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2/04/2016

Ms. Kristi Williquette TCO
c/o Internal Revenue Service
Self Employed and Small Business
M/S 4106 KW
50 South 200 East
Salt Lake City, UT 84111

RE: Preston Olsen SS# XXX-XX-4944
Elizabeth Olsen SS# XXX-XX-0632

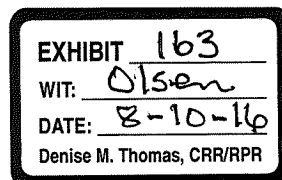
TAX YEARS 2013 & 2014

Dear Ms. Williquette

We completely disagreed with everything that the auditor disallowed on the tax returns in question.

The taxpayer is not and has never been in the business of energy production, he is in the business of renting tangible personal property. The taxpayer rents the solar lenses (an Alternative Energy System as per Webster's Dictionary) that are used to product heat. The heat can be used to heat a building, a greenhouse, to produce clean drinking water and yes steam to drive a turbine that would product power. Because the lenses produce heat they are clearly eligible for the energy credit as per Internal Revenue Code §48.

Treasury Regulation 1.46-3(d)(2) explains that in the case of property acquired by the taxpayer for use in his trade or business the following are examples of cases



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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 during the taxable year for use as replacements for a particular machine or machines in order to avoid operational time loss, and (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. You were given a 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. In addition to that the company has always been in compliance with all the Millard County regulatory requirements 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 depreciation deduction for all years in question and they should not have been disallowed by the auditor.

The taxpayer has provided the auditor with the purchase records for the lenses that show the purchase price. Also the question of an active trade or business does not apply. The auditor stated to me in part "the activity does not meet the guidelines of carrying on a trade or business". Again the auditor is clearly not following the Treasury Regulations when reviewing the taxpayer's returns.

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 §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. Olsen 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 §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 §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 website 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 §162.

One other important point is the Kirton/McConkie legal memorandum which states in part "So long as a Buyer's principal activity is something other than the performance of personal services, the Buyer will be able to use the credits and losses attributable to the Solar Lenses to offset active income from other sources".

There is one other item that needs to be addressed. The question of a trade or business has to do with profit motive. 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 §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 \$100,000 over a short period of time. One other item showing that the auditor is incorrect 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 §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.

Tax Year 2013

We disagree with and protest all proposed changes to the 2013 tax return as filed

Item 1 General Business Credit: Solar Energy Credit. This is the main item on the audited return. This item is clearly allowed as stated in Public Law 110-343, The Emergency Economic Stabilization Act of 2008, HR 1424 that includes a number of provisions supporting renewable energy, including solar. The instructions for IRS Form 3468, line 12b clearly state that the credit is allowed for equipment that uses solar energy to "Provide solar process heat".

Item 2 Depreciation Expense. This is the other main item that is adding to the increase in total income on the audited return. This item is allowed under IRC §162 as an ordinary and necessary business expense based on the taxpayer's personal property leasing business. Also see IRC §48(a)(3)(A)(i) clearly showing that 85% of the total cost of the solar lens is eligible for the bonus depreciation (as per the Tax Relief, Unemployment Insurance Re-Authorization, and Job Creation Act of 2010 Public Law 111-312). The auditor also stated "that the Qualified Energy Equipment was not actually placed in service". The taxpayer is in the business of leasing tangible personal property so this statement has no significance on this audit and should not have been made.

Item 3 Student Loan Interest. The removal of the student loan interest is a result of the increase in total taxable income because of the audit adjustments. This deduction item will be allowed once the audit is disallowed.

Therefore, the need for an Appeals Officer to review this audit is mandated.

Tax Year 2014

We disagree with and protest all proposed changes to the 2014 tax return as filed.

Item 1 General Business Credit: Solar Energy Credit. This is the main item on the audited return. This item is clearly allowed as stated in Public Law 110-343, The Emergency Economic Stabilization Act of 2008, HR 1424 that includes a number of provisions supporting renewable energy, including solar. The instructions for IRS Form 3468, line 12b clearly state that the credit is allowed for equipment that uses solar energy to "Provide solar process heat".

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I, Richard Jameson MST, MGFE, EA am submitting the protest and accompanying documents as POA for Mr.& Mrs. Olsen. I know personally that the facts stated in the protest and accompanying documents are true and correct.

Thank You,

A handwritten signature in black ink that reads "Richard Jameson EA". The signature is written in a cursive, flowing style.

Richard Jameson MST, MGFE, EA

Cc: Preston Olsen

Encl.

1. Signed under POA copy attached