



Closing Argument

*United States of America v.
RaPower-3, LLC, International Automated Systems,
Inc., LTB1, LLC, R. Gregory Shepard, Neldon
Johnson, and Roger Freeborn*

Case No. 2:15-cv-00828-DN-EJF

United States District Court,
District of Utah

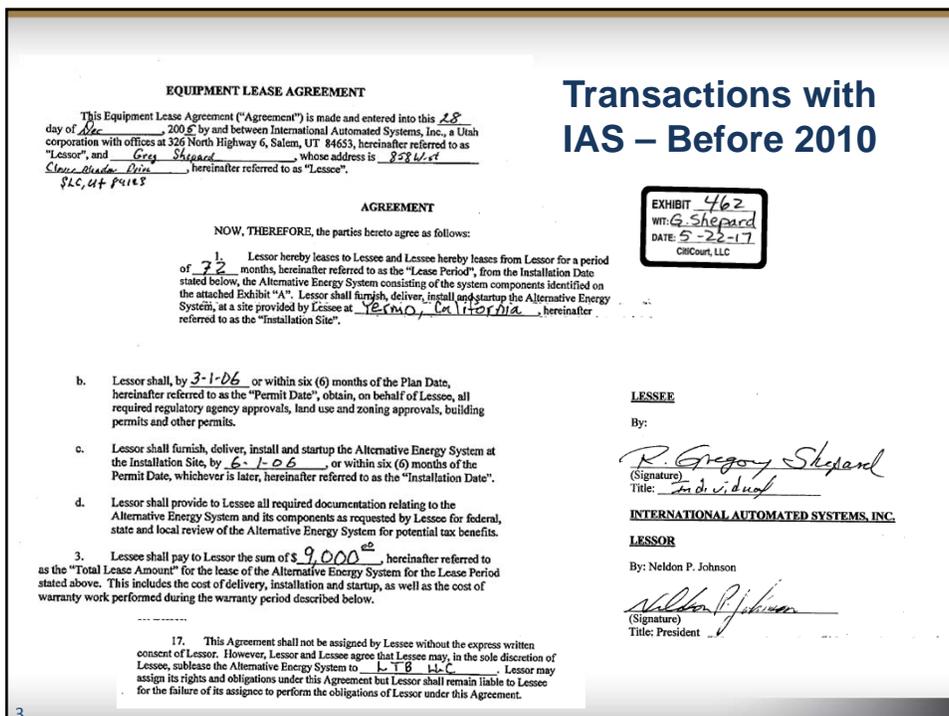
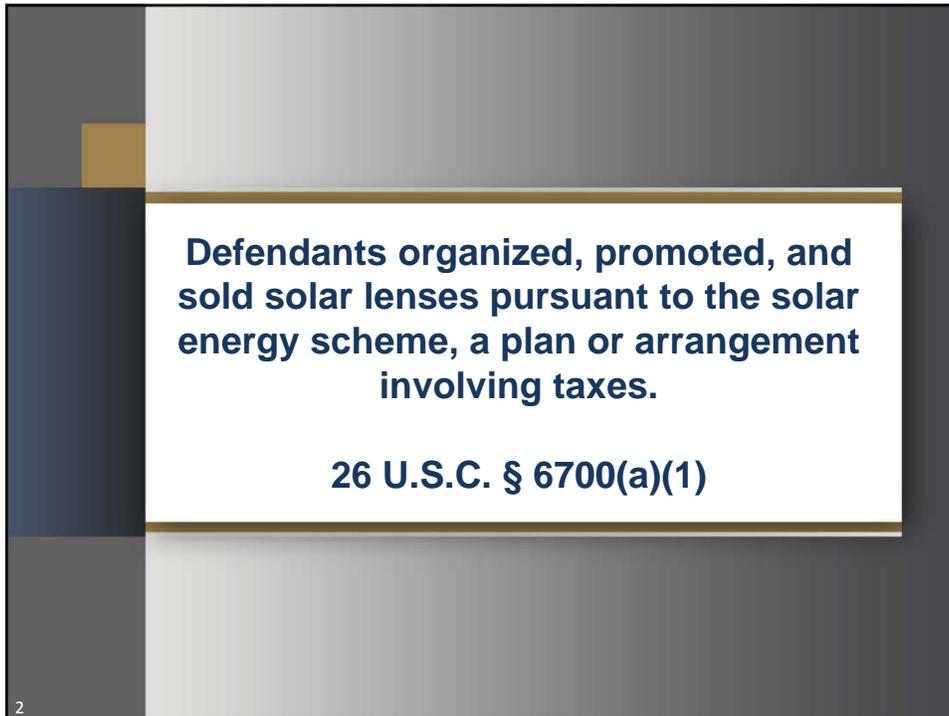
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The United States' Claims:

26 U.S.C. § 7408
26 U.S.C. § 6700

26 U.S.C. § 7402

1



Transactions with IAS – Before 2010

- PLEX 8A
 - PLEX 91
 - PLEX 92
 - PLEX 93
 - PLEX 94
 - PLEX 95
 - PLEX 181
 - PLEX 462
 - PLEX 464
 - PLEX 531
 - PLEX 532
 - PLEX 533
 - PLEX 613
 - PLEX 614
 - PLEX 615
 - PLEX 760
 - PLEX 762
-
- PLEX 581, IAS Dep. 182:16-183:4; 196:21-198:19
 - PLEX 673, LTB1 Dep. 43:16-46:24
 - PLEX 685, Shepard Dep. 57:7-59:3; 73:1-74:2
 - Rowbotham Testimony, Trial Tr. 910:24-925:5
 - Williams Testimony, Trial Tr. 982:3-983:23; 985:4-989:10
 - Olsen Trial Testimony, Trial Tr. 1060:11-25

4



RaPower-3 Equipment Purchase Agreement

This Equipment Purchase Agreement (the "Agreement") is entered into this day
12/20/2012 4:57:46 PM

by and between RaPower-3 LLC (the "Operator"), with principal offices at 4035 South 4000 West, Deseret, UT 84624, hereinafter referred to as "Seller", and
Preston Olsen on behalf of PFO Solar LLC
whose address is 571 S. Main Street Dr, Bluff, UT 84107
hereinafter referred to as "Purchaser".

3. Payment Terms. Purchaser shall pay to Seller the sum of \$3,500 for each Alternative Energy System purchased, hereinafter referred to as the "Purchase Amount" for the purchase of the Alternative Energy System. This includes the cost of delivery, installation and startup, as well as the cost of warranty work performed during the warranty period described below. The Total Purchase Amount shall be paid in accordance with the following schedule.

Option 1:
Initial Down Payment in the amount of \$1,050 (one thousand fifty dollars) for each Alternative Energy System purchased, which shall be paid at the time this agreement is entered into.

Option 2:
Initial Down Payment in the amount of \$1,050 (one thousand fifty dollars) for each Alternative Energy System purchased, which shall be paid with a one-time payment of \$103 (equal to 10% of the down payment) at the time this Agreement is entered into. The balance of \$945 for each Alternative Energy System is to be paid on or before June 30, 2012.

Option 3:
Initial Down Payment in the amount of \$1200 (One Thousand Two Hundred Dollars) for each Alternative Energy Systems purchased, which shall be paid in monthly installments of \$100 (One Hundred Dollars) per system purchased.

BACKGROUND

1. Seller is the licensee of certain proprietary alternative energy technology, which technology relates to solar energy collection and which technology is utilized for the design and fabrication of certain components which are identified below and which are hereinafter collectively referred to as the "Alternative Energy System(s)".

2. Seller and Purchaser now desire to enter into an agreement whereby Seller will sell Purchaser the Alternative Energy System specifically described below.

EXHIBIT 119
WIT: Olsen
DATE: 8-16-16
Doreen M. Thomas, CRW/PFR

Preston Olsen, for PFO Solar LLC
Signature
RaPower3 Windows Utility
IP Digital Signal

Seller
By: Neldon Johnson - RaPower-3
Neldon Johnson - Director 12/20/2012 4:57:46 PM
Signature

**Transactions with RaPower3
– Starting in 2010**

5

Transaction Structure with RaPower-3 starting in 2010

- PLEX 25
- PLEX 119
- PLEX 121
- PLEX 174
- PLEX 346
- PLEX 473
- PLEX 511
- PLEX 512
- PLEX 555
- PLEX 587
- PLEX 637
- PLEX 638
- PLEX 639
- PLEX 579, Johnson Dep., vol. 1, 206:15-23; 219:2-223:23
- PLEX 581, IAS 30(b)(6) Dep., 181:9-182:5
- PLEX 682, RaPower-3 30(b)(6) Dep., 39:18-41:2
- PLEX 683, John Howell Dep., vol. 2, 39:17-40:4; 95:3-5; 134:14-135:22
- PLEX 685: R. Gregory Shepard Dep., 157:18-24
- PLEX 687: Robert Aulds Dep., 141:3-13; 146:17-147:5
- PLEX 698: Peter Gregg Dep., 55:19-56:13
- PLEX 697: Brian Zeleznik Dep., 67:3-12
- Rowbotham Testimony, Trial Tr. 925:7-927:7
- Williams Testimony, Trial Tr. 989:11-990:12; 991:6-994:15
- Olsen Testimony, Trial Tr. 1070:11-1074:7; 1078:20-1081:23
- Jameson Testimony, Trial Tr. 1221:15-22; 1224:13-1225:25; 1226:6-1228:10; 1237:8-16

See PLEX 510 regarding similar transactions entered into by XSun Energy

6

Promoted Solar Energy Scheme to Thousands of Customers and Prospective Customers

Defendants Promoted the Scheme through:

- Websites
- Facebook, Tumblr, YouTube, other social media
- Email Distribution Lists
- Neldon Johnson KNRS Radio Shows
- Convention & Tours
- Bigger, Faster, Stronger customers and Roger Freeborn
- Commission-based multi-level marketing / word of mouth

RECENT ACCOMPLISHMENTS

1. **Highlights from Jan. to March 2012:** Purchased a big lift truck for the new 30,000 square foot manufacturing plant. Had the best ever first quarter sales. Purchased two heavy-duty concrete pumps with trucks for our construction project. Had four big truck loads of steel delivered: enough for 300 towers. Poured the concrete base in the new manufacturing plant for our 89,000 lb mold-making machine. Finalized the location and date for our RaPower3 National Convention. Purchased two cranes for the construction project. Purchased 1,280 acres for solar projects. Received five new patents. Manufactured and delivered on-site 700 trusses. Built the mold that mass-produces the frames for the solar lenses. Purchased a Robotic Welder and developed a Circuit Board. Received white papers and engineers are presently creating the software for the circuit board. Purchased a drill truck for digging a hole four feet in diameter and fifteen feet deep in which to place the tower. Created molds for other important manufacturing parts such as the mold to connect the frames to the trusses along with a seal. Completed the mass production process for the jet nozzles. After four tries, discovered the proper coating to protect our solar heat exchanger from melting.
2. **Highlights from April 2012:** Finished the final mold for the strut connecting the lens frame to the Truss. Every mold for every component for mass manufacturing has now been completed. The last pieces of equipment for the assembly lines for the automated mass production of components have been ordered. Construction plans for the Delta project being finalized. Completed the first phase of the software engineering for the circuit board.
3. **Highlights from May to early June 2012:** Completing the manufacturing plant. Nearing completion of the software engineering for the Circuit Board and the readiness for the construction of CSP towers in Delta, Utah.
4. **Growing RaPower3:** Reached a thousand team members from all corners of the United States.



Gregg_P&R-002666

7

Promoted Solar Energy Scheme to Thousands of Customers and Prospective Customers

Through Their Websites...

Social Media

- | | | | |
|------------|------------|-------------|------------|
| - PLEX 1 | - PLEX 352 | - PLEX 718 | |
| - PLEX 2 | - PLEX 394 | - PLEX 719 | - PLEX 345 |
| - PLEX 3 | - PLEX 399 | - PLEX 720 | - PLEX 428 |
| - PLEX 4 | - PLEX 419 | - PLEX 721 | - PLEX 429 |
| - PLEX 5 | - PLEX 459 | - PLEX 722 | - PLEX 430 |
| - PLEX 6 | - PLEX 481 | - PLEX 723 | - PLEX 436 |
| - PLEX 13 | - PLEX 505 | - PLEX 724 | - PLEX 441 |
| - PLEX 14 | - PLEX 547 | - PLEX 725 | - PLEX 539 |
| - PLEX 16 | - PLEX 548 | - PLEX 726 | |
| - PLEX 17 | - PLEX 551 | - PLEX 727 | |
| - PLEX 19 | - PLEX 631 | - PLEX 728 | |
| - PLEX 20 | - PLEX 674 | - PLEX 729 | |
| - PLEX 21 | - PLEX 676 | - PLEX 730 | |
| - PLEX 23 | - PLEX 677 | - PLEX 731 | |
| - PLEX 24 | - PLEX 679 | - PLEX 732 | |
| - PLEX 25 | - PLEX 680 | - PLEX 733 | |
| - PLEX 26 | - PLEX 714 | - PLEX 796 | |
| - PLEX 27 | - PLEX 715 | - PLEX 832 | |
| - PLEX 34 | - PLEX 716 | - PLEX 832A | |
| - PLEX 351 | - PLEX 717 | - PLEX 901 | |
| | | - PLEX 903 | |

8

Promoted Solar Energy Scheme to Thousands of Customers and Prospective Customers

Through Their Tours, Conventions, and Word of Mouth...

Marketing & Sales

The program provided by RaPower's proved to quite effective in the years of 2011 & 2012. Hundreds of people across the nation purchased solar leases. Many came to see the manufacturing and construction sites.



Word spread through the RaPower's network marketing components.

One of the many tours of the solar site and manufacturing plant in 2012. People were attracted by the generous bonus program contracted through International Automated Systems and the long-term rental program offered by ITR, LLC, an Operations and Maintenance Company. In addition, the tax benefits offered to solar companies producing heat were also attractive.

The RaPower's sales gave Neldon Johnson and his staff much needed revenue to achieve our three fold objective: (1) To have the lowest manufacturing and installation cost of any energy company; (2) To have the lowest cost of operation of any energy company; (3) To have mass production capability.

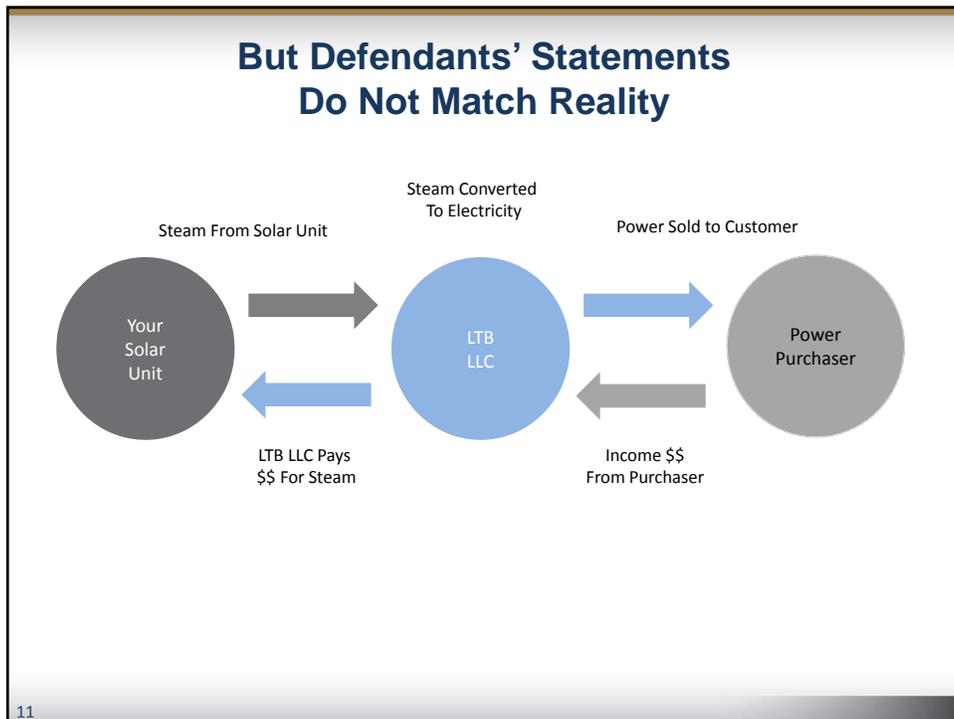
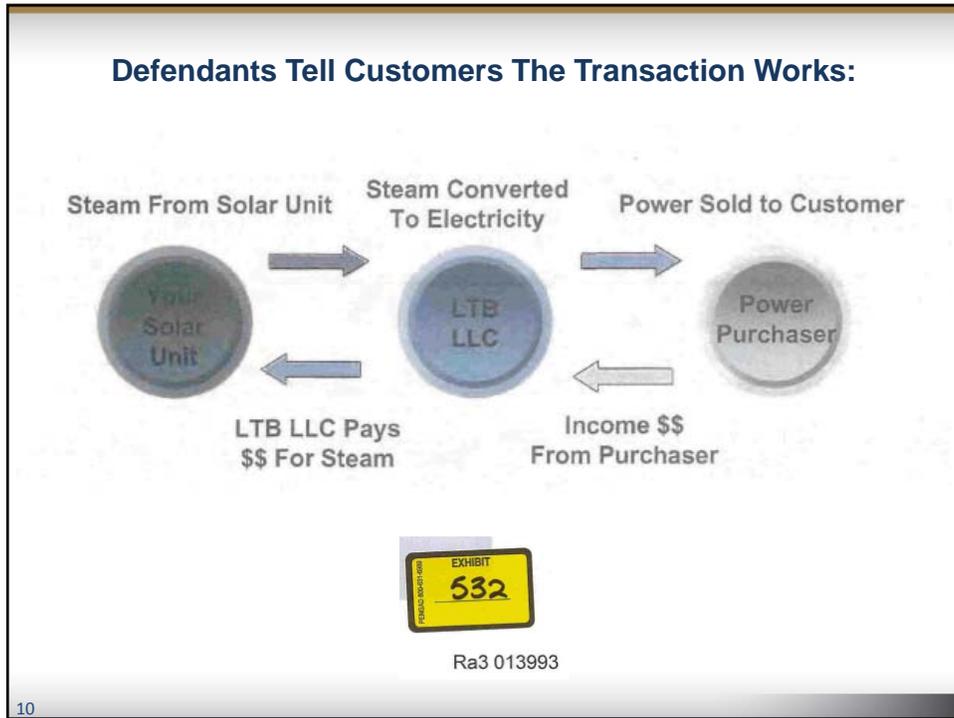


Gregg_P&R-000572

- M. Shepard Testimony, Trial Tr. 1383:7-9; 1390:3-7
- G. Shepard Testimony, Trial Tr. 1602: 7-25
- PLEX 114
- PLEX 215
- PLEX 292
- PLEX 432
- PLEX 731, KNRS Radio Shows by Neldon Johnson
- PLEX 579, Neldon Johnson Dep., vol. 1, 210:4-211:7

- 210:4 Q. Mr. Johnson, you've referenced a few
 210:5 times that you have folks who come and visit the site
 210:6 to see it; is that right?
 210:7 A. Yeah, uh-huh.
 210:8 Q. And you've been hosting visitors at the
 210:9 site for ten years?
 210:10 A. Probably.
 210:11 Q. Right. And you're the one who shares
 210:12 information about the technology with the visitors to
 210:13 the site; correct?
 210:14 A. Most the time.
 210:15 Q. There have also been -- well, there's at
 210:16 least one RaPower-3 national convention. Are you
 210:17 aware of that?
 210:18 A. Uh-huh.
 210:19 Q. Yes?
 210:20 A. It was in -- yeah, we held it in Salt
 210:21 Lake City, I believe.
 210:22 Q. In 2012; correct?
 210:23 A. 2012.
 210:24 Q. And you spoke at that convention; right?
 210:25 A. I did.
 211:1 Q. You told the people there about the state
 211:2 of the technology?
 211:3 A. Yes, I did.
 211:4 Q. And, in fact, RaPower-3 hosts tours.
 211:5 Like, RaPower-3 will bring groups of people to see the
 211:6 construction site and the R&D site; correct?
 211:7 A. I do.

9



While promoting the solar energy scheme, Defendants made or furnished (or caused others to make or furnish) statements about the allowability of a depreciation deduction and a solar energy tax credit as a result of buying solar lenses which Defendants knew, or had reason to know, were false or fraudulent as to material matters.

12

Defendants are charged with knowledge of the law applicable to the tax benefits they promote.

United States v. Campbell, 704 F. Supp. 715, 725 (N.D. Tex. 1988)

United States v. Music Masters, Ltd., 621 F. Supp. 1046, 1055 (W.D.N.C. 1985)

13

Defendants' subjective beliefs do not matter.

“The test for injunctive relief under § 7408 is satisfied if the defendant had reason to know his statements were false or fraudulent, regardless of what he actually knew or believed.”

United States v. Hartshorn, 751 F.3d 1194, 1202 (10th Cir. 2014).

14

Defendants made statements about the black letter tax law

- Customers were in a “trade or business”
 - And could therefore depreciate their solar lenses because
 - The solar lenses were “placed in service”
- Solar lenses qualified for the solar energy credit
- Customers’ “lens leasing” business was active, not passive
 - Because they did “substantially all” of the work in their activity
- Customers were “at risk” with respect to the full purchase price (\$3,500) of their solar lenses when they only paid a minimal amount up front

15

Defendants told customers they could buy “lenses” and claim tax benefits.



Plaintiff Exhibit 5 1/2
 US-001798
 US001798

Each solar lens costs \$3,500 and thus a \$1,050 tax credit may be available (Use IRS tax forms 3468 and 3800). If so, the entire down payment could be paid back in less than a year.

A depreciation of \$2,975 per solar lens may also be available (Use IRS tax forms 4562 and Schedule C). If so, an in-pocket profit of another 50-65% could be realized on top of the tax credit. Typically, taxpayers may go back one year on the tax credit and forward twenty years on the tax credit. The depreciation and NOL (Net Operating Loss) is the same as any other business as far as going back and going forward. The generous tax benefits are part of the ARRA-American Recovery and Reinvestment Act meant to stimulate the solar energy industry along with much needed innovation.

Plaintiff Exhibit 18 3. sponsoring ana 1/3
 US-001793
 US001793

16

Specifically, Depreciation

Solar Tax Credit to Participants

The person buying a solar unit receives a \$9,000 tax credit from the IRS for each solar unit purchased. For a solar unit purchased during the year 2006 or 2007, the Federal Government Energy policy gives a 30% tax credit. The retail value of IAUS's solar unit is \$30,000. The federal tax credit at 30% of \$30,000 equals \$9,000. The tax credit is a dollar for dollar credit. It is not a deduction. The maximum credit that can be taken is \$25,000 plus 25% of the remaining balance of taxes owed. However, this credit can be used one year back and 20 years forward.

Solar Tax Illustration:

Let's say a person pays an average of \$50,000 Federal Income Tax each year. This person purchases five lenses for a total down payment of \$45,000 dollars in 2006. When this person files his 2007 taxes, he can use/deduct \$25,000 plus 25% of the remaining balance (of \$25,000) which comes to \$6,250 (0.25 x \$25,000). The total tax credit for 2007 is \$31,250 (\$25,000 + \$6,250). Therefore \$31,250 of the \$45,000 invested is returned in a tax credit for 2007 leaving only \$13,750 un-credited of the \$45,000 invested. However, in the same 2007 filing, this person can also take up to another \$25,000 in tax credits plus 25% of the remaining balance of taxes owed for the year 2006. This option credits and returns the remaining \$13,750. When necessary, any excess credit can be taken when filing for successive years, for up to 20 years forward.

Example 1 Tax (Bracket of 25%)

Expense	Year 1	Year 2	Year 3	Year 4	Year 5
Direct Payment	-\$9,000	\$0	\$0	\$0	\$0
Loan Payment	\$0	\$0	\$0	\$0	\$0
Operations	\$0	\$0	\$0	\$0	\$0
Total Expenses	-\$9,000	\$0	\$0	\$0	\$0
Income					
Tax Credit	\$9,000	\$0	\$0	\$0	\$0
Depreciation	\$1,275	\$2,040	\$1,224	\$714.40	\$714.40
IRS Revenue (25% credit/50%)	\$825	\$1,020	\$612.00	\$357.20	\$357.20
Total Income	\$11,100	\$3,060	\$2,086.00	\$1,071.60	\$1,071.60
Remainder Less Expenses	\$2,100	\$3,060	\$2,086.00	\$1,071.60	\$1,071.60
Total Net Income Years 1-5	\$10,363.20				
Total Net Income Years 1-20	\$20,294.80				

Depreciation

Half of the tax credit (\$4,500) must be subtracted from the \$30,000 dollar purchase amount when using it to calculate depreciation of the equipment. Therefore, only \$25,500 of the \$30,000 value can be depreciated. This can be taken over a period of six years. How does depreciation work? It is based upon what income tax bracket the buyer falls into. For example, if the buyer is in a 30% income tax bracket, 30% of \$25,500 (which amounts to \$7,650) can be taken off from the buyer's personal taxes over a period of six years. The percentage of the \$7,650 that can be taken in each year is broken down by the IRS in the following sequence:

Year 1	20%	\$1,530
Year 2	32%	\$2,448
Year 3	19.2%	\$1,468.80
Year 4	11.52%	\$881.28
Year 5	11.52%	\$881.28
Year 6	5.76%	\$440.64



Neldon Johnson wrote PLEX 531

- IAS Dep. 161:1-11, 15-18; 163:17-165:9

17

Specifically, Depreciation

TAX BENEFITS FOR JIM
 Prepared by Greg Shepard, Chief Director of Operations at
 RealPower3
 801-690-2264 greg@rpsmail.com

Example Based on Approximate Yearly Federal Taxes:

1. Jim pays \$84K/yr going back to last yr, this yr & next 5 years.
2. Multiply $\$84K \times 7 = \$588K$
3. Multiply $\$588K \times .0007 = 412$
4. This formula means that to optimize Jim's Tax Benefits, he should purchase 412 solar lens systems.
5. Purchase price is \$3,500 per system
6. So $\$3,500 \times 412 = \$1,442,000$
7. The Down Payment is \$1,050 Per System
8. So $\$1,050 \times 412 = \$432,600$ for the Down Payment
9. However, we only require 10% of the Down Payment upfront
10. So 10% of $\$432,600 = \$43,260$
11. The balance of the Down Payment is paid as you use the systems for your taxes.
12. The balance of your Purchase Price is paid through the revenue generated by the sale of power of Jim's systems.

Jim's Tax Benefits from the ARRA Passed by Congress:

1. Jim gets a 30% tax credit. Systems placed in service this year.
2. So 30% of $\$1,442,000 = \$432,600$ in tax credits
3. The IRS states that solar tax credits can be carried back one year and forward 20 years. Therefore, Jim could amend his 2010 taxes, use some tax credits this year and carry forward the rest the next five years.
4. Use IRS Tax Forms 3468, 3800 and page two of the 1040 Form.
5. This year the IRS allows a 100% Bonus Depreciation of new solar equipment purchases used in a business.
6. Take half of the tax credit = $\$216,300$ and subtract that from the purchase price $\$1,442,000$ minus $\$216,300 = \$1,225,700$; depreciate this amount this year.
7. Use IRS Forms 4562, Schedule C and then the first page of your 1040 Form.
8. Depreciation NOL can go back two years and carried forward 10+ years.
9. NET EFFECT: The $\$1,225,700$ depreciation and the $\$432,600$ in tax credits should be enough to zero out your 2010 through 2016 federal taxes and also give you a 5% Utah State tax benefit. Also, your 2009 taxes, if amended, may give you a sizable refund. All in all, for your total down payment of $\$432,600$, Jim could get back or save a total of nearly $\$700,000$.

How It Could Work for Jim in the First Year

1. Make your upfront payment of $\$43,260$ this year
2. Then in May when you get your tax refund, give us double your upfront money plus 70% of your 2009 refund if any. You pocket the rest and that could be around $\$70K$.
3. Then use the same strategy in the following years until your down payment is fully paid.
4. If for some reason, your income becomes less, then just pay for the systems actually used using the .0007 formula or carry forward another year or two.

215
EXHIBIT NO. 70
FOR IDENTIFICATION
DATE: 8-1-16 RPT: LP

18

And Solar Energy Tax Credits.

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TAXPAYER'S IDENTIFICATION NUMBER
EXHIBIT
531

Example 1 Tax Bracket of 21%

Expenses	2006.1	2006.2	2006.3	2006.4	2006.5
Down Payment	(\$5,000)	\$0	\$0	\$0	\$0
Loan Payment	\$0	\$0	\$0	\$0	\$0
Operations	\$0	\$0	\$0	\$0	\$0
Total Expenses	(\$5,000)	\$0	\$0	\$0	\$0
Income					
Tax Credits	\$9,000	\$0	\$0	\$0	\$0
Depreciation	\$1,275	\$2,490	\$1,224	\$734.40	\$734.40
IRS Refund (1/3 annual 75%)	\$82.5	\$165	\$82.5	\$50.1	\$50.1
Total Income	\$11,100	\$2,655	\$2,096.5	\$1,234.5	\$1,234.5
Income Less Expenses	\$6,100	\$2,655	\$2,096.5	\$1,234.5	\$1,234.5
Total Post Income Taxes 1-5	\$18,265.12				
Total Post Income Taxes 1-10	\$20,294.52				

19

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 • IAS Dep. 161:1-11, 15-18; 163:17-165:9

And Solar Energy Tax Credits.

TAX BENEFITS FOR JIM
 Prepared by Greg Shepard, Chief Director of Operations at
 R4Power3
 801-699-2284 greg@r4psmail.com

Example Based on Approximate Yearly Federal Taxes:

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EXHIBIT NO. PL5
 70
 FOR IDENTIFICATION
 DATE: 8-1-16 RPR:LP

20

Defendants told customers they could buy “lenses” and claim tax benefits.

▪ PLEX 1	▪ PLEX 70A	▪ PLEX 177	▪ PLEX 236	▪ PLEX 352
▪ PLEX 5	▪ PLEX 83	▪ PLEX 179	▪ PLEX 239	▪ PLEX 423
▪ PLEX 10	▪ PLEX 84	▪ PLEX 182	▪ PLEX 240	▪ PLEX 424
▪ PLEX 19	▪ PLEX 85	▪ PLEX 184	▪ PLEX 241	▪ PLEX 476
▪ PLEX 20	▪ PLEX 88	▪ PLEX 205	▪ PLEX 242	▪ PLEX 494
▪ PLEX 24	▪ PLEX 93	▪ PLEX 206	▪ PLEX 243	▪ PLEX 501
▪ PLEX 25	▪ PLEX 108	▪ PLEX 207	▪ PLEX 244	▪ PLEX 504
▪ PLEX 29	▪ PLEX 109	▪ PLEX 208	▪ PLEX 245	▪ PLEX 531
▪ PLEX 30	▪ PLEX 109A	▪ PLEX 209	▪ PLEX 246	▪ PLEX 532
▪ PLEX 34	▪ PLEX 112	▪ PLEX 210	▪ PLEX 247	▪ PLEX 597
▪ PLEX 40	▪ PLEX 115	▪ PLEX 212	▪ PLEX 248	▪ PLEX 732
▪ PLEX 43	▪ PLEX 133	▪ PLEX 213	▪ PLEX 249	▪ PLEX 733
▪ PLEX 48	▪ PLEX 135	▪ PLEX 214	▪ PLEX 250	▪ PLEX 764
▪ PLEX 49	▪ PLEX 136	▪ PLEX 216	▪ PLEX 252	▪ PLEX 777
▪ PLEX 51	▪ PLEX 139	▪ PLEX 219	▪ PLEX 261	▪ PLEX 796
▪ PLEX 52	▪ PLEX 142	▪ PLEX 220	▪ PLEX 263	▪ PLEX 832
▪ PLEX 56	▪ PLEX 149	▪ PLEX 221	▪ PLEX 278	▪ PLEX 903
▪ PLEX 62	▪ PLEX 150	▪ PLEX 222	▪ PLEX 309	
▪ PLEX 70	▪ PLEX 152	▪ PLEX 232	▪ PLEX 347	

21

Defendants told customers they could buy “lenses” and claim tax benefits.

- Oveson Testimony, Trial Tr. 377:21-378:3
- Rowbotham Testimony, Trial Tr. 928:14-929:10; 957:17-19
- Williams Testimony, Trial Tr. 1022:4-14; 1099:16-1102:15
- Olsen Testimony, Trial Tr. 1089:21-1090:15

- PLEX 682, RaPower-3 30(b)(6) Dep., 155:4-166:18
- PLEX 685, R. Gregory Shepard Dep., 250:13-251:13
- PLEX 687, Robert Aulds Dep., 42:11-44:22; 54:15-55:14; 57:17-60:15
- PLEX 688, Roger Freeborn Dep. 71:2-20
- PLEX 689, Peter Gregg Dep. 127:19-128:8; 136:4-6, 10-14; 137:3-12; 147:5-148:10; 149:1-7
- PLEX 693, Frank Lunn Dep., 164:12-171:1

22

In order to qualify for depreciation, a customer must be in a “trade or business” related to the solar lenses, or holding the lenses “for the production of income.”

26 U.S.C. § 167

23

Defendants Knew Customers Had To Be In a Trade or Business To Claim Depreciation

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[Buy Solar Lenses](#)

Frequently Asked Questions

4. What are the depreciation requirements?

To be depreciable, the property must meet all of the following requirements: (Our RaPower3 solar thermal lenses easily meet these four requirements) 1. It must be property you own; 2. It must be used in your business or income-producing activity; 3. It must have a determinable useful life; 4. It must be expected to last more than one year after being placed in service.

Plaintiff Exhibit
1

24

Defendants told customers that customers were in a “trade or business”

25

Defendants Told Customers They Were in a “Trade or Business”

Ra3 Active/Passive Status
1 message

Greg Shepard <greg@bfsmail.com>
To: undisclosed-recipients

Wed, Feb 2, 2011 at 1:14 PM

To qualify for the huge Depreciation federal tax benefit, your CPA will want to know if this was an investment. NO, IT IS NOT. YOU PURCHASED ALTERNATIVE ENERGY SYSTEMS AND THIS IS A BUSINESS. Next, the CPA will want to know if this is an Active or Passive enterprise. IT IS ACTIVE. IT MUST BE FOR YOU TO GET YOUR DEPRECIATION ON TOP OF YOUR TAX CREDIT.

Attached is a statement on this (Two versions). Make a copy. This statement is also on the RaPower3.com website under TAX BENEFITS/FINER POINTS: Active/Passive Rules.

Plaintiff Exhibit
30

26

Defendants Told Customers They Were in a “Trade or Business”

Frank Lunn

From: Greg Shepard <greg@bfsmail.com>
Sent: Monday, December 28, 2011 3:31 PM
To: undisclosed-recipients
Subject: Ra3 Important Tax Info

EXHIBIT NO. 43
FOR IDENTIFICATION
DATE 8-1-10 BY: WFL LP

TO ALL: THE THIRD AND LAST E-MAIL TODAY THAT I DEEM TO BE IMPORTANT. PRINT THIS OUT AND KEEP IT IN YOUR RAPOWER3 FILE.

AM I REALLY IN THE SOLAR ENERGY BUSINESS? Yes. You make important decisions and demands for your business with the Equipment Purchase Agreement, Bonus Contract and the Operations and Maintenance Agreement. You are an independent contractor with RaPower3. You can, if you want, sell systems for us and receive a commission. Those that receive a commission check will receive a 1099 form from RaPower3 as required by the IRS.

Frank Lunn

From: Greg Shepard <greg@power3.com>
Sent: Thursday, November 07, 2013 7:24 PM
Subject: Ra3 Your Tax Info

Final Incorrect Assertion: She states, “The panels are leased back to the company (incurred see above), and therefore, according to the lease agreement and rental income (sic) would be an investment asset (We say purchase not investment) and reportable on Schedule E as a passive activity with no material participation. This means, to this auditor, the depreciation cannot be allowed.

EXHIBIT NO. 49
FOR IDENTIFICATION
DATE 8-1-10 BY: WFL LP

Our position: This auditor seems to be unaware that the taxpayer's solar energy business has a multi-level marketing structure to it. Millions of Americans are involved in network or multi-level marketing and are allowed depreciation benefits. You can't single this taxpayer out. Again, I cite the Anderson Tax Attorney Opinion letter:

“Stated simply, if you do most of the work in the business using the RaPower3 energy equipment, any losses associated with your business will be non-passive and can be deducted without limitation. Generally any work you do in connection with your business will be considered participation. In a multi-level marketing structure, participation would include any activity to increase the productivity of other individuals engaged in sales such as recruiting, training, motivating and counseling such individuals. Other ways to participate in your business would include meeting and counseling with the operator of the equipment, negotiating sale and distribution of energy, reviewing productivity and costs, among others.

Right now, the government is enacting programs geared to foster and encourage development of energy sources. RaPower3's equipment could allow you to enter the energy market and capitalize on those government incentives.”

27

Defendants Told Customers They Were in a “Trade or Business”

Steven Carver

From: Greg Shepard [greg@rapower3.com]
Sent: Monday, November 11, 2013 8:07 AM
Subject: Ra3 Audit/Appeal Great Info

Plaintiff Exhibit
 32

TO ALL: This was just sent to me. IMO, this is a great approach and strategy. Regards, Greg

3 significant issues Rick Jameson emphasizes -

#1. This is leasing "personal property" which is not considered passive at all - no need to worry about establishing involvement and time spent (for this qualification). We buy and own the lenses (personally) and do business with them by leasing them. [Unless, someone has their business buy the lenses (where other people are involved).]

#2. We should not consider ourselves in an "energy" business. We are buying lenses and leasing them - THAT is our business - LEASING - NOT producing energy, though we lease the lenses because they produce heat (which qualifies for the credit). And our lenses are "Placed in service" as they are part of a solar energy system, extra backup equipment, in line to be added, etc., ie: in a state of readiness, and are also used currently for advertizing purposes. They qualify because they can and will be used to produce heat. They do not need to produce electricity (ever).

2013

28

Defendants Told Customers They Were in a “Trade or Business”

Disruptive Energy Technologies

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Buy Solar Lenses

Frequently Asked Questions

10. There is also the Anderson tax attorney opinion letter. Since the Kirton-McConkie memorandum is newer, should I just use that one or use both?

Use both. The Anderson tax attorney opinion letter is your best resource in claiming your depreciation. You let IAUS use your lenses for advertising purposes and did so by the Bonus Referral Contract with your compensation tied to the gross sales of IAUS (International Automated Systems). This means you were using your lenses for a money making purpose. Therefore, your lenses were "placed into service" under the guidelines for Depreciation, which are different than the "placed into service" guidelines for your tax credit.

Plaintiff Exhibit
 1

29

Other Examples of Defendants' Statements that Customers are in a "Trade or Business"

- PLEX 1
 - PLEX 32
 - PLEX 43
 - PLEX 93
 - PLEX 125
 - PLEX 214
 - PLEX 294
 - PLEX 348
 - PLEX 492
 - PLEX 496
 - PLEX 499
 - PLEX 501
 - PLEX 532
- Additional Statements made by Neldon Johnson
 - PLEX 681, IAS Dep. 162:1-165:9; 171:10-173:20
 - Additional Statements made by R. Gregory Shepard
 - PLEX 685, Shepard Dep. 148:21-149:25; 243:11-244:3
 - Additional Statements made by Roger Freeborn
 - PLEX 688, Freeborn Dep. 47:24-53:18

30

Defendants Knew, or Had Reason To Know, That Their Customers Were "Buying" Tax Benefits and Were Not in a "Trade or Business."

31

Defendants knew that their solar energy scheme was and is an abusive tax scheme based on common red flags

- The goal was to eliminate a customer's tax liability
- Customers did not and would not earn income from their solar lenses
- Neldon Johnson retained control of the "business"
- Defendants used illusory contract documents

32

Defendants' Goal Was To Eliminate a Customer's Tax Liability

33

Johnson Wanted Immediate Tax Benefits

620

11 Q. And why was it important to Mr. Johnson to have
 12 an opinion that the lenses were placed in service sooner
 13 rather than later?

14 A. He wanted his clients to be able to take the
 15 depreciation benefits and those 179 deductions immediately
 16 upon purchasing, as opposed to when it started actually
 17 producing energy.

■ Jessica Anderson

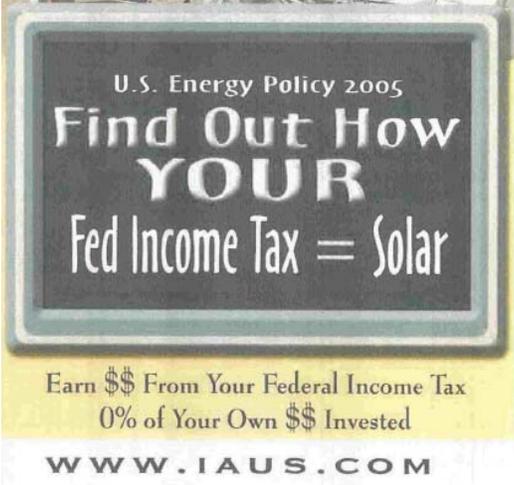
34

Goal = To Eliminate a Customer's Tax Liability

35

EXHIBIT NO. 40
 FOR IDENTIFICATION
 DATE: 8-16 APRIL LP

Goal = To Eliminate a Customer's Tax Liability





Ra3 013993

36

Goal = To Eliminate a Customer's Tax Liability

Turn Your Tax Liabilities Into Assets
Calculate How Many Lenses You Need

We recommend that you look at the taxes you paid last year and what you expect to pay this year in determining how many solar thermal lenses you should buy to maximize your profits. If you plan it right, you may be able to zero out your taxes while maximizing your solar business. In determining the number of lenses you should purchase, you may wish to consult your sponsor, use our free Lens Calculator, request a free quote, or do the math on your own as described at the bottom of this page.

Note: To find out what your 2013 taxes were, go to line 61 of your 2013 1040 Form. Guidelines for 2014 expected taxes: Are you making about the same as last year; look at your YTD (Year to Date pay stub); or meet with your tax preparer.

Lens and Tax Benefit Calculator

Calculate your optimum number of lenses to purchase based on your year's tax refund or savings. Simply click on and change the blue numbers in the white boxes in the far left column to reflect your personal circumstances.

2014



US-001667
US001667



37

Goal = To Eliminate a Customer's Tax Liability

12/8/2017
RaPower3 | Calculate

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[News](#)
[Radio Shows](#)
[Message Board](#)
[Backoffice Login](#)

R a P o w e r 3
Technology
Opportunity
Events
F.A.Q.

FILL IN THE YELLOW BOXES

You 2016 Taxes Paid:	\$35,000	
Your Projected 2017 Taxes:	\$40,000	
Recommended to Buy: 72 RaPower3 Solar Thermal Lenses**		
Your NET Gain after Tax Returns:	\$28,800	You can use this money on a cruise, pay off debt, give it to your spouse, etc.

Step 1	Buy: 72	RaPower3 Solar Thermal Lenses
Step 2	You Pay Now: \$7,200	Due 15 days from purchase
Step 3	You Get in April: \$75,600	In Federal Solar Investment Tax Credit (ITC)**
Step 4	You Pay in April: \$30,600	Due within 12 months of purchase
Step 5	You Get Every Year: \$1,000	(Annual NET Residual Rental Income****)
Your Total Rental Income:		\$32,400 (NET over 30 years)

Your NET Financial Gain by April:	\$28,800	(After your tax benefits are realized)
Returns on your money by April:	400.00%	(With your Tax Return)
Your Total NET Financial Gain after 30 Years:	\$51,200	(Tax benefits plus Rental profits)

Dec. 2017

Plaintiff Exhibit
721

Goal = To Eliminate a Customer's Tax Liability

STRATEGY: Most people don't know what their taxes will be exactly, but they can make an estimate. Let's say your taxes are going to be between \$10,000 and \$14,000 for 2013. The best strategy is to order a conservative number now like seven lenses in this example. This a good strategy because of the upfront cost of \$105 per lens. So seven would be \$735 payable by October 15th. Then in a couple of months when you can get a more exact idea of your taxes, you can buy several more lenses at the bigger upfront cost if they are, in fact, needed.

Good Luck, Greg

Greg Shepard
RaPower3
4035 South 4000 West
Deseret, UT 84624
www.rapower3.com

EXHIBIT 140
 WIT: Olsen
 DATE: 8-10-16
 Denise M. Thomas, CR/RPR

Goal = To Eliminate a Customer's Tax Liability

RaPower3

This is **Really Something!**



Michael just ordered his RaPower3 [Solar Thermal Lenses](#) this morning. He needed \$32,000 in tax credits between 2016 and 2017 to zero out his taxes for those years. So, he ordered 30 of our commercial Solar Thermal Lenses with a deposit of only \$3,000.

Next April, he will finish paying us from his tax refund and get \$31,500 in solar tax credits. That is enough to pay in-full the down payment for his solar lenses, plus put a whopping **\$12,000** in his pocket for a 60% return in less than six months!

In addition, Michael will only need to purchase six more commercial solar lenses to qualify for a [24-7 Home Energy System](#) absolutely free.

You can do this too!

Whether you need \$3,200, \$32,000 like Michael, or even \$320,000 in tax credit, we can make it happen for you. Here's how:

- Contact Greg Shepard (greg@rapower3.com) or Matt Shepard (matt@rapower3.com).
- Or come to a [RaPower3 Energy Forum](#) to find out more (see details below).

Plaintiff Exhibit

722

40

Goal = To Eliminate a Customer's Tax Liability

- Defendants made clear that the goal of buying solar lenses was to “zero out” a customer’s tax liability.
 - PLEX 20, 24, 40, 158, 438 at 2, 490 at 9-10

- The amount of the down payment is identical to the amount Defendants tell customers they can claim as a solar energy tax credit.
 - PLEX 20 at 2, PLEX 532 at 3

41

Goal = To Eliminate a Customer's Tax Liability

- Other Examples:
 - PLEX 48, at 1
 - PLEX 85, at 3
 - PLEX 133 at 1-2
 - PLEX 207 ("With this program you are awarded the ... tax privileges that General Electric gets, i.e., pay no federal taxes. In fact, full [par]ticipation makes you tax free till [sic] 2020.")
 - PLEX 214
 - PLEX 220
 - PLEX 438 at 2
 - PLEX 501 at 2
 - PLEX 531
 - PLEX 674
 - PLEX 718
- PLEX 579, Neldon Johnson Dep., vol. 1, 247:11-248:12
- PLEX 581, IAS 30(b)(6) Dep., 162:1-165:9
- PLEX 685, R. Gregory Shepard Dep., 239:16-240:10
- PLEX 688, Roger Freeborn Dep., 71:2-20
- PLEX 693, Frank F. Lunn Dep., 188:18-189:20

42

Mission Accomplished!

Department of the Treasury — Internal Revenue Service (99)

Form **1040** U.S. Individual Income Tax Return **2011**

For the year Jan 1 - Dec 31, 2011, or other tax year beginning 2011, ending

Your first name PRESTON MI Last name OLSEN

If a joint return, spouse's first name ELIZABETH MI Last name OLSEN

EXHIBIT 130
 WIT: Olsen
 DATE: 8-10-16
 Denise M. Thomas, CRP/RRP

Income Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld. If head of household, \$8,500	7	Wages, salaries, tips, etc. Attach Form(s) W-2	7	161,474.
	8a	Taxable interest. Attach Schedule B if required	8a	
	b	Tax-exempt interest. Do not include on line 8a	8b	
	9a	Ordinary dividends. Attach Schedule B if required	9a	
	b	Qualified dividends	9b	
	10	Taxable refunds, credits, or offsets of state and local income taxes	10	1,675.
	11	Alimony received	11	
	12	Business income or (loss). Attach Schedule C or C-EZ	12	-46,871.
	53	Other IRS Form: a <input checked="" type="checkbox"/> 3800 b <input type="checkbox"/> 8801 c <input type="checkbox"/>	53	7,531.
	54	Add lines 47 through 53. These are your total credits	54	10,981.
	55	Subtract line 54 from line 46. If line 54 is more than line 46, enter -0-	55	0.
	Payments		62	Federal income tax withheld from Forms W-2 and 1099
Refund		72	Add line 52, 53, 64a, & 65-71. These are your total pmts	24,862.
		73	If line 72 is more than line 61, subtract line 61 from line 72. This is the amount you overpaid	24,862.
		74a	Amount of line 73 you want refunded to you. If Form 8858 is attached, check here	24,862.

43

Defendants Knew That Customers Did Not, and Would Not, Earn Income From Their Solar Lenses

44

Defendants knew that, to be in a trade or business, a customer had to expect to make money.

INTERNATIONAL AUTOMATED SYSTEMS
326 NORTH SR 198
SALEM, UTAH 84653

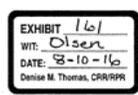


This bonus program makes certain that each purchase was made for an economic reason. This reason would be such that anyone would see the value of the transaction as to its economic values beyond just a tax savings.

Ra3 Preston's Questions

2 message(s)

Date: Mon Sep 23 2013 07:07:05 GMT-0600 (MDT)
From: Greg Shepard
To: prestonfx@gmail.com
CC:
ID: 1414acc3709655d1



Greg, Do you know since I am being audited if I bought more lenses this year would my tax benefits be denied automatically? I'M PRETTY SURE THAT EACH YEAR IS LOOKED AT SEPARATELY. LENSES PURCHASED THIS YEAR SHOULD BE PRODUCING REVENUE AND ELECTRICITY AND THIS IS WHAT THEY WANT.

45

Defendants knew that, to be in a trade or business, a customer had to expect to make money.

From: Greg Shepard <greg@rapower3.com>
Sent: Friday, February 19, 2016 10:16 PM
To:
Subject: Ra3 New Oregon Audit Info

1. The Two culprits in the Oregon audit are Rod and Genevieve. They believe we have a tax avoidance scam and they are going to do everything they can to make you pay. They do not believe our technology is real. They don't understand the principle of R&D. Therefore, they want results now; meaning income. Since we have no income yet or proof that our towers are up and running, they have gone to a new ploy which is classifying your solar business as a hobby. (it's an IRS term and classification) This classification would deny your tax benefits. When there is no income over a long time, it can be classified as a hobby and thus denying tax benefits. Finally, there were several communications with Sheryl Dekker who accused IAUS/Neldon



46

So Defendants Told Customers to Expect Income

- Rental payments from LTB
- Bonus payments (only on lens purchases made before July 31, 2014)

47

Defendants Told Customers to Expect Income

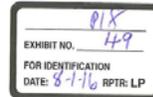
Frank Lunn

From: Greg Shepard <greg@rapower3.com>
Sent: Thursday, November 07, 2013 7:24 PM
Subject: Ra3 Vital Tax Info

In analyzing an Auditor's Proposed Report, I'm sharing my following thoughts:

B. Taxpayer is unable to establish the ability to generate income form the solar panels (lenses) purchased.

My Response: First, when you start a business, you are not required to generate income right away. especially with innovative technology. It is standard to give the taxpayer some time to generate income. Rental and Bonus income should start in 2014.



48

Defendants Told Customers to Expect Rental Payments

12/8/2017

Business opportunity



Solar Power

Home > Business opportunity

Business opportunity

Being a RaPower3 Team Member is much more than just getting tax credits.

Rental Income

- **Your Purchase:** Each lens you buy yields you \$150 a year for 30 years in Rental Income, which equals a total of \$4,500. Out of the \$150 Rental Income, \$135 goes to pay off the Balance Due you owe on your lens and \$15 goes to you every year for 30 years. This leaves you with a NET profit of \$450 for every solar lens you own.
- **Just For Fun:** How much would you make in rental income per year and over 30 years, if you owned a total of 50 solar lenses? (See answer at bottom of page).

Plaintiff
Exhibit

724

49

Defendants told customers about “great progress” on their purported technology to create the expectation of rental payments.

- November 2006: “IAUS has a goal to put up 50 additional Solar Pods before year’s end.” PLEX 93
- Throughout: both Neldon Johnson and Greg Shepard told visitors to the sites about the “progress” of the purported technology.
- Throughout: Greg Shepard emailed customers about the “progress” of the purported technology.
- March 2015 and May 2017: “This year is our year.” PLEX 10; G. Shepard Dep. 306:2-310:11

50

**While at the same time,
Defendants made excuses for never delivering.**

15 YEARS IN THE MAKING

IAUS RESEARCH AND DEVELOPMENT HISTORICAL TIMELINE



EXHIBIT 431
 WIT: Shepard
 DATE: 4-18-17
 CIRCourt, LLC

51

Defendants Knew that Customers Have Never Been, and Would Never Be, Paid Rental Income

- Defendants knew that they had no contracts to generate income for solar lens owners
- Defendants knew that they had no operational technology that could make a contract possible
- Defendants knew, as they promoted the solar energy scheme for the past 10 years, that no customer has been paid rental income for the use of his lenses

52

“What if”

From: Greg Shepard <greg@rapower3.com>
Sent: Saturday, December 21, 2013 1:42 PM
To: Aaron Mayer <visionelectronics1@gmail.com>; Bill Herzog <cbherzog@aol.com>; Bob Tilden <rt@tnns.org>; Brandon Hart <brandonhart@gmail.com>; Brian Zeleznik
Subject: Ra3 Audit/Appeal Update

TO ALL: It appears the IRS has slowed way down in the number of audits being initiated in the last 40 days. Only one or two.

What if we do produce electricity?
What if we gain revenue from power produced?
What if rental fees start being paid?
What if bonuses start being paid?



53

Defendants Knew That They Had No Contracts That Would Generate Rental Income For Customers

- No contracts that would result in the sale of electricity
 - Defendants knew that they did not have an Interconnection Agreement, and would not get one

 - Defendants knew that they did not have a Power Purchase Agreement, and would not get one

- No contracts that would result in a customer being paid money for any other use of his lens

54

Defendants Knew or Had Reason to Know That, to Sell Electricity, They Would Have to Obtain an Interconnection Agreement

- No Power Purchase Agreement or Interconnection Agreement even though Defendants knew they needed those agreements
 - PLEX 411, at 10-11
 - PLEX 412, at 9
 - PLEX 413, at 6
 - PLEX 414, at 10
 - PLEX 415, at 7
 - PLEX 416, at 7
 - PLEX 526
 - PLEX 901

 - Johnson Testimony, Trial Tr. 1990:13-16

55

Defendants told customers that they would soon interconnect to the grid.

3/2/2015 RaPower3 News

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Follow and share: 

RaPower3 LLC's concentrated solar power (CSP) test project in Delta, Utah is now ready for the next step and is working with a local utility to get the system connected to the grid. Connecting equipment has been delivered and a crew is working on installing the equipment according to utility requirements.

Plaintiff Exhibit
6

56

No Possibility of an Interconnection Agreement

- The requirements are extensive, technical and time-consuming.
 - PLEX 196; PacifiCorp Dep. 82:1-97:12

- But Preston Olsen testified that Defendants told customers that, because renewable energy has statutory priority, it would not be difficult to put energy on the grid.

57

No Possibility of a Power Purchase Agreement

From: Greg Shepard (greg@power3.com) [mailto:greg@power3.com]
 Sent: Monday, April 27, 2015 2:58 PM
 To: Peter (p3@power3.com)
 Subject: RAPower3 Team Memo #25

RAPower3 updates, info on how buying and more... View this email in your browser

RA3 TEAM MEMO #25

Update

The manufacturing facility continues to receive upgrades and, when completed, most processes will be automated and computer aided. Also, we are now in the process of negotiating a PPA for the first set of towers that will be going up.



- Shepard Dep. 204:15-207:8

A. . . . Since 2010 I have tried to put my own projects together.

Q. Who have you negotiated power purchase agreements with?

A. I haven't negotiated any yet. Never got that far. Every time I got close, they wanted to see a power project up and running. . . . And we didn't have that running yet.

58

No Possibility of a Power Purchase Agreement



PLEX 509
 Video 12_4_38-5_15
 Video 18_4_09-4_25



59

Customers Have Never Received Rental Income From Their Solar Lenses

- No customer has received any “rental” income from lenses for any purpose
 - PLEX 142
 - PLEX 159
 - PLEX 341
 - PLEX 796

 - PLEX 579, N. Johnson Dep. 239:14-17
 - PLEX 581, IAS 30(b)(6) Dep. 98:24-7
 - PLEX 673, LTB 30(b)(6) Dep. 73:15-74:21
 - PLEX 682, RaPower-3 30(b)(6) Dep., 80:16-18, 82:10-83:4
 - PLEX 685, R. Gregory Shepard Dep., 129:17-131:2

 - Rowbotham Testimony, Trial Tr. 933:19-935:16
 - Williams Testimony, Trial Tr. 1000:9-1001:7
 - Olsen Testimony, Trial Tr. 1074:8-1078:16; 1086:12-1087:6
 - Jameson Testimony, Trial Tr. 1238:3-24; 1241:6-11; 1241:17-1245:1; 1280:21-1282:20; 1310:18-1312:9
 - M. Shepard Testimony, Trial Tr. 1406:12-1407:2; 1574:21-1575:14
 - G. Shepard Testimony, Trial Tr. 1734:9-1738:23

60

Defendants’ Purported “In Kind” Payments Show Their Desperation, Not That Customers Earned Income

SPECIAL MEMO 3-27-18

R a P o w e r 3



Rental Fee Payoff

Plaintiff
Exhibit
796

61

Defendants told customers to expect bonus money

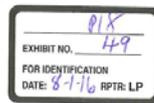
Frank Lunn

From: Greg Shepard <greg@rapower3.com>
Sent: Thursday, November 07, 2013 7:24 PM
Subject: Ra3 Vital Tax Info

In analyzing an Auditor's Proposed Report, I'm sharing my following thoughts:

B. Taxpayer is unable to establish the ability to generate income form the solar panels (lenses) purchased.

My Response: First, when you start a business, you are not required to generate income right away, especially with innovative technology. It is standard to give the taxpayer some time to generate income. Rental and Bonus income should start in 2014.



62

Defendants Knew that Customers Would Not Be Paid Bonus Money

- IAS has not sold lenses – or anything else – since 2010.

63

Customers Have Never Received Bonus Money

- No customer has received “bonus” monies
 - PLEX 10, at 3
 - PLEX 48, at 1
 - PLEX 49, at 1
 - PLEX 61, at 1
 - PLEX 70A, at 1
 - PLEX 151, at 1
 - PLEX 217
 - PLEX 246
 - PLEX 283, at 3
 - PLEX 465
 - PLEX 579, Neldon Johnson Dep., vol. 1, 230:4-11
 - PLEX 685, R. Gregory Shepard Dep., 34:18-35:24; 76:23-82:18; 93:17-94:13
 - Olsen Testimony, Trial Tr. 1087:7-12; 1098:20-1099:6
 - M. Shepard Testimony, Trial Tr. 1574:16-20
 - Johnson Testimony, Trial Tr. 1959:18-21

64

**Defendants Knew That
Neldon Johnson, Not The Customer,
Controlled The “Business”**

65

Neldon Johnson Retained Control

- Johnson controls all terms of the transaction.
- Customers do not negotiate the terms, including price of their purchase.
- Customers do not take possession of their lenses.
- Defendants tell customers how little effort they will be required to expend in their “solar lens leasing business.”
- Defendants do not track lenses; customers do not know which lenses are theirs.
- Johnson has control over all entities in the transactions: RaPower-3/Solco/XSun Energy, LTB, IAS, and Cobblestone Centre.

66

Neldon Johnson Retained Control

Dear RaPower3 Team Member:

We are tremendously excited to bring you news about paying off the first five years of our rental fees. This payoff will be made only to those who have fully paid your obligation to us as per terms of your original Equipment Purchase Agreement.

Here are the advantages:

1. Instead of the \$150 payout a year, you'll get paid out for all five years.
2. The rest of the 30-year rental agreement will be still be in force for you.
3. The tax credits can be used for twenty years.
4. You will have to pay taxes on the \$750 gain, but for this, you can use your new tax credits.
5. If your income is such that you are no longer in need of tax credits, you may sell them. We are working on a way to help you with this option.
6. For those that still need tax credits, you will actually end up making more than you would have with the \$750 cash payout per lens and you'll receive your money quicker.
7. This rental fee payout is for any number of lenses that you have purchased prior to 2017 whether it's 5, 50 or even five hundred.

Your new Equipment Purchase Agreements reflecting the new rental payout will soon be available. More detailed information will also be available at rapower3.com

Sincerely,

Neldon Johnson
Manager

SPECIAL MEMO 3-27-18
RaPower3



Rental Fee Payoff

Plaintiff
Exhibit

796

67

Neldon Johnson Retained Control

- Rowbotham Testimony, Trial Tr. 957:3-10
- Williams Testimony, Trial Tr. 987:3-16; 993:8-994:15; 1008:5-7; 1010:3-7
- Olsen Testimony, Trial Tr. 1078:17-1079:3
- Jameson Testimony, Trial Tr. 1246:14-1247:16
- M. Shepard Testimony, Trial Tr. 1354:7-15

- PLEX 19
- PLEX 119
- PLEX 346, at 1
- PLEX 420

- PLEX 673, LTB1 30(b)(6) Dep., 32:8-34:15; 75:15-77:14; 87:10-88:6
- PLEX 682, RaPower-3 30(b)(6) Dep., 39:9-41:2; 62:21-64:5
- PLEX 683, John Howell Dep., vol. 2, 39:17-40:4; 95:3-5; 134:14-135:22
- PLEX 685, R. Gregory Shepard Dep., 157:18-24
- PLEX 687, Robert Aulds Dep., 141:3-13; 146:17-147:5
- PLEX 688, Roger Freeborn Dep., 28:19-40:16
- PLEX 689, Peter Gregg Dep., 55:19-56:13
- PLEX 693, Frank Lunn Dep., 103:16-104:6; 114:11-115:4
- PLEX 697, Brian Zeleznik Dep., 67:3-12; 93:18-96:3

68

Defendants Knew They Used Illusory Contract Documents

69

Illusory Contract Documents

- Customers pay a minimal amount “up front” payment.
- Customers are expected to make the remaining “down payment” after their tax refund, but not all customers make payment.
- Defendants do not enforce the contract terms for those that don’t pay.
- Remaining purchase price is “financed” on a non-recourse basis with the lens as the only security.
- Defendants do not check prospective customers’ credit.
- Defendants have also offered refunds if customers do not receive the advertised tax benefits.

70

Illusory Contract Documents

- | | |
|------------|------------|
| ▪ PLEX 8A | ▪ PLEX 511 |
| ▪ PLEX 25 | ▪ PLEX 512 |
| ▪ PLEX 91 | ▪ PLEX 531 |
| ▪ PLEX 92 | ▪ PLEX 532 |
| ▪ PLEX 93 | ▪ PLEX 533 |
| ▪ PLEX 94 | ▪ PLEX 555 |
| ▪ PLEX 95 | ▪ PLEX 587 |
| ▪ PLEX 119 | ▪ PLEX 613 |
| ▪ PLEX 121 | ▪ PLEX 614 |
| ▪ PLEX 174 | ▪ PLEX 615 |
| ▪ PLEX 181 | ▪ PLEX 637 |
| ▪ PLEX 346 | ▪ PLEX 638 |
| ▪ PLEX 462 | ▪ PLEX 639 |
| ▪ PLEX 464 | ▪ PLEX 760 |
| ▪ PLEX 473 | ▪ PLEX 762 |

AGREEMENT

NOW, THEREFORE, the parties hereto agree as follows:

1. Seller hereby sells to Purchaser and Purchaser hereby purchases from Seller the Alternative Energy System consisting of the system components identified on the attached Exhibit “A”. Seller shall furnish, deliver, install and startup the Alternative Energy System, at a site provided by Purchaser at DeVra, Utah, hereinafter referred to as the “Installation Site”.
2. Seller agrees to complete the following for the Alternative Energy System in accordance with the schedule stated:
 - a. Seller shall furnish, deliver, install and startup the Alternative Energy System at the Installation Site, by Dec. 29, 2006, hereinafter referred to as the “Installation Date”.
 - b. Seller shall provide to Purchaser all required documentation relating to the Alternative Energy System and its components as requested by Purchaser for federal, state and local review of the Alternative Energy System for potential tax benefits.

EXHIBIT 94
 WIT: Rebecca Thomas
 DATE 8-8-12
 Denise M. Thomas, CHSOPP

71

Illusory Contract Documents

- PLEX 282
- PLEX 383
- PLEX 468
- PLEX 790
- PLEX 796

- PLEX 448, Mike Penn Dep., 11:21-15:23; 38:10-40:22
- PLEX 579, Neldon Johnson Dep., vol. 1, 237:16-239:13
- PLEX 685, R. Gregory Shepard Dep., 110:9-113:7; 153:2-16304:4-305:10
- PLEX 687, Robert Aulds Dep., 104:15-146:5
- PLEX 698, Peter Gregg Dep., 53:20-55:9

72

In order to depreciate property, that property must be “placed in service.”

**26 C.F.R. § 1.167(a)-10(b)
26 C.F.R. § 1.167(a)-11(e)(1)(i)
26 C.F.R. § 1.46-3(d)(1)(ii) and (d)(2)**

73

Defendants Knew Customers' Lenses Must be "Placed in Service"

-----Original Message-----
 From: Greg Shepard [mailto:greg@fasall.com]
 Sent: Tuesday, August 25, 2009 10:41 AM
 To: Ken Overton
 Subject: Solar Placed In Service

Ken, this is what I sent my sales team and clients. Having our solar property "placed in service" with absolutely no gray areas is fundamental to our selling units for our solar project west of Delta. If you cannot accept this basic premise, then I would quickly need to go in a different direction.

EXHIBIT 575
 WIT: Overton
 DATE: 3-16-11
 CMCover LLC



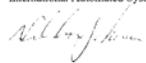
KBR Investments, Lc
 4579 S. Wallace Ln.
 Salt Lake City, Utah 84117

December 30, 2008

Dear Sir:

This letter is regarding the "Alternative Energy Systems" that you purchased from International Automated Systems, Inc. (IAS). IAS put into service your equipment on or before December 24, 2008. This will qualify you for the Internal Revenue Services solar energy tax credit.

Respectfully Yours,
 International Automated Systems, Inc.



Neldon P. Johnson
 President & CEO

EXHIBIT 103
 WIT: Rowbotham
 DATE: 2-8-16
 Denise M. Thomas, CR/R/RPR

Purchase price Book

74

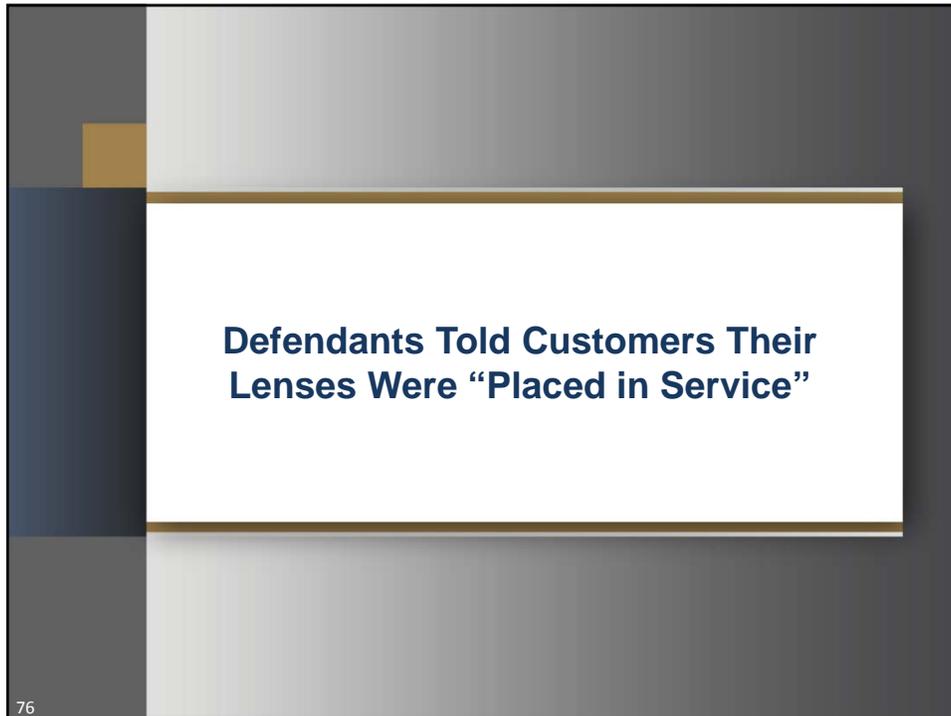
Defendants Knew Customers' Lenses Must be "Placed in Service"

Overview of the "Placed in Service" Letter

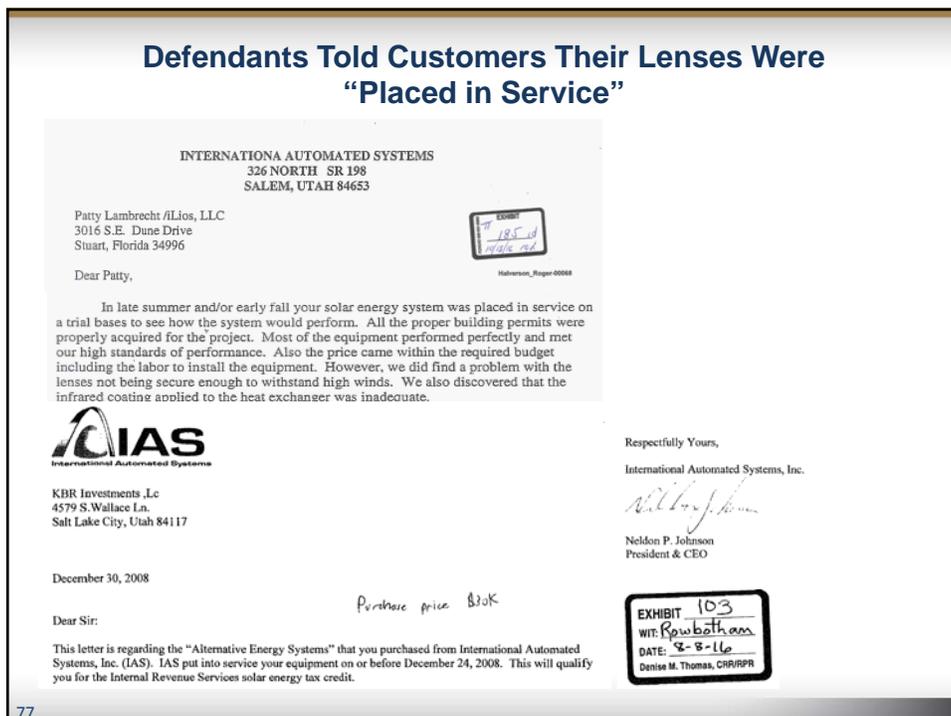
Both depreciation and the solar energy tax credit "require solar property (lenses) being 'placed in service.'"

EXHIBIT
 547
 N JOHNSON

75



76



77

Defendants Told Customers Their Lenses Were "Placed in Service"



Presten Olsen
9351 So. Dutch Valley Drive
South Jordan, UT 84095

February 12, 2015

Dear Preston Olsen:

This letter is regarding the "Alternative Energy Systems" that you purchased from RaPower3 LLC. RaPower3 put into service your equipment for 10 solar lenses on or before December 31, 2014. This will qualify you for the Internal Revenue Service solar energy tax credit.

Respectfully Yours,

RaPower3 LLC

RaPower3 LLC

4035 S. 4000 W.

Deseret, Utah 84624

Greg Shepard
Chief Director of Operations

EXHIBIT 124
WT: Olsen
DATE: 8-10-16
Denise M. Thomas, CRWRP

78

Defendants Told Customers Their Lenses Were "Placed in Service"



LINDSAY DAVIS
1640 WASHINGTON ST #6
SAN FRANCISCO, CA 94109

Dear LINDSAY,

This notification is to confirm that your solar lenses have been placed in service, for those that the 30% down has been paid in full. LRS LLC has utilized solar energy from your panels for the purpose of assisting IAS in research and development for both agricultural and municipal solar thermal waste heat recclamation and multiple non-serial-array concentrated photovoltaic receiver circuitry, among other applications such as refinement of gearless dual-axis hydraulic tracking mechanisms and quick-release panel stabilizers and connections, which qualify as commercial use of solar energy.

This letter is regarding the "Alternative Energy System" that you purchased from RaPower3 LLC. RaPower3 put into service your equipment.

(However for your personal information, Section 199 Etc. B Energy Credit (code Sec 481) "For projects whose construction time is expected to equal or exceed two years, the Credit may be claimed as it placed in service.")

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

Respectfully Yours,

William Johnson
Manager of RaPower3

PLAINTIFFS
EXHIBIT
558
N. JOHNSON

This notification is to confirm that your solar lenses have been placed in service, for those that the 30% down has been paid in full. LRS LLC has utilized solar energy from your panels for the purpose of assisting IAS in research and development for both agricultural and municipal solar thermal waste heat recclamation and multiple non-serial-array concentrated photovoltaic receiver circuitry, among other applications such as refinement of gearless dual-axis hydraulic tracking mechanisms and quick-release panel stabilizers and connections, which qualify as commercial use of solar energy.

This letter is regarding the "Alternative Energy System" that you purchased from RaPower3 LLC. RaPower3 put into service your equipment.

79

Examples of “Placed in Service” Letters in Evidence

- PLEX 44: February 2, 2012 Placed in Service Letter from RaPower-3, LLC to Frank Lunn signed by Greg Shepard, Director of Operations
- PLEX 103: December 30, 2008 Placed in Service Letter from International Automated Systems, Inc. to Robert Rowbotham signed by Neldon Johnson, President & CEO
- PLEX 104: February 2, 2012 Placed in Service Letter from RaPower-3, LLC to Robert Rowbotham signed by Greg Shepard, Director of Operations
- PLEX 105: January 28, 2011 Placed in Service Letter from RaPower-3, LLC to Robert Rowbotham signed by Greg Shepard, Director of Operations
- PLEX 534: Placed in Service Letters from International Automated Systems, Inc. signed by Neldon Johnson to various customers
- PLEX 546: Placed in Service Letters from International Automated Systems, Inc. and RaPower-3, LLC signed by Neldon Johnson to R. Gregory Shepard from 2005 – 2013
- PLEX 558: Placed in Service Letter from RaPower-3, LLC to Lindsay Davis signed by Neldon Johnson, Manager of RaPower[-]3
- PLEX 588: February 2, 2012 Placed in Service from RaPower-3, LLC to John Howell signed by Greg Shepard, Director of Operations
- PLEX 637, p.8-10: Placed in Service Letters from RaPower-3, LLC to Peter Gregg by Greg Shepard, Director of Operations
- PLEX 638, p.31: Placed in Service Letter from RaPower-3, LLC to Ryan Cook signed by Greg Shepard, Chief Director of Operations

80

Defendants Told Customers Their Lenses Were “Placed in Service”



Our Procedure:

Once you have paid in full your 30% down payment, you are eligible to receive a "Placed-In-Service" letter from the company. The Operation & Maintenance Company LTB, LLC rents your solar lenses and utilizes the solar energy from your panels for the purpose of assisting IAS in research and development for both agricultural and municipal solar thermal waste heat reclamation and multiple non-serial array concentrated photovoltaic receiver circuitry, among other applications such as

refinement of gearless dual-axis hydraulic tracking mechanisms and quick-release panel stabilizers and connections, which qualify as commercial use of solar energy.

The "Placed in Service" letter is regarding the "Alternative Energy Systems" that you purchased from RaPower3 LLC. RaPower3 put into service your equipment.

The Importance of the Letter:

First, I think it ties everything together in relation to the tax benefits, qualifying for the tax benefits as stated in IRS form #3468 and giving solid, clear-cut reasons for this qualification. Second, it helps tax preparers better understand the tax benefits being claimed on their client's tax return. And third, it can be used in a state or federal audit as indisputable reasons for claiming the solar energy tax benefits that could never be denied in tax court.

81

Defendants Told Customers Their Lenses Were “Placed in Service”



Our blog content

Frequently Asked Questions

5. When can I start claiming my depreciation?

A taxpayer can start claiming depreciation of an asset as soon as his or her property is placed in service. Property is placed in service when it is ready and available for a specific use, whether in a business activity, an income-producing activity, a tax-exempt activity, or a personal activity. This does not mean you have to be using the property; just that it is ready and available for its specific use. The Placed-In-Service letter and Bonus Referral Contract that you will receive after you purchase your systems verifies this.

If the equipment is ready and available for ANY income producing activity, including leasing it out for advertising purposes, the owner may start claiming depreciation on the asset. This is what we give you with the Bonus Referral Contract. Your solar thermal lenses qualify for the 50% bonus depreciation in 2012, 2013 and 2014 as the above standards have been met. You use the standard 5-year double declining balance depreciation method for 2014.

Plaintiff Exhibit

1

82

Other Statements that Equipment was “Placed in Service”

- PLEX 29
- PLEX 44
- PLEX 49
- PLEX 57
- PLEX 73
- PLEX 123
- PLEX 124
- PLEX 125
- PLEX 149
- PLEX 150
- PLEX 176
- PLEX 185
- PLEX 313
- PLEX 420
- PLEX 472
- PLEX 473
- PLEX 538
- PLEX 588

Ra3 Questions Answered

1 message

Greg Shepard <greg@bfsmail.com>
To: undisclosed-recipients

Wed, Feb 2, 2011 at 6:17 PM

TO ALL: BRAD, A RAPOWER3 TEAM MEMBER, ASKED THE FOLLOWING QUESTIONS BELOW. THE ANSWERS ARE IN CAPS. YOU WILL PROBABLY BE ASTONISHED AT THE ANSWERS.

If I purchase using the payment plan, will I get the in-service letter in Feb of next year even if I have not completed the final payment? YES. IT IS NOT THE FINAL PAYMENT THAT IS IMPORTANT, BUT THE FACT YOU SIGN A CONTRACT/AGREEMENT.

Is there a minimum number of payments required to get the in-service letter? NO. AGAIN, IT IS THE SIGNED CONTRACT/AGREEMENT THAT MATTERS.

How many units are already in-service? WE TOOK ORDERS LAST DECEMBER FOR 2,600 SYSTEMS.

Plaintiff Exhibit

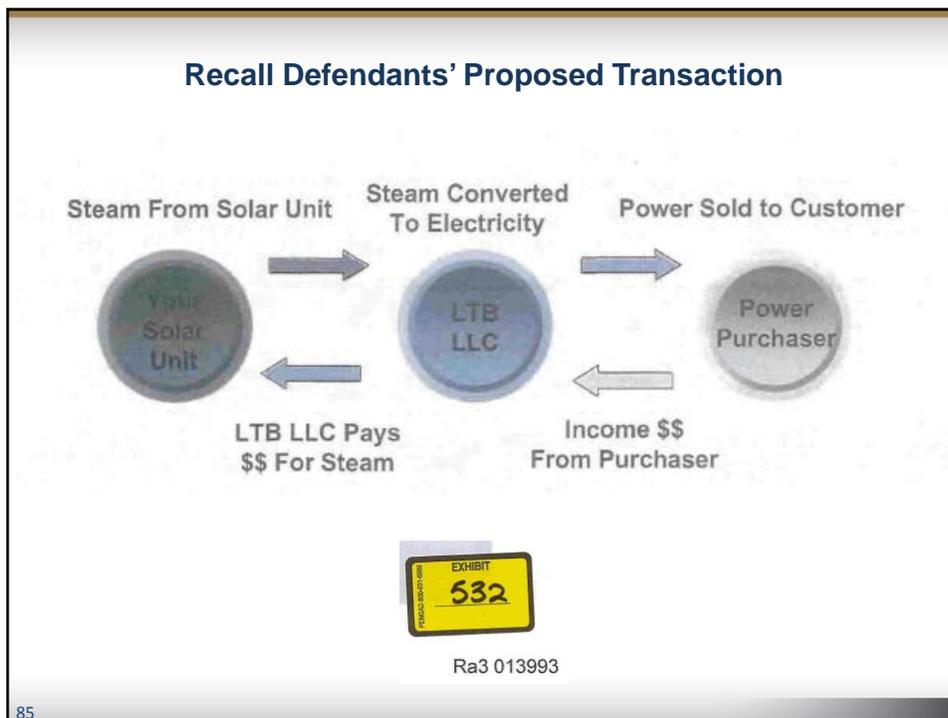
29

- PLEX 687, Robert Aulds Dep., 107:11-109:1

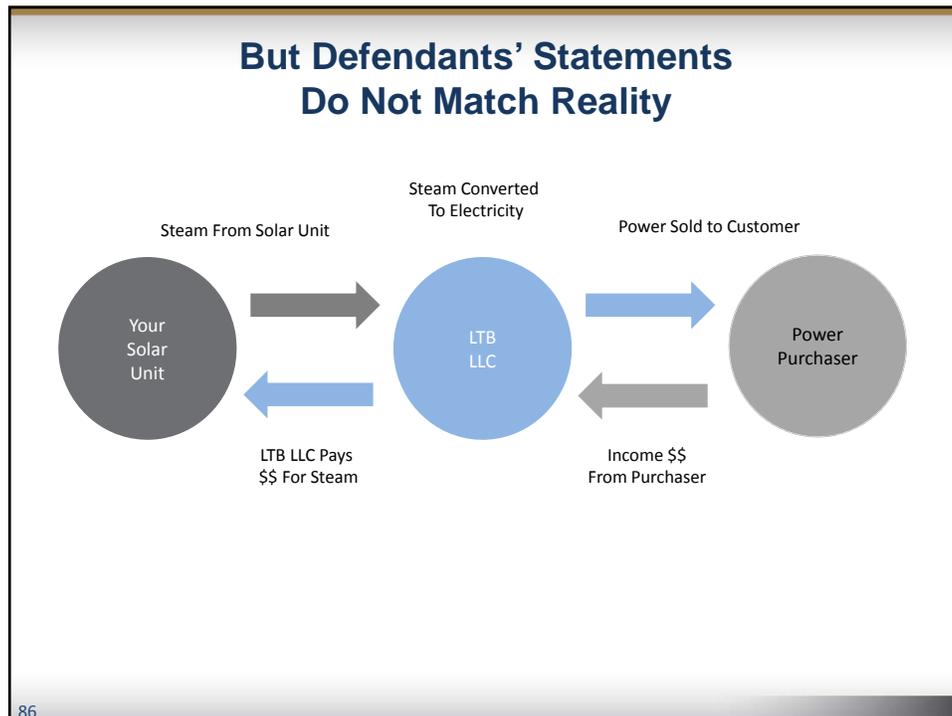
83

Defendants Knew or Had Reason to Know that Customers' Lenses Were Not "Placed in Service."

84



85



But No Lens Has Been “Placed in Service” to Generate Electricity or Solar Process Heat

- Lenses are a component of a larger solar energy system
- Lenses are not installed as part of a larger solar energy system.
- No evidence that Defendants’ solar lenses have ever, by themselves, used heat from the sun to accomplish any kind of useful function or application.

- PLEX 688, Freeborn Dep. 95:3-13.
- Dr. Mancini Testimony, Trial Tr. 75:4-15; 85:24-86:12; 90:5-94:7; 96:17-20; 105:9-107:6.
- Shepard Testimony, Trial Tr. 1692:25-1693:5; 1723:15-22; 1728:4-1729:25; 1730:18-1731:3

87

Defendants Knew Customers' Lenses Were Not "Placed in Service"

- Although Defendants have told customers that their lenses have been placed in service by International Automated Systems, Inc., RaPower-3, LLC and/or LTB, those entities all denied, under oath, that they placed lenses in service.
- PLEX 449, at 2, Response to Interrogatory No. 11
- PLEX 450, at 4, Response to Interrogatory No. 15
- PLEX 452, at 2, Response to Interrogatory No. 11

INTERROGATORY NO. 11: Identify what, and how many Lenses, Systems, and Components

have been placed in service, as defined in 26 U.S.C. § 48(a)(1) and Treas. Reg. § 1.46-3(d). Your response should include the dates any Lens, System or Component was placed in service.

RESPONSE NO. 11: LTB1 does not place any lenses into service. As such, it is not situated to offer information relevant to this interrogatory.

**Plaintiff
Exhibit**

452

88

August 2009

-----Original Message-----

From: Ken Oveson [mailto:ken@mmacpa.com]
Sent: Monday, August 24, 2009 10:08 AM
To: greg@bfsmail.com
Cc: Kim McReynolds; Don Mantyla; Jim Oveson
Subject:
Importance: High

Greg,

I received your e-mail following our meeting on Friday. It is apparent that we did not come out of this meeting with the same understanding. As we discussed, there are still a number of key issues to research on this before we can start talking to people. Please let your people know that we will not be able to speak with them until we have done that research. We have already had several calls which we have not responded to.

Also, Mantyla McReynolds has a client acceptance committee that has to approve each new client. I will present your company to them today but their next scheduled meeting is on Wednesday and they must give approval to proceed with services for the clients.

One more issue has come up. After our meeting I went to our audit department to discuss International Automated Systems, Inc. We are now in the process of doing the audit for them. I am told by the audit department that the units being sold are not yet "placed in service". From a tax standpoint, "placed in service" is a key factor in taking deductions for depreciation and credits. Again we need to research how this will impact those who have already purchased units. Our first impression is that until the units are placed in service, there is no deduction to be taken. In fact, the amounts already paid for units are recorded as deferred income since they are not yet placed in service. There must be consistency between the books of International Automated Systems and the taxpayer.

Also, see

- PLEX 373
- Buck Testimony, Trial Tr. 267:24-269:22; 270:3-271:4
- Oveson Testimony, 331:11-23; 334:18-336:3; 341:20-342:25; 343:1-2; 6-8; 343:21-344:10; 344:21-346:19; 347:18-348:13; 352:24-355:21; 356:7-357:14; 358:13-361:2
- Shepard Dep. 266:2-267:1

CONFIDENTIAL



MM004317

MM004317

89

Early 2010

INTERNATIONAL AUTOMATED SYSTEMS
326 NORTH SR 198
SALEM, UTAH 84653

Patty Lambrecht ALios, LLC
3016 S.E. Dune Drive
Stuart, Florida 34996

Dear Patty,

EXHIBIT

185 id

4/18/16 rad

Halverson, Roger-00068

We are also in the process of finishing the business plan for the solar energy system and its economic advantages in the market place over other green energy systems. We hope to have the business plan completed by the end of the second quarter of 2010.

We do have power purchase agreements tentatively in place with other companies that have agreed to purchase the power produced from the solar energy equipment once the system is placed in service.

To summarize your position with the company in receiving a profit from your equipment: The first and most important is the bonus program. This program will be more fully explained in the attached contract. However, for every \$9,000.00 purchased you would qualify for up to \$90,000 as your portion of IAS sales up to the cut off of \$1 billion dollars in sales. So far the company has sold under the trial program about \$2,500,000. Your portion would amount to \$11,250. Also the Needles California project is \$7.5 million up front with a residual of \$17.5 million. Your portion of the \$7.5 million is \$33,750. The next portion of the Needles project is for \$300 million. Your portion of that would amount to \$1,350,000. Your share of the one billion dollar sales would be \$4.5 million.

We expect that for the first five years of production you would receive 100% of production. This time would begin when the equipment is placed in full service. Your position would amount to about \$54,000 per year or for the five years about \$270,000.

We hope that this will help. We are sending you pictures of your system along with this letter. You should receive the full business plan within a few months.

Sincerely

Neldon P. Johnson CEO International Automated Systems, Inc.



90

October 2010 through early 2011

- Jessica Anderson expressed concerns to Neldon Johnson about equipment not being “placed in service.”
- PLEX 570
- Jessica Anderson Testimony, Trial Tr. 613:12-618:9; 620:1-621:24; 622:19-623:20.

614

13:31:49	7		Other concerns that I had, if it's not going to
13:31:56	8		be placed into service as energy producing equipment, I
13:32:00	9		don't think it falls under the definition of being placed
13:32:04	10		into service, so I had questions about -- I had doubts
13:32:07	11		about the depreciation component of that.

91

June 2012

----- Original Message -----

From: QUINNSMITHCPA@aol.com [mailto:QUINNSMITHCPA@aol.com]
 To: bryan@vcb-cpa.com
 Cc: greg@bfsmail.com
 Sent: Tue, 5 Jun 2012 21:03:50 -0400 (EDT)
 Subject: Solar energy equipment purchases from RaPower3 and tax credits/savings

2. Also, there is the concern of the "placed in service" date that is also discussed a lot on blogs and whether the equipment has truly been placed in service as one website shows pictures taken from the construction sites as late as March 2012 and there doesn't appear to be much construction activity? (This could raise IRS scrutiny by it's nature.) (I guess my question is that if RaPower3 sends out a letter saying the equipment has been placed in service, wouldn't that mean that energy is being produced and income from power would start to be received from the purchaser?)

From: Greg Shepard [greg@bfsmail.com]
 Sent: Tuesday, June 05, 2012 7:10 PM
 To: QUINNSMITHCPA@aol.com
 Cc: bryan@vcb-cpa.com
 Subject: RE: Solar energy equipment purchases from RaPower3 and tax credits/savings

Quinn,

As I have said before, Bryan does not answer questions unless you are a client

At this point, I'm not interested in doing business with your clients.

Sorry.

Greg Shepard

Greg Shepard
 RaPower3-Chief Director of Operations
 843 W 2400 S
 Salt Lake City, UT 84119
 Fax 801-975-1159
www.rapower3.com

EXHIBIT 477
 WIT: G. Shepard
 DATE: 5-22-17
 CHICourt, LLC

92

September 2013

Ra3 Zeleznik Audit

1 message

Greg Shepard <greg@rapower3.com>
 To: jessicawoodward@cpaauto.com
 Cc: BJ ZELEZNIK <ZELEZNIK@leroyk12.org>

Tue, Sep 10, 2013 at 8:44 PM

HELLO JESSICA-RESPONSES IN CAPS

Hi Greg, Frank and BJ

BJ and I just had our telephone audit interview.

She basically is denying all credits/depreciation because there is no proof of being placed in service. THIS, AS YOU WERE ADVISED, WAS EXPECTED.

Again, just like Frank, she wants proof of licenses, proof the panels are hooked up to the grid, etc. DOES NOT APPLY AS STATED IN MY MATERIAL. I WILL MAKE SURE YOU GET A COPY. ALSO, YOU ARE NOW ON MY E-MAIL LIST AND SO YOU WILL GET MY INFO FIRST HAND

So basically the IRS definition of placed in service is different than our definition of placed in service. THAT IS CORRECT

PIP
 EXHIBIT NO. 73
 FOR IDENTIFICATION
 DATE: 8-21-17 BY: LP

93

**To qualify for the solar energy credit,
“energy property” must be “placed in
service” during the tax year.**

26 U.S.C. § 48

94

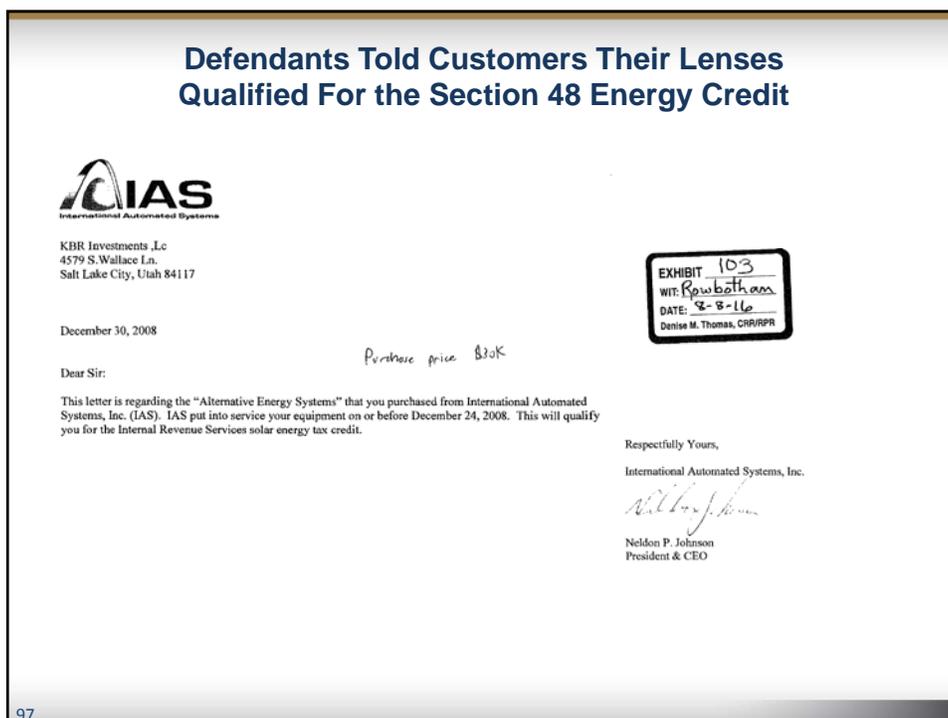
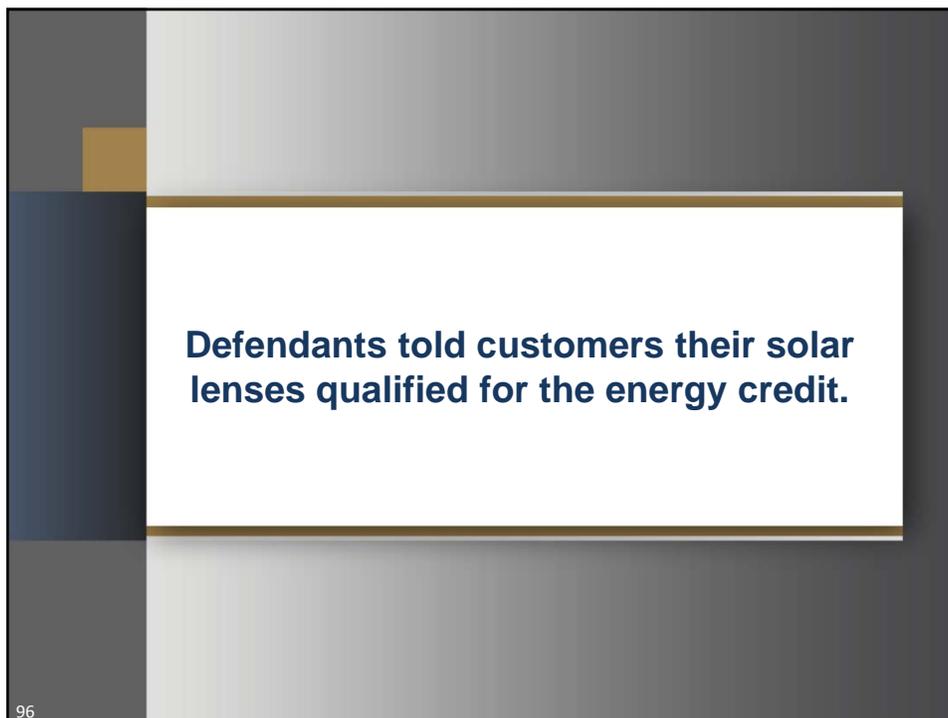
“Energy Property” means equipment:

- with respect to which depreciation is allowed, and
- “which uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat.”

26 U.S.C. § 48

95

6/22/2018



Defendants Told Customers Their Lenses Qualified For the Section 48 Energy Credit



Presten Olsen
9351 So. Dutch Valley Drive
South Jordan, UT 84095

February 12, 2015

Dear Preston Olsen:

This letter is regarding the "Alternative Energy Systems" that you purchased from RaPower3 LLC. RaPower3 put into service your equipment for 10 solar lenses on or before December 31, 2014. This will qualify you for the Internal Revenue Service solar energy tax credit.

Respectfully Yours,

RaPower3 LLC

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

Greg Shepard
Chief Director of Operations



Defendants Told Customers Their Lenses Qualified For the Section 48 Energy Credit

- PLEX 1
- PLEX 5
- PLEX 10
- PLEX 19
- PLEX 20
- PLEX 24
- PLEX 34
- PLEX 531
- PLEX 764
- PLEX 777

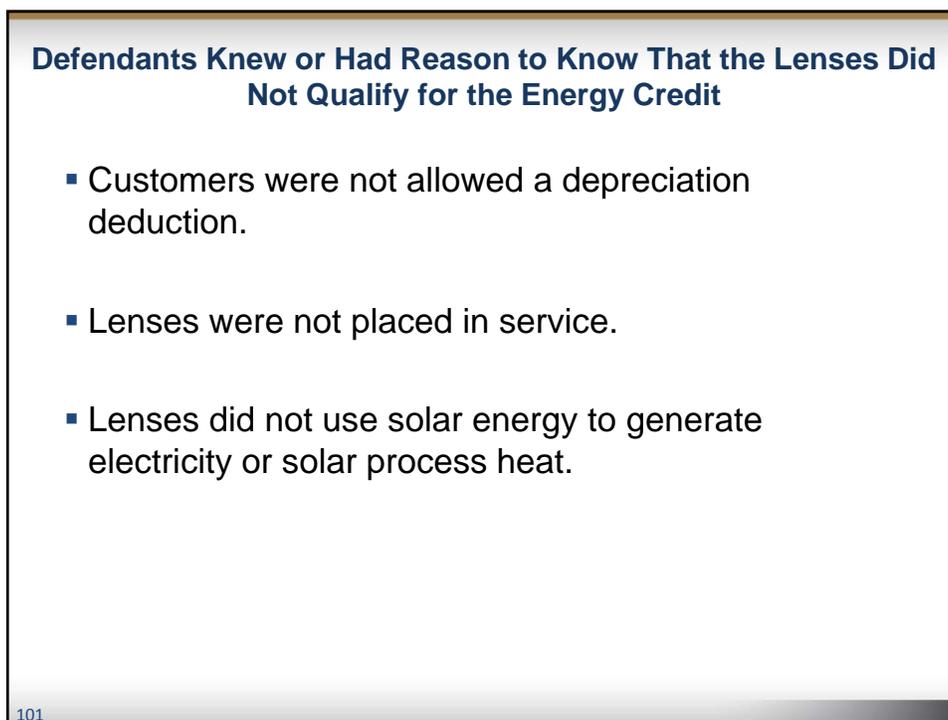
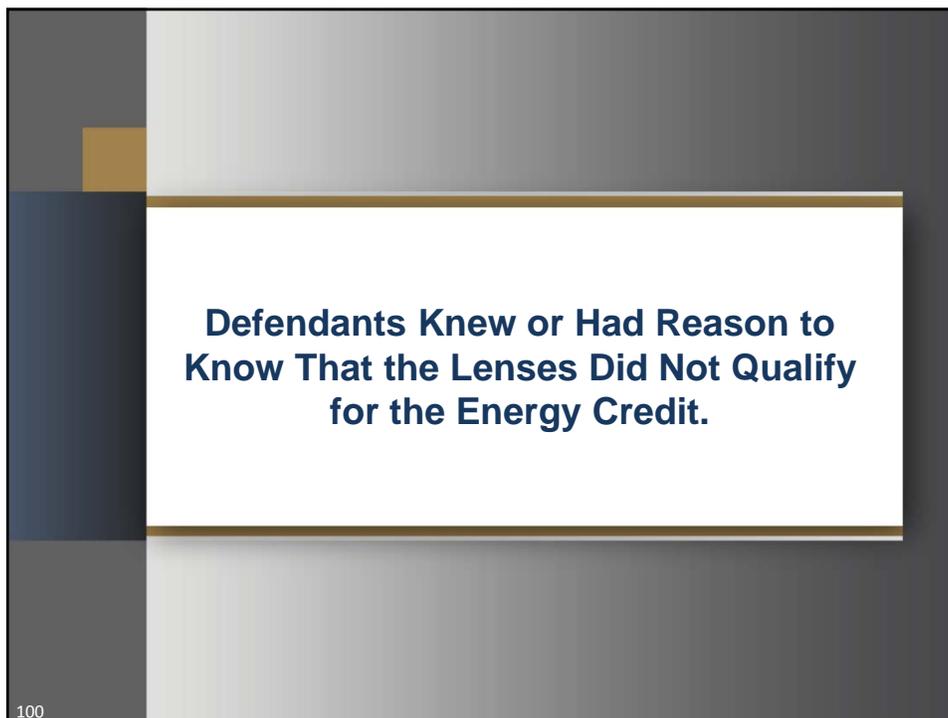


Solar Tax Credit to Participants

The person buying a solar unit receives a \$9,000 tax credit from the IRS for each solar unit purchased. For a solar unit purchased during the year 2006 or 2007, the Federal Government Energy policy gives a 30% tax credit. The retail value of RAUS's solar unit is \$30,000. The federal tax credit at 30% of \$30,000 equals \$9,000. The tax credit is a dollar for dollar credit. It is not a deduction. The maximum credit that can be taken is \$25,000 plus 25% of the remaining balance of taxes owed. However, this credit can be used one year back and 20 years forward.

Solar Tax Illustration:

Let's say a person pays an average of \$50,000 Federal Income Tax each year. This person purchases five lenses for a total down payment of \$45,000 dollars in 2006. When this person files his 2007 taxes, he can use/deduct \$25,000 plus 25% of the remaining balance (of \$25,000) which comes to \$6,250 (0.25 x \$25,000). The total tax credit for 2007 is \$31,250 (\$25,000 + \$6,250). Therefore \$31,250 of the \$45,000 invested is returned in a tax credit for 2007 leaving only \$13,750 un-credited of the \$45,000 invested. However, in the same 2007 filing, this person can also take up to another \$25,000 in tax credits plus 25% of the remaining balance of taxes owed for the year 2006. This option credits and returns the remaining \$13,750. When necessary, any excess credit can be taken when filing for successive years, for up to 20 years forward.



But as of April 2018, Defendants told customers that lenses “can” produce both electricity and solar process heat.

4/23/2018 RaPower3 FAQ

Buy Lenses News Radio Shows Message Board Backoffice Login

RaPower3 Technology Opportunity Events & Tours F.A.Q.

General Q's Purchasing Q's Tax Q's Technology Q's Contract Q's Sponsoring Q's Rental Q's Press/News Q's

FAQ Tax Questions

7. What types of solar qualify for the solar energy tax credit?
 Eligible solar energy property includes equipment that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat. (Source: energy.gov and dsireusa.org)

RaPower3 uses thin-film solar thermal lenses that concentrate the sun's energy onto solar receivers that generate either electricity or solar process heat that can be used for a variety of industrial, business, commercial or residential purposes.

8. What is solar process heat?
 Solar process heat is any type of heat produced by a solar energy system that reduces or replaces energy coming from a hydrocarbon fuel or fossil fuel source through a commercial and/or research & development application. RaPower3 solar lenses can produce heat for a variety of purposes. They can also generate electricity for several purposes outside of power being put on the grid, although, we can also put power on the grid.

Plaintiff Exhibit 903

102

Losses and credits generated in a passive activity may not be used to offset a taxpayer’s “active” income like wages.

26 U.S.C. § 469(a)

103

Defendants Knew This

EQUIPMENT PURCHASE AGREEMENT

This Equipment Purchase Agreement ("Agreement") is made and entered into this 18th day of December 2008 by and between International Automated Systems, Inc., a Utah corporation with offices at 326 North Highway 6, Salem, UT 84653, hereinafter referred to as "Seller", and, Ilios, LLC, a Florida limited liability company whose address is 3016 S.E. Dune Drive Stuart, Florida 34996, hereinafter referred to as "Purchaser".

1. Seller hereby sells to Purchaser and Purchaser hereby purchases from Seller each Alternative Energy System and its components, which includes IAS Technology, and this Agreement shall serve as the Bill of Sale for the Alternative Energy Systems. The number of Alternative Energy Systems purchased by Purchaser from Seller under this Agreement shall be 50. Seller shall furnish, deliver, install and startup the Alternative Energy System at a site provided by Seller in Delta, Utah, hereinafter referred to as the "Installation Site".

6. The Seller represents that each Alternative Energy System will be installed and operational no later than December 31, 2008 and in sufficient time to meet IRS standards of an active investment. In the event Seller fails to meet these active investment standards or if the IRS deems the investment as passive precluding Purchaser from obtaining the tax benefits expected or contemplated hereunder by Purchaser, this Agreement may be terminated by Purchaser upon written notice by Purchaser to Seller, and the Initial Down Payment shall be promptly, but in no event more than fourteen (14) days after receipt of such written notice, refunded to Purchaser.

PURCHASER
Ilios, LLC

SELLER
INTERNATIONAL AUTOMATED
SYSTEMS, INC.

By: *[Signature]*
Title: *President*

By: *[Signature]*
Title: *CEO International Automated Systems, Inc.*

EXHIBIT
181 id
10/18/16 acs

104

Defendants Knew This

On Aug 17, 2009, at 1:11 PM, Preston Olsen wrote:

Matt - quick question for you or your dad. I have some friends that might be interested in investing. They had a question that I cannot answer, and it is making me a little nervous. Do you know how this investment gets around the passive loss rules? Basically the idea that you cannot use the business tax credits against normal wages because the investment in the solar panels might be viewed as a passive investment.

From: "Greg Shepard" <greg@bfsmail.com>
Date: August 20, 2009 10:49:15 AM MDT
To: "Matthew Shepard" <matthew.shepard@gmail.com>
Subject: RE: Purchase Agreement Exhibit A

Matt and Preston,

Neldon Johnson, the President and CEO of IAUS, is almost finished with a corporation that will provide energy to co-ops and others. We will have sales material and info in having our clients become distributors for this corporation. This would establish Preston as an active participant. He is free to work as little or as much as he would like in his solar business. In the meantime, he has a signed purchase agreement where he has required things of the management company. He has an LLC and me as his representative spending the required number of hours.

The law states that if, in his LLC, the solar business is what he is spending the majority of his time in then he does not need to spend 500 hours and is accepted as active. However, it is a moot point because within a month he will enjoy active status as a distributor in our new corporation.

Greg Shepard

EXHIBIT 135
WIT: Olsen
DATE: 8-10-16
Denise M. Thomas, CRR/RPR

105

Defendants Knew This

From: "Greg Shepard" <greg@bfsmail.com>
 Date: August 21, 2009 2:09:43 PM MDT
 Cc: <ken@mmacpa.com>
 Subject: Solar/CPA/TaxInfo

Also, during the meeting we talked with Neldon Johnson, IAUS CEO and President, about his new plan to help with the passive/active issue. Ken is nearly sure this will be just fine. Again, Ken will research this. I am quite optimistic we will all be able to receive all of the tax benefits we have been outlining to clients as active participants and will satisfy the IRS requirement of being material participant.

Regards, Greg

Greg Shepard
 IAUS National Sales
 843 W 2400 S
 Salt Lake City, UT 84119
 Office 800-628-9737
 Cell 801-699-2284
 Fax 801-975-1159
 www.iaus.com



106

Defendants Knew This

-----Original Message-----
 From: Greg Shepard [mailto:greg@bfsmail.com]
 Sent: Tuesday, August 25, 2009 11:10 AM
 To: Ken Oveson
 Subject: Greg's Solar Priorities

Ken, The following are the issues that need to be addressed. Thanks in advance. Thursday's conference call will revolve around these issues. If you're not ready to talk about all of them. Talk about what you can.

CPA PRIORITIES



4. The passive/active status and being a "material participant" question. If a purchaser is a distributor in our solar energy MLM, does that qualify for active status? Would the purchaser need to spend 500 hours? Or, would the time spent in this business be sufficient? What kind of records would need to be kept and how necessary-if so?

5. The purchaser needs to feel that he or she can take the 30% tax credit without question. That the depreciation can be taken without question as an active participant. That amending one's return can effortlessly be done. A high level of confidence in all of the above with documentation.

Greg Shepard
 IAUS National Sales
 843 W 2400 S
 Salt Lake City, UT 84119
 Office 800-628-9737
 Cell 801-699-2284
 Fax 801-975-1159
www.iaus.com

107

Defendants Knew This

Ra3 Tax Depreciation

From: Greg Shepard (greg@bfsmail.com)
Sent: Thu 10/14/10 8:14 AM
To: neldon@iaus.com
Cc: glendsejohnson@hotmail.com

Neldon, I give you the following for your tax attorney.

1. The ARRA (American Recovery and Reinvestment Act) has made the depreciation for 2009 and hopefully 2010 easy. We just use a Section 179 Depreciation and use IRS Publication 946 (2009) as proof of our position and cite the section on Energy Property which is the same wording as the "Placed in Service" Tax Credit instructions.
2. However, the question as to Material Participation still looms for being an active participant. The fact that Systems are purchased and then rented back is problematic.
3. An opinion on the seven criteria for determining active participation would be essential.

Thanks, Greg

Greg Shepard
RaPower3-Chief Director of Operations
843 W 2400 S
Salt Lake City, UT 84119
Cell 801-699-2284
Fax 801-975-1159
www.rapower3.com

EXHIBIT 574
WIT: Anderson
DATE: 8-4-17
Denise M. Thomas, CRV/RFP

Anderson 000141

Anderson 000141

Defendants Knew This



www.defendantsknewthis.com
andersonlawcenter@ishofahomey.com
P.O. Box 903
Dix, Utah 84024
P: 435 864-4337
F: 435 864-4338

Sent via email to neldon@iaus.com, original will follow

Re: Response to tax questions posed.

Dear Mr. Johnson,

Prior to 1986, a taxpayer could generally deduct losses in full from rental activities and trades or businesses regardless of his or her participation. This gave rise to significant numbers of tax shelters that allowed taxpayers to deduct non-economic losses against wages and investment income. The Tax Reform Act of 1986 added IRC § 469, which limits the taxpayer's ability to deduct losses from businesses in which he or she does not materially participate and from rental activities.

If an activity or the participation in the activity is determined to be passive, this does not mean that the taxpayer may not deduct the expense. The expenses are deemed to be passive losses and are still deductible if the taxpayer has passive income from other sources. Passive income is determined by the same passive/active rules that apply to losses.

EXHIBIT 570
WIT: Anderson
DATE: 8-4-17
Denise M. Thomas, CRV/RFP

Leasing Lenses is a *Per Se* Passive Activity

- A “business” involving rental of tangible personal property is *per se* passive.
 - 26 U.S.C. § 469(c)(2), (7), (j)(8)

- Jessica Anderson told Neldon Johnson this in October 2010.
 - PLEX 570, at 2

A. EQUIPMENT LEASING AS A PASSIVE ACTIVITY

In general, losses generated from equipment leasing are considered to be passive. I.R.C. § 469(c)(2) & (4). The material participation standard, as defined later, will normally not apply to long-term equipment rentals, thus equipment leasing losses would be passive regardless of the level of participation.

EXHIBIT 570
 WIT: Anderson
 DATE: 8-4-17
 Denise M. Thomas, CR/RPR

110

In October 2010, Jessica Anderson Told Neldon Johnson:

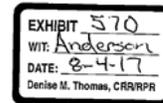
- “While the taxpayer may spend time working on various aspects of the activity, certain hours do not count in the tests for material participation:
- Investor-type activities do not count unless the taxpayer is directly involved in day-to-day management or operations. Treasury Regulation § 1.469-5T(f)(2)(ii)(B) provides that the following activities do not count unless the taxpayer is directly involved on a day-to-day basis in management or operations:
 - o Studying or reviewing financial statements or reports.
 - o Preparing or compiling summaries of analyses for the individual's own use.
 - o Monitoring finances or operations in a non-managerial capacity.
 - o (This list is not all inclusive. Other activities could include organizing records, preparing taxes, and paying bills.)
 - Work not ordinarily done by an owner is not counted if it is claimed in an effort to avoid the passive loss limitations. This would be work performed by an owner that would normally be assigned to an employee. Generally the taxpayer has no reason to include these services in the hourly computations other than in an attempt to avoid disallowance of losses.
 - Travel time generally should not be considered in computing the hourly tests for material participation, particularly if other factors indicate the taxpayer is not participating in the activity on a regular, continuous and substantial basis. Legislative history provides that “services must be integral to operations”. It is somewhat difficult to construe that travel constitutes “services” or “participation” as contemplated by Congress or the Regulations. More importantly, travel is not integral to operations in most cases.

EXHIBIT 570
 WIT: Anderson
 DATE: 8-4-17
 Denise M. Thomas, CR/RPR

111

In October 2010, Jessica Anderson Told Neldon Johnson:

- “[B]road indicators that the IRS will look at to determine if the taxpayer does not materially participate include:
 - The taxpayer was not compensated for services. Most individuals do not work significant hours without expecting wages or commissions.
 - The taxpayer’s residence is hundreds of miles from the activity.
 - The taxpayer has a W-2 job requiring 40+ hours a week for which he or she receives significant compensation.
 - The taxpayer has numerous other investments, rentals, business activities, or hobbies that absorb significant amounts of time.
 - There is a paid on-site management/foreman/supervisor and/or employees who provide day-to-day oversight and care of the operations.
 - The taxpayer is elderly or has health issues
 - The majority of the hours claimed are for work that does not materially impact operations.
 - Business operations would continue uninterrupted if the taxpayer did not perform the services claimed.



112

Defendants Knew, or Had Reason to Know, That Customers' Participation Was Passive

- Customers were individuals.
 - PLEX 544
 - PLEX 682, RaPower-3 30(b)(6) Dep. 96:19-97:13
 - PLEX 545
 - PLEX 749
- Customers' "lens leasing business" activities were passive activities at best.
- Defendants told customers how little they would have to do to have a solar lens "business"

113

Defendants Knew, or Had Reason to Know, That Customers' Participation Was Passive

- Those individuals had other employment or income-producing activities as their prime source of income.
 - PLEX 40, at 12
 - PLEX 109, at 1
 - PLEX 214
 - PLEX 216
 - PLEX 247
 - PLEX 492, at 1
 - PLEX 544
 - PLEX 674
 - PLEX 731, November 18, 2017 radio show recording

 - PLEX 579, Neldon Johnson Dep., vol 1., 96:19-97:13
 - PLEX 685, R. Gregory Shepard Dep., 239:16-240:10
 - PLEX 688, Roger Freeborn Dep., 44:11-45:3
 - Rowbotham Testimony, Trial Tr. 908:2-909:23

114

No Later Than January 2011

- Jessica Anderson told Neldon Johnson that even if one of the exceptions applied, his customers would not meet the standard for material participation.

- He refused to accept her opinion and kept trying to change her mind, getting more aggressive each time.

- So she fired him as a client.

115

No Later Than January 2011

It has always been my belief that your customers who purchase the solar equipment and then turn over the operation of the power generating to a third party are not active participants, such that the income from the business would not be active income. I have been unable to find any way around it and in general my advice and counsel tends to be on the conservative side anyway. I understand you believe that there is a way to draft the contract between the equipment owner and the third party manager in such a way that the income and/or losses will be active. I do not believe that is something I can accomplish for you and would recommend that you seek an attorney that is more familiar and has a greater knowledge in this area than I do.

Jessica L. Anderson
Anderson Law Center, P.C.
54 South 300 East
PO Box 183
Delta, UT 84624
P: 435-864-HELP (4357)
F: 435-864-4358
jessica@deltaattorney.com

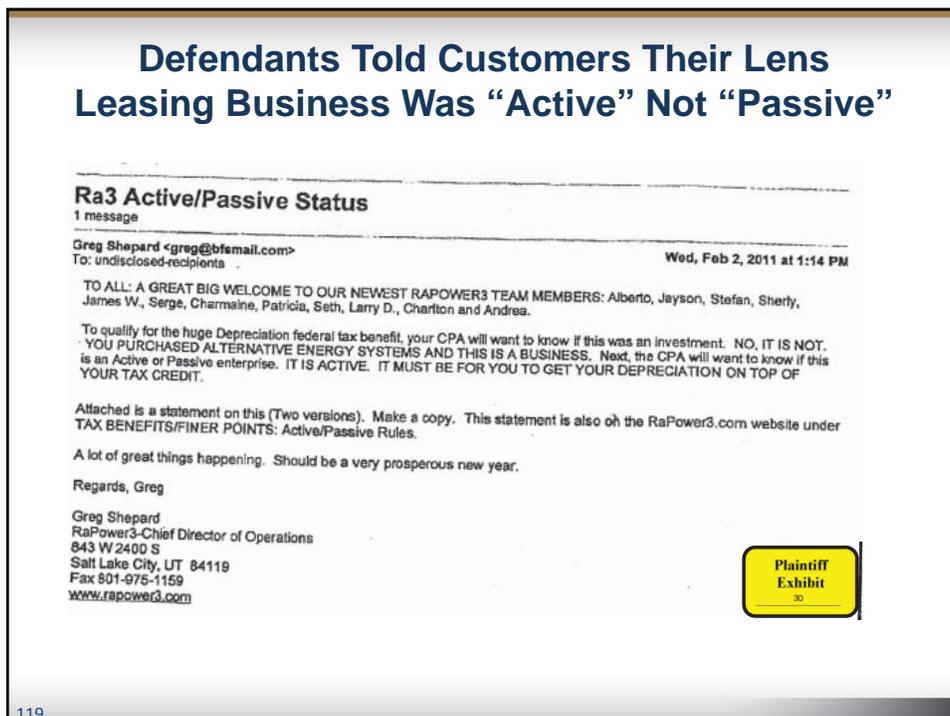
Plaintiff
Exhibit

582

116

Defendants Knew or Had Reason to Know That Customers Could Not Use the Depreciation or Credit to Offset Their "Active Income."

117



Defendants Told Customers Their Lens Leasing Business Was “Active” Not “Passive”

Steven Carver

From: Greg Shepard [greg@rapower3.com]
Sent: Monday, November 11, 2013 8:07 AM
Subject: Ra3 Audit/Appeal Great Info

#1. This is leasing "personal property" which is not considered passive at all - no need to worry about establishing involvement and time spent (for this qualification). We buy and own the lenses (personally) and do business with them by leasing them. [Unless, someone has their business buy the lenses (where other people are involved).]

Greg Shepard
4035 South 4000 West
Deseret, UT 84624
www.rapower3.com
greg@rapower3.com
801-699-2284

Plaintiff Exhibit 32

120

Defendants Told Customers They “Materially Participated” In Their “Trade or Business”

PIT
EXHIBIT NO. 43
FOR IDENTIFICATION
DATE 6-1-16 RPT: LP

Frank Lunn

From: Greg Shepard <greg@bfsmail.com>
Sent: Monday, December 28, 2011 3:31 PM
To: undisclosed-recipients
Subject: Ra3 Important Tax Info

TO ALL: THE THIRD AND LAST E-MAIL TODAY THAT I DEEM TO BE IMPORTANT. PRINT THIS OUT AND KEEP IT IN YOUR RAPOWER3 FILE.

MY CPA SAYS THAT I MUST BE A MATERIAL PARTICIPANT AND BE ACTIVE RATHER THAN PASSIVE TO RECEIVE THE DEPRECIATION BENEFITS. HOW DO I DO THAT? Go to irs.gov. put in material participant in the search engine space in the upper right hand corner. The below info was copied from the irs.gov site. As you can see, there are seven ways you can qualify for material participation. All you have to do is meet one of the seven criteria. A few of you will qualify with number one in that you and your spouse spend more than 500 hours on RaPower3.

This is why keeping all of my e-mails is important. Many of you went to our convention. That counts as hours. Anytime you tell someone about the RaPower3 opportunity, you are adding hours. Many of you would meet the hundred hour rule. You have to work more than a hundred hours in a year and those hours have to be more than any of YOUR employees. The employees at RaPower3 don't count. In this case, you would qualify under the #3 criterion.

But, you are an independent contractor. Unless you set up an LLC, you are a sole proprietor of your solar energy business with no employees. Almost all of you fall into this category. This means, you qualify under guideline #2 meaning you do all the work in your solar energy business and you have no employees. Even if you spend less than 100 hours on your RaPower3 business.

To determine material participation in an activity, the taxpayer must meet ONE of the following:

1

121

Defendants Told Customers They “Materially Participated” In Their “Trade or Business”



Frequently Asked Questions

6. I know I have to materially participate in my solar energy business to be considered non-passive so I can claim the depreciation. Do I have to spend 500 hours a year to be considered active because I really can't do that?

No, you do not have to spend 500 hours to qualify for material participation. Here are the guidelines taken from [irs.gov website](http://irs.gov/website): If the taxpayer and/or the spouse meet any of the following, he materially participates and income is non-passive and should not be on Form 8582, triggering passive losses:

1. Did taxpayer work more than 500 hours a year in business?
2. **Did taxpayer do most of the work?**
3. Did taxpayer work 100 hours and no one worked more?
4. Did taxpayer work 100-500 hours in several passive activities, the sum of which exceed 500 hours?
5. Did taxpayer materially participate in the activity any 5 of the prior 10 years?
6. If the business is a personal service activity, did he materially participate in any 3 prior years?

Most RaPower3 Team Members qualify under guideline #2. Almost all of our RaPower3 Team Members work by themselves in their solar energy business. They have no employees and therefore, they do all or most of the work involving their solar energy business. So these team members usually don't spend 500 hours on their business, but qualify anyway under guideline #2 because they do most of the work.

Plaintiff Exhibit
1

122

Examples of Other Statements Regarding Material Participation

- PLEX 1
- PLEX 10
- PLEX 45
- PLEX 49
- PLEX 52
- PLEX 73
- PLEX 135
- PLEX 150
- PLEX 177
- PLEX 205
- PLEX 231
- PLEX 247
- PLEX 252
- PLEX 283
- PLEX 335
- PLEX 343
- PLEX 346
- PLEX 399
- PLEX 479
- PLEX 504

123

The allowable amount of any deduction, with respect to any activity, is limited to the amount the Customer has “at risk” in the activity.

26 U.S.C. § 465

124

Defendants Knew This

KIRTON | McCONKIE

MEMORANDUM

DATE: October 31, 2012

TO: SOLCO I, LLC
Attn: Neldon Johnson

FROM: Kenneth W. Birrell

SUBJECT: Tax Issues Relating to Purchase of Solar Lenses

EXHIBIT 387
WIT: Birrell
DATE: 2-14-17
CIBCourt, LLC

IV. Limitations upon Use of Credits and Depreciation Deductions

A. At-Risk Limitations

Code Section 465(a) provides that the losses (in this case, depreciation deductions in excess of the Rental Payments) of certain taxpayers from certain activities are only allowed to the extent of the aggregate amount with respect to which the taxpayer is at risk with respect to such activity. The taxpayers subject to Code Section 465(a) include a subchapter C corporation that meets the ownership requirements of Code Section 542(a)(2), which are summarized above.

For purposes of Section 465(a), a taxpayer is considered to be at risk for an activity in amount equal to the sum of the amount of money or property contributed to the activity and certain amounts borrowed with respect to the activity. Code Section 465(b)(1). Taxpayers are considered to be at risk for borrowed amounts only if the taxpayer is personally liable for the repayment of such amounts or has pledged property (other than property used in such activity) as security for such borrowed amounts; provided that a taxpayer will not be considered to be at risk with respect to borrowed amounts to the extent such amounts are borrowed from a person who has an interest in the activity (other than as a creditor) or from a person who is related to such a person. Code Section 465(b)(2) and (b).

125

Defendants Told Customers They Could Claim Depreciation Deductions Based on the Full Purchase Price.

126

Defendants Told Customers to Use Full Purchase Price

Solar Tax Credit to Participants

The person buying a solar unit receives a \$9,000 tax credit from the IRS for each solar unit purchased. For a solar unit purchased during the year 2006 or 2007, the Federal Government Energy policy gives a 30% tax credit. The retail value of IAUS' solar unit is \$30,000. The federal tax credit at 30% of \$30,000 equals \$9,000. The tax credit is a dollar for dollar credit. It is not a deduction. The maximum credit that can be taken is \$25,000 plus 25% of the remaining balance of taxes owed. However, this credit can be used one year back and 20 years forward.

Solar Tax Illustration:

Let's say a person pays an average of \$50,000 Federal Income Tax each year. This person purchases five lenses for a total down payment of \$45,000 dollars in 2006. When this person files his 2007 taxes, he can use/ deduct \$25,000 plus 25% of the remaining balance (of \$25,000) which comes to \$6,250 (0.25 x \$25,000). The total tax credit for 2007 is \$31,250 (\$25,000 + \$6,250). Therefore \$31,250 of the \$45,000 invested is returned in a tax credit for 2007 leaving only \$13,750 un-credited of the \$45,000 invested. However, in the same 2007 filing, this person can also take up to another \$25,000 in tax credits plus 25% of the remaining balance of taxes owed for the year 2006. This option credits and returns the remaining \$13,750. When necessary, any excess credit can be taken when filing for successive years, for up to 20 years forward.

Depreciation

Half of the tax credit (\$4,500) must be subtracted from the \$30,000 dollar purchase amount when using it to calculate depreciation of the equipment. Therefore, only \$25,500 of the \$30,000 value can be depreciated. This can be taken over a period of six years. How does depreciation work? It is based upon what income tax bracket the buyer falls into. For example, if the buyer is in a 30% income tax bracket, 30% of \$25,500 (which amounts to \$7,650) can be taken off from the buyer's personal taxes over a period of six years. ¹⁰What are remaining 25% of the tax credit that can be taken in each year is broken down by the IRS in the following sequence

Year 1	20%	\$1,530
Year 2	32%	\$2,448
Year 3	19.2%	\$1,468.80
Year 4	11.52%	\$881.28
Year 5	11.52%	\$881.28
Year 6	5.76%	\$440.64

Other Examples of Defendants' Statements:

- PLEX 20
- PLEX 24, at 1
- PLEX 34
- PLEX 40
- PLEX 43, at 1
- PLEX 70 & 70A
- PLEX 185
- PLEX 207
- PLEX 219
- PLEX 232
- PLEX 236
- PLEX 240
- PLEX 245
- PLEX 278
- PLEX 475
- PLEX 490
- PLEX 531, at 2-3
- PLEX 603
- PLEX 677
- PLEX 680



Ra3 013964

127

Defendants Told Customers to Use Full Purchase Price

12/8/2017 RaPower3 November 8th 2017 Newsletter

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What Do I Do? Purchase 75 commercial [Solar Thermal Lenses](#) and designate 36 of them for our home system transfer program. The transfer will take place when your home system is ready for installation. (target date is the 2nd Quarter of 2018). This should get you enough in tax credits to pay for your entire system!

What's the Cost? Your down payment on these 75 Solar Thermal Lenses is \$48,750 (\$650 per solar lens: $75 \times 650 = \$48,750$) plus \$29,250 when you get your tax refund or realized tax savings next April-May.

What Does My Tax Preparer Need to Know?
The Cost Basis of 75 solar lenses is \$262,000 ($\$3,500 \times 75 = \$262,000$)

Plaintiff Exhibit
718

128

Defendants Knew or Had Reason to Know That Their Customers' Were Not "At-Risk" with respect to the Solar Lenses.

129

Not “At Risk”

- Defendants offered to refund customers’ money.

In December 2010, Johnson promised to refund customers’ money and void their Equipment Purchase Agreement if they did not receive the tax benefits Defendants promote. In January 2015, Johnson, via Shepard, reiterated this offer to customers who were being audited for having claimed the tax benefits that Defendants promote. He said, “We ... believe we will prevail against the IRS in court. However, if you would like to part company, we will refund your money and you can pay the IRS and move in a different direction. You can most likely get the IRS to drop the penalties.”



130

Not “At Risk”

- Defendants used extensive non-recourse financing.

Solar Equipment: IAUS Financing

IAUS’s solar unit can be purchased with a down payment of \$9,000. The balance of \$21,000 is financed by IAUS interest free over a term of 30 years. The first five years of the loan are deferred to the end. Once the first five years are over, the buyer pays 30 annual loan payments of \$700.

IAUS believes that paying the five deferred installments at the end of the thirty years is much more profitable for the purchaser than in the first five years. Since, the wholesale price per kilowatt-hour (kWh) will follow the average U.S. GDP inflation rate of 2.9%, the wholesale price of electricity will be at 13 cents per kWh after thirty years and over 15 cents per kWh by thirty-five years.

Purchased solar units will be nested with other solar units in an array, selling net energy or net BTUs to a commercial power plant that will be owned and operated by LTB LLC. The power company LTB LLC will use the BTUs to generate electricity and in turn, sell it to customers such as residents, businesses, or other power companies.

LTB LLC will maintain and operate the plant and market the power generated by the solar units. LTB LLC will pay the solar unit owner a quarterly payment for the purchase of the net BTUs produced by each solar unit, at a rate of 5.5 cents per kWh. The selling price for electricity generated by an energy provider in the U.S., averaged 5.5 cents per kWh in 2005. The projected net energy production for each solar unit is an estimated 14,600 kWh per year.



Ra3 013964

131

Not "At Risk"

- Defendants used extensive non-recourse financing.

RA POWER 3
RaPower-3 Equipment Purchase Agreement

This Equipment Purchase Agreement (the "Agreement") is entered into this day
 12/29/2012 4:57:46 PM

by and between RaPower-3 LLC (the "Operator"), with principal offices at 4035 South 4000 West, Duesent, UT 84024, hereinafter referred to as "Seller", and
Robert Olsen, on behalf of PPO Solar LLC
 whose address is: 151 Brynmore Cv Murray, UT 84304
578 S. Meadows Dr, Bluff UT 84107
 hereinafter referred to as "Purchaser".

EXHIBIT 119
 WIT Olsen
 DATE 8-18-16
 DENISE M. THOMAS, CLERK

3. **Payment Terms.** Purchaser shall pay to Seller the sum of \$3,500 for each Alternative Energy System purchased, hereinafter referred to as the "Purchase Amount" for the purchase of the Alternative Energy System. This includes the cost of delivery, installation and startup, as well as the cost of warranty work performed during the warranty period described below. The Total Purchase Amount shall be paid in accordance with the following schedule:

Option 1:

Initial Down Payment in the amount of \$1,050 (one thousand fifty dollars) for each Alternative Energy System purchased, which shall be paid at the time this agreement is entered into.

Option 2:

Initial Down Payment in the amount of \$1,050 (one thousand fifty dollars) for each Alternative Energy System purchased, which shall be paid with a one-time payment of \$105 (equal to 10% of the down payment) at the time this Agreement is entered into. The balance of \$945 for each Alternative Energy System is to be paid on or before June 30, 2012.

Option 3:

Initial Down Payment in the amount of \$1200 (One Thousand Two Hundred Dollars) for each Alternative Energy Systems purchased, which shall be paid in monthly installments of \$100 (One Hundred Dollars) per system purchased.

132

Not "At Risk"

- Defendants used extensive non-recourse financing.

12/8/2017

Terms & Conditions



Solar Power

Home » Terms & Conditions

Terms & Conditions

Down Payments & Financing

At least 18% of the solar technology purchase price is due within 15 days of the purchase date. Up to 82% financing is provided directly from the company on solar purchases. No credit check will be performed. Every purchase instantly qualifies and is automatically enrolled in the financing program with a valid Tax Identification Number (TIN) from the purchaser. The purchaser may opt out of company financing; in such case, the full price of the solar technology is due within 15 days of time of purchase. The purchaser also retains

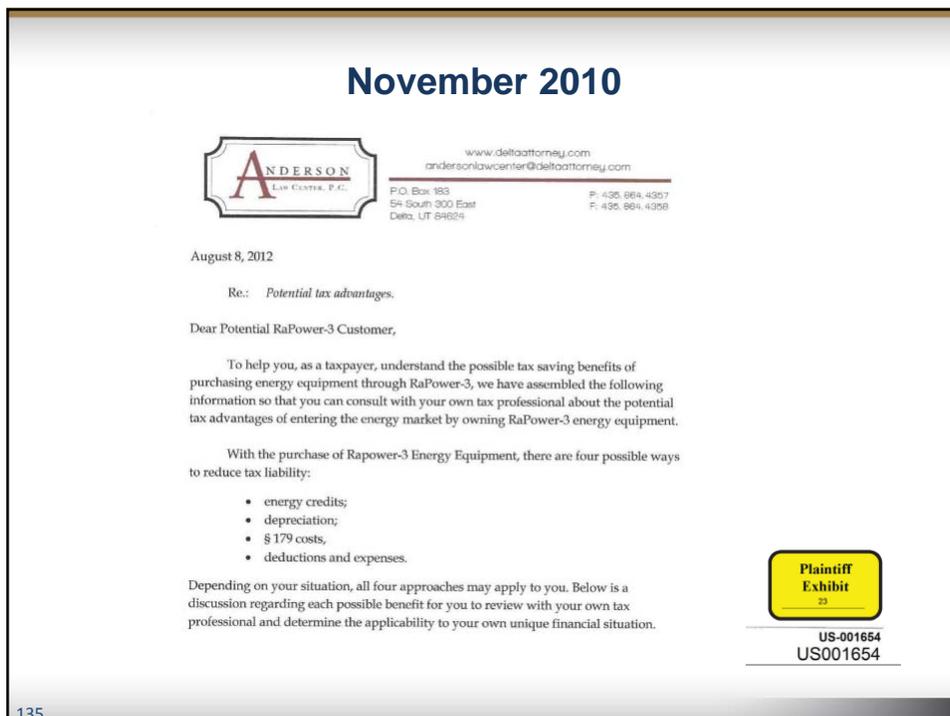
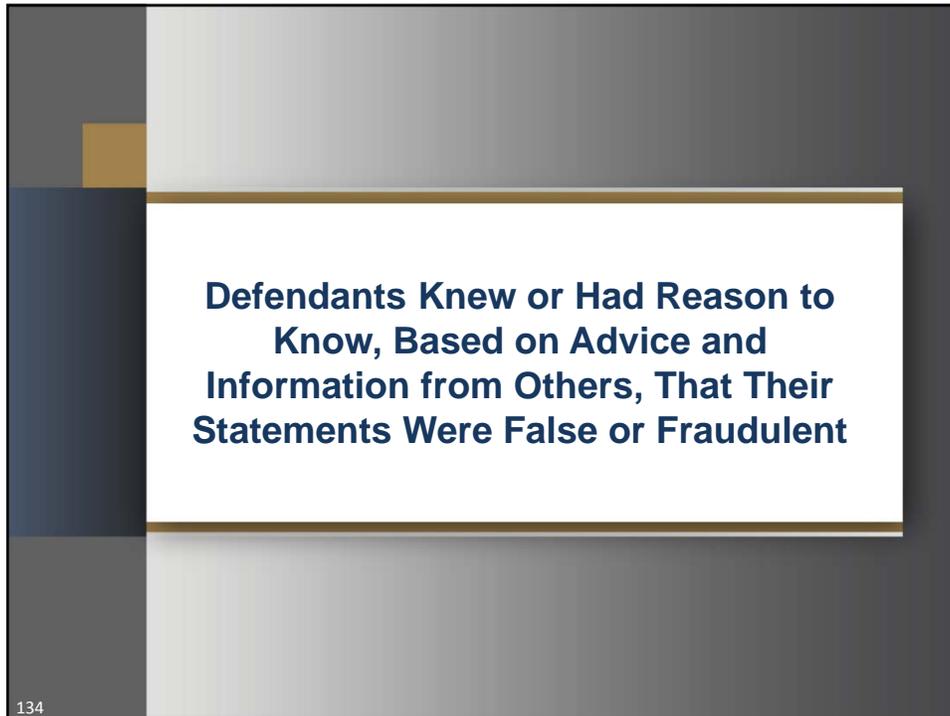
Shopping Cart 0 items(s) - \$0.00 Search

Welcome visitor you can [login](#) or [create an account](#)

Home | [Wish List \(0\)](#) | [My Account](#) | [Shopping Cart](#) | [Checkout](#)

Plaintiff Exhibit
 716

133



January 2011

630

4 Q. Did Mr. Johnson ever bring in anything that was
 5 convincing to you about material participation?

6 A. I believe the very next time that I saw
 7 Mr. Johnson after Todd and I had that conversation, it wa
 8 again the hypotheticals, and he was -- he was getting to
 9 be over the top in his demeanor and the way that he was
 10 treating me, and at that point I told him that he needed
 11 to find someone else to represent RaPower-3.

12 Q. When you say he was being over the top, what do
 13 you mean?

14 A. Being -- being aggressive, being loud, being in
 15 my space.

16 Q. And in the course of that conversation, did you
 17 fire RaPower-3 as a client?

18 A. I told him that I couldn't do what he wanted me
 19 to do and he needed to find someone else.

136

June 2012

IRS Criminal Investigation Division
 executes search warrant.

Williams Testimony

- Trial Tr. 1044:2-5

2 Q. While you were present at the site for the visit on
 3 2012, did you witness the IRS raid on the RaPower facilities
 4 that took place?

5 A. Yes, I did.

8 Q. Right. Did you go anywhere else in 2012?
 9 A. No. Yeah, I take that back. Yes, we went
 10 to Neldon's house.
 11 Q. Why did you go to Neldon's house?
 12 A. We just went by there. No particular
 13 reason that I know of. That's just where the whole
 14 group of us went.
 15 Q. Do you remember seeing government
 16 officials --
 17 A. Yes.
 18 Q. -- with large weapons --
 19 A. Yes.
 20 Q. -- on that 2012 visit?
 21 A. Yes.
 22 Q. Do you know what that was about?
 23 A. They were doing a raid.
 24 Q. On?
 25 A. RaPower, Neldon Johnson, confiscating

81: 1 computers and everything. Yes.
 2 Q. Did you ask anybody about that?
 3 A. We did. We talked about it some.
 4 Q. Who did you talk about it with?
 5 A. Greg, Neldon. They were -- we were at
 6 a -- we had stopped somewhere to -- they cooked
 7 hamburgers and stuff, and so --
 8 Q. What did Neldon Johnson say about the
 9 raid?
 10 A. I don't really recall all of that. We
 11 weren't given any specifics.
 12 Q. You mean specifics?
 13 A. I didn't look at any search warrants or
 14 anything like that, so I didn't have the specifics.
 15 Q. What did Greg Shepard say, if anything?
 16 A. That's been awhile back. I'm not sure of
 17 any exact things that they said.
 18 Q. Do you remember generally?
 19 A. Just said that the government raided
 20 Neldon's house and the manufacturing plant, because
 21 we had to go to the solar research and development
 22 first before we could come back to the manufacturing
 23 plant.

Plaintiff Exhibit
883

137

October 2012

KIRTON | M'CONKIE

MEMORANDUM

DATE: October 31, 2012
 TO: SOLCO, LLC
 Attn: Nathan Johnson
 FROM: Kenneth W. Biwell
 SUBJECT: Tax Issues Relating to Purchase of Solar Lenses

EXHIBIT 369
 WF: Biwell
 DATE: 2-14-17
 CIRCOUR, LLC

FACTUAL BACKGROUND

The Solar Lenses will be purchased by Buyers that are (i) corporations or limited liability companies organized in the United States, (ii) neither tax-exempt nor governmental entities and (iii) taxed as subchapter C corporations for federal income tax purposes. The Solar Lenses will be purchased pursuant to a Solar Lenses Purchase Agreement that is substantially similar to the agreement set forth in Exhibit A hereto (the "Purchase Agreement"). The Solar Lenses were manufactured by International Automated Systems or one of its affiliates and consist of thin-film solar lenses that focus the sun's energy, which energy is collected and transmitted to produce heated steam for power generation and other uses. The Treasury Department has made a grant under Section 1603 of the American Recovery & Reinvestment Act of 2009 with respect to the same model of solar lenses as the Solar Lenses and related equipment, which grant required a finding by the Treasury Department that such solar lenses and related equipment constituted property described in Code Section 48(a)(3)(A)(i) or (ii).

138

June 2013

- IRS began auditing customers and disallowing all promoted tax benefits.
 - PLEX 71
 - PLEX 73
 - PLEX 328
 - PLEX 602
 - PLEX 689, Gregg Dep., 141:20-142:7
 - PLEX 697: Zeleznik Dep., 165:13-166:10; 167:3-21
 - PLEX 683, Howell Dep., 216:16-217:15
- IRS has never allowed anything.
 - Jameson Testimony, Trial Tr. 1249:14-1250:1

139

Also in 2013...

- Oregon Department of Revenue began auditing customers and disallowing benefits.

From: Greg Shepard <greg@rapower3.com>
 Sent: Wednesday, July 31, 2013 7:45 PM
 To: pgregg@bfmail.com
 Subject: RE: Oregon Dept of Treasury

CALL ME AT 801-699-2284

Greg Shepard
 RaPower3
 4035 South 4000 West
 Draper, UT 84024
 www.rapower3.com

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----- Original Message -----
 From: Peter Gregg [mailto:pgregg@bfsmail.com]
 To: greg@rapower3.com
 Sent: Wed, 31 Jul 2013 12:41:13 -0700
 Subject: Oregon Dept of Treasury

Greg,
 I was asked to send in the IRS Adjustments and the Appeal that I replied with to the Oregon Dept Treasury. Genevieve Trumb has now called and asked me to discuss the items with her.

Peter Gregg
 BPS Clinician/Sales Rep
 www.biggerfastrstronger.com
 Edmund High School Coach
 503-679-4688



Gregg_P&R-001465

140

July 2013

Tate W. Bennett, Esq.
 Attorney at Law
 PO Box 278
 Fillmore, Utah 84631
 801-603-2796
 tatebennettlawfirm@gmail.com

Cease and Desist Letter

Neldon Johnson
 4035 W-4000 S
 Delta, Utah 84624

RAPOWER-3, LLC
 c/o Neldon P. Johnson - Registered Agent
 326 North Hwy. 6
 Salem, Utah 84653

Re: Unauthorized Use of Proprietary Information

Mr. Johnson

I have been retained by Todd Anderson and the Anderson Law Center to potentially initiate litigation regarding your unauthorized use of proprietary information in the form of an advisory letter.

My client, Todd Anderson, provided you with an advisory letter in order to further discussions and solicit information in his capacity as legal advisor. Todd Anderson's letter was not, and is not, a complete advisory letter and was only in the "rough draft" stage and was intended to solicit additional information from you during the regular course of representation. Further, Todd Anderson did not, and does not, give you permission to use his incomplete letter in any manner other than for its intended purpose - to solicit additional information to aid him in his legal analysis.

It has come to my attention that the letter has been and/or is currently being displayed by you and/or your company, RAPOWER-3 LLC, in a manner which was not authorized by Mr. Anderson, nor the Anderson Law Center.

Although the information which has been and/or is currently being displayed by you and/or your company RAPOWER-3 LLC, does not bear the letter-head of the Anderson Law



Anderson_Todd-00024

Center, nor does it contain Mr. Anderson's name or signature, it is identical or substantially similar to Mr. Anderson's advisory letter previously provide to you and/or your company.

Permission was neither asked nor granted to reproduce or alter Mr. Anderson's advisory letter, nor was permission granted to display the advisory letter to 3rd parties. As such, your displaying of Mr. Anderson's letter constitutes an infringement of his rights. We are therefore entitled by law to an injunction against your continued infringement, as well as damages from you for the loss we have suffered as a result of your infringing conduct.

We demand that you immediately:

- Remove all infringing content and notify us in writing that you have done so;
- Immediately cease the use and distribution of the advisory letter;
- Deliver-up for destruction all unused or undistributed copies of Mr. Anderson's letter;
- Pledge in writing to desist from using any of Mr. Anderson's advisory letter in the future.

We request that you respond to this demand on or before the close of business on July 10, 2013.

This cease and desist letter is written without prejudice to our rights, all of which we hereby expressly reserved.

Sincerely,

Tate Bennett, Esq.

Anderson_Todd-00026

141

6/22/2018

Defendants Continue to Use the November Draft from the Andersons to Sell Lenses

4/23/2018 RaPower3 FAQ

[Buy Lenses](#) [News](#) [Radio Shows](#) [Message Board](#) [Backoffice Login](#)

R a P o w e r 3 Technology Opportunity Events & Tours F.A.Q.

[General Q's](#) [Purchasing Q's](#) [Tax Q's](#) [Technology Q's](#) [Contract Q's](#) [Sponsoring Q's](#) [Rental Q's](#) [Press/News Q's](#)

FAQ [Tax Questions](#)

11. How do I find out how tax benefits may apply to my Solar Thermal Lens purchases?
 You can read the following Tax Attorney Letters:


 Tax Opinion (Anderson)


 Tax Opinion (Haws)


 Tax Letter (K&M)

Plaintiff Exhibit
 903

142

December 2013

From: Greg Shepard <greg@rapower3.com>
Sent: Wednesday, December 11, 2013 7:50 PM

Subject: Ra3 Audit-McConkie Letter
Attach: Tax Kirton Comments.doc

TO ALL:

First, we are really progressing down in Delta. Weather is cold but sunny. We do not slow down at all.

Second, the last time I wrote to you it was concerning the Kirton-McConkie Memorandum Letter. The concerns stemmed from an audit a RaPower3 Team Member went through with IRS officer, Mark Tenney. I went down to Kirton-McConkie and spoke with COO Ken Olson who then talked with Ken Birrell who wrote a Tax Attorney Opinion Letter for one of our big clients and who also wrote the Memorandum Letter to Solco1 and Neldon Johnson.

Mark Tenney vociferously stated the letter written by Birrell had been recinded and was adamant that RaPower3 members had no business using it. **Do not be misled by Tenney or allow him to intimidate you.**



Gregg_P&R-003220

143

6/22/2018

December 2013

From: Greg Shepard <greg@rapower3.com>
Sent: Wednesday, December 11, 2013 7:50 PM
Subject: Ra3 Audit-McConkie Letter
Attach: Tax Kirton Comments.doc

This morning I wrote Ken Birrell and Ken Olson a detailed letter about the situation and asked Mr. Birrell to write a letter of clarification.

While I'm waiting for his clarification, here are the facts as we see them:

1. Kirton-McConkie did write an opinion letter for a big client and Solco1, the entity we use for multi-million dollar deals.
2. Kirton-McConkie did write a Memorandum for Solco1 and Neldon Johnson. Memorandums are what Neldon uses to confirm wordings in contracts.
3. RaPower3 owns Solco1 (Tenney does not know this)
4. Neldon paid Kirton-McConkie for the Memorandum and thus Neldon Johnson owns that Memorandum. (Tenney does not know this)
5. Kirton-McConkie has a disclaimer at the end of the Memorandum basically saying you can't use their letter to avoid penalties and to also seek tax advice elsewhere.
6. So what did you do as a RaPower3 Team Member? Neldon owns the letter. Therefore, you can use his letter (which is the Memorandum) for your purposes.



BOTTOM LINE: The Memorandum cannot be rescinded. You can use it. Tenney's assertions are patently false.

ATTACHED IS A SYNOPSIS OF THE KIRTON-MCCKONKIE MEMORANDUM. I REDUCED IT DOWN TO TWO-PLUS PAGES FOR EASIER UNDERSTANDING. I TRIED TO CAPTURE THE ESSENCE OF THE CODES AND TAX COURT RULINGS FOR YOUR BENEFIT. HOPE IT HELPS.

Warmest Regards, Greg

Gregg_P&R-003221

144

January 2014

KIRTON | McCONKIE
 Kenneth W. Birrell
 Attorney at Law
 941 215 0100

January 10, 2014

Neldon Johnson
 4013 South 4900 West
 Deseret, UT 84624

Greg Shepard
 4013 South 4900 West
 Deseret, UT 84624

The Certified Mail

Re: **One of Kirton McConkie Memorandum Dated October 11, 2012**

Mr. Johnson and Mr. Shepard,

We are writing in response to Mr. Shepard's request for a letter of clarification concerning the Memorandum dated October 11, 2012, from our firm to SOLCO 1, LLC (the "Memorandum"), a copy of which is attached hereto for your reference.

First, as indicated by its name, the Memorandum is not an opinion letter. It is merely a memorandum. While under certain circumstances taxpayers can rely upon an opinion letter to avoid the imposition of certain federal tax penalties, the Memorandum was not intended to and does not provide any such protection as it is merely a memorandum rather than an opinion letter. To constitute an opinion letter for tax purposes, the document must address the specifics of an actual transaction, which the Memorandum does not do as it merely discusses the ability to qualify for an energy tax credit in general terms. Hence the statement on page 12 of the Memorandum, that "[t]he analysis set forth in this memorandum was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding United States federal tax penalties that may be imposed on the taxpayer."

Second, as stated on page 2 of the Memorandum, the analysis within the Memorandum only applies if, among other factors, the purchaser was "taxed as a subchapter C corporation for federal income tax purposes." The Memorandum's analysis of when energy tax credits may be available does not apply to any other type of taxpayer, including individuals, trusts, partnerships, limited liability companies taxed as partnerships or corporations taxed as subchapter S corporations. The requirements relating to application of certain issues addressed in the Memorandum are different for such non-C corporation types of taxpayers, and the ability of such non-C corporation taxpayers to qualify for an energy tax credit depends upon certain additional

EXHIBIT 231
 01/10/14
 DATE: 1-14-14
 CHERRY, LLC

issues that are not addressed at all in the Memorandum. Therefore, for various reasons, the conclusions of the Memorandum's analysis, while accurate as they relate to taxpayers who are taxed as C corporations, have little, if any, relevance to taxpayers who are not taxed as C corporations.

Third, the analysis within the Memorandum only applies if, among other factors, the solar leases are purchased on the terms and conditions set forth in the "Transaction Documents" referenced on page 3 of the Memorandum and attached as exhibits thereto. Any sale of solar leases upon terms and conditions that vary at all from those of the Transaction Documents could raise additional issues and/or alter the Memorandum's analysis, even as it relates to taxpayers taxed as C corporations. Therefore, the conclusions of the Memorandum's analysis may have little, if any, relevance to taxpayers who purchase solar leases on terms and conditions that are at all different from the terms and conditions of the Transaction Documents.

Based upon the foregoing, demand is made that XSun Energy LLC, SOLCO 1, LLC, RaPower 3, LLC, and any and all affiliates, agents and representatives of any of the foregoing companies immediately cease and desist from:

- (1) referring to the Memorandum as an opinion letter, whether orally, in writing, in electronic communications, upon websites or otherwise;
- (2) representing to any person, including but not limited to potential purchasers of solar leases, that they can rely upon the Memorandum as a defense against the imposition of any federal tax penalties;
- (3) representing to any person, including but not limited to potential purchasers of solar leases, that the analysis within the Memorandum applies to any person other than a taxpayer who is taxed as a C corporation for federal income tax purposes; and
- (4) representing to any person, including but not limited to potential purchasers of solar leases, that the analysis within the Memorandum applies to any person that purchases solar leases upon terms and conditions that vary at all from the terms and conditions set forth in the "Transaction Documents."

Please be advised that we are providing a copy of this letter to Special Agent Michael Lawson with the Internal Revenue Service's Criminal Investigation Division, and authorizing him to provide copies of this letter to anyone he deems appropriate, including any taxpayers who claim an ability to rely upon the Memorandum as if it were an opinion letter.

Very truly yours,

KIRTON | McCONKIE

Kenneth W. Birrell
Kenneth W. Birrell

cc: Michael Lawson

888-830-7581

KMC0275

145

Defendants Continue to Use the Kirton McConkie Memorandum to Sell Lenses

4/23/2018 RaPower3 FAQ


Buy Lenses News Radio Shows Message Board Backoffice Login

RaPower3
Technology
Opportunity
Events & Tours
F.A.Q.

General Q's
Purchasing Q's
Tax Q's
Technology Q's
Contract Q's
Sponsoring Q's
Rental Q's
Press/News Q's

FAQ [Tax Questions](#)

11. How do I find out how tax benefits may apply to my Solar Thermal Lens purchases?
You can read the following Tax Attorney Letters:



Tax Opinion (Anderson)



Tax Opinion (Haws)



Tax Letter (K&M)

Plaintiff Exhibit

903

146

October 2014

- Peter Gregg lost case against Oregon Department of Revenue

Gregg v. Department of Revenue, 2014 WL 5112762 (2014)

2014 WL 5112762 (Or.Tax Magistrate Div.)
Only the Westlaw citation is currently available.
Oregon Tax Court, Magistrate Division.

Peter C. GREGG and Renae J. Gregg, Plaintiffs,
v.
DEPARTMENT OF REVENUE,
State of Oregon, Defendant.

TC-MD 140043C
|
October 13, 2014

FINAL DECISION

III. CONCLUSION

After carefully considering the evidence, the court concludes that Plaintiffs have failed to establish their entitlement to the \$21,960 in depreciation they claimed on their 2010 federal Schedule C, which flowed over to their 2010 Oregon return. Accordingly, the court concludes that Defendant's adjustments to Plaintiffs' 2010 Schedule C were proper. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal is denied.

147

November 2014

From: Greg Shepard [mailto:greg@rapower3.com]
Sent: November 15, 2014 12:18 PM
To: John Howell
Cc: Rick Jameson; Ken Riter; Kenneth Alexander
Subject: IRS Tactics Against Tax Preparers

Hello All:

The IRS is harassing some of you tax preparers. This comes in the form of threats and then demands. The threat states RaPower3 is a Tax Avoidance Scheme and you may face criminal charges if you don't give them confidential information. They may want your entire client list and then highlight your RaPower3 clients. What an invasion. The IRS is running amok. Just politely e-mail them back and say "What is the purpose of this? It appears you are overreaching." They probably won't respond back. Just ignore them. There is no consequence for not complying with these illegal demands. This advice comes from our attorney Paul Jones.

I will continue to keep you informed. Hang in there and good luck.

Regards, Greg

Greg Shepard
 RaPower3
 Chief Director of Operations
 4035 South 4000 West
 Deseret, UT 84624
 801-699-2284
www.rapower3.com

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Riter_Kenneth-01066

November 2015

Case 2:15-cv-00828-DN Document 2 Filed 11/23/15 Page 1 of 47

IN THE UNITED STATES DISTRICT COURT FOR THE
 DISTRICT OF UTAH

UNITED STATES OF AMERICA,
 Plaintiff,

vs.

RAPOWER-3, LLC, INTERNATIONAL
 AUTOMATED SYSTEMS, INC., LTB1,
 LLC, R. GREGORY SHEPARD,
 NELDON JOHNSON, and ROGER
 FREEBORN,

Defendants.

Civil No. 2:15-cv-00828 DN

**COMPLAINT FOR PERMANENT
 INJUNCTION AND OTHER
 EQUITABLE RELIEF**

Judge David Nuffer

Plaintiff, the United States of America, for its complaint against Defendants RaPower-3, LLC, International Automated Systems, Inc., LTB1, LLC, R. Gregory Shepard, Neldon Johnson, and Roger Freeborn (collectively, "Defendants"), states as follows:

November 2017

Gregg v. Department of Revenue, 2017 WL 5900999 (2017)

III. CONCLUSION

2017 WL 5900999 (Or.Tax Magistrate Div.)
Only the Westlaw citation is currently available.
Oregon Tax Court,
Magistrate Division,
Income Tax.

Kevin M. GREGG and Michaele D. Gregg, Plaintiffs,
v.

DEPARTMENT OF REVENUE,
State of Oregon, Defendant.

TC-MD 160068R

|
November 30, 2017

FINAL DECISION¹

After careful consideration, the court concludes Plaintiffs were not eligible to deduct depreciation and solar energy credits from their income for the 2011 tax year pursuant to ORS sections 162 and 183. The court also concludes that Plaintiffs are not eligible for the deductions because they did not meet their burden of proof that the solar lenses were placed into service during the 2011 tax year, because the venture lacked true economic substance, and that any deductions are eliminated by the passive activity loss and at risk limitation rules. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal is denied.

IT IS FURTHER DECIDED that Defendant's request that the court disallow Plaintiffs' depreciation deductions related to Michaele Gregg's investment in the venture is granted.

150

November 2017

Orth v. Department of Revenue, 2017 WL 5904611 (2017)

III. CONCLUSION

2017 WL 5904611 (Or.Tax Magistrate Div.)
Only the Westlaw citation is currently available.
Oregon Tax Court,
Magistrate Division,
Income Tax.

Matthew D. ORTH and Elizabeth D. Orth, Plaintiffs,
v.

DEPARTMENT OF REVENUE,
State of Oregon, Defendant.

TC-MD 160075R

|
November 30, 2017

Opinion

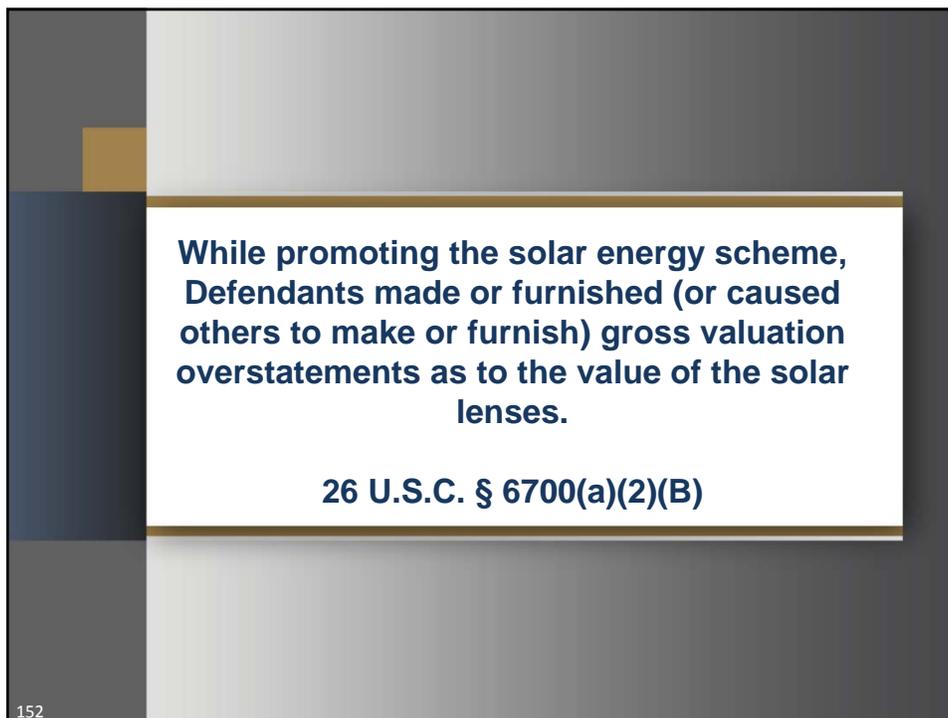
FINAL DECISION¹

After careful consideration, the court concludes Plaintiffs were not eligible to deduct depreciation and solar energy

credits from their income for the 2011 tax year pursuant to ORS sections 162 and 183. The court also concludes that Plaintiffs are not eligible for the deductions because they did not meet their burden of proof that the solar lenses were placed into service during the 2011 tax year, because the venture lacked true economic substance, and that any deductions are eliminated by the passive activity loss and at risk limitation rules. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal is denied.

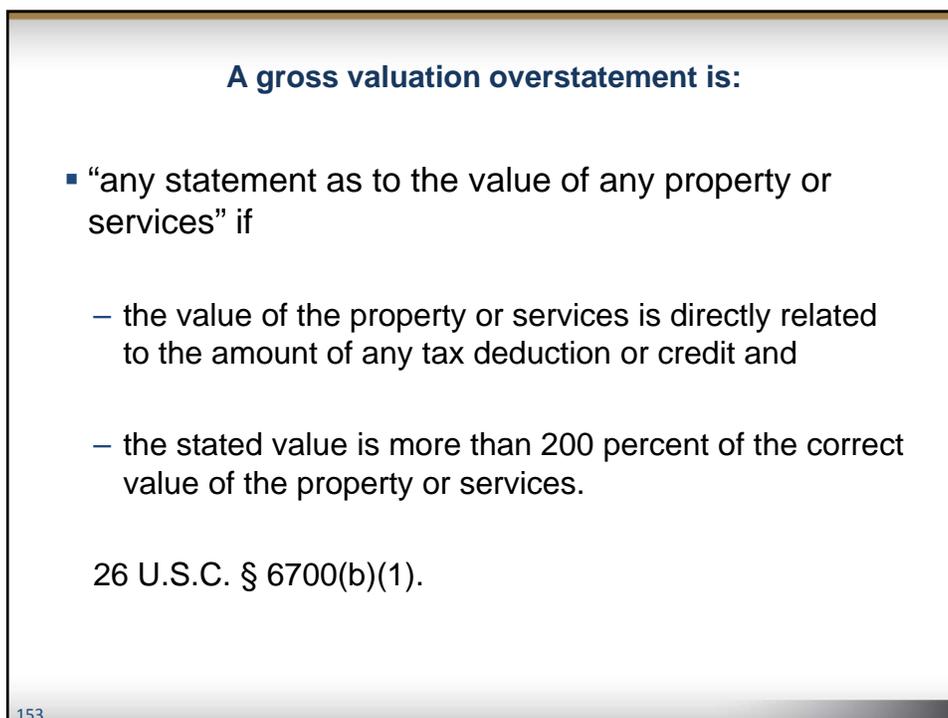
151



While promoting the solar energy scheme, Defendants made or furnished (or caused others to make or furnish) gross valuation overstatements as to the value of the solar lenses.

26 U.S.C. § 6700(a)(2)(B)

152



A gross valuation overstatement is:

- “any statement as to the value of any property or services” if
 - the value of the property or services is directly related to the amount of any tax deduction or credit and
 - the stated value is more than 200 percent of the correct value of the property or services.

26 U.S.C. § 6700(b)(1).

153

Merely stating a price is “furnishing” a statement of value

A defendant “who stated [a] price to any person as part of an effort to induce them to invest . . . [has] furnished a ‘gross valuation overstatement’ within the meaning of § 6700(a)(2)(B).”

- *United States v. Turner*, 601 F. Supp. 757,767 (E.D. Wis. 1985)
- *Gates v. United States*, 874 F.2d 584, 586 (8th Cir. 1989)
- *Reno v. United States*, 717 F. Supp. 1198, 1202 (S.D. Miss. 1989)
- *Mattingly v. United States*, 722 F. Supp. 586, 572 (E.D. Mo. 1989)
- *United States v. Campbell*, 704 F. Supp. 715, 726 (N.D. Tex. 1988); *United States v. Campbell*, 897 F.2d 1317, 1322-23 (5th Cir. 1990)

154

No scienter required

There is no scienter element in proving penalty conduct under § 6700(a)(2)(B); it is a strict liability standard.

- *Autrey v. United States*, 889 F.2d 973, 981 (11th Cir. 1989)
- *United States v. Hand-Bostick*, 816 F. Supp. 2d 343, 352 (N.D. Tex. 2011)
- *Campbell*, 704 F. Supp. at 726
- *Turner*, 601 F. Supp. at 767
- *Gates*, 874 F.2d at 586

155

Defendants made a gross valuation overstatement each time they stated the price of a lens.

\$3,500 per lens

- PLEX 579, Neldon Johnson Dep., vol. 1, 206:15-23
- PLEX 687, Robert Aulds Dep., 140:5-141:13; 146:17-147:5
- PLEX 511

Each solar lens costs \$3,500 and thus a \$1,050 tax credit may be available (Use IRS tax forms 3468 and 3800). If so, the entire down payment could be paid back in less than a year.

A depreciation of \$2,975 per solar lens may also be available (Use IRS tax forms 4562 and Schedule C). If so, an in-pocket profit of another 50-65% could be realized on top of the tax credit. Typically, taxpayers may go back one year on the tax credit and forward twenty years on the tax credit. The depreciation and NOL (Net Operating Loss) is the same as any other business as far as going back and going forward. The generous tax benefits are part of the ARRA-American Recovery and Reinvestment Act meant to stimulate the solar energy industry along with much needed innovation.



3. sponsoring and

13

US-001793
US001793

156

The correct valuation of a lens is \$26-35

- Correct valuation is necessarily an approximation, and can be within a range. *United States v. Music Masters, Ltd.*, 621 F. Supp. 1046, 1054 (W.D.N.C. 1985).
- Generally, correct valuation is price agreed to by willing buyer and willing seller. BUT NOT in “a transaction in which the parties have incentives to agree to an inflated price, to increase the tax benefits to the purchaser.” *In re MDL-731--Tax Refund Litig. of Organizers & Promoters of Inv. Plans Involving Book Properties Leasing*, 989 F.2d 1290, 1298-99 (2d Cir. 1993); *Music Masters*, 621 F. Supp. at 1054.

157

The correct valuation of a lens is \$26-35

- Because the lenses are component parts of a purported system that does not work to generate income, the best evidence of the correct valuation of the lenses is their raw material cost.
- “UEC's modules were and are simply not functional. Although the solar industry is still in a developing stage, UEC's modules fall drastically short of the quality of products made by other manufacturers. Thus, the best evidence of the modules' value is the Trustee's sale of them for scrap, which will bring at most several hundred dollars each.” *United States v. United Energy Corp.*, No. C-85-3655 RFP (CW), 1987 WL 4787, at *7 (N.D. Cal. Feb. 25, 1987)

158

The correct valuation of a lens is \$26-35

Purchase Order from International Automated Systems, Inc.

AP

<p>Fax To: Plaskolite Greg Lemay (662) 893 5352</p> <p>Fax From: International Automated Systems, Inc. 138 Phillips (801) 423-1433</p> <p>Ship to: International Automated Systems, Inc. 279 East Main Street Delta, Utah 84024</p> <p>Bill to: International Automated Systems, Inc. 326 North Highway 6 Salem, Utah 84804</p>	<p>Product Description: Solar Lens Number of Pieces: 2,100 Dimensions: 60.0" x 49.12" Thickness: 0.085" Unit Price: \$52.18 Total Price Pre-Terms: \$109,578 Credit Terms: 2% Cash up front discount Total Price Post Terms: \$107,386.44</p> <p>Freight Terms: Freight Pre-paid Need by Date: February 2, 2009</p> <p>Contact Information: Randy Johnson (801) 592-8148</p> <p>International Automated Systems, Inc. <i>[Signature]</i> Neldon Johnson President, CEO</p>	<p>PLASKOLITE INC P.O. BOX 636087 CINCINNATI, OH 45263-6087</p> <p>1-9-2009 Date</p> <p>EXHIBIT 518</p>
---	--	---

See also, PLEX 520: Plaskolite Invoices

Unit Price Between \$ 52.18 and \$69.30

EXHIBIT 520

159

Defendants Incurred No Other Expenses to Produce Each Lens

- All Defendants responded, under penalty of perjury, that they had not incurred any such costs.

- PLEX 449, at 2, Response to Interrogatory No. 12
- PLEX 450, at 5, Response to Interrogatory No. 16
- PLEX 451, at 3, Response to Interrogatory No. 12
- PLEX 452, at 2, Response to Interrogatory No. 12

INTERNATIONAL AUTOMATED SYSTEMS, INC.'S SUPPLEMENTAL RESPONSES TO UNITED STATES' FIRST INTERROGATORIES

Civil No. 2:15-cv-00828-DN-BCW
 Judge David Nuffer
 Magistrate Judge Evelyn Furse

Plaintiff Exhibit
449

INTERROGATORY NO. 12: Identify the costs you incurred to produce each lens, including the cost of procuring materials and manufacturing the final product that you sold to customers.

RESPONSE NO. 12: IAUS does not incur any of the described costs as it does not produce the lenses or materials related thereto. As such, IAUS is unable to provide further information on this interrogatory. Verification associated with this response can be found in the public filings associated with IAUS. Specifically, the 10K and 10Q filings.

Defendants recently valued each lens at merely \$750

SPECIAL MEMO 3-27-18

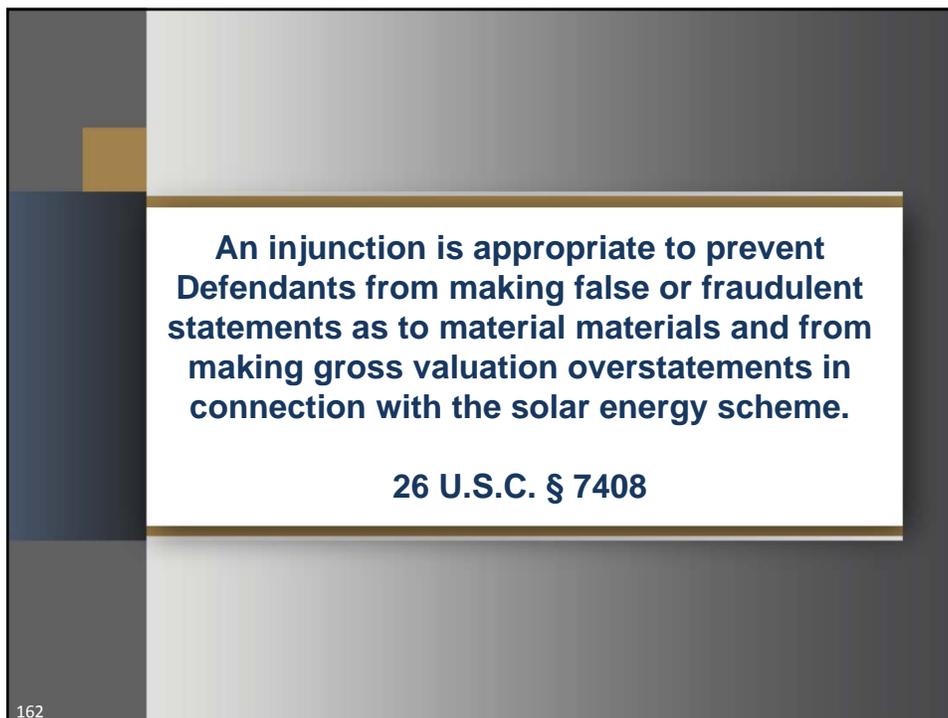
RePower3



Rental Fee Payoff

The Operations and Maintenance Agreement specifies that you will be paid \$150 per lens for the first five years or \$750 per lens for the full five years. You will be paid this amount in the form of solar lenses and that will give you \$1,050 in tax credits per lens.

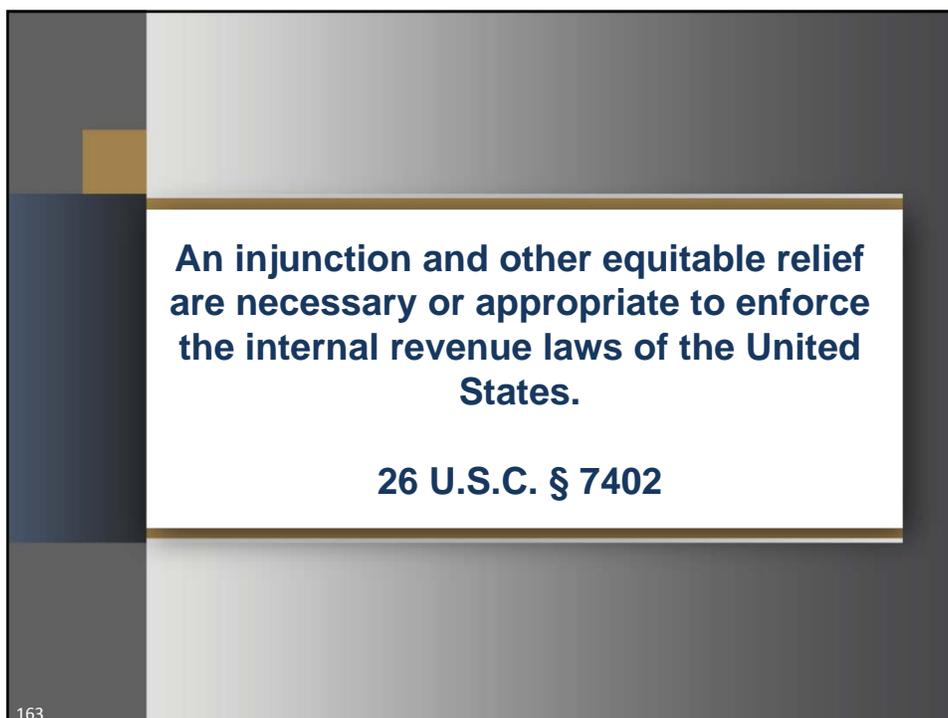
Plaintiff Exhibit
796



An injunction is appropriate to prevent Defendants from making false or fraudulent statements as to material materials and from making gross valuation overstatements in connection with the solar energy scheme.

26 U.S.C. § 7408

162



An injunction and other equitable relief are necessary or appropriate to enforce the internal revenue laws of the United States.

26 U.S.C. § 7402

163

An Injunction is Necessary or Appropriate

- Each Defendant was a critical player in the solar energy scheme.
- Each Defendant continually and repeatedly engaged and engages in conduct that must be enjoined.
- Each Defendant knew or had reason to know that he was making statements about tax benefits that were false or fraudulent.
- Defendants are unapologetic.
- Defendants' ongoing occupations and activity put them in a position to continue the solar energy scheme.
- Defendants have caused serious harm to the U.S. Treasury.

164

**Defendants Have Caused Serious Harm
to the U.S. Treasury.**

165

Tax Benefits Claimed: Tax Credits

Solar Tax Credit

- Property placed into service in current year – on Form 3468
- Form 3468, line 14 – carries over to Form 3800
- Computation of current year credit allowed on Form 3800
- Carried over from line 38 on Form 3800 to line 53 on the second page of 1040

Deposition Testimony

- PLEX 683, John Howell Dep., 186:3-190:23; 193:22-194:10; 194:19-200:20
- PLEX 697, Brian Zeleznik Dep., 152:10-15, 152:22-159:5
- PLEX 689, Peter Gregg Dep., 102:7-103:25; 104:24-105:4; 105:15-106:2; 112:7-124:9

Trial Testimony

- Perez, Trial Tr. 828:5-829:7; 834:11-836:14.
- Olsen, Trial Tr. 1136:14-1137:18; 1139:8-1145:12.
- Williams, Trial Tr. 1022:18-1028:14.
- Jameson, Trial Tr. 1282:21-1289:11; 1289:15-1293:18; 1304:4-1306:8; 1307:2-1308:17.

168

Tax Benefits Claimed: Tax Credits

Form **3468** Investment Credit
 Department of the Treasury Internal Revenue Service
 Attach to year tax return.
 Information about Form 3468 and its separate instructions is at www.irs.gov/form3468.
 OMB No. 1545-0055
2012
 attached to Form 1040
 Name(s) shown on return: **ROBERT K AUJDS & MERJA E GILLESPIE-AUJDS** Identifying number: **9933**

Part II Information Regarding the Election To Treat the Lessee as the Purchaser of Investment Credit Property
 If you are claiming the investment credit as a lessee based on a section 48(g) (as in effect on November 4, 1990) election, provide the following information. If you acquired more than one property as a lessee, attach a statement showing the information below.

1 Name of lessee
 2 Address of lessee
 3 Description of property
 4 Amount for which you were treated as having acquired the property

Part III Qualifying Advanced Coal Project Credit, Qualifying Gasification Project Credit, and Qualifying Advanced Energy Project Credit
 5 Qualifying advanced coal project credit (see instructions):

12 Energy credit:
 a Basis of property using geothermal energy or solar energy (acquired before January 1, 2005, and the basis attributable to construction, reconstruction, or erection by the taxpayer before January 1, 2005) placed in service during the tax year (see instructions) 12a 0
 b Basis of property using solar illumination or solar energy placed in service during the tax year that was acquired after December 31, 2005, and the basis attributable to construction, reconstruction, or erection by the taxpayer after December 31, 2005 (see instructions) 12b 356,400
 12c 1,188,600 x 30% (30%)

13 Enter the applicable unused investment credit from cooperative (see instructions) 13
 14 Add lines 11e through 11i, 11m, 12a, 12b, 12c, 12d, 12e, 12f, 12g, 12h, 12i, 12j, 12k, 12l, 12m, 12n, 12o, 12p, 12q, 12r, 12s, and 13. Report this amount on Form 3800, line 4a 14 356,400

Form 3468 (2012)



169

Tax Benefits Claimed: Tax Credits

Form 3800
Department of the Treasury
Internal Revenue Service (99)

General Business Credit
Information about Form 3800 and its separate instructions is at www.irs.gov/form3800.
Attach to your tax return.

OMB No. 1545-0045
2012
Attachment
Sequence No. 22

ROBERT K AULDS & MERITA E GILLESPIE-AULDS Identifying number: -3933

Part III Current Year Credit for Credits Not Allowed Against Tentative Minimum Tax (TMT)
(See instructions and complete Part(s) III before Parts I and II)

1	General business credit from line 2 of all Parts III with box A checked	1	3,064
2	Passive activity credits from line 2 of all Parts III with box B checked	2	3
3	Enter the applicable passive activity credits allowed for 2012 (see instructions)	3	
4	Carryforward of general business credit to 2012. Enter the amount from line 2 of Part III with box C checked. See instructions for statement to attach	4	
5	Carryback of general business credit from 2013. Enter the amount from line 2 of Part III with box D checked (see instructions)	5	1,584
6	Add lines 1, 3, 4 and 5	6	4,647
30	Enter the general business credit from line 5 of all Parts III with box A checked	30	356,400.
31	Enter the total eligible small business credit from line 6 of all Parts III with box E checked	31	
32	Passive activity credits from line 5 of all Parts III with box B checked and line 6 of all Parts III with box F checked	32	
33	Enter the applicable passive activity credits allowed for 2012 (see instructions)	33	
34	Carryforward of business credit to 2012. Enter the amount from line 5 of Part III with box C checked and line 5 of all Parts III with box G checked. See instructions for statement to attach	34	137,159.
35	Carryback of business credit from 2013. Enter the amount from line 5 of Part III with box D checked and line 5 of all Parts III with box H checked (see instructions)	35	
36	Add lines 30, 31, 33, 34, and 35	36	493,559.
37	Enter the smaller of line 29 or line 36	37	6,753.
38	Credit allowed for the current year. Add lines 34 and 37. Report the amount from line 38 (if smaller than the sum of Part I, line 6 and Part II, lines 25 and 36, see instructions) as indicated below on the applicable line of your return: • Individuals, Form 1041, line 53, or Form 1041EZ, line 50 • Corporations, Form 1120, Schedule J, Part I, line 5c • Estates and trusts, Form 1041, Schedule G, line 2b	38	6,753.

Form 3800 (2012)

EXHIBIT
401
AULDS 3/14/17

170

Tax Benefits Claimed

TY 2013-2016

Tax Preparer	Depreciation Expense	Solar Energy Credit
John Howell (Texas)	\$14,829,035	\$5,912,267
Kenneth Alexander (Florida)	\$9,643,475	\$1,154,650
Richard Jameson (Utah)	\$3,452,658	\$921,900
Other Preparers	\$2,959,334	\$1,856,930
Grand Total	\$30,884,502	\$9,845,747

Plaintiff Exhibit
752

171

Tax Benefits Claimed

TY 2013-2016

Tax Year	Depreciation Expense	Depreciation at Average Tax Rate*	Solar Energy Credit
2013	\$6,779,926	\$924,782	\$2,926,905
2014	\$10,893,841	\$1,542,568	\$4,053,787
2015	\$9,087,035	\$1,303,081	\$1,903,915
2016	\$4,123,700	\$591,339	\$961,140
Grand Total	\$30,884,502	\$4,361,770	\$9,845,747

Plaintiff Exhibit
752

* The average tax rate for TY2013 is 13.64%, TY2014 is 14.16%, and TY2015 is 14.34%. IRS SOI (Statistics of Income) Tax Stats website: <https://www.irs.gov/statistics/soi-tax-stats-individual-statistical-tables-by-tax-rate-and-income-percentile>. The average tax rate for TY2016 is not yet available, so the average tax rate from TY2015 is applied.

172

Tax Benefits Claimed

TY 2013-2016

Tax Year	Depreciation at Average Tax Rate*	Solar Energy Credit	Harm to Treasury
2013	\$924,782	\$2,926,905	\$3,851,687
2014	\$1,542,568	\$4,053,787	\$5,596,355
2015	\$1,303,081	\$1,903,915	\$3,206,996
2016	\$591,339	\$961,140	\$1,552,479
Grand Total	\$4,361,770	\$9,845,747	\$14,207,517

Plaintiff Exhibit
752

* The average tax rate for TY2013 is 13.64%, TY2014 is 14.16%, and TY2015 is 14.34%. IRS SOI (Statistics of Income) Tax Stats website: <https://www.irs.gov/statistics/soi-tax-stats-individual-statistical-tables-by-tax-rate-and-income-percentile>. The average tax rate for TY2016 is not yet available, so the average tax rate from TY2015 is applied.

173

Tax Returns in Evidence Claiming Tax Benefits Relating to the Solar Lenses

- PLEX 63: Form 1040 for Brian and Amy Zelenik for TY2010 prepared by Bryan Bolander
- PLEX 64: Form 1040 for Brian and Amy Zelenik for TY2011 prepared by Bryan Bolander
- PLEX 65: Form 1040 for Brian and Amy Zelenik for TY2012 prepared by Kenneth Riter
- PLEX 66: Form 1040 for Brian and Amy Zelenik for TY2013 prepared by Woodward & Associates
- PLEX 67: Form 1040 for Brian and Amy Zelenik for TY2014 prepared by Woodward & Associates
- PLEX 68: Form 1040 for Brian and Amy Zelenik for TY2015 prepared by Woodward & Associates
- PLEX 127: Form 1040X for Preston and Elizabeth Olsen for TY2008 prepared by Bryan Bolander
- PLEX 128: Form 1040 for Preston and Elizabeth Olsen for TY2009 prepared by Bryan Bolander
- PLEX 129: Form 1040 for Preston and Elizabeth Olsen for TY2010 prepared by Bryan Bolander
- PLEX 130: Form 1040 for Preston and Elizabeth Olsen for TY2011 prepared by Bryan Bolander
- PLEX 131: Form 1040 for Preston and Elizabeth Olsen for TY2013 prepared by Richard Jameson
- PLEX 132: Form 1040 for Preston and Elizabeth Olsen for TY2014 prepared by Richard Jameson
- PLEX 158: Form 1040 for "Andrea"
- PLEX 168: Form 1040 for Samuel and Gloria Otto for TY2010 prepared by Steven Carter
- PLEX 169: Form 1040 for Samuel and Gloria Otto for TY2011 prepared by Steven Carter
- PLEX 170: Form 1040 for Samuel and Gloria Otto for TY2012 prepared by Steven Carter
- PLEX 171: Form 1040 for Samuel and Gloria Otto for TY2013 prepared by Steven Carter
- PLEX 172: Form 1040 for Samuel and Gloria Otto for TY2014 prepared by Steven Carter
- PLEX 173: Form 1040 for Samuel and Gloria Otto for TY2015 prepared by Steven Carter
- PLEX 191: Portions of Patricia Lambrecht's tax return for TY2009 prepared by Roger Halverson, specifically Form 3800 and Schedule C

174

Tax Returns in Evidence Claiming Tax Benefits Relating to the Solar Lenses

- PLEX 308: Form 1040 for Peter and Ranae Gregg for TY2010, self-prepared
- PLEX 314: Form 1040 for Peter and Ranae Gregg for TY2011, self-prepared
- PLEX 315: Form 1040 for Peter and Ranae Gregg for TY2012, self-prepared
- PLEX 316: Form 1040 for Peter and Ranae Gregg for TY2013 prepared by Richard Jameson
- PLEX 317: Form 1040 for Peter and Ranae Gregg for TY2014 prepared by Richard Jameson
- PLEX 389: Form 1040 for Mike and Jann Penn for TY2011 prepared by John Howell
- PLEX 390: Form 1040X for Mike and Jann Penn for TY2011 prepared by John Howell
- PLEX 391: Form 1040 for Mike and Jann Penn for TY2012 prepared by John Howell
- PLEX 392: Form 1040 for Mike and Jann Penn for TY2013 prepared by John Howell
- PLEX 397: Form 1040 for Robert and M. Gillespie-Aulds for TY2011 prepared by John Howell
- PLEX 400: Form 1040X for Robert and M. Gillespie-Aulds for TY2010 prepared by John Howell
- PLEX 401: Form 1040 for Robert and M. Gillespie-Aulds for TY2012 prepared by John Howell
- PLEX 402: Form 1040 for Robert and M. Gillespie-Aulds for TY2013 prepared by John Howell
- PLEX 403: Form 1040 for Robert and M. Gillespie-Aulds for TY2014 prepared by John Howell
- PLEX 404: Form 1040 for Robert and M. Gillespie-Aulds for TY2015 prepared by John Howell
- PLEX 446: Form 1120S for Shepard Global, Inc. for TY2014 prepared by Richard Jameson
- PLEX 598: Form 1040 for Charles and Tammy Kowing for TY2014 prepared by John Howell
- PLEX 599: Form 1040 for James and JoAnn Woodson for TY2013 prepared by John Howell
- PLEX 634: Form 1040 for R. Gregory and Diana Shepard for TY2013 prepared by Richard Jameson
- PLEX 635: Form 1120 for Shepard Global, Inc. for TY2013 prepared by Richard Jameson
- PLEX 636: Form 1040 for R. Gregory and Diana Shepard for TY2014 prepared by Richard Jameson
- PLEX 761: Form 1040 for Lynette Williams for TY2010 prepared by Bryan Bolander
- PLEX 763: Form 1040 for Lynette Williams for TY2011 prepared by Bryan Bolander

175

Tax Returns in Evidence Claiming Tax Benefits Relating to the Solar Lenses

- PLEX 766: Form 1040 for Frank and Lisa Lunn for TY2009 prepared by Woodward & Associates
- PLEX 767: Form 1065 for Kahuna Builders, LLC (Frank Lunn) for TY2010 prepared by Woodward & Associates
- PLEX 768: Form 1040 for Frank and Lisa Lunn for TY2010 prepared by Woodward & Associates
- PLEX 769: Form 1065 for Kahuna Builders, LLC (Frank Lunn) for TY2011 prepared by Woodward & Associates
- PLEX 770: Form 1040 for Frank and Lisa Lunn for TY2011 prepared by Woodward & Associates
- PLEX 771: Form 1040 for Frank and Lisa Lunn for TY2012 prepared by Woodward & Associates
- PLEX 772: Form 1065 for Kahuna Builders, LLC (Frank Lunn) for TY2013 prepared by Woodward & Associates
- PLEX 773: Form 1040 for Frank and Lisa Lunn for TY2013 prepared by Woodward & Associates
- PLEX 774: Form 1065 for Kahuna Builders, LLC (Frank Lunn) for TY2014 prepared by Woodward & Associates
- PLEX 775: Form 1040 for Frank and Lisa Lunn for TY2014 prepared by Woodward & Associates
- PLEX 779: Form 1120S for Shepard Global, Inc. for TY2015 prepared by Richard Jameson

176

Defendants' Organized Response to IRS

- | | | | |
|------------|------------|------------|------------|
| ▪ PLEX 9 | ▪ PLEX 145 | ▪ PLEX 278 | ▪ PLEX 335 |
| ▪ PLEX 10 | ▪ PLEX 147 | ▪ PLEX 279 | ▪ PLEX 336 |
| ▪ PLEX 51 | ▪ PLEX 155 | ▪ PLEX 282 | ▪ PLEX 338 |
| ▪ PLEX 52 | ▪ PLEX 156 | ▪ PLEX 283 | ▪ PLEX 340 |
| ▪ PLEX 69 | ▪ PLEX 157 | ▪ PLEX 284 | ▪ PLEX 341 |
| ▪ PLEX 70 | ▪ PLEX 225 | ▪ PLEX 285 | ▪ PLEX 440 |
| ▪ PLEX 71 | ▪ PLEX 226 | ▪ PLEX 286 | ▪ PLEX 481 |
| ▪ PLEX 72 | ▪ PLEX 227 | ▪ PLEX 287 | ▪ PLEX 553 |
| ▪ PLEX 73 | ▪ PLEX 228 | ▪ PLEX 290 | ▪ PLEX 556 |
| ▪ PLEX 75 | ▪ PLEX 229 | ▪ PLEX 293 | ▪ PLEX 557 |
| ▪ PLEX 76 | ▪ PLEX 230 | ▪ PLEX 298 | ▪ PLEX 601 |
| ▪ PLEX 78 | ▪ PLEX 231 | ▪ PLEX 299 | ▪ PLEX 602 |
| ▪ PLEX 89 | ▪ PLEX 255 | ▪ PLEX 305 | ▪ PLEX 606 |
| ▪ PLEX 116 | ▪ PLEX 267 | ▪ PLEX 325 | ▪ PLEX 625 |
| ▪ PLEX 117 | ▪ PLEX 269 | ▪ PLEX 328 | ▪ PLEX 626 |
| ▪ PLEX 143 | ▪ PLEX 271 | ▪ PLEX 329 | |

177

Disgorgement is necessary or appropriate to enforce the Internal Revenue Laws.

26 U.S.C. § 7402(a)

178

RaPower3: 10 LENS PURCHASE
Purchases can be from One to a Thousand Lenses

BUYER

1.4 X MONEY BACK NET ZERO EXPENSE

70% Financing (\$24,500)

30% Down Payment (\$10,500)
1. Up-Front Payment: \$1,050
2. After-Refund Payment: \$9,450

Operation & Maintenance Agreement \$27,900 over 35 Years
1. \$1,500 per yr first five yrs
2. \$680 per yr next 30 yrs

For your up-front payment...

YOU GET:

- \$10,500 in Tax Credit
- \$29,750 in Depreciation
- \$20,000 in Bonuses
- \$27,900 in Lease Payments

PLUS

- Performance Guarantee
- Free Maintenance
- No-cost 3rd-Party Operation
- Liability Insurance Included
- Lifetime Warranty

ENVIRONMENTALLY FRIENDLY

- No special land preparation
- Very little water used

Power Purchase Agreement

Year	Depreciation Tax Bracket	In-Pocket Benefit
2012	20%	\$3,570
2012	25%	\$4,462
2012	30%	\$5,355

2012 Tax Credit \$10,500

2013-2017 Depreciation \$17,850*

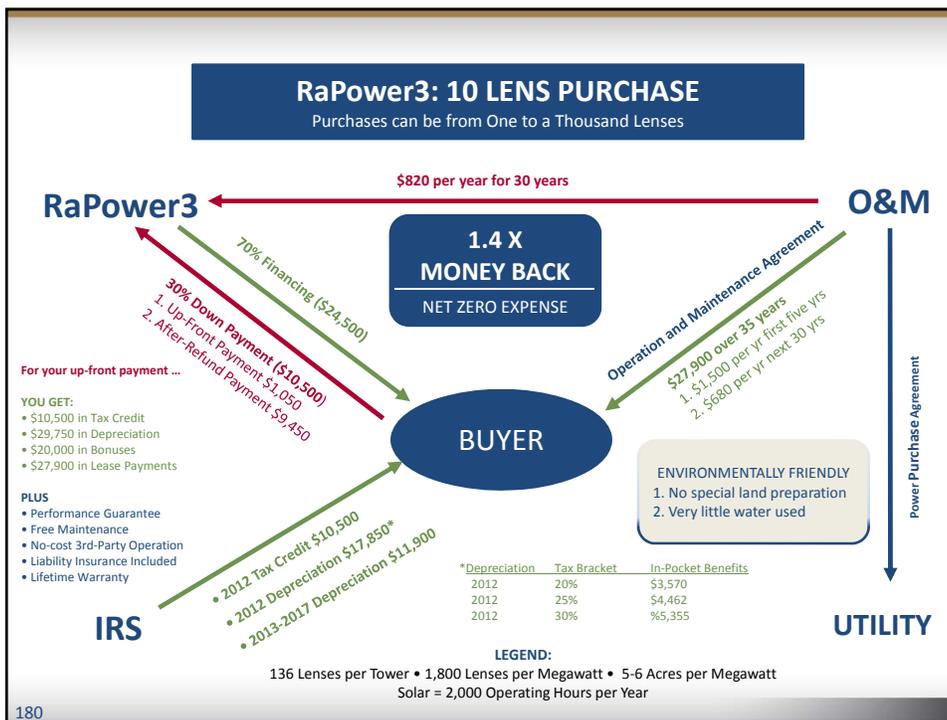
2013-2017 Depreciation \$11,900

LEGEND:
136 Lenses per Tower • 1,800 Lenses per Megawatt • 5-6 Acres per Megawatt
Solar = 2,000 Operating Hours per Year

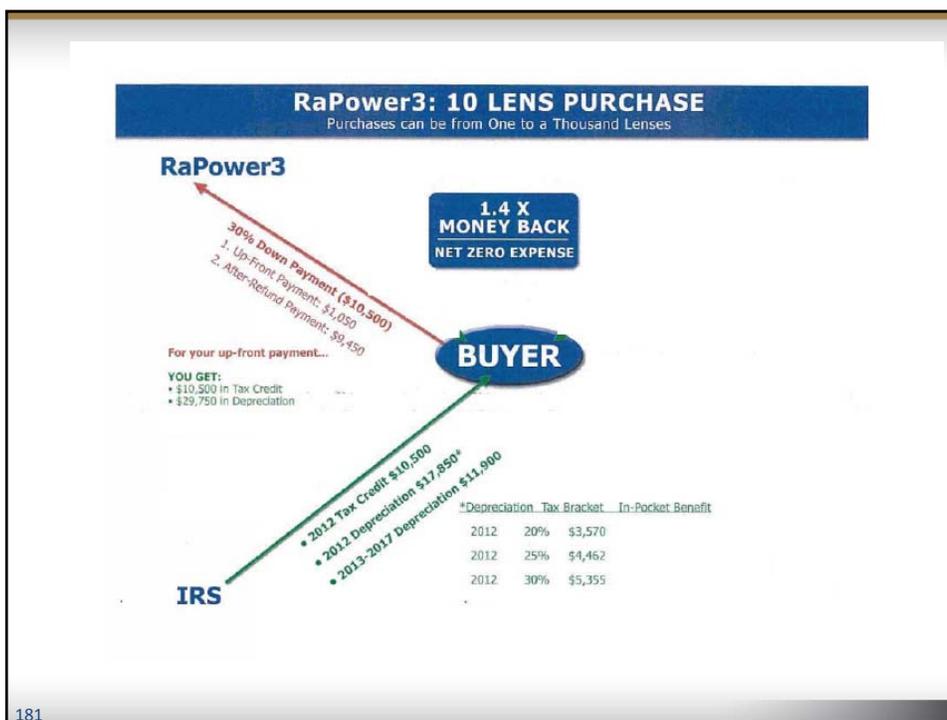
Freeborn_Roger-00066

179

See also PLEX 777



180



181

Defendants instructed customers to pay RaPower-3 with the money they saved on their taxes.

12/8/2017

RaPower3 | Home System



What Do I Do? Just purchase 36 of our commercial Solar Lenses and click the home unit option.

What's the Cost? Your deposit on these 36 Solar Thermal Lenses is \$3,600 (\$100 per solar lens). Then when you get your refund of \$37,800 you pay us \$19,800 (\$550 per lens). Your cost basis is \$126,00 (35 X \$3,500)

What Are the Tax Credits on 36 Solar Lenses? \$1,050 for each lens: 36 X \$1,050 = \$37,800

When Do I Get this Money? When you file your 2017 federal taxes, your realized tax savings are immediate or if you get a refund, it will typically come in 3-5 weeks after you file. Then, you and your tax preparer might want or need to amend your 2016 federal taxes in order to get the full \$37,800 for your home system. This means you are going to get back your original \$23,400 plus the balance of \$14,400 to pay off your home energy system in full. Refunds from amended returns can take 6-8 weeks.

When Do I Need to Pay RaPower3? You need to pay RaPower3 the full deposit by check within 15-30 days after you place your order and then the balance in April-May of next year when you get your refund.

Plaintiff Exhibit
714

182

Defendants knew customers "have been getting significant tax benefits since 2006"

From: greg@rapower3.com
Subject: Shepard's 2nd Draft
Date: October 3, 2016 at 6:28 PM
To: Don Gillette donsthe1@gmail.com, Matt Shepard matt@rapower3.com



Don and Matt, Here is the 2nd draft of our ad. Thanks, Greg

Initial Message/Keyword Response Set #1
Initial Broadcast Message

first_name imagine receiving guaranteed money from the federal government on a program signed by President Obama and overwhelmingly approved by Congress. Our people have been getting significant federal benefits since 2006. We are a debt free firm with \$65 million

EXHIBIT 435
WIT: SHEPARD
DATE: 4-18-17
CRICourt, LLC

183

Defendants knew that selling tax benefits made them more money.

LEADERSHIP MEETING

6. Have your people make a copy of their refund check so the both of you can use it as a valuable tool in your presentations.
5. Remember, if your people are happy, meaning they received all their tax benefits, then they will purchase even more systems. That means you make commissions all over again.



184

The proper measure of disgorgement is Defendants' gross receipts

- The United States' evidence provides a reasonable approximation of Defendants' gross receipts

185

Disgorgement: RaPower-3

- RaPower-3, LLC does not generate revenue from any source other than selling lenses in the solar energy scheme.
- Pl. Ex. 682, RaPower-3, LLC 30(b)(6) Dep., 32:16-33:14; 36:14-39:16; 66:1-12

186

Disgorgement: RaPower-3



Invoice

Purchase Date: 12/29/2012 12:15:32 PM

RaPower3 LLC
403S South 4000 West
Deseret, UT, 84624

TO: COOK AES, LLC
2688 SHAGBARK SE
GRAND RAPIDS, MI 49546

Order Information

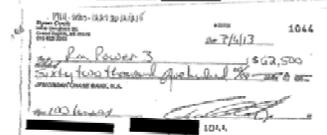
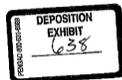
Order ID:	Units Purchased	Description	Down Payment	Full Unit Price
3714-2703-122920321215	109	600 Watt Solar Thermal Lens	\$105,000.00	\$200,000.00

Order Payments

Payment Date	Payment Type	Payment Received	Payment Amount
1/4/2013	Check	Yes	\$105,000.00
7/12/2013	Check	Yes	\$94,500.00
7/12/2013	Check	Yes	\$32,000.00
7/15/2013	Check	Yes	\$18,000.00

Received Payment Count: 1
Amount Paid: \$105,000.00

(Does not reflect passing payments) Balance: \$0.00



187

Disgorgement: RaPower-3

RaPower-3, LLC
Gross Receipts 2009-2016

Gross Receipts
2017 - February 2018

Grand Total: **\$25,310,670**

\$563,395

Years	Sum of Amount
2009	\$4,580.01
2010	\$940,008.45
2011	\$2,447,120.37
2012	\$4,131,501.86
2013	\$5,573,907.07
2014	\$5,032,267.06
2015	\$4,493,974.47
2016	\$2,687,311.08
Grand Total	\$25,310,670.37

PLEX 749
Tab: Order
Filter: Comments/ "paid"
Filter: Date Added/ 2017 and 2018

TOTAL, 2009 through February 2018:
\$25,874,065.73



188

Disgorgement: International Automated Systems, Inc.

Customer Deposits and Revenue Recognition - The terms of sale of a System provides for an initial cash deposit of \$9,000 at the date the agreement is signed and thirty annual payments of \$700 (with no stated interest), totaling \$21,000, commencing five years following the installation date. As of June 30, 2009, the Company had entered into contracts and received deposits to build, install and maintain approximately 200 Systems.

Under the terms of sale, the Company warrants that the Systems will remain in good operating condition for a thirty-five year period commencing on the installation date and that it will be responsible for all material, equipment and labor costs incurred to complete such maintenance and repair work. In addition, the Company warrants a production rate of 95% of the target production rate of 250,000,000 BTU's per year for the first five years. If the energy produced during the first five years is less than five times the warranted production rate, the purchaser may elect to terminate the agreement and will have no further obligation other than to return the System to the Company. The initial cash deposit will not be returned.

The deposits received have been recorded as customer deposits and included as current liabilities in the financial statements since the Company has not verified the energy output and has not yet delivered electricity from the Systems to a third party as of June 30, 2009. Therefore, for all of these agreements, the customers may request a return of their deposits since the Company has not verified output of the energy. The Company will begin to recognize revenue once the Systems energy output has been verified (saleable energy is produced) and once it is able to estimate its costs associated with the warranty.

NOTE 9 - CUSTOMER DEPOSITS

During the years ended June 30, 2009 and 2008, the Company received customer deposits totaling \$954,000 and \$99,000, respectively, and refunded deposits totaling \$0 and \$9,000, respectively, relating to contract agreements to build, install and maintain alternate solar energy systems.

The total amount of customer deposits at June 30, 2009 and 2008 was \$1,757,250 and \$803,250, respectively. The agreements provide that the Company will deliver, install and startup the alternate solar energy system prior to June 30, 2009. The Company has and continues to work toward delivering, installing and starting up the alternate solar energy system, but the energy output has not been verified. Therefore, for all of these agreements, the customers may request a return of their deposits since the Company has not verified output of the energy.







189

Disgorgement: International Automated Systems, Inc.

Fiscal Year Ended	Amount	Evidence
June 30, 2010	\$2,360,250	PLEX 852, p. 59 Buck Testimony, Trial Tr. 257:7-258:20; 271:9-272:12; 293:1-294:11; 312:5-15. PLEX 371, p. 63
June 30, 2016	\$3,077,839	PLEX 507, p. 20, 35 N. Johnson, Trial Tr. 1812:4-12.
Total	\$5,438,089	

190

Disgorgement: Neldon Johnson for Solco I, LLC

- Solco I, LLC does not generate revenue from any source other than selling lenses in the solar energy scheme.
- PLEX 579, Johnson Dep., vol. 1, 82:-8-85:2
- PLEX 581, IAS 30(b)(6) Dep., 38:10-40:6; 45:4-21
- PLEX 673, LTB1, LLC 30(b)(6) Dep., 78:22-79:5; 79:12-80:9; 81:12-21
- PLEX 38
- PLEX 325
- PLEX 495
- Reinken Testimony, Trial Tr. 863:18-866:18; 870:3-871:7

191

Disgorgement: Neldon Johnson for Solco I, LLC

Solco I, LLC
Gross Receipts 2010-2016

Grand Total: \$3,434,992

Years	Sum of Amount
2010	\$12,450.00
2011	\$5,200.05
2012	\$1,269,595.55
2013	\$891,859.29
2014	\$1,138,606.87
2015	\$59,630.45
2016	\$57,650.08
Grand Total	\$3,434,992.29



192

Disgorgement: Neldon Johnson for XSun Energy, LLC

- Neldon Johnson used XSun Energy to sell lenses to customers and to promote RaPower-3 lens sales
- XSun Energy, LLC does not generate revenue from any source other than selling lenses in the solar energy scheme.
- PLEX 579, Neldon Johnson Dep., vol. 1, 79:8-81:7; 82:8-10
- PLEX 581, IAS 30(b)(6) Dep., 47:2-19
- PLEX 208
- PLEX 355
- PLEX 356
- PLEX 510
- PLEX 743, p. 11

193

Disgorgement: Neldon Johnson for XSun Energy, LLC

XSun Energy, LLC
Gross Receipts 2011-2016

Grand Total: \$1,126,888

Years	Sum of Amount
2011	\$442,355.43
2012	\$660,462.57
2013	\$21,298.73
2014	\$1,170.10
2015	\$813.17
2016	\$788.18
Grand Total	\$1,126,888.18

Plaintiff
Exhibit
741

194

Disgorgement: Neldon Johnson Summary

Where From	Amount
Solco I, LLC	\$3,434,992
Xsun Energy, LLC	\$1,126,888
Total	\$4,561,880

And Neldon Johnson should be jointly and severally liable for the disgorgement of RaPower-3, LLC and International Automated Systems:

Where From	Amount
Total From Above	\$4,561,880
RaPower-3, LLC	\$25,874,066
IAS	\$5,438,089
(Joint/Several RaPower-3 and IAS)	(\$3,077,839)
Total	\$32,796,196

195

Disgorgement: R. Gregory Shepard

- Received gross receipts from his activity related to the solar energy scheme.
- He was paid by International Automated Systems, Inc. and RaPower-3, LLC.
- His entity, Shepard Global, Inc., was paid by RaPower-3, LLC for his activity related to the solar energy scheme.

196

Disgorgement: R. Gregory Shepard

SUMMARY COMMISSION CHECKS FOR DEC. 2008

1. Lynette Williams: \$5,400 to Greg Shepard in Jan. 09
2. Mo & Janeen Myers: \$1,800 to Greg Shepard in Jan. 09
3. Mike Kirwan/K & Sun, LLC: \$4,500 to Greg Shepard in Jan. 09 and \$4,500 to Tom Day in Jan. 09
4. Patty Lambrecht/ILIOS,LLC: \$22,500 to Ryan Davies in Jan. 09 and \$22,500 to Greg Shepard to be paid as follows:
 - A. \$2,700 to Matt Shepard in Dec. 08
 - B. \$6,000 to Andrea Shepard in Dec. 08
 - C. \$6,000 to Greg Shepard in Dec. 08

- D. \$5,000 to Andrea Shepard in Jan. 09
 - E. \$2,800 to Greg Shepard in Jan. 09
- W. Vaughan: \$900 to Greg Shepard Jan. 09*

ADDRESSES:

EXHIBIT 445
WIT. Shepard
DATE: 4-16-19
CISCOINT, LLC



Plaintiff Exhibit 745



Check: 16867 Amount: \$2,700.00 Date: 3/20/2006 HIN # 227101001007715

Plaintiff Exhibit 746

197

Disgorgement: R. Gregory Shepard

Year	Amount	Evidence
2006	\$11,700	PLEX 411, Trial Tr. 1596:5-21
2007	\$4,500	PLEX 411; Trial Tr. 1596:22-24
2008	\$3,600	PLEX 411; Trial Tr. 1596:25-1597:2
	+ \$11,100	PLEX 445
2009	\$19,000	PLEX 411; Trial Tr. 1597:3-5
	+ \$1,400	PLEX 445
2010	\$15,000	PLEX 411; Trial Tr. 1597:6-8
2011	\$9,000	PLEX411; Trial Tr. 1597:9-11
2012	\$55,829	PLEX411; Trial Tr. 1597:12-15
2013	\$82,603	PLEX 411; Trial Tr. 1597:16-18
2014	\$89,629	PLEX 411; Trial Tr. 1597:19-21
2015	\$127,308	Trial Tr. 1296:19-13
2016	\$169,332	Trial Tr. 1297:19-1301:3
2017	\$102,000	Trial Tr. 1597:22-1598:21
TOTAL	\$702,001	

198

Disgorgement: Defendants bear the risk of uncertainty

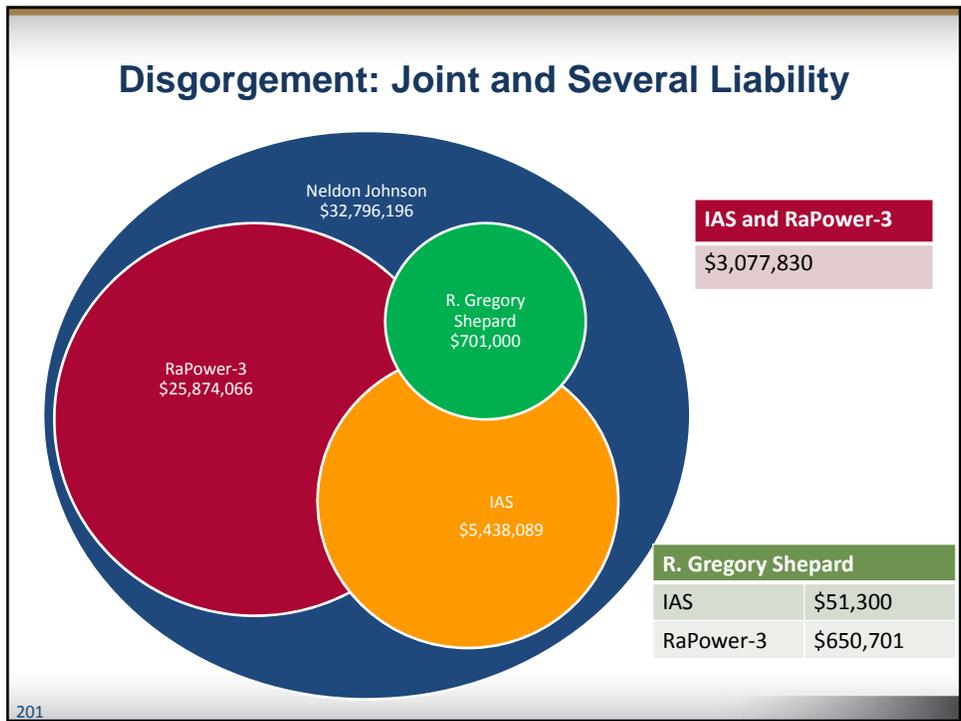
- These numbers are a reasonable approximation of Defendants' gross receipts
- Defendants failed to introduce evidence showing that our numbers are *not* a reasonable approximation of their unjust enrichment
- Defendants bear any risk of uncertainty in this calculation

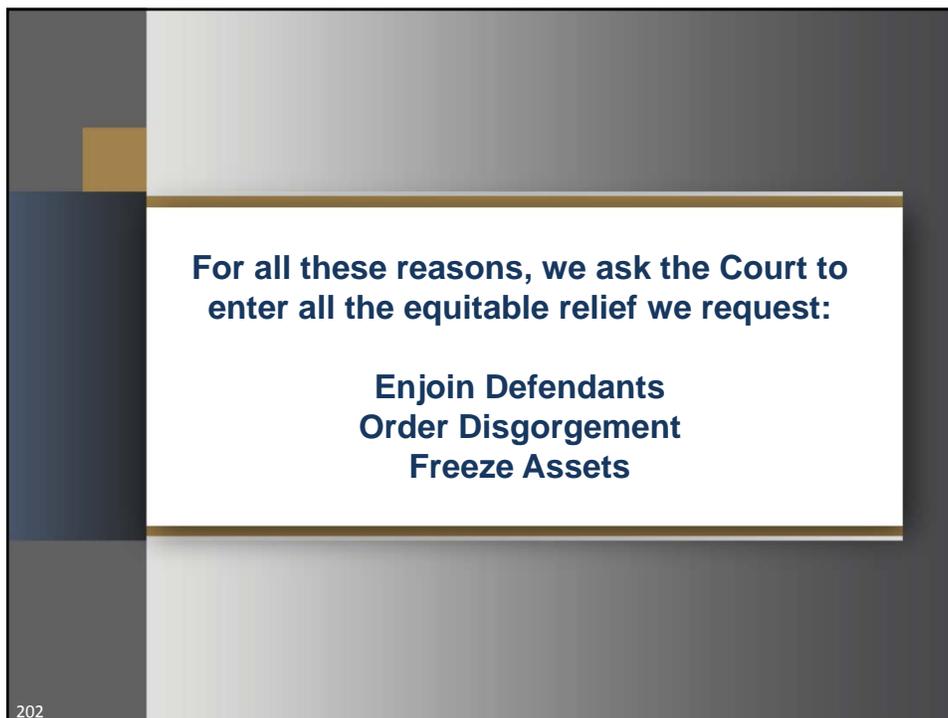
199

Disgorgement: Defendants should not be given a credit

- Defendants did not meet their burden of proving that they should be given a credit for expenses
- Defendants defrauded the United States for personal enrichment
- No part of their business involving solar lenses was legitimate

200





**For all these reasons, we ask the Court to
enter all the equitable relief we request:**

**Enjoin Defendants
Order Disgorgement
Freeze Assets**

202