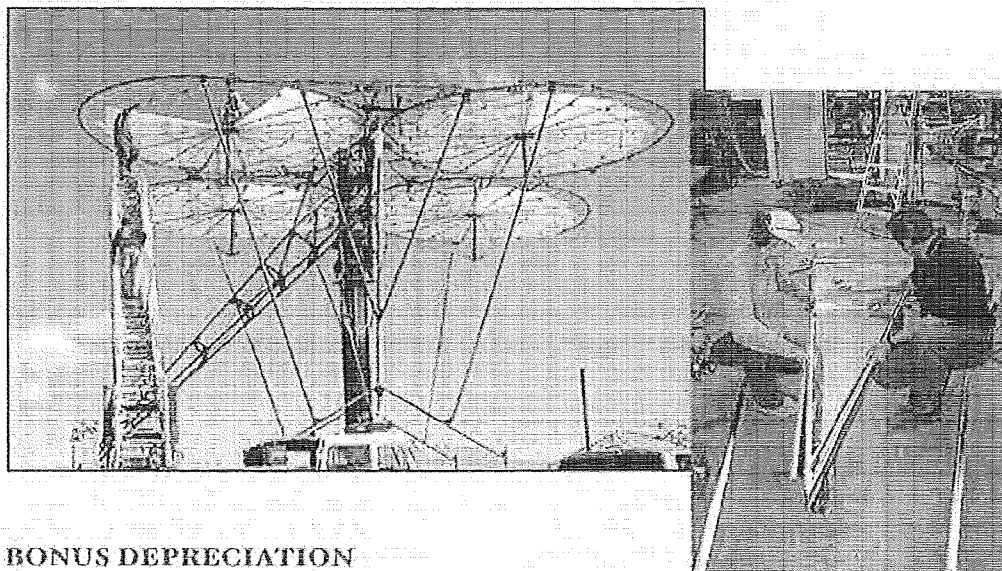
(a) Extension of Credit.—

(1) Solar energy property.—Paragraphs (2)(A)(i)(II) and (3)(A)(ii) of section 48(a) are each amended by striking “January 1, 2009” and inserting “January 1, 2017”.

(b) Allowance of Energy Credit Against Alternative Minimum Tax.

(1) In general.—Subparagraph (B) of section 38(c)(4), as amended by the Housing Assistance Tax Act of 2008, is amended by redesignating clause (vi) as clause (vi) and (vii), respectively, and by inserting after clause (iv) the following new clause: “(v) the credit determined under section 46 to the extent that such credit is attributable to the energy credit determined under section 48.”

DEPRECIATION



BONUS DEPRECIATION

Along with the Section 48 investment tax credit, this alternative energy solar equipment is property for which depreciation is allowable. Please note, you may **NOT** take section 179 Deduction on this property as certain property does not qualify and that includes energy property like this equipment. Also please note that you must reduce the basis of the energy property by 50% of the energy credit determined.

Reference: IRS Publication 946, How to Depreciate Property pp. 3-5, 18, 38

IF DESIRED this property also qualifies for accelerated depreciation through Dec. 31, 2016 and 100 percent expensing through Dec. 31, 2011, HOWEVER, you can elect out and take the 5-year depreciation schedule instead.

Accelerated Depreciation

Modified Accelerated Cost Recovery System (MACRS) is a depreciation method which allows the owner of qualifying equipment including qualifying solar equipment to deduct 85 percent of their tax basis using either the commercial ITC or the Treasury Grant Program. This form of depreciation can be claimed over a five year period.

Recent Changes: 100 Percent Expensing

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 included provisions that allow companies to elect a 100 percent through 2011 and a 50 percent bonus depreciation through 2012. The 100 percent expensing is a way for companies with qualified, new projects to depreciate 100 percent of the capital investments placed in service after September 8, 2010 through December 31, 2011. For companies that place equipment in service after 2011, the bill contains a 50 percent bonus depreciation provision that companies can elect for qualifying property through December 31, 2012.

Reference: IRS Publication 946, How to Depreciate Property pp. 30, 35 (2)(g)

AT-RISK

The at-risk limits apply to this equipment purchase due to IRS Publication 925, pp. 22, Activities Covered by the At-Risk Rules. The at-risk rules limit your losses from most activities to your amount at risk in the activity. You treat any loss that is disallowed because of the at-risk limits as a deduction from the same activity in the next tax year.

You are at risk in any activity for:

1. The money and adjusted basis of property you contribute to the activity, and
2. Amounts you borrow for use in the activity if:
 - a. You are personally liable for repayment
 - b. You pledge property (other than the property used in the activity) as security for the loan.

To determine whether a taxpayer has personal liability for purposes of the at-risk rules refer to IRC 404,014 where it states that a taxpayer is considered at-risk with respect to amounts borrowed for use in an activity to the extent he is personally liable for repayment. Thus, a taxpayer is not at-risk for his share of any nonrecourse loan (that is, a loan for which the borrower is not personally liable) used to finance the activity or the acquisition of property used in the activity. Also, if the taxpayer borrows money to contribute to the activity and the lender's only recourse is either the taxpayer's interest in the activity or property used in the activity, the proceeds of the borrowings are considered nonrecourse and don't increase the taxpayer's amount at-risk.

In this purchase, 30% of the total price is put down, and then the remaining 70% balance is paid on terms. There is no financing agreement, no loan, simply terms of purchase that you are agreeing to in the Purchase Agreement. According to the Purchase Agreement, section 5, if payment is not made, interest shall accrue and in the event that your client fails to pay, their system can be repossessed and they will remain liable for all sums then due and unpaid, less the credit for the value of the repossessed System. Thus this is NOT a nonrecourse loan because there is an obligation that the investor pay the difference if the value of the property is less than the amount due on the note as cited in case law Rev Rul 85-113, 1985-2 CB 150.

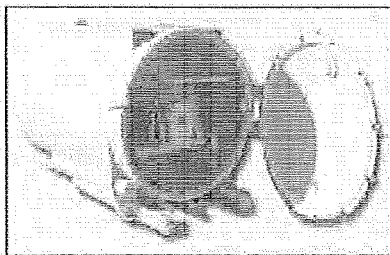
This being said, it has been considered a smart financial decision by your client due to the potential benefits and revenue generation through the referral agreement with XSun Energy and the rental agreement with LTB, LLC. Again, according to IRC 404,014, where a taxpayer takes on personal liability on bona fide debt, the fact that a financial arrangement exists under which he will receive income to meet his payments will, by itself, not prevent him from being at-risk for the liability. Thus, the Ninth Circuit, reversing the Tax Court, held a buyer-lessor was at risk on notes executed to finance the purchase of solar water heating units leased back to the seller who rented them to homeowners. The court held the notes were fully recourse where they were ordinary negotiable notes personally obligating the taxpayer for the entire unit cost and there was no side agreement with the seller releasing the taxpayer from liability. The fact that the business plan would, if successful, generate income to cover the notes didn't make them nonrecourse.

Reference: Sacks, Seymour v. Com., (1995, CA9) 76 AFTR 2d 95-7138, 69 F3d 982, 95-2 USTC ¶50586, rev'g & rem'g (1992) TC Memo 1992-596, RIATC Memo -92596, 64 CCHTCM 1003.

It was also held in another case, that personal liability can exist even where the possibility of having to make payment is remote.

Reference: Tepper, Jack, (1991) TC Memo 1991-402, 62 CCHTCM 505, TCM -91402.

MATERIAL PARTICIPATION FOR SOLE PROPRIETOR



In order to deduct at-risk losses against ordinary income, this must be considered active income activity. To be considered not passive, your client must have materially participated in the trade or business for the tax year.

To materially participate in a trade or business activity for a tax year you must satisfy any of the following tests:

- ☐ You participated in the activity for more than 500 hours.
- ☐ Your participation was substantially all the participation in the activity of all the individuals for the tax year, including the participation of individuals who did not own any interest in the activity.
- ☐ You participated in the activity for more than 100 hours during the tax year, and you participated at least as much as any other individual (including individuals who did not own any interest in the activity) for the year.
- ☐ Based on all the facts and circumstances, you participated in the activity on a regular, continuous, and substantial basis during the year.

Participation is defined as any work you and/or your spouse do in connection with an activity in which you own an interest.

Reference: IRS Publication 925, pp. 4-5

PARTICIPATION ACTIVITIES OF ALTERNATIVE ENERGY OWNERS

Based upon their contractual obligations, your client will participate in the following ways:

- ☐ Responsible for contracting with reputable management company to direct the operations of the lenses.
- ☐ Responsible for communication with the management company for any issues of maintenance or faulty usage that may arise.
- ☐ Responsible for requiring the Operations and Management Company to maintain adequate insurance on the Alternative Energy System.
- ☐ Responsible at all times for making the management decisions to either place the Alternative Energy System in service, or remove it from service.

They can also materially participate by doing some or all of the following:

- ☐ Reviewing monthly and quarterly budgets, development updates, and performance evaluations.
- ☐ At any time, they can provide on-site inspection and evaluation of management company in the conduct of their Alternative Energy System.
- ☐ Participating in soliciting additional funding for the completion of the project to ensure profitability by referring other potential owners or substantial investors to the project.

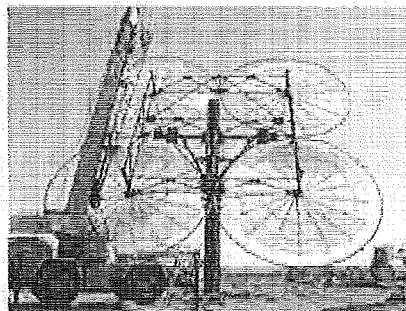
If participation is not deemed active, then passive activity limits apply which states that you can deduct passive activity losses only from passive activity income. You carry any excess loss forward to the following year or years until used, or until deducted in the year you dispose of your entire interest in the activity in a fully taxable transaction.

Reference: IRS Publication 925, p. 2

Consistent with this purpose, a taxpayer generally is considered to actively conduct a trade or business if the taxpayer meaningfully participates in the management or operations of the trade or business. Generally, a partner is considered to actively conduct a trade or business of the partnership if the partner meaningfully participates in the management or operations of the trade or business. A mere passive investor in a trade or business does not actively conduct the trade or business. (iii) Example. The following example illustrates the provisions of paragraph (c)(6)(ii) of this section. Example. A owns a salon as a sole proprietorship and employs B to operate it. A periodically meets with B to review developments relating to the business. A also approves the salon's annual budget that is prepared by B. B performs all the necessary operating functions, including hiring beauticians, acquiring the necessary beauty supplies, and writing the checks to pay all bills and the beautician's salaries. In 1991, B purchased, as provided for in the salon's annual budget, equipment costing \$9,500 for use in the active conduct of the salon. There were no other purchases of section 179 property during 1991. A's net income from the salon, before any section 179 deduction, totaled \$8,000. A also is a partner in PRS, a calendar-year partnership, which owns a grocery store. C, a partner in PRS, runs the grocery store for the partnership, making all the management and operating decisions. PRS did not purchase any section 179 property during 1991. A's allocable share of partnership net income was \$6,000. Based on the facts and circumstances, A meaningfully participates in the management of the salon. However, A does not meaningfully participate in the management or operations of the trade or businesses of PRS. Under section 179(b)(3)(A) and this paragraph (c), A's aggregable taxable income derived from the active conduct by A of any trade or business is \$8,000, the net income from the salon.

EXAMPLE

Federal Tax Due in 2011\$10,000
 Federal Tax Paid in 2010.....\$ 8,000
 Federal Tax Paid in 2009.....\$12,000
 TOTAL PAID IN FEDERAL TAX.....\$30,000



To determine the number of systems to be purchased, divide the total tax liability you wish to offset by \$1,050 ($\$3,500 \times 30\%$) which in this example is equal to approximately 30 lenses.

John would need to put a deposit down for 3% of the total price ($\$3,500 \times 30 = \$105,000$), equaling \$3,150. This is due upon signing the purchase agreement. These monies could be paid in lieu of estimated tax payments to the IRS if you deem that through the credit and depreciation benefit they will have adequate deductions to offset their income.

In the above example, the client now has a depreciable asset valued at \$105,000 ($\$3,500 \times 30$ lenses) minus half the tax credit (half of $\$31,500 = \$15,750$). Therefore, the maximum allowable depreciation in this example is \$89,250.

Due to the available 100% bonus depreciation, you may choose to take the entire amount in year one, which may be enough to zero out the 2011 taxes that will be due, thus enabling your client to use all \$31,500 in tax credits for carryback purposes, or you can leverage the 2 year net operating loss to recapture funds into 2009. At this writing, it is probable you may be able to elect to use the 50% special depreciation instead of the 100% special depreciation. In our example, the 50% special depreciation option may also zero out your 2011 taxes. This would allow your client to claim the leftover forty percent depreciation and use the five-year double declining balance schedule.

DISCLAIMER: *XSun Energy as an organisation or its sales representatives are not offering you advice on any personal income tax requirements or issues. The purpose of this communication is for general information only and does not represent personal tax advice either expressed or implied. You are encouraged to seek professional tax advice for personal or corporate income tax questions and assistance.*