

# EXHIBIT 2

September 28, 2017

Denver C. Snuffer, Jr.  
Steven R. Paul  
NELSON SNUFFER DAHLE & POULSEN  
10885 South State Street  
Sandy, Utah 84070

RE: USA v. RaPower-3, LLC, et al  
U.S. District Court Case No. 15-828

Dear Steven and Denver,

You have asked that I provide expert opinions in the lawsuit against RaPower-3, LLC brought by the federal government over what they consider to be questionable tax treatment by buyers of solar energy lenses. I provide you the information contained in this letter and my experience to answer the two questions that you posed to me.

I understand that I am being designated as an expert in this case. I also understand I am to provide a copy of my resume, attached hereto. The following are responses to the questions you asked about my qualifications:

I have testified, in deposition only, in this case on September 20, 2017.

I have testified in the Oregon Tax Court on October 25 and 26, 2016.

I have not had any articles published in the last 10 years.

I am being compensated for my time in this case as an expert at the hourly rate of \$150.00.

## OPINIONS

You have asked that I answer the following two questions. My answers are as indicated below:

QUESTION 1: Do the solar lenses purchased by individuals or business entities from RaPower-3, LLC qualify under section 48 of the Internal Revenue Code as “energy equipment” and for tax reporting purposes, can those people claim the energy credit for the year their lens(es) are placed in service?

ANSWER: For the reasons explained and stated herein, yes.

QUESTION 2: Do buyers of solar lenses from RaPower-3, LLC qualify to deduct depreciation on their federal tax returns?

ANSWER: For the reasons explained and stated herein, yes.

## OVERVIEW

First, the taxpayer is not in the **solar energy business**, this is a complete misunderstanding. The taxpayer is in the business of renting tangible personal property. The solar lenses are tangible personal property. (**Internal Revenue Code §1231 property**). The lenses are used to produce heat. They are not solar panels that are used to produce electricity. The solar lenses are a modified version of the Fresnel lens, which was invented in 1822. The Fresnel lens is still used in movie theaters and light houses today.

## LAWS

The United States Supreme Court's decision in *Frank Lyon Co v. United Sates*, **435 U.S. 561 (1978)** was the key factor that the sale/lease back transaction was considered a substantial economic investment (20 percent) made by the buyer/lessor. The Supreme Court's decision to uphold the sale leaseback transaction was based in large measure on the significance of the buyer/lessor's economic investment. The court stated in part "The fact that favorable tax consequences were taken into account by Lyon on entering into the transaction is no reason for disallowing those consequences. We cannot ignore the reality that