northstar
tax services

1717 E Vista Chino Ste A7-448 □ Palm Springs, CA 92262 □ 435-669-9225

5/01/2014

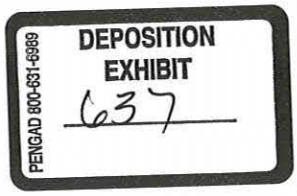
Ms. Carla Oyala Appeals Officer
Internal Revenue Service
Appeals Office M/S 0-680
1220 SW 3rd Ave, Suite G044
Portland, OR 97204-2827
RE: Peter C Gregg SS# [redacted]
Renae J Gregg
TAX PERIODS: 12/2010, 12/2011, 12/2012

Dear Ms. Oyala,

As per our telephone conversation on 3/27/2014 this is the follow up information for the Gregg's appeal that you are working on. As stated earlier we disagree with everything that the auditor disallowed on the tax returns in question. Because several of the items are related I am going to cover them all at once.

Disallowance of the Depreciation and Energy Credit.

Attached are copies of the invoices for the purchase of the solar lenses by Mr. Gregg and the placed in service letters. The taxpayer is allowed the deduction for depreciation of the lenses placed in service. The taxpayer is also allowed the energy credit for the lenses placed in service. The auditor did not follow the Treasury Regulations when reviewing the taxpayer's tax returns. The taxpayer is allowed the items that were disallowed based on Treasury Regulation 1.46-3(d)(2) that states in part: "in the case of property acquired by the taxpayer for use in his trade or business (or for the production of income), the following are examples of cases where property shall be considered in a condition or state of readiness and availability for a specifically designed function: (i) Parts are acquired and set aside



taxable year for use as replacements for a particular machine or machines in order to avoid operational time loss. Also (iii) Equipment is acquired for a specifically assigned function and is operational but is undergoing testing to eliminate any defects.

The taxpayer's purchase and rental of the solar lenses does meet these requirements. **Attached** is a follow up placed in service letter concerning the use of the lenses. The letter clearly states that the lenses were placed in service and are being used by the company they were rented to. As a matter of fact I have been to the site and have seen the home that is currently being powered by the lenses in the testing of the units. **Attached** are pictures of the home that I took on site when I was there. In addition to that the company has always been in compliance with all the Millard County regulatory equipments at the research and development site, proving the lenses are placed in service. The company also has their business license and all conditional use permits required to operate the site in the City of Delta, Millard County, Utah.

Therefore, this clearly shows that the taxpayer is allowed the deprecation deduction and the Energy Credits for all years in question and they should not have been disallowed by the auditor.

Please note that the IRS Appeals Officer has allowed the deprecation deduction and Energy Credit in the past for another taxpayer. See the letter **attached** concerning a taxpayer who was allowed the items in question by an Appeals Officer.

This action by the IRS auditor brings into question the doctrine of equity of treatment. An agency may make rules and may exercise discretion in that regard, but it is bound by the requirement of equity. If one party is treated differently than another that is discrimination. There is a duty of administrative consistency that the Internal Revenue Service must adhere to in all matters regarding taxpayers. See Contractors Tramp Crop. V. United States, 537 F2d 1160, 1162 (4th CIR. 1976) and IBM Corp v. United States, 343 F2d 914 (CT. CL. 1965) and Wheeler v. United States, 768 F2d 1333, 1337 (Fed. CIR. 1985). The United States Supreme Court in U.S. v. Caceres, 440 US 741 (1979) stated in part, "Agency violations of their own regulations, whether or not in violation of the United States

Constitution may well be inconsistent with the standards of agency action which the Administrative Procedures Act (Public Law 79-404) directs the courts to enforce."

The Emergency Economic Stabilization Act of 2008, HR 1424 Public Law 110-343 (Division B), includes a number of provisions supporting renewable energy, including solar. This law also includes commercial and residential solar investment tax credit (ITC), and allows utilities and alternative minimum tax (AMT) filers to take the credit as per IRC Section 196(c). Along with the IRC §48(a) (3) (A) investment tax credit, solar property also qualifies for accelerated depreciation through Dec. 31, 2016. The United States Congress implemented those laws with the intent that taxpayer's would be encouraged to invest in renewable energy sources. As long as the taxpayer materially participates in a business activity (IRC §469(h) (1)), then the taxpayer may deduct the losses from such activity. Because the business that Mr. Gregg is engaged in is the rental of tangible personal property reported on his Schedule C (as per several court cases) then the question of material participation (Treasury Regulation Section 1.469-5T(a) that states "The taxpayer does substantially all the work in the activity") is not a question that applies. The taxpayer meets all the requirements of the law allowing them to claim the credits and the depreciation on their tax returns.

Treasury Regulation Section 1.469-5T(a) which states very clearly that the taxpayer only needs to meet one of the 7 tests in this regulation. Test #2 states "The taxpayer does substantially all the work in the activity". Simply stated because the taxpayer does all the work in his business of leasing tangible personal property (the solar lenses) the income or loss will be non-passive. There is no specific number of hours associated with this test. In addition, the term "substantially" is not defined in the regulations.

The Small Business/Self-Employed section of the IRS web site defines self employment as "an activity carried on for livelihood or in the good faith to make a profit".

Beginning in 1991, the IRS issued instructions for the Form 1040, Schedules C and E that stated "Use Schedule C to report income and expenses from the rental of personal property, such as equipment or vehicles".

Beginning in 1992, the IRS added an instruction on the face of the Schedule E to "report income and expenses from the rental of personal property on Schedule C or C-EZ".

Publication 334 Tax Guide for Small Business, page 21 states "If you are in the business of renting personal property (equipment, vehicles, formal wear, etc.), include the rental amount you receive in your gross receipts on Schedule C or C-EZ.

The following court cases reinforce the requirement of reporting the income and expenses on a Schedule C or C-EZ for the business of renting tangible personal property. See *Stevenson v. Commissioner 57 T.C.M. 1032 (1989) and Walker v. Commissioner 101 T.C. 537 (1993).*

Therefore, the taxpayer is currently engaged in a business activity and entitled to all normal business deductions as per IRC Section 162.

Profit motive question

The profit motive is very straight forward as stated earlier and in the attached letter. By leasing the lenses to LTB LLC the taxpayer will generate income to recover his investment over a period of time. This profit motive clearly meets the requirements of Treasury Regulation Section 1.183-2(a). If for no other reason than the increase in the value of the assets purchased. The major profit motive is the projected bonus payments for the use of the lenses. Based on the taxpayer's investment the bonus could be as high as $200,000 over a short period of time. One other item showing that the auditor is wrong is the fact that the company renting the lenses has been approached by small towns that need drinking water because of the drought. Based on the discussions the projected income from the production of pure drinking water could far exceed the income that would be paid for the production of electricity by the lenses.

There are several court cases stating that losses under IRC Section 183 are allowed by the taxpayer in this circumstance. See Storey v. Commissioner, TC

Memo 2012-115 (4/19/2012), and Mullins v. U.S., Cite as 94 AFTR 2d 2004-5389 (334 F. Supp. 2d 1042), 07/14/2004, also Holmes v. Comm., Cite as 83 AFTR 2d 99-2987 (184 F. 3d 536), 07/01/1999, also Freddie Stromatt, et ux. V. Commissioner, TC Summary Opinion 2011-42, also John E. Morrissey, et ux. V. Commissioner, TC Summary Opinion 2005-86, and N. Joseph Calarco v. Commissioner, TC Summery Opinion 2004-94.

Therefore, we request that the audit be disallowed and the taxpayer's returns be approved as filed.

Thank You,

Richard Jameson MST, MGFE, EA

Cc: Peter Gregg

Invoice

Purchase Date: 4/17/2010 11:46:36 AM

RaPower3 LLC
4035 South 4000 West
Deseret, UT. 84624

TO: PETER GREGG
38490 BICKFORD ST
SANDY, OR. 97055

Order Information

Order ID:	38-173-4172010114600		
Units Purchased	Description	Down Payment	Full Unit Price
7	600 Watt Solar Thermal Lens	$8,400.00	$21,000.00

Order Payments

Payment Date	Payment Type	Payment Recieved	Payment Amount
5/27/2010	Credit	Yes	$700.00
4/27/2010	Credit	Yes	$700.00
7/29/2010	Check	Yes	$700.00
9/2/2010	Check	Yes	$700.00
9/2/2010	Check	Yes	$700.00
11/2/2010	Check	Yes	$700.00
11/2/2010	Check	Yes	$700.00
11/29/2010	Check	Yes	$700.00
12/30/2010	Check	Yes	$700.00
1/18/2011	Check	Yes	$700.00
3/4/2011	Check	Yes	$700.00
3/31/2011	Check	Yes	$700.00

Received Payment Count: 12
Amount Paid: $8,400.00

(Does not reflect pending payments) Balance: $0.00

Invoice

Purchase Date: 4/12/2011 9:11:14 PM

RaPower3 LLC
4035 South 4000 West
Deseret, UT 84624

TO: PETER GREGG
38490 BICKFORD STREET
SANDY, OR. 97055

Order Information

Order ID:	38-1091-4122011911		
Units Purchased	Description	Down Payment	Full Unit Price
26	600 Watt Solar Thermal Lens	$27,300.00	$91,000.00

Order Payments

Payment Date	Payment Type	Payment Received	Payment Amount
4/18/2011	Check #686	Yes	$2,730.00
5/11/2012	ACH	Yes	$1,470.00
4/26/2013	Check #813	Yes	$4,200.00

Received Payment Count: 3
Amount Paid: $8,400.00

Balance: $18,900.00

Peter C Gregg
38490 Bickford Street
Sandy, OR. 97055

Dear Peter,

This letter is regarding the "Alternative Energy Systems" that you purchased from RaPower3 LLC. RaPower3 put into service your equipment on or before December 31, 2010. This will qualify you for the Internal Revenue Services solar energy tax credit.

(However for your personal information, Section 103 Div. B Energy Credit (code Sec.48), "For projects whose construction time is expected to equal or exceed two years, the Credit may be claimed as is placed in service.")

We appreciate your business and look forward to the opportunity to work with you to help solve our nation's energy needs. If you have any questions you may correspond with us at the below address.

Respectfully Yours,

Greg Shepard,
Director of Operations

Peter C Gregg
38490 Bickford St
Sandy OR. 97055

Saturday, May 18, 2013

Dear Peter,

This letter is regarding the "Alternative Energy Systems" that you purchased from RaPower3 LLC. RaPower3 put into service your equipment on or before December 31, 2011. This will qualify you for the Internal Revenue Services solar energy tax credit.

(However for your personal information, Section 103 Div.B Energy Credit (code Sec.48), "For projects whose construction time is expected to equal or exceed two years, the Credit may be claimed as is placed in service.")

We appreciate your business and look forward to the opportunity to work with you to help solve our nation's energy needs. If you have any questions you may correspond with us at the below address.

Respectfully Yours,

Greg Shepard,
Director of Operations

Peter C Gregg
38490 Bickford Street
Sandy, OR. 97055

Dear Peter,

This letter is regarding the "Alternative Energy Systems" that you purchased from RaPower3 LLC. RaPower3 put into service your equipment on or before December 31, 2012. This will qualify you for the Internal Revenue Services solar energy tax credit.

(However for your personal information, Section 103 Div. B Energy Credit (code Sec.48), "For projects whose construction time is expected to equal or exceed two years, the Credit may be claimed as is placed in service.")

We appreciate your business and look forward to the opportunity to work with you to help solve our nation's energy needs. If you have any questions you may correspond with us at the below address.

Respectfully Yours,

Greg Shepard,
Director of Operations

Addendum: April 7, 2014

Department of the Treasury
Auditors and Appeal Officers

To whom it may concern:

Our RaPower3 program has some complexities and because of this, IRS auditors have had a difficult time understanding our position. This includes some taxpayer cases from RaPower3. I hope the following information will be helpful:

I am aware that the IRS is auditing many RaPower3 Members tax returns. Perhaps the primary supposition is that our solar lenses and/or technology must produce electricity and that the electricity produced must be on a utility grid to qualify and meet the "placed in service" criterion. Therefore, I thought it would be well to review the two main kinds of solar technology and how they relate to the instructions of form 3468.

There are two main kinds of solar technology: Photovoltaic (PV) and Concentrated Solar Power (CSP). PV technology uses solar panels and their only function is to produce electricity. Most of the world's PV panels are made in China. PV technology is used for both residential and commercial projects whereas CSP technology is only for commercial projects. Special licenses and certifications are required for residential PV solar panel installation. I believe that some IRS auditors have understandably been confused by thinking we have PV technology.

RaPower3 taxpayers use CSP technology. CSP technology uses mirrors or lenses that reflect or refract the sun's rays to create heat. With this heat, not only can electricity be produced, but the solar heat can be used to heat a building or to heat a greenhouse for the production of food. Some solar CSP businesses also use the solar heat to produce clean water for drinking and irrigation purposes. The electricity produced can be used for commercial buildings and/or property without going on the grid. Solar credits have been given to other solar CSP businesses for all of the above varieties of uses.

The placed in service instructions given for solar tax credits on IRS Form 3468 are succinct and quite clear. Solar equipment is placed in service when it uses solar energy to generate electricity or provide solar process heat. The RaPower3 taxpayer's solar equipment (the solar lenses) provides solar process heat.

The patented solar lenses are manufactured by Lucite, one of the largest plastic manufacturers in the world. It is made of a high-grade material which is the same as the front windows of our

military's jet airplanes. Lucite only accepts minimum orders of 100,000 solar lenses for each run. Therefore, RaPower3 has a huge inventory. This means the taxpayer's solar lenses were manufactured before they were purchased. It also means the taxpayer's solar lenses were in a state of readiness for producing heat as they came off the production line. Therefore, when the taxpayer purchased the solar lenses they were placed in service.

The proof of concept for our solar lenses came in 2004 by using Fresnel lenses. Existing technology for both PV and CSP was not cost effective when compared to coal energy back then and it still isn't. In 2004 the tax credits were only 10% not 30%. We wanted to be able to beat the price of coal in manufacturing, installation and cost of operation. We also wanted to be able to mass produce all of our components.

The Fresnel lenses and our patented turbine produced electricity in 2004, but it was far too expensive. Armed with this proof of concept, we thought software could be developed whereby inexpensive plastic could be used instead of expensive polished glass mirrors used in conventional CSP technology. Finally, after much innovation and over two years of struggle, the software and methodology were completed.

I have read the IRS's take on our plastic lenses. It certainly appears the IRS's mind set is that we just bought a cheap plastic material down at Walmart to take an illegal advantage of the tax breaks. The software we developed is so highly complex that engineers have calculated that it would take a rogue country like China several years to reverse engineer what we have.

Even though in 2006 we could manufacturer our solar lenses with our breakthrough technology, much research and development still needed to be done. Eventually, we chose a R&D/project site in the Delta, Utah area. It's near the grid going into California and the land is only $100 an acre to purchase. The term "empty lot" has been used by the IRS to describe our R&D/Project site. In reality, our "empty lot" consists of thousands of acres with millions of dollars of completed manufactured components. In addition, in contrast to the IRS position, Millard County gave us a conditional use permit to do our R&D work using our heat for irrigation purposes and we have access to all the irrigation canals in the west Delta area.

Other research and development centered on framing our solar lenses with high wind tolerances. After much trial and error with a number of framing methods, we now have wind tolerances of up to 100 MPH. In contrast, a big CSP installation in California shuts their operation down when winds reach 35 MPH. As a result of our R&D, many of our own solar lenses with their now obsolete frames were broken and twisted during big winds in Delta. They were placed in an area away from our working solar towers. This led to misleading IRS comments that our site is nothing but a "junk pile".

During our research and development phase, a new heat exchanger technology was invented that has staggering implications. It is a thousand times smaller in size and cost than our competitors. It also requires no boilers, coolers or lengthy pipes. This drastically cuts our manufacturing and

installation costs along with our cost of operation.

We also developed a dual-axis tracking system that would operate smoothly and inexpensively. Normally, a PV system cannot operate effectively with a tracking system. In Delta, Utah, PV systems get about 2,000 hours of sun annually, while our tracking system will get us 2,600 hours of sun annually.

We have now completed our research and development along with a refinement phase and have emerged with some remarkable breakthrough working technologies. This means we can accomplish all of our objectives. No other renewable energy can even come close to matching us. We have a business license and conditional use permit to fully operate our manufacturing plant in Delta, Utah. We have a business license and conditional use permit to fully operate our manufacturing plant in Delta, Utah.

For example, a 392 Megawatt CSP plant was just installed just across the Nevada border in Ivanpah, California. They received over one billion dollars in IRS tax benefits using old technology fraught with problems: problems we have overcome. Their lenses are as big as garage doors and must be washed daily. There are 350,000 of them. We don't need to wash our solar lenses plus ours are more efficient and don't have to be replaced because of a rock chip like the ones at Ivanpah. Their antiquated heat exchangers use huge amounts of water that must have boilers, coolers and miles of pipes. So, all of this good water is being needlessly used in a desert area during the worst drought in California history.

Their receiving towers using antiquated reflective CSP technology rise up 450-feet. These super high towers are killing many birds. Little wonder they have been told not to build any more projects in California.

All of our components are made in America. We have our own manufacturing plant and our own construction company. We soon expect to manufacture and install twenty towers or two megawatts per day. That equates to about 2,700 solar lenses installed per day at our different property locations. We expect to accomplish this using only one shift a day – five days a week.

The taxpayer's solar lenses were used in this R&D/Refinement period and will now be placed on a tower that will produce rental income by the Operating and Maintenance Company: LTB, LLC. The rental income will be retroactive going back to 2010. Each of the taxpayer's solar lenses will have an identification number.

The number three in RaPower3 stands for the three ways taxpayers will receive money from their solar lenses. First, are the tax benefits. Second, is the rental income which will exceed the tax benefits and third, are the bonuses which will be the most lucrative of all benefits. The rental income and bonuses should start paying out this year.

The taxpayer's solar lenses will produce intense heat. The income produced could come from

the sale of electricity, or water or a combination of both. There have been offers to pay more for the water than for the electricity. Unfortunately, there are now hundreds of water sources in the United States polluted by arsenic and the number is growing. Drought areas in the world and in our country are truly troubling and it seems to be getting worse.

The taxpayer's solar lenses create heat and thus steam. As the steam is expelled from the jet nozzle of our patented breakthrough turbine, it begins to condense back to its liquid water state. All of the foreign particles, such as arsenic, other pollutants, impurities, or salt drop to a bottom container. We are then left with pure distilled water that can be used for drinking or irrigation. We would get a minimum of two gallons of water per kilowatt per hour. That's about 50 gallons a day per kilowatt or five million gallons of water per day for a 100 Megawatt project. What's really neat about this is that we can produce electricity at the same time if we want.

Officer Ouellette, I realize this addendum has been somewhat lengthy. However, I wanted you to know of all the remarkable capabilities of the solar lenses purchased by the taxpayer. I realize the IRS has spent many millions of taxpayer revenues to conduct these RaPower3 audits and appeals just because of so much misunderstanding and false information.

The taxpayer's purchased their solar lenses to help America have clean, affordable renewable energy. President Obama has given passionate speeches about our government investing in the innovation of renewable energy. RaPower3 taxpayers saw the great potential of the RaPower3 technology and invested in the very innovation talked about by President Obama.

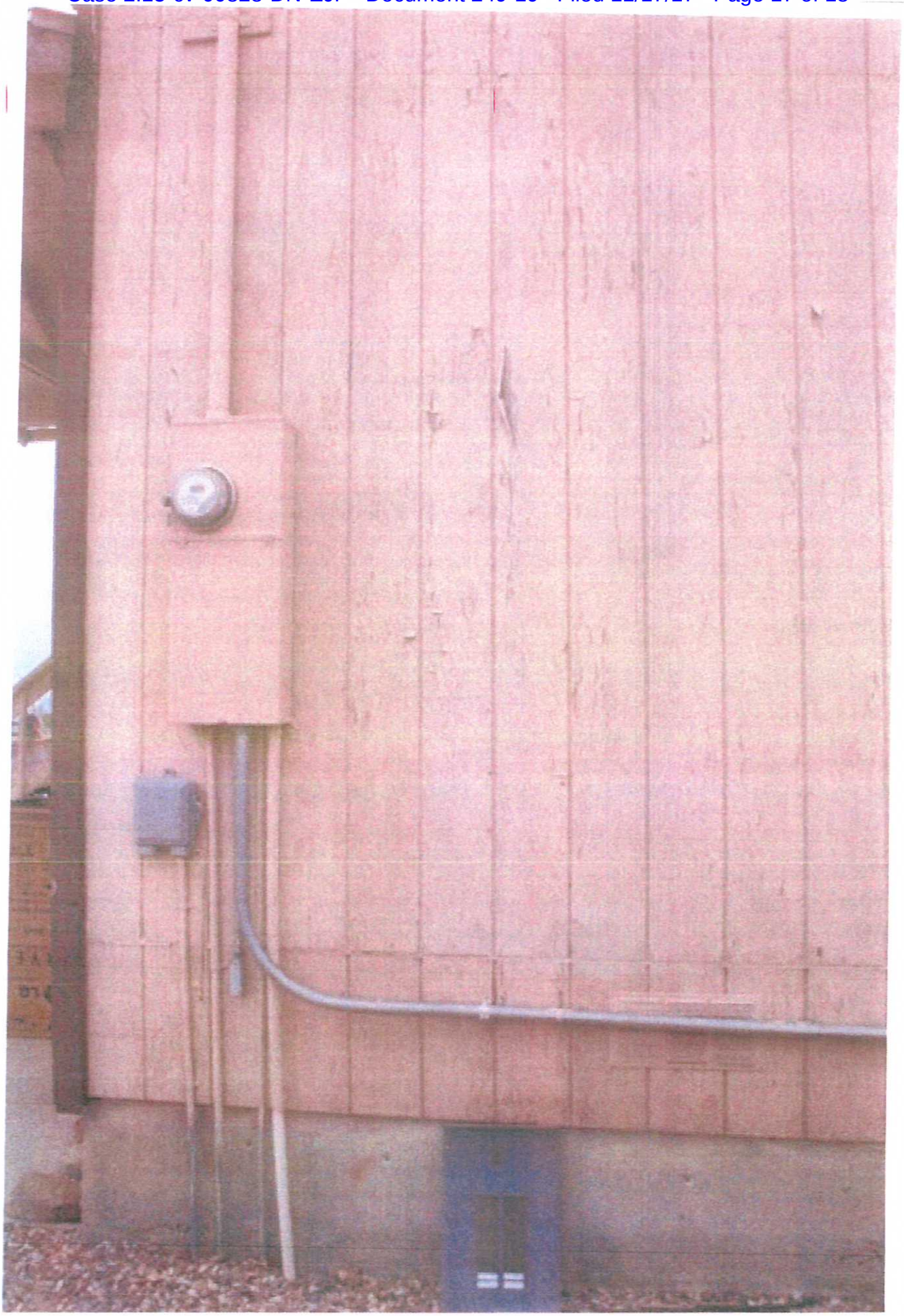
The vision of our RaPower3 taxpayers is coming to fruition. They expect and I expect the government to live up to its end of the bargain. Billions of tax benefit dollars have been squandered with dozens of solar companies who have gone bankrupt or produced questionable results. The solar lenses purchased by RaPower3 taxpayers are finally a way the government can get some of this revenue returned.

Press releases will be coming forth soon. President Obama and other government officials will become aware of this praiseworthy effort. Where will the IRS be when this happens?

RaPower3 LLC

Greg Shepard
Chief Director of Operations

RaPower3 LLC
4035 S. 4000 W.
Deseret, UT 84624



Internal Revenue Service

For assistance, call
Your Caller ID:
Notice Number:
Date: February 4,

ROGER P
495 W TENAYA DR
IVINS UT 84738-6581956

Amount of Refund
$62,210.63

For account of ROGER P & KRISTIN

This is not a bill

We Changed Your Account

We will explain why you received this notice, how we changed your account, how this change affects you and actions you may wish to take.

Why You Received This Notice

As you requested, we changed your account for 2010 to correct your tax credits.

The law requires us to send a copy of this notice to both you and your spouse. Each copy contains the same information about your joint account. We will issue only one refund.

How We Changed Your Account

We changed your account as follows:

Account balance before this change	
Decrease in tax because of this change	None
Amount to be refunded to you	$62,210.63 CR
(If you owe tax, other taxes or other debts we are required to collect)	$62,210.63

How This Affects You

You may have already received your refund by direct deposit or mail. If not, you can expect it in approximately 2 weeks. Your refund will include interest if applicable. We will notify you if any pending matters postpone your refund.