PRESTON OLSEN & ELIZABETH OLSEN, ET AL.,
Petitioners,

ELECTRONICALLY FILED

v.

Docket No. 26469-14, 21247-16

COMMISSIONER OF INTERNAL REVENUE,
Respondent

RESPONDENT'S SERIATIM OPENING BRIEF

UNITED STATES TAX COURT

PRESTON OLSEN & ELIZABETH OLSEN,	)	
Petitioners,	)	
v.	)	Docket Nos. 26469-14 & 21247-16
COMMISSIONER OF INTERNAL REVENUE,	)	Filed Electronically
Respondent.	)	

OPENING BRIEF FOR RESPONDENT

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CONTENTS

Page

CONTENTS

Page

CONTENTS

Page

CONTENTS

CITATIONS

Page

CASES

CITATIONS

Page

CITATIONS

Page

STATUTES

CITATIONS

Page

REGULATIONS

CITATIONS

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OPENING BRIEF FOR RESPONDENT

PRELIMINARY STATEMENT

This case is a test case for the many cases related to the RaPower3 solar lens tax avoidance scheme. Petitioners' case involves issues common to all related RaPower3 cases. Specifically, the Court must determine whether petitioners are entitled to deductions and/or credits based on their purchase of solar lenses. In the present case respondent determined deficiencies and penalties in the following amounts.

Year	Deficiency	I.R.C. § 6662(a)
2010	$30,760.00	$6,152.00
2011	$22,089.00	$4,417.80
2012	$26,097.00	$5,219.40
2013	$26,718.00	$5,343.60
2014	$20,668.00	$4,133.60

On January 21, 2020 through January 23, 2020, in Provo, Utah, before the Honorable Albert G. Lauber, the parties tried this case. The record consists of the pleadings, a comprehensive Stipulation of Facts, two expert witness reports (Exhibits 145-P and 147-R), a rebuttal expert report from Dr. Mancini (Exhibit 148-R), trial testimony from both expert witnesses and several fact witnesses, and documentary evidence. The Stipulation of Facts consists of paragraphs 1 through 318 and Exhibits 1-J through 144-J, inclusive.

The unresolved issue in this case is whether petitioners improperly received over $130,000 of federal income tax refunds by purchasing tax benefits disguised as solar lenses or whether they are entitled to claim, for tax years 2010 through 2014, deductions and credits related to the purchase of the solar lenses.

As a result of concessions made by respondent, the parties will need to obtain Rule 155 computations after the Court issues an opinion.

At the conclusion of trial, the Court ordered the parties to file seriatim briefs with respondent's opening brief due on April 22, 2020 and petitioners' answering brief due on June 22, 2020. By Order dated January 31, 2020, the Court extended these due dates to May 5, 2020 and July 6, 2020, respectively.

QUESTIONS PRESENTED

1. Are petitioners entitled to deduct the depreciation expenses they claimed on the Schedules C they attached to their individual income tax returns for the tax years at issue?

2. Are petitioners entitled to deduct the legal and professional services expenses they claimed on the Schedules C they attached to their individual income tax returns for tax years 2010 and 2011?

3. Are petitioners entitled to claim the general business credit (and related carryforward of that credit) based on the purchase price of the solar lenses they purchased in 2009, 2011, 2012, 2013, and 2014?

Respondent conceded adjustments to tax year 2010 related to the "recapture" of depreciation expenses ($30,600.00) and the general business credit ($7,506.00) that petitioners claimed on their individual income tax return for tax year 2009. (Respondent's Answer)

Pursuant to the Court's holding in Clay v. Commissioner, 152 T.C. 223 (2019), respondent conceded the accuracy-related penalties under section 6662(a). (Tr. 18) All other adjustments are computational in nature.

ULTIMATE FINDINGS OF FACT

1. Petitioners participated in an abusive tax avoidance scheme. (Entire record)

2. Petitioners' acquisition of solar lenses from International Automated Systems, Inc. ("IAS") and RaPower3, LLC ("RaPower3") was motivated primarily, if not exclusively, by tax considerations. (Entire record)

3. Petitioners' solar lenses never produced electricity or solar thermal heat for any meaningful purpose. (Entire record)

4. Petitioners' solar lenses never will produce electricity or solar thermal heat for any meaningful purpose. (Entire record)

5. Petitioners never received any income from their solar lenses. (Entire record)

6. The only monetary benefits petitioners received from their participation in the solar lens abusive tax avoidance scheme were tax benefits (deductions and credits). (Entire record)

7. Petitioners were not engaged in the trade or business of producing electricity or solar thermal heat with their solar lenses. (Entire record)

8. Petitioners were not engaged in the trade or business of leasing solar lenses. (Entire record)

9. Petitioners' solar lenses were not an investment held for the production of income either from producing electricity or solar thermal heat or from leasing the solar lenses. (Entire record)

10. The specifically assigned function of the solar lenses petitioners purchased was to create electricity. (Entire record)

11. Petitioners' solar lenses were never placed in service. (Entire record)

12. Petitioners failed to substantiate any of the $750.00 of legal and professional fees they claimed in tax years 2010 ($425.00) and 2011 ($325.00). (Entire record)

13. Accordingly, petitioners are not entitled to any of the deductions or credits related to the solar lens tax avoidance scheme. (Entire record)

RESPONDENT'S REQUEST FOR FINDINGS OF FACT

I. Jurisdiction

1. Petitioners jointly filed timely a Form 1040, U.S. Individual Income Tax Return, for tax year 2009 ("2009 return"). (Stip. ¶ 1; Exhibit 1-J)

2. Petitioners jointly filed timely a Form 1040, U.S. Individual Income Tax Return, for tax year 2010 ("2010 return"). (Stip. ¶ 2; Exhibit 2-J)

3. Petitioners jointly filed timely a Form 1040, U.S. Individual Income Tax Return, for tax year 2011 ("2011 return"). (Stip. ¶ 3; Exhibit 3-J)

4. Petitioners jointly filed timely a Form 1040, U.S. Individual Income Tax Return, for tax year 2012 ("2012 return"). (Stip. ¶ 4; Exhibit 4-J)

5. Petitioners jointly filed timely a Form 1040, U.S. Individual Income Tax Return, for tax year 2013 ("2013 return"). (Stip. ¶ 5; Exhibit 5-J)

6. Petitioners jointly filed timely a Form 1040, U.S. Individual Income Tax Return, for tax year 2014 ("2014 return"). (Stip. ¶ 6; Exhibit 6-J)

7. On July 30, 2014, respondent timely issued to petitioners a valid notice of deficiency for tax years 2010, 2011, and 2012. (Stip. ¶ 7; Exhibit 7-J; Tr. 80:24-25)

8. On July 1, 2016, respondent timely issued to petitioners a valid notice of deficiency for tax years 2013 and 2014. (Stip. ¶ 8; Exhibit 8-J; Tr. 80:24-25)

9. Petitioners resided in South Jordan, Utah at the time they filed their petition in each of the consolidated cases. (Stip. ¶ 9)

II. Solar Power Entities

10. For the tax years at issue, petitioners claimed deductions and credits based on their purchase of solar lenses from International Automated Systems, Inc. ("IAS") and RaPower3, LLC. ("RaPower3"). (Stip. ¶ 10)

11. IAS, RaPower3 and all other entities involved in the scheme were wholly owned and controlled by Neldon Johnson and his entities and family members. (Stip. ¶¶ 11, 15, 16, 19, 22, 23, 26, 27, 28)

12. Randale Johnson is Neldon Johnson's son. (Tr. 355:19-20)

13. Randale Johnson could not remember his position (e.g., Vice President or Secretary or both) in IAS. (Tr. 354:23-25, 355:7-11)

14. Randale Johnson is no longer employed by IAS because the Receiver appointed in the district court case took over ownership. (Tr. 356:22-357:3)

15. Randale Johnson could not remember the full names of a "handful" of employees who allegedly worked on the purported solar lens project for years. (Tr. 355:10-18, Tr. 357:19-22)

16. The Receiver appointed by the United States District Court for the District of Utah now owns all the property of IAS, RaPower3, and the other related entities. (Tr. 318:6-7; Tr. 356:24-357:3)

A. International Automated Systems, Inc.

17. On September 26, 1986, Neldon Johnson incorporated "IAS". (Stip. ¶ 11; Exhibit 9-J)

18. When it was organized, IAS' primary purpose was "To engage in any business involving the research, development, design, and manufacture of automated systems including checkout systems for grocery and other stores." (Exhibit 9-J)

19. For the tax years at issue, Mr. Johnson was the president and CEO of IAS. While various family members served on the company's board of directors, Mr. Johnson was the decision-maker for the company. (Stip. ¶ 15)

B. RaPower3, LLC

20. On November 17, 2009, Neldon Johnson filed, with the State of Utah Department of Commerce, Articles of Organization for RaPower3. (Stip. ¶ 16; Exhibit 10-J)

21. RaPower3 is a single-member LLC with the sole member being DCL16BLT, Inc. Both entities share the same address. (Stip. ¶ 17)

22. Pursuant to its Articles of Organization, RaPower3's principal purpose was "to generate, manufacture, purchase, acquire, and accumulate electric energy" to "transmit, distribute, furnish, sell, and dispose" to its resellers and the general public. (Stip. ¶ 18; Exhibit 10-J)

23. Neldon Johnson served as Director for RaPower3. (Stip. ¶ 19)

24. R. Greg Shepard served as Director of Operations for RaPower3. (Stip. ¶ 20)

25. In September 2009, RaPower3 published Policies and Procedures for potential "Team Members". (Stip. ¶ 21; Exhibit 11-J)

26. RaPower3 launched to the general public on December 14, 2009. (Exhibit 104-J)

C. DCL16BLT, Inc.

27. Neldon Johnson first formed DCL16BLT, Inc. on or about October 8, 2009 with an address in Oasis, Utah. (Stip. ¶ 22)

28. On April 7, 2014, Neldon Johnson registered with the State of Utah another entity with the same name and same address. (Stip. ¶ 23)

29. On November 17, 2009, Denver Snuffer registered with the State of Utah another entity with the same name but with an address in Cheyenne, Wyoming. (Stip. ¶ 24)

30. The registrations for all three DCL16BLT entities expired and have not been renewed. (Stip. ¶ 25)

D. LTB entities

31. In or about 2008, Neldon Johnson formed LTB, LLC, with a principal place of business in Las Vegas, Nevada. (Stip. ¶ 26)

32. Neldon Johnson later formed LTB1, LLC and LTB O&M, LLC. (Stip. ¶ 27)

33. Neldon Johnson controls all three LTB entities. (Stip. ¶ 28)

III. Purported solar energy plant proposed by IAS and RaPower3

A. Neldon Johnson's technical papers

34. Neldon Johnson drafted an undated document titled "New Solar Breakthrough May Compete with Gas" explaining the solar technology he envisioned. (Stip ¶ 210; Exhibit 29-J)

35. Neldon Johnson drafted another undated document titled "IAUS Technical Overview". (Stip ¶ 211; Exhibit 30-J)

36. Neldon Johnson combined these two documents and revised them in a document labeled Confidential Draft and titled "New Solar Breakthrough May Compete with Fossil Fuels". (Stip ¶ 212; Exhibits 31-J, 147-R)

37. Though he had no background or expertise in the area, IAS's founder and president, Neldon Johnson, provided the "scientific" aspects of the solar energy tax avoidance scheme. (Exhibits 29-J, 30-J, 31-J, 147-R)

38. Neldon Johnson has obtained a number of patents. (Exhibits 145-P, 147-R; Tr. 388:21)

39. Obtaining a patent is not difficult as long as the applicant does not infringe on existing technology and is willing to pay the fee. (Tr. 390:17-20)

B. IAS' purported solar energy system(s)

40. IAS has researched and developed various technologies, including automated checkout lanes and automated fingerprint technologies. (Stip. ¶ 12; Tr. 331:2-9)

41. Beginning in 2005, IAS focused on developing solar energy technologies. (Stip. ¶ 13)

42. Solar energy technology is changing quickly. (Tr. 405:5-6)

43. In 2006, IAS built approximately 19 "towers" containing arrays with solar lenses at a "research and development" or "test" site in Delta, Utah. (Stip. ¶ 14)

44. No additional towers were constructed during the time period petitioners purchased their lenses. (Tr. 172:23-174:5, 358:23-359:6)

45. IAS developed a turbine. (Exhibit 147-R, pp. 30-32; Tr. 332:21-22)

46. The only evidence the turbine worked was when it was connected to a different system with different lenses. (Tr. 335:19-23, 362:1-6)

47. Neldon Johnson, through IAS, attempted to develop a concentrating solar production (CSP) system. (Stip. ¶ 13; Exhibit 147-R, p. 15)

48. The IAS CSP system seemed to be a hybrid of the parabolic trough and the dish/engine technologies. (Tr. 147-R, p. 15-16)

49. As of the week of the trial in this case, there were no commercial dish systems operating. (Tr. 501:21-22)

50. The solar lenses would allegedly be placed in arrays on towers that would track the sun and focus sunlight into a receiver. (Exhibits 29-J, 30-J, 31-J, 95-J, 147-R)

51. The amount of power that can be generated by any solar energy system like the one envisioned by Neldon Johnson depends on a number of factors, including clouds, type of system, tracking capabilities, sun exposure, cleanliness of lenses, and the existence of full lenses. (Exhibit 147-R, p. 21; Tr. 413:1-13, Tr. 514:9-14)

52. The purported IAS system would take focused sunlight to heat a transfer fluid, alleged to be either water or molten salt or oil at various times. (Exhibits 29-J, 30-J, 31-J, 78-J, 95-J, 147-R; Tr. 396:1-15)

53. The purported IAS system would then pump the transfer fluid to a heat exchanger, which would use the heat to boil water to create steam to drive a turbine generator. (Exhibits 29-J, 30-J, 31-J, 78-J, 95-J, 147-R; Tr. 396:1-15)

54. IAS, however, failed to bring the IAS CSP system to fruition. (Entire record)

55. At best, the IAS solar dish technology remains in the research Stage 1 of development. (Exhibit 147-R, pp. 3, 9, 30, 32, 35)

C. Failures of the IAS CSP system

56. Petitioners' own expert witness testified that IAS never really started doing anything. (Tr. 405:15-18)

57. Nobody involved with IAS or any of the other related entities had any formal education in mechanical engineering. (Exhibit 147-R, p. 15; Tr. 357:15-25, Tr. 423:10-424:8)

58. Nobody involved with IAS or any of the other related entities was a licensed engineer. (Exhibit 147-R, p. 15; Tr. 403:19-20; Tr. 500:20-21)

59. Nobody involved with IAS had the education or experience to design and build the solar lenses Neldon Johnson envisioned. (Exhibit 147-R, pp. 12, 15; Tr. 364:14-19; Tr. 497:9-12)

60. Nobody involved with IAS or any of the other related entities had any experience building and operating a solar energy plant. (Exhibit 147-R, pp. 12, 15)

61. Occasionally, IAS would contract with other companies and/or engineers to develop certain components of Neldon Johnson's solar energy system(s). (Tr. 335:2-6, Tr. 336:17-20, Tr. 357:10-14)

62. IAS failed to properly subcontract work to develop Neldon Johnson's envisioned system. (Tr. 350:8-10)

63. The few contracted engineers that were hired detailed problems with the system envisioned by Neldon Johnson as early as 2003. (Tr. 335:6-9)

64. The components of the IAS CSP system comprised separate component parts that do not work together in an operational solar energy system. (Exhibit 147-R, pp. 3, 12, 35)

65. The designs of different and fundamental system components have changed over time. (Exhibit 147-R, p. 12)

66. IAS attempted to use multiple fluids as a "working fluid" (also referred to as a "transfer fluid" or "high temperature fluid") including molten salt,

water, and oil. (Exhibits 145-P, 147-R, pp. 26, 29; Tr. 395:23-396:13; Tr. 498:8-11)

67. Deciding on a working fluid is essential to designing and building other components of a solar energy system. (Exhibit 147-R, pp. 30, 31; Tr. 396:16-397:11)

68. Because IAS continually changed the working fluid to be used in the system, it could not complete the design and manufacture of other components of the solar energy system (for example the receiver, heat transfer piping, and the heat exchanger). (Exhibit 147-R, pp. 28-31; Tr. 397:7-11)

69. During the roughly 17 years of working on a solar energy system, IAS continued to change the structure of the system and the various components needed. (Tr. 499:9-16)

70. The concentrator and receiver designs were incompatible. (Exhibit 147-R, p. 12)

71. The incompatibility of the concentrator and receiver designs would lead to low optical and thermal efficiencies. (Exhibit 147-R, p. 12)

72. The change of the collector working fluid from water to molten salt and then to synthetic oil would result in lower cycle operating temperature. (Exhibit 147-R, p. 12)

73. The design of the turbine would not work at the reduced cycle temperatures associated with using synthetic oil as a working fluid. (Exhibit 147-R, p. 12; Tr. 498:24-25)

74. The IAS CSP system lacked a boiler and condenser required by the Rankine cycle. (Exhibit 147-R, p. 12)

75. The IAS CSP system lacked sensors, controls, a control system, and a suitably sized generator. (Exhibit 147-R, p. 12)

76. IAS had very few, if any, detailed engineering analyses or design drawings for the solar dish, receiver, heat exchanger, or turbine-generator. (Exhibit 147-R, pp. 13, 34; Tr. 496:22-24)

77. IAS had no detailed component models describing operation under a range of operational conditions. (Exhibit 147-R, p. 13)

78. IAS had no system performance models describing the system output as a function of solar energy input. (Exhibit 147-R, p. 13)

79. IAS had no cost analysis for the materials and manufacturing of the components. (Exhibit 147-R, p. 13)

80. IAS had no cost analysis of building the proposed solar power plant. (Exhibit 147-R, p. 13)

81. IAS had no test data or performance data regarding the key components of the proposed system, including the accuracy of the solar lens assembly or their ability to survive weather conditions. (Exhibit 147-R, p. 22; Tr. 497:19-20)

82. None of the 19 towers at the test site were ever connected to the grid. (Stip. ¶ 31; Tr. 362:17-21, Tr. 401:24-402:1, Tr. 402:25-403:1, Tr. 417:2-3, Tr. 424:18-425:8).

83. Neldon Johnson claimed IAS could connect their proposed power plant to the grid through existing power lines on poles on the property. (Exhibit 147-R, p. 35)

84. A transmission line is insufficient for a solar power plant producing the amount of power proposed by IAS. (Exhibit 147-R, p. 35, Tr. 491:24-25)

85. CSP systems are large, require a substation, and must meet regulatory conditions with the Federal government, state government, and utility companies. (Tr. 491:14-24)

86. During Dr. Mancini's visits to the site (on January 24, 2017 and April 4, 2017), the components of the IAS CSP system were not operating, were not assembled as a system, and were not producing electrical power or heat using solar energy. (Exhibit 147-R, pp. 12, 27, 30, 31; Tr. 487:75-488:6)

87. Mr. Gardner claimed to see the system running, but it was not connected to anything. (Exhibits 145-P, unnumbered page 8, 148-R, p. 4; Tr. 401:18-19)

88. The towers at the test site had broken lenses. (Exhibit 147-R, pp. 24, 38, 39; Tr. 394:15)

89. The test site has broken lenses on the ground. (Exhibit 147-R, p. 38; Tr. 394:16-17)

90. During Mr. Gardner's visit it 2015, only one tower had the four arrays full of solar lenses. (Tr. 403:2-4, Tr. 425:104, 428:7-9)

91. This one tower in 2015 had less than 70 total solar lenses. (Tr. 428:13-18)

92. The system was not operational. (Exhibit 147-R, p. 12; Tr. 410:3-5)

93. Nobody, including Mr. Gardner, has seen any test results for the system. (Entire record, Exhibit 147-R, pp. 13, 14; Tr. 404:13-22, Tr. 497:7-8)

94. The IAS CSP system does not produce electricity or other useable energy from the sun. (Exhibit 147-R)

95. The IAS CSP system is not now a commercial-grade dish solar system converting sunlight into electrical power or other useful energy. (Exhibit 147-R; Tr. 478:14-482:7)

96. IAS has no operational system using its various technologies, including the solar lenses despite more than a decade of purported development. (Exhibits 147-R, p. 38, 148-R, p. 4-5)

97. IAS does not have the capability or resources to develop a solar dish power system or a commercial, utility-scale solar project. (Exhibit 147-R, pp. 38, 41; Tr. 500:15-20)

98. The IAS concept has fundamental flaws that make it economically, if not technically, infeasible. (Exhibit 147-R, p. 38)

99. Even if IAS fixed the many problems with the IAS CSP system, it could never have been a commercially viable system. (Tr. 501:10-502:5)

100. The IAS CSP system will never be a commercial-grade dish solar system converting sunlight into electrical power or other useful energy. (Exhibits 147-R, pp. 3, 38-42, 148-R, pp. 3, 5-6; Tr. 493:14-494:1)

D. IAS' purported CPV system

101. The record is unclear on when IAS began developing a concentrated photovoltaic (CPV) system in addition to their proposed CSP system. (Exhibits 29-J, pp. 12-14, 31-J, 145-P, 148-R, pp. 2, 5; Tr. 345:12-22, Tr. 372:10-13, Tr. 407:21-409:10)

102. The technology being sold to purchasers of solar lenses was not CPV technology during tax years 2009-2014. (Stip. ¶¶ 222-223; Exhibits 41-J, 84-J, 147-R, 148-R; Tr. 385:13-18)

103. Randale Johnson incorrectly testified that a CPV system is the same thing as a CSP system (Tr. 374:14-15;)

104. A CPV system is different than a CSP system. (Exhibit 147-R, p. 4; Tr. 383:21-22, 25-384:2 Tr. 489:5-7; Tr. 489:19-490:20; Tr. 494:3-9)

105. IAS would face much stiffer competition in a CPV market today. (Tr. 405:13-14)

106. Nobody has seen a CPV receiver installed on any tower. (Entire record; Tr. 422:21-25)

107. Nobody has seen a CPV receiver in operation with the solar lenses. (Entire record; Tr. 423:1-6)

108. Nobody, including Mr. Gardner, has seen any test results for the "multiple layer PN junction" allegedly being developed by Neldon Johnson. (Tr. 419:18-420:1)

109. In his expert report, Mr. Gardner based all of the calculations specific to the IAS system(s) on the unreliable hearsay of Neldon Johnson and Randale

Johnson. (Exhibit 145-P; Tr. 404:15-22, Tr. 419:21-420:11, Tr. 421:8-11, Tr. 426:1-6, Tr. 426:18-427:1)

110. Only NASA in space (not on Earth) has achieved the efficiencies claimed by Neldon Johnson. (Tr. 427:9-22)

111. Nobody saw either a CSP system or CPV system working to produce electricity. (Entire record)

E. Production of solar lenses

112. IAS first used a parabolic trough system but ran into difficulties with production and maintenance. (Tr. 333:8-19)

113. IAS turned to solar Fresnel lenses in 2001 or 2002. (Tr. 333:20-21)

114. Fresnel lenses are not a new technology. (Exhibit 145-P; Tr. 392:13-14)

115. The use of plastic Fresnel lenses in solar energy applications has been viable since the late 1970s. (Exhibit 145-P, unnumbered page 8; Tr. 392:7-12)

116. IAS wanted to use the solar lenses to primarily create electricity. (Exhibit 97-J; Tr. 343:12)

117. The development of the solar lenses took time and money. (Tr. 336:14-17)

118. The Johnson family financed the research and development of the solar lenses with their own money and money from IAS stock. (Tr. 362:24-363:17)

119. Nobody could provide even an estimate of the amount of costs associated with researching and developing the IAS system, including the lenses. (Entire record)

120. Dr. Mancini believed the solar lenses were inventive and clever, but he still had concerns about their efficiency and operational costs. (Tr. 500:23-501:9)

121. IAS believed they worked out all the problems with their solar lenses manufacturing process in or around 2004. (Tr. 338:20-22, Tr. 340:23-341:2)

122. Even though he was an officer in IAS, Randale Johnson did not know how many lenses IAS purchased from Lucite or the purchase price. (Tr. 366:19-22, Tr. 367:18-22).

123. Randale Johnson estimated IAS bought "many thousands" of lenses from Lucite. (Tr. 367:4-6)

124. The solar lenses on the pallets were in rectangular shape but ultimately needed to be cut into triangles to be installed on any tower. (Exhibit 75-J, picture on page 3; Tr. 367:8-15, Tr. 368:17-369:24)

125. A purchaser of lenses did not actually own anything useful until the rectangular shapes were cut into triangles and put onto a frame. (Tr. 368:22-369:24)

126. Solar lenses cannot produce electricity themselves. (Exhibit 148-R, p. 3; Tr. 391:10-13)

127. Solar lenses must be incorporated into a working system to create electricity. (Exhibits 145-P, 147-R; Tr. 391:14-17)

128. The solar lenses purchased by petitioners would need to be cleaned to work in any system. (Tr. 514:6-516:3)

129. The solar lenses purchased by petitioners could be used to produce heat for some meaningful purpose in some system. (Tr. 15:14-16:9, Tr. 26:9-29:10; Tr. 504:19-505:6; Tr. 509:21-24)

130. The solar lenses purchased by petitioners could not be used to produce heat that could produce electricity in any IAS solar energy system. (Tr. 15:14-16:9, Tr. 26:9-29:10; Tr. 507:6-11)

131. None of the solar lenses purchased by petitioners were ever used to produce electricity or generate heat for any meaningful purpose. (Entire record)

F. Licenses, permits, and authorizations

132. On or about June 2, 2014, Cobblestone Centre, LLC recorded a conditional use permit from Millard County, Utah for the solar lens "manufacturing facility" located at 2740 West 4000 South, in Delta, Utah. (Stip. ¶ 302, Exhibit 119-J)

133. The manufacturing facility is several miles from the test site where the 19 towers were located. (Tr. 214:18-24)

134. This permit was obtained by Glenda Johnson, who is Neldon Johnson's wife. (Exhibit 119-J)

135. This permit does not authorize the construction of a solar energy plant. (Exhibit 119-J)

136. Besides this permit, no other solar entity or individual related to the IAS and RaPower3 project obtained any license, permit, or authorization to build a solar energy plant. (Stip. ¶ 303)

G. Agreements with electric utility companies or other purchasers of electricity.

137. To provide and sell electricity on the power grid, a provider must obtain a number of permits, licenses, authorizations, or other agreements including

but not limited to Power Purchase Agreements ("PPA"), Connection Agreements, and End User Agreements. (Stip. ¶ 29)

138. Neither IAS, Rapower3, nor any other related entity or individual associated with them ever obtained a PPA from any utility or other entity. (Stip. ¶ 30; Tr. 245:17-25)

139. Randale Johnson's testimony that IAS had a PPA with Needles was not credible. (Stip. ¶ 30; Tr. 245:17-25, Tr. 360:16-361:6)

140. Neither IAS, RaPower3, nor any other related entity or individual ever entered into a Connection Agreement or Net Metering Agreement with Rocky Mountain Power, or any other electric utility, to connect their solar energy system for the purpose of transmitting electricity. (Stip. ¶ 31; Tr. 245:17-25, Tr. 417:4-8)

141. Obtaining a net metering agreement is a simple process that involves submitting a plan to the county and having a county official inspect and approve the plant. (Tr. 417:9-12)

142. IAS never applied for a net metering agreement. (Entire record)

143. No county official ever inspected the purported solar plant. (Entire record)

144. The net metering agreement takes roughly three weeks, not over 15 years. (Tr. 417:15-19)

145. Neither RaPower3, IAS, nor any other related entity or individual ever obtained an End User Agreement with any entity to purchase and/or use the power created by the RaPower3 project. (Stip. ¶ 32; Tr. 245:17-25)

H. Other purported uses of the solar lenses

146. Besides creating electricity, IAS purportedly wanted to use the solar lenses for a variety of purposes. (Exhibit 75-J; Tr. 343:10-11)

147. IAS experienced many difficulties because the time of the very few employees was divided on numerous projects. (Tr. 349:23-350:5, Tr. 351:19-23)

148. Purchasers were told their solar lenses would be used in a biomass system by the end of November 2010. (Exhibit 55-J)

149. IAS never developed a biomass system to produce power. (Tr. 284:22-283:1)

150. IAS wanted to use the solar lenses in a system to heat a home. (Tr. 343:23)

151. Neither IAS nor any other related entity or individual ever heated a home. (Tr. 376:1-3)

152. IAS wanted to use the solar lenses in a system to distill water. (Exhibit 79-J; Tr. 343:23).

153. Neither IAS nor any other related entity or individual ever sold distilled water. (Tr. 375:13-14)

154. IAS has abandoned the attempt to produce distilled water. (Tr. 421:12-13)

155. IAS wanted to use the solar lenses in a system to distill sulfuric acid. (Tr. 343:25-344:2)

156. Neither IAS nor any other related entity or individual ever sold distilled sulfuric acid. (Tr. 375:15-16)

157. Neither IAS nor any other related entity or individual ever fully tied the distilling aspect of the system together. (Tr. 375:6-7)

158. These other technologies are irrelevant to the current case and other related RaPower3 cases. (Tr. 348:15-349:1)

159. Even if the other technologies were relevant, the record reflects no evidence that they ever worked. (Entire record)

IV. Petitioners' Tax Year 2009

160. Petitioner Preston Olsen learned of the solar lens tax avoidance scheme from his childhood friend, Matt Shepard. (Tr. 92)

161. Matt Shepard is the son of Greg Shepard, one of the main promoters of the abusive tax avoidance scheme. (Tr. 281:14-17)

162. Greg Shepard had a background in strength and conditioning for athletes, not solar generation of electricity. (Tr. 282:11-18)

163. On July 23, 2009, petitioner Preston Olsen registered with the state of Utah a single-member LLC named PFO Solar, LLC ("PFO Solar") with Preston Olsen being the sole member. (Stip. ¶ 33)

A. 2009 Equipment Purchase Agreement

164. On July 23, 2009, PFO Solar entered into an Equipment Purchase Agreement with IAS ("2009 Equipment Purchase Agreement"). (Stip. ¶ 34; Exhibit 12-J)

165. Petitioner Preston Olsen signed the 2009 Equipment Purchase Agreement as the purchaser for PFO Solar. (Stip. ¶ 35; Exhibit 12-J)

166. This agreement provides no terms for payment of any "rent" to the purchasers. (Exhibit 12-J)

167. Paragraph 2 explicitly references potential tax benefits. (Exhibit 12-J)

168. In paragraph 3, PFO Solar agreed to purchase two "alternative energy systems" (solar lenses) from IAS for $30,000 each. (Stip. ¶ 36; Exhibit 12-J)

169. Petitioner Preston Olsen could not clearly articulate why the purchase price per solar lens was much higher in this year than the other tax years at issue

($30,000 per lens compared to $3,500 per lens). (Stip ¶ 41, 74, 110, 145, 181; Tr. 88:1-15)

170. Petitioners never took physical possession of any of the solar lenses they purchased by December 31, 2009. (Stip. ¶ 41)

171. To the extent the 2 solar lenses petitioners purchased in tax year 2009 actually existed, those solar lenses remained on wrapped pallets. (Tr. 110:18-23, Tr. 113:12-17, Tr. 122:3-7, Tr. 264:5-10, Tr. 367:8-12)

172. In paragraph 3 a., PFO Solar agreed to pay a down payment in the amount of $9,000 for each "alternative energy system". (Stip. ¶ 37; Exhibit 12-J)

173. In paragraph 3 b., PFO Solar agreed to pay the balance, interest free, in thirty annual installments of $700 beginning five years following the "installation date." (Stip. ¶ 38; Exhibit 12-J)

174. In paragraph 4, PFO Solar agreed that the "alternative energy systems" would be operated and managed by an "independent Operations and Management Company, namely LTB, LLC." (Stip. ¶ 39; Exhibit 12-J)

175. In paragraph 7, IAS agreed to refund the initial down payment if it failed to "furnish, deliver, install, and startup the alternative energy system" by December 31, 2009. (Stip. ¶ 40; Tr. 163:16-19; Exhibit 12-J)

176. IAS failed to furnish, deliver, install, and startup any alternative energy system by December 31, 2009. (Tr. 163:20-23)

177. Petitioners never requested a refund of their initial down payment, and IAS never issued a refund of petitioners' initial down payment. (Stip. ¶ 42; Tr. 164:16-20, Tr. 239:16-21)

178. In paragraph 10, PFO Solar and IAS acknowledged a "Target Production Rate" from the alternative energy system equal to 250,000,000 British Thermal Units ("BTUs"). Paragraph 10 also describes a "Warranty Production Rate" and an "Adjusted Warranty Production Rate". (Stip. ¶ 43; Exhibit 12-J)

179. Paragraph 10 further provides that PFO Solar may terminate the 2009 Equipment Purchase Agreement if the alternative energy system fails to meet the Warranty Production Rate or Adjusted Warranty Production Rate. (Stip. ¶ 44; Exhibit 12-J)

180. To date, the alternative energy systems purchased by PFO Solar have never met the Warranty Production Rate or Adjusted Warranty Production Rate. (Stip. ¶ 45)

181. PFO Solar, however, did not terminate the 2009 Equipment Purchase Agreement with IAS. (Stip. ¶ 46)

182. The seller line for IAS has a signature line for Neldon P. Johnson as authorized to sign for IAS, but the agreement is unsigned. (Stip. ¶ 47; Exhibit 12-J; Tr. 165:7-15).

183. The 2009 Equipment Purchase Agreement included a "alternative energy system component list", which provided that the "alternative energy systems" petitioners purchased comprised of solely "solar lens concentrators to produce 250 million BTUs per year". The quantity number, model number, serial numbers, and value columns on this list are blank. (Stip. ¶ 48; Exhibit 12-J; Tr. 165:1-6)

B. Payments made by petitioners for the solar lenses purchased in 2009

184. By check dated July 23, 2009, petitioners paid IAS a down payment of $18,000 for the two solar lenses. (Stip. ¶ 49; Exhibit 13-J)

185. Pursuant to the 2009 Equipment Purchase Agreement, petitioners supposedly remain liable to pay the remaining balance of $42,000 for the two solar lenses purchased on July 23, 2009. (Stip. ¶ 50; Exhibit 12-J)

186. Petitioners have made no additional payments pursuant to the 2009 Equipment Purchase Agreement for the solar lenses purchased on July 23, 2009. (Stip. ¶ 51)

C. Petitioners' income tax return for tax year 2009

187. On their individual income tax return for tax year 2009, petitioners reported the items detailed in Table A. (Stip. ¶ 52; Exhibit 1-J)

Table A

Item	Amount
Wages (ln 7)	$[redacted]
Business loss (ln 12)	-$[redacted]
Adjusted gross income (ln 37)	$[redacted]
Taxable income (ln 43)	$[redacted]
Tax (ln 46)	$[redacted]
Child tax credit (ln 51)	-$[redacted]
Form 3800 credit (ln 53)	-$[redacted]
Total tax (ln 60)	$0
Total payments (ln 71)	$[redacted]
Refund (ln 74)	$[redacted]

188. Petitioners attached to their 2009 return a Schedule C for a business named PFO Solar LLC, a solar energy business. (Stip. ¶ 53; Exhibit 1-J)

189. On this Schedule C, petitioners reported $0 in income, but they claimed depreciation expenses in the amount of $30,600. (Stip. ¶ 54; Exhibit 1-J)

190. Petitioners attached to their 2009 return a Form 3800, General Business Credit. On line 29a, petitioners claimed an investment (solar energy) credit in the amount of $18,000 (30% of the $60,000 total purchase price of the solar lenses purchased in tax year 2009). On line 32 of the Form 3800, they claimed a credit allowed for tax year 2009 in the amount of $4,629. They carried $2,877 of the $18,000 credit back to tax year 2008 by filing an amended individual income tax return and carried $10,306 of the $18,000 credit forward to tax year 2010. (Stip. ¶ 55; Exhibits 1-J; 2-J)

191. Bryan C. Bolander, a Certified Public Accountant ("CPA"), prepared petitioners' 2009 individual income tax return. (Stip. ¶ 56)

192. Petitioners zeroed out their income tax liability in tax year 2009 by claiming depreciation expenses and tax credits based on their purchase of solar lenses. (Exhibit 1-J; Tr. 248:12-249:3)

V. Petitioners' Tax Year 2010

193. Petitioners did not purchase any solar lenses during tax year 2010. (Stip. ¶ 57)

194. On their individual income tax return for tax year 2010, petitioners reported the items detailed in Table B. (Stip. ¶ 58; Exhibit 2-J)

Table B

Item	Amount
Wages (ln 7)	$[redacted]
Business loss (ln 12)	-$[redacted]
Adjusted gross income (ln 37)	$[redacted]
Taxable income (ln 43)	$[redacted]
Tax (ln 46)	$[redacted]
Child tax credit (ln 51)*	-$[redacted]
Form 3800 credit (ln 53)	-$[redacted]
Total tax (ln 60)	$0
Total payments (ln 72)	$[redacted]
Refund (ln 74)	$[redacted]

*Computational adjustment at issue in this case. (Exhibit 7-J)

195. Petitioners attached to their 2010 return a Schedule C for a business named PFO Solar LLC, a solar energy business. (Stip. ¶ 59; Exhibit 2-J)

196. On this Schedule C, petitioners reported $0 in income, but they claimed depreciation expenses in the amount of $8,160 and legal and professional services in the amount of $425. (Stip. ¶ 60; Exhibit 2-J)

197. Petitioners provided no testimony, documentation, or other evidence to substantiate the $425 of legal and professional services they claimed. (Entire record)

198. Petitioners attached to their 2010 return a Form 3800, General Business Credit. On line 6 of the Form 3800, they claimed a carryforward (from tax year 2009) of a general business credit (energy credit) in the amount of $10,494. On line 32 of the Form 3800, they claimed a credit allowed for tax year 2010 in the amount of $10,306. (Stip. ¶ 61; Exhibit 2-J)

199. Petitioners zeroed out their income tax liability in tax year 2010 by claiming business expenses and tax credits based on their purchase of solar lenses in 2009. (Exhibits 1-J, 2-J; Tr. 248:12-249:3)

200. Bryan C. Bolander, a Certified Public Accountant ("CPA"), prepared petitioners' 2010 return. (Stip. ¶ 62)

201. During the audit of petitioners' return for tax year 2010, Mr. Bolander represented petitioners before the respondent. (Tr. 453:11-14)

202. Mr. Bolander provided some advice to petitioners on how their purchase of solar lenses would affect their income tax liability. (Tr. 457:2-7)

203. Petitioners believed they cooperated with respondent during the Exam process and provided the records requested. (Tr. 453:20-456:5)

204. Mr. Bolander believed he provided to respondent all the books and records available to him, but respondent determined it was not sufficient to support petitioners' claimed deductions and credits related to their lenses. (Exhibit 7-J)

205. After examination, respondent determined petitioners were not entitled to claim as deductions any expenses related to their purchase of solar lenses from RaPower3 as set forth in the notice of deficiency. (Stip. ¶ 63; Exhibit 7-J)

206. Respondent also determined petitioners were not entitled to claim any credits related to their purchase of solar lenses from RaPower3 as set forth in the notice of deficiency. (Stip. ¶ 64; Exhibit 7-J)

VI. Petitioners' Tax Year 2011

A. 2011 Equipment Purchase Agreement

207. On December 9, 2011, PFO Solar entered into an Equipment Purchase Agreements with RaPower3 ("2011 Equipment Purchase Agreement"). (Stip. ¶ 65; Exhibit 14-J)

208. Petitioner Preston Olsen signed the 2011 Equipment Purchase Agreements as the purchaser for PFO Solar. (Stip. ¶ 66; Exhibit 14-J)

209. In paragraphs 1 and 3, PFO Solar agreed to purchase a total of 14 "alternative energy systems" (solar lenses) from RaPower3 for $49,000 ($3,500 per solar lens). (Stip. ¶ 67; Exhibit 14-J)

210. Paragraph 2 explicitly references potential tax benefits. (Exhibit 14-J)

211. Petitioner Preston Olsen chose the number of solar lenses to buy in tax year 2011 based solely on the number of solar lenses needed to eliminate his federal income tax liability. (Tr. 106:17-21)

212. Paragraph 3 offered three options for paying the purchase price. (Stip. ¶ 68; Exhibit 14-J)

213. PFO Solar chose option 2, which required a down payment of $1,050 per solar lens (comprised of one-time payment of $105 per solar lens, with the remaining $945 per solar lens paid on or before June 30, 2012). (Stip. ¶ 69; Exhibit 14-J)

214. PFO Solar agreed to pay the balance of the purchase price, interest free, in thirty annual installments of $82 per system beginning five years following the "installation date", which paragraph 3 defined "as the date the Alternative Energy Equipment has been installed and begins to produce revenue." (Stip. ¶ 70; Exhibit 14-J)

215. Petitioners never took physical possession of the 14 solar lenses they purchased in tax year 2011, and those solar lenses never produced any revenue. (Stip. ¶ 71)

216. To the extent the 14 solar lenses petitioners purchased in tax year 2011 actually existed, those solar lenses remained on wrapped pallets. (Tr. 110:18-23, Tr. 113:12-17, Tr. 122:3-7, Tr. 264:5-10, Tr. 367:8-12)

217. In paragraph 4, PFO Solar agreed that the "alternative energy systems" would be operated and managed by an "independent Operations and Management Company." (Stip. ¶ 72; Exhibit 14-J)

218. In paragraph 10, PFO Solar and RaPower3 acknowledged a "Target Production Rate" from one alternative energy system equal to "600 peak watts".[1] Paragraph 10 also describes a "Warranty Production Rate" and an "Adjusted Warranty Production Rate". (Stip. ¶ 73; Exhibit 14-J)

219. The "specifically assigned function" of the solar lenses petitioners purchased in 2011 was to create electricity at the "target rate" of 600 peak watts. (Exhibit 14-J)

[1] The 2011 Equipment Purchase Agreement does not provide whether this target production rate was per hour, per day, per year.

220. Paragraph 10 further provides that PFO Solar may terminate the Equipment Purchase Agreement if the alternative energy system fails to meet the Warranty Production Rate or Adjusted Warranty Production Rate within five years. (Stip. ¶ 74; Exhibit 14-J)

221. To date, the lenses purchased by PFO Solar have never met the Warranty Production Rate or Adjusted Warranty Production Rate. (Stip. ¶ 75)

222. PFO Solar, however, did not terminate the 2011 Equipment Purchase Agreement with RaPower3. (Stip. ¶ 76)

223. Neldon P. Johnson signed the 2011 Equipment Purchase Agreement as Director of RaPower3. (Stip. ¶ 77; Exhibit 14-J)

B. 2011 Operation and Maintenance Agreement

224. On December 9, 2011, petitioner Preston Olsen (for PFO Solar) entered into an "Operation and Maintenance Agreement" ("2011 O&M Agreement") with LTB. (Stip. ¶ 78; Exhibit 15-J)

225. In paragraph 4.2 of the 2011 O&M Agreement, LTB agreed to operate the solar energy project in compliance with all applicable laws and with OSHA standards. (Stip. ¶ 79; Exhibit 15-J)

226. In paragraph 5.2 of the 2011 O&M Agreement, LTB agreed to pay petitioners rent once the solar lenses they purchased pursuant to the 2011

Equipment Purchase Agreement were installed and producing revenue. (Stip. ¶ 80; Exhibit 15-J)

227. In paragraph 5.2 of the 2011 O&M Agreement, LTB agreed to pay petitioners rent ($150 per year per solar lens) once the solar lenses they purchased pursuant to the 2011 Equipment Purchase Agreement were installed and producing revenue. (Stip. ¶ 115; Exhibit 15-J)

228. At the rate of $150 per lens per year, petitioners would not recoup the purchase price of their solar lenses ($3500 per solar lens) for over 23 years. (Exhibit 15-J)

229. LTB never paid petitioners any rental payments. (Stip. ¶ 81)

230. In paragraph 5.4 of the 2011 O&M Agreement, petitioners agreed to pay LTB a lease payment of $1 per year per solar lens for space on a structure that holds solar lenses. (Stip. ¶ 82; Exhibit 15-J)

231. Petitioners never paid any lease payments to LTB. (Stip. ¶ 83)

232. Paragraph 9.2 of the 2011 O&M Agreement allowed petitioners the opportunity to terminate the agreement if LTB breaches any of its material obligations under the agreement. (Stip. ¶ 84; Exhibit 15-J)

233. Petitioners have not terminated the 2011 O&M Agreement. (Stip. ¶ 85)

234. Even though the 2011 O&M Agreement was between PFO Solar and LTB, Neldon Johnson signed the agreement as Director of RaPower3. (Stip. ¶ 86; Exhibit 15-J; Tr. 167:6-22)

C. Payments made by petitioners for solar lenses purchased in 2011

235. On December 12, 2011, petitioners paid to RaPower3 a down payment of $1,470 ($105 per solar lens) for the 14 solar lenses they purchased. (Stip. ¶ 87; Exhibit 13-J, page 2; Exhibit 14-J; Tr. 219:5-11))

236. On June 14, 2012, petitioners paid to RaPower3 $7,000 ($500 per solar lens) for lenses purchased in tax year 2011. (Stip. ¶ 88; Exhibit 13-J, page 3)

237. Petitioners opted to participate in a five-year payment plan RaPower3 offered in only tax year 2011 to pay remaining balance of the down payment for the solar lenses they purchased on December 9, 2011. (Stip. ¶ 89)

238. Petitioners have made no other payments for the solar lenses purchased on December 9, 2011. (Stip. ¶ 91)

239. Pursuant to the 2011 Equipment Purchase Agreement, petitioners supposedly remain liable to pay the remaining balance of $40,530 for the 14 solar lenses purchased on December 9, 2011. (Stip. ¶ 92; Exhibit 14-J)

240. Petitioners, however, will never pay this remaining balance "because the whole thing is falling apart." (Tr. 224:16-23)

D. Petitioners' individual income tax return for 2011

241. On their individual income tax return for tax year 2011, petitioners reported the items detailed in Table C. (Stip. ¶ 93; Exhibit 3-J)

Table C

Item	Amount
Wages (ln 7)	$[redacted]
Business loss (ln 12)	-$[redacted]
Adjusted gross income (ln 37)	$[redacted]
Taxable income (ln 43)	$[redacted]
Tax (ln 46)	$[redacted]
Child tax credit (ln 51)*	-$[redacted]
Form 3800 credit (ln 53)	-$[redacted]
Total tax (ln 60)	$0
Total payments (ln 72)	$[redacted]
Refund (ln 74)	$[redacted]

*Computational adjustment at issue in this case. (Exhibit 7-J)

242. Petitioners attached to their 2011 return a Schedule C for PFO Solar LLC, a solar energy business. (Stip. ¶ 94; Exhibit 3-J)

243. On this Schedule C, petitioners reported $0 in income, but they claimed depreciation expenses in the amount of $46,546 and legal and professional services in the amount of $325. (Stip. ¶ 95; Exhibit 3-J)

244. Petitioners provided no testimony, documentation, or other evidence to substantiate the $325 of legal and professional services they claimed. (Entire record)

245. Petitioners attached to their 2011 return a Form 3800, General Business Credit. On line 4 of the Form 3800, they claimed a carryforward (from tax year 2009) of a general business credit (energy credit) in the amount of $188. On line 38 of the Form 3800, they claimed a credit allowed for tax year 2011 in the amount of $7,531. (Stip. ¶ 96; Exhibit 3-J)

246. Petitioners zeroed out their income tax liability in tax year 2011 by claiming depreciation expenses and tax credits based on their purchase of solar lenses in 2009 and 2011. (Exhibits 1-J; 2-J, 3-J; Tr. 248:12-249:3)

247. Bryan C. Bolander, a Certified Public Accountant ("CPA"), prepared petitioners' 2011 return. (Stip. ¶ 97; Exhibit 3-J)

248. During the audit of petitioners' return for tax year 2011, Mr. Bolander represented petitioners before the respondent. (Tr. 453:11-14)

249. Mr. Bolander provided some advice to petitioners on how their purchase of solar lenses would affect their income tax liability. (Tr. 457:2-7)

250. Petitioners believed they cooperated with respondent during the Exam process and provided the records requested. (Tr. 453:20-456:5)

251. Mr. Bolander believed he provided to respondent all the books and records available, but respondent determined it was not sufficient to support petitioners' claimed deductions and credits related to their lenses. (Exhibit 7-J)

252. After tax year 2011, Mr. Bolander stopped preparing returns for RaPower3 participants to protect his career. (Tr. 299:19-300:10)

253. After examination, respondent determined petitioners were not entitled to claim as deductions any expenses related to their purchase of solar lenses from RaPower3 as set forth in the notice of deficiency. (Stip. ¶ 98; Exhibit 7-J)

254. Respondent also determined petitioners were not entitled to claim any credits related to their purchase of solar lenses from RaPower3 as set forth in the notice of deficiency. (Stip. ¶ 99; Exhibit 7-J)

VII. Petitioners' Tax Year 2012

A. 2012 Equipment Purchase Agreement

255. On December 20, 2012, PFO Solar entered into an Equipment Purchase Agreement with RaPower3 ("2012 Equipment Purchase Agreement"). (Stip. ¶ 100; Exhibit 16-J)

256. Petitioner Preston Olsen signed the Equipment Purchase Agreement as the purchaser for PFO Solar. (Stip. ¶ 101; Exhibit 16-J)

257. In paragraphs 1 and 3, PFO Solar agreed to purchase 13 "alternative energy systems" (solar lenses) from RaPower3 for $45,500 ($3,500 per solar lens). (Stip. ¶ 102; Exhibit 16-J)

258. Paragraph 2 explicitly references potential tax benefits. (Exhibit 16-J)

259. Petitioner Preston Olsen chose the number of solar lenses to buy in tax year 2012 based solely on the number of solar lenses needed to eliminate his federal income tax liability. (Tr. 106:17-21)

260. Paragraph 3 offered three options for paying the purchase price. (Stip. ¶ 103; Exhibit 16-J)

261. PFO Solar chose option 2, which required a down payment of $1,050 per solar lens (comprised of one-time payment of $105 per solar lens, with the

remaining $945 per solar lens paid on or before June 30, 2012 [sic]). (Stip. ¶ 104; Exhibit 16-J; Tr. 217:22-219:1)

262. PFO Solar agreed to pay the balance of the purchase price, interest free, in thirty annual installments of $82 per solar lens beginning five years following the "installation date", which paragraph 3 defined "as the date the Alternative Energy Equipment has been installed and begins to produce revenue." (Stip. ¶ 105; Exhibit 16-J)

263. Petitioners never took physical possession of the 13 solar lenses they purchased in 2012, and those solar lenses never produced any revenue. (Stip. ¶ 106)

264. To the extent the 13 solar lenses petitioners purchased in tax year 2012 actually existed, those solar lenses remained on wrapped pallets. (Tr. 110:18-23, Tr. 113:12-17, Tr. 122:3-7, Tr. 264:5-10, Tr. 367:8-12)

265. In paragraph 4, PFO Solar agreed that the "alternative energy systems" would be operated and managed by an "independent Operations and Management Company." (Stip. ¶ 107; Exhibit 16-J)

266. In paragraph 10, PFO Solar and RaPower3 acknowledged a "Target Production Rate" from one alternative energy system equal to "600 peak watts".[2] Paragraph 10 also describes a "Warranty Production Rate" and an "Adjusted Warranty Production Rate". (Stip. ¶ 108; Exhibit 16-J)

267. The "specifically assigned function" of the solar lenses petitioners purchased in 2012 was to create electricity at the "target rate" of 600 peak watts. (Exhibit 16-J)

268. Paragraph 10 further provides that PFO Solar may terminate the Equipment Purchase Agreement if the alternative energy system fails to meet the Warranty Production Rate or Adjusted Warranty Production Rate within five years. (Stip. ¶ 109; Exhibit 16-J)

269. To date, the alternative energy systems purchased by PFO Solar have never met the Warranty Production Rate or Adjusted Warranty Production Rate. (Stip. ¶ 110)

270. PFO Solar, however, did not terminate the 2012 Equipment Purchase Agreement with RaPower3. (Stip. ¶ 111)

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[2] The 2012 Equipment Purchase Agreement does not provide whether this target production rate was per hour, per day, per year.

271. Neldon P. Johnson signed the 2012 Equipment Purchase Agreement as Director of RaPower3. (Stip. ¶ 112; Exhibit 16-J)

B. 2012 Operation and Maintenance Agreement

272. On December 20, 2012, petitioner Preston Olsen (for PFO Solar) entered into an "Operation and Maintenance Agreement" ("2012 O&M Agreement") with LTB. (Stip. ¶ 113; Exhibit 17-J)

273. In paragraph 4.2 of the 2012 O&M Agreement, LTB agreed to operate the solar energy project in compliance with all applicable laws and with OSHA standards. (Stip. ¶ 114; Exhibit 17-J)

274. In paragraph 5.2 of the 2012 O&M Agreement, LTB agreed to pay petitioners rent ($150 per year per solar lens) once the solar lenses they purchased pursuant to the 2012 Equipment Purchase Agreement were installed and producing revenue. (Stip. ¶ 115; Exhibit 17-J)

275. At the rate of $150 per lens per year, petitioners would not recoup the purchase price of their solar lenses ($3500 per solar lens) for over 23 years. (Exhibit 15-J)

276. LTB never paid petitioners any rental payments. (Stip. ¶ 116)

277. In paragraph 5.4 of the 2012 O&M Agreement, petitioners agreed to pay LTB a lease payment of $1 per year per solar lens for space on a structure that holds solar lenses. (Stip. ¶ 117; Exhibit 17-J)

278. Petitioners never paid any lease payments to LTB. (Stip. ¶ 118)

279. Paragraph 9.2 of the 2012 O&M Agreement allowed petitioners the opportunity to terminate the agreement if LTB breaches any of its material obligations under the agreement. (Stip. ¶ 119; Exhibit 17-J)

280. Petitioners have not terminated the 2012 O&M Agreement. (Stip. ¶ 120)

281. Even though the 2012 O&M Agreement was between PFO Solar and LTB, Neldon Johnson signed the agreement as Director of RaPower3. (Stip. ¶ 113; Exhibit 17-J; Tr. 168:16-24)

C. Payments made by petitioners for solar lenses purchased in 2012

282. By check dated December 27, 2012, petitioners paid to RaPower3 a down payment $1,365 ($105 per solar lens) for the 13 solar lenses they purchased. (Stip. ¶ 122; Exhibit 13-J, page 4; Tr. 217:22-219:1)

283. By check dated June 5, 2013, petitioners paid $12,285 ($945 per solar lens), which was the remaining down payment pursuant to the 2012 Equipment Purchase Agreement to RaPower3. (Stip. ¶ 123; Exhibit 13-J, page 5)

284. To date, petitioners have made no other payments for the solar lenses purchased on December 20, 2012. (Stip. ¶ 124)

285. Pursuant to the 2012 Equipment Purchase Agreement, petitioners supposedly remain liable to pay the remaining balance of $31,850 for the 13 solar lenses purchased on December 20, 2012. (Stip. ¶ 125; Exhibit 17-J)

286. Petitioners, however, will never pay this remaining balance "because the whole thing is falling apart." (Tr. 224:16-23)

D. Petitioners' 2012 individual income tax return

287. On their individual income tax return for tax year 2012, petitioners reported the items detailed in Table D. (Stip. ¶ 126; Exhibit 4-J)

Table D

Item	Amount
Wages (ln 7)	$[redacted]
Business loss (ln 12)	-$[redacted]
Adjusted gross income (ln 37)	$[redacted]
Taxable income (ln 43)	$[redacted]
Tax (ln 46)	$[redacted]
Child tax credit (ln 51)*	-$[redacted]
Form 3800 credit (ln 53)	-$[redacted]

Total tax (ln 60)	$0
Total payments (ln 72)	$2[redacted]
Refund (ln 74)	$[redacted]

*Computational adjustment at issue in this case. (Exhibit 7-J)

288. Petitioners attached to their 2012 return a Schedule C for PFO Solar LLC, a solar energy business. (Stip. ¶ 127; Exhibit 4-J)

289. On this Schedule C, petitioners reported $0 in income, but they claimed depreciation expenses in the amount of $23,242. (Stip. ¶ 128; Exhibit 4-J)

290. Petitioners attached to their 2012 return a Form 3800, General Business Credit. On line 38 of the Form 3800, they claimed a credit allowed for tax year 2012 in the amount of $19,136. (Stip. ¶ 129; Exhibit 4-J)

291. Petitioners attached to their 2012 return a Form 3468, Investment Credit. On line 12b of this form, petitioners claimed basis of property for purposes of the energy credit in the amount of $13,650 (total purchase price for 13 solar lenses in the amount of $45,500 multiplied by 30%). (Stip. ¶ 130; Exhibit 4-J)

292. Petitioners zeroed out their income tax liability in tax year 2012 by claiming depreciation expenses and tax credits based on their purchase of solar lenses in 2012. (Exhibit 4-J; Tr. 248:12-249:3)

293. Kenneth B. Riter, a Certified Public Accountant ("CPA"), prepared petitioners' 2012 return. (Stip. ¶ 131; Exhibit 4-J)

294. After examination, respondent determined petitioners were not entitled to claim as deductions any expenses related to their purchase of solar lenses from RaPower3 as set forth in the notice of deficiency. (Stip. ¶ 132; Exhibit 7-J)

295. Respondent also determined petitioners were not entitled to claim any credits related to their purchase of solar lenses from RaPower3 as set forth in the notice of deficiency. (Stip. ¶ 133; Exhibit 7-J)

VIII. Petitioners' Tax Year 2013

A. 2013 Equipment Purchase Agreement

296. On December 30, 2013, PFO Solar entered into an Equipment Purchase Agreement with RaPower3 ("2013 Equipment Purchase Agreement"). (Stip. ¶ 134; Exhibit 18-J)

297. Petitioner Preston Olsen signed the Equipment Purchase Agreement as the purchaser for PFO Solar. (Stip. ¶ 135; Exhibit 18-J)

298. In paragraphs 1 and 3, PFO Solar agreed to purchase 15 "alternative energy systems" (solar lenses) from RaPower3 for $52,500 ($3,500 per solar lens). (Stip. ¶ 136; Exhibit 18-J)

299. Paragraph 2 explicitly references potential tax benefits. (Exhibit 18-J)

300. Petitioner Preston Olsen chose the number of solar lenses to buy in tax year 2013 based solely on the number of solar lenses needed to eliminate his federal income tax liability. (Tr. 106:17-21)

301. Paragraph 3 offered three options for paying the purchase price. (Stip. ¶ 137; Exhibit 18-J)

302. PFO Solar chose option 2, which required a down payment of $1,050 per solar lens (comprised of one-time payment of $105 per solar lens, with the remaining $945 per solar lens paid on or before June 30, 2012 [sic]). (Stip. ¶ 138; Exhibit 18-J; Tr. 217:22-219:1)

303. PFO Solar agreed to pay the balance of the purchase price, interest free, in thirty annual installments of $82 per solar lens beginning five years following the "installation date", which paragraph 3 defined "as the date the Alternative Energy Equipment has been installed and begins to produce revenue." (Stip. ¶ 139; Exhibit 18-J)

304. Petitioners never took physical possession of the 15 solar lenses they purchased in tax year 2013, and those solar lenses never produced any revenue. (Stip. ¶ 140)

305. To the extent the 15 solar lenses petitioners purchased in tax year 2013 actually existed, those solar lenses remained on wrapped pallets. (Tr. 110:18-23, Tr. 113:12-17, Tr. 122:3-7, Tr. 264:5-10, Tr. 367:8-12)

306. In paragraph 4, PFO Solar agreed that the "alternative energy systems" would be operated and managed by an "independent Operations and Management Company." (Stip. ¶ 141; Exhibit 18-J)

307. In paragraph 10, PFO Solar and RaPower3 acknowledged a "Target Production Rate" from one alternative energy system equal to "600 peak watts".[3] Paragraph 10 also describes a "Warranty Production Rate" and an "Adjusted Warranty Production Rate". (Stip. ¶ 142; Exhibit 18-J)

308. The "specifically assigned function" of the solar lenses petitioners purchased in 2013 was to create electricity at the "target rate" of 600 peak watts. (Exhibit 18-J)

309. Paragraph 10 further provides that PFO Solar may terminate the Equipment Purchase Agreement if the alternative energy system fails to meet the Warranty Production Rate or Adjusted Warranty Production Rate within five years. (Stip. ¶ 143; Exhibit 18-J)

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[3] The 2013 Equipment Purchase Agreement does not provide whether this target production rate was per hour, per day, per year.

310. To date, the alternative energy systems purchased by PFO Solar have never met the Warranty Production Rate or Adjusted Warranty Production Rate. (Stip. ¶ 144; Exhibit 18-J)

311. PFO Solar, however, did not terminate the 2013 Equipment Purchase Agreement with RaPower3. (Stip. ¶ 145)

312. Neldon P. Johnson signed the 2013 Equipment Purchase Agreement as Director of RaPower3. (Stip. ¶ 146; Exhibit 18-J)

B. 2013 Operation and Maintenance Agreement

313. On December 30, 2013, petitioner Preston Olsen (for PFO Solar) entered into an "Operation and Maintenance Agreement" ("2013 O&M Agreement") with LTB. (Stip. ¶ 147; Exhibit 19-J)

314. In paragraph 4.2 of the 2013 O&M Agreement, LTB agreed to operate the solar energy project in compliance with all applicable laws and with OSHA standards. (Stip. ¶ 148; Exhibit 19-J)

315. In paragraph 5.2 of the 2013 O&M Agreement, LTB agreed to pay petitioners rent ($150 per year per solar lens) once the solar lenses they purchased pursuant to the 2013 Equipment Purchase Agreement were installed and producing revenue. (Stip. ¶ 149; Exhibit 19-J)

316. At the rate of $150 per lens per year, petitioners would not recoup the purchase price of their solar lenses ($3,500 per solar lens) for over 23 years. (Exhibit 19-J)

317. LTB never paid petitioners any rental payments. (Stip. ¶ 150)

318. In paragraph 5.4 of the 2013 O&M Agreement, petitioners agreed to pay LTB a lease payment of $1 per year per solar lens for space on a structure that holds solar lenses. (Stip. ¶ 151; Exhibit 19-J)

319. Petitioners never paid any lease payments to LTB. (Stip. ¶ 152)

320. Paragraph 9.2 of the 2013 O&M Agreement allowed petitioners the opportunity to terminate the agreement if LTB breached any of its material obligations under the agreement. (Stip. ¶ 153; Exhibit 19-J)

321. Petitioners have not terminated the 2013 O&M Agreement. (Stip. ¶ 154)

322. Even though the 2013 O&M Agreement was between PFO Solar and LTB, Neldon Johnson signed the agreement as Director of RaPower3. (Stip. ¶ 155; Exhibit 19-J; Tr. 169:3-17)

C. Payments made by petitioners for solar lenses purchased in 2013

323. By check dated December 30, 2013, petitioners paid to RaPower3 a down payment $1,575 ($105 per solar lens) for the 15 solar lenses they purchased

pursuant to the 2013 Equipment Purchase Agreement. (Stip. ¶ 156; Exhibit 13-J, page 6; Tr. 217:22-219:1)

324. By check dated June 4, 2014, petitioners paid $14,175 ($945 per solar lens), which was the remaining down payment pursuant to the 2013 Equipment Purchase Agreement to RaPower3. (Stip. ¶ 157; Exhibit 13-J, page 7; Tr. 217:22-219:1)

325. To date, petitioners have made no other payments for the solar lenses purchased on December 30, 2013. (Stip. ¶ 158)

326. Pursuant to the 2013 Equipment Purchase Agreement, petitioners supposedly remain liable to pay the remaining balance of $36,750 for the 15 solar lenses purchased on December 30, 2013. (Stip. ¶ 159; Exhibit 18-J)

327. Petitioners, however, will never pay this remaining balance "because the whole thing is falling apart." (Tr. 224:16-23)

D. Petitioners' 2013 individual income tax return

328. On their individual income tax return for tax year 2013, petitioners reported the items detailed in Table E. (Stip. ¶ 160; Exhibit 5-J)

Table E

Item	Amount
Wages (ln 7)	$[redacted]
Business loss (ln 12)	-$[redacted]
Adjusted gross income (ln 37)	$[redacted]
Taxable income (ln 43)	$[redacted]
Tax (ln 46)	$[redacted]
Child tax credit (ln 51)*	-$[redacted]
Form 3800 credit (ln 53)	-$[redacted]
Total tax (ln 61)	$0
Total payments (ln 72)	$[redacted]
Refund (ln 74)	$[redacted]

*Computational adjustment at issue in this case. (Exhibit 8-J)

329. Petitioners attached to their 2013 return a Schedule C for PFO Solar LLC, identifying it as an "equipment rental services" company. (Stip. ¶ 161; Exhibit 5-J)

330. On this Schedule C, petitioners reported $0 in income, but they claimed depreciation expenses in the amount of $33,715. (Stip. ¶ 162; Exhibit 5-J)

331. Petitioners attached to their 2013 return a Form 3800, General Business Credit. On line 34 of the Form 3800, they claimed a carryforward of business credit from tax year 2012 in the amount of $1,871. On line 38 of the Form 3800, they claimed a credit allowed for tax year 2013 in the amount of $16,540. (Stip. ¶ 163; Exhibit 5-J)

332. Petitioners attached to their 2013 return a Form 3468, Investment Credit. On line 12b of this form, petitioners claimed basis of property for purposes of the energy credit in the amount of $15,750 (total purchase price for 15 solar lenses in the amount of $52,500 multiplied by 30%). (Stip. ¶ 164; Exhibit 5-J)

333. Petitioners zeroed out their income tax liability in tax year 2013 by claiming depreciation expenses and tax credits based on their purchase of solar lenses in 2012 and 2013. (Exhibits 4-J, 5-J; Tr. 248:12-249:3)

334. Richard Jameson prepared petitioners' 2013 return. (Stip. ¶ 165; Exhibit 5-J)

335. During the audit of petitioners' return for tax year 2013, Mr. Jameson represented petitioners before respondent's Tax Compliance Officer ("TCO"). (Tr. 432:12-20)

336. Mr. Jameson provided some advice on whether he believed petitioners' purported solar energy activities met the section 162 requirements. (Tr. 434:7-23)

337. Petitioners believed they cooperated with the TCO and provided the records requested. (Tr. 433:1-434:6)

338. Mr. Jameson believed he provided all the books and records available to him, but the TCO determined they were not sufficient to support petitioners' claimed deductions and credits related to their lenses. (Exhibit 8-J)

339. After examination, respondent determined petitioners were not entitled to claim as deductions any expenses related to their purchase of solar lenses from RaPower3 as set forth in the notice of deficiency. (Stip. ¶ 166; Exhibit 8-J)

340. Respondent also determined petitioners were not entitled to claim any credits related to their purchase of solar lenses from RaPower3 as set forth in the notice of deficiency. (Stip. ¶ 167; Exhibit 8-J)

IX. Petitioners' Tax Year 2014

A. 2014 Equipment Purchase Agreement

341. On December 29, 2014, PFO Solar entered into an Equipment Purchase Agreement with RaPower3 ("2014 Equipment Purchase Agreement"). (Stip. ¶ 168; Exhibit 20-J)

342. Petitioner Preston Olsen signed the Equipment Purchase Agreement as the purchaser for PFO Solar. (Stip. ¶ 169; Exhibit 20-J)

343. In paragraphs 1 and 3, PFO Solar agreed to purchase 10 "alternative energy systems" (solar lenses) from RaPower3 for $35,000 ($3,500 per solar lens). (Stip. ¶ 170; Exhibit 20-J)

344. Paragraph 2 explicitly references potential tax benefits. (Exhibit 20-J)

345. Petitioner Preston Olsen chose the number of solar lenses to buy in tax year 2014 based solely on the number of solar lenses needed to eliminate his federal income tax liability. (Tr. 106:17-21)

346. Paragraph 3 offered three options for paying the purchase price. (Stip. ¶ 171; Exhibit 20-J)

347. PFO Solar chose option 2, which required a down payment of $1,050 per solar lens (comprised of one-time payment of $105 per solar lens, with the

remaining $945 per solar lens paid on or before June 30, 2012 [sic]). (Stip. ¶ 172; Exhibit 20-J; Tr. 217:22-219:1)

348. PFO Solar agreed to pay the balance of the purchase price, interest free, in thirty annual installments of $82 per solar lens beginning five years following the "installation date", which paragraph 3 defined "as the date the Alternative Energy Equipment has been installed and begins to produce revenue." (Stip. ¶ 173; Exhibit 20-J)

349. Petitioners never took physical possession of the 10 solar lenses they purchased in tax year 2014, and those solar lenses never produced any revenue. (Stip. ¶ 174)

350. To the extent the 10 solar lenses petitioners purchased in tax year 2014 actually existed, those solar lenses remained on wrapped pallets. (Tr. 110:18-23, Tr. 113:12-17, Tr. 122:3-7, Tr. 264:5-10, Tr. 367:8-12)

351. In paragraph 4, PFO Solar agreed that the "alternative energy systems" would be operated and managed by an "independent Operations and Management Company." (Stip. ¶ 175; Exhibit 20-J)

352. In paragraph 10, PFO Solar and RaPower3 acknowledged a "Target Production Rate" from one alternative energy system equal to "600 peak watts".[4] Paragraph 10 also describes a "Warranty Production Rate" and an "Adjusted Warranty Production Rate". (Stip. ¶ 176; Exhibit 20-J)

353. The "specifically assigned function" of the solar lenses petitioners purchased in 2014 was to create electricity at the "target rate" of 600 peak watts. (Ex. 20-J)

354. Paragraph 10 further provides that PFO Solar may terminate the Equipment Purchase Agreement if the alternative energy system fails to meet the Warranty Production Rate or Adjusted Warranty Production Rate within five years. (Stip. ¶ 177; Exhibit 20-J)

355. To date, the alternative energy systems purchased by PFO Solar have never met the Warranty Production Rate or Adjusted Warranty Production Rate. (Stip. ¶ 178)

356. PFO Solar, however, did not terminate the 2014 Equipment Purchase Agreement with RaPower3. (Stip. ¶ 179)

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[4] The 2014 Equipment Purchase Agreement does not provide whether this target production rate was per hour, per day, per year.

357. Neldon Johnson signed the 2014 Equipment Purchase Agreement as Director of RaPower3. (Stip. ¶ 180; Exhibit 20-J)

B. 2014 Operation and Maintenance Agreement

358. On December 29, 2014, petitioner Preston Olsen (for PFO Solar) entered into an "Operation and Maintenance Agreement" ("2014 O&M Agreement") with LTB. (Stip. ¶ 181; Exhibit 21-J)

359. In paragraph 4.2 of the 2014 O&M Agreement, LTB agreed to operate the solar energy project in compliance with all applicable laws and with OSHA standards. (Stip. ¶ 182; Exhibit 21-J)

360. In paragraph 5.2 of the 2014 O&M Agreement, LTB agreed to pay petitioners rent ($150 per year per solar lens) once the solar lenses they purchased pursuant to the 2014 Equipment Purchase Agreement were installed and producing revenue. (Stip. ¶ 183; Exhibit 21-J)

361. At the rate of $150 per lens per year, petitioners would not recoup the purchase price of their solar lenses ($3500 per solar lens) for over 23 years. (Exhibit 21-J)

362. LTB never paid petitioners any rental payments. (Stip. ¶ 184)

363. In paragraph 5.4 of the 2014 O&M Agreement, petitioners agreed to pay LTB a lease payment of $1 per year per solar lens for space on a structure that holds solar lenses. (Stip. ¶ 185; Exhibit 21-J)

364. Petitioners never paid any lease payments to LTB. (Stip. ¶ 186)

365. Paragraph 9.2 of the 2014 O&M Agreement allowed petitioners the opportunity to terminate the agreement if LTB breached any of its material obligations under the agreement. (Stip. ¶ 187; Exhibit 21-J)

366. Petitioners have not terminated the 2014 O&M Agreement. (Stip. ¶ 188)

367. Even though the 2014 O&M Agreement was between PFO Solar and LTB, Neldon Johnson signed the agreement as Director of RaPower3. (Stip. ¶ 189; Exhibit 21-J; Tr. 170:4-9)

C. Payments made by petitioners for solar lenses purchased in 2014

368. By check dated January 12, 2015, petitioners paid to RaPower3 a down payment $1,050 ($105 per solar lens) for the 10 solar lenses they purchased on December 29, 2014. (Stip. ¶ 190; Exhibit 13-J, page 19; Tr. 217:22-219:1)

369. By check dated November 1, 2015, petitioners paid RaPower3 $9,450 ($945 per solar lens), which was the remaining down payment pursuant to the 2014

Equipment Purchase Agreement to RaPower3. (Stip. ¶ 191; Exhibit 13-J, page 20; Tr. 217:22-219:1)

370. To date, petitioners have made no other payments for the solar lenses purchased on December 29, 2014. (Stip. ¶ 192)

371. Pursuant to the 2014 Equipment Purchase Agreement, petitioners supposedly remain liable to pay the remaining balance of $24,500 for the 10 solar lenses purchased on December 29, 2014. (Stip. ¶ 193)

372. Petitioners, however, will never pay this remaining balance "because the whole thing is falling apart." (Tr. 224:16-23)

D. Petitioners' 2014 individual income tax return

373. On their individual income tax return for tax year 2014, petitioners reported the items detailed in Table F. (Stip. ¶ 194; Exhibit 6-J)

Table F

Item	Amount
Wages (ln 7)	$[redacted]
Business loss (ln 12)	-$[redacted]
Adjusted gross income (ln 37)	$[redacted]
Taxable income (ln 43)	$[redacted]
Tax (ln 44)	$[redacted]

Child tax credit (ln 52)*	-$[redacted]
Form 3800 credit (ln 54)	-$[redacted]
Total tax (ln 63)	$[redacted]
Total payments (ln 72)	$[redacted]
Refund (ln 74)	$[redacted]

*Computational adjustment at issue in this case. (Exhibit 8-J)

374. Petitioners attached to their 2014 return a Schedule C for PFO Solar LLC, identifying it as an "equipment rental services" company. (Stip. ¶ 195; Exhibit 6-J)

375. On this Schedule C, petitioners reported $0 in income, but they claimed depreciation expenses in the amount of $29,975. (Stip. ¶ 196; Exhibit 6-J)

376. Petitioners attached to their 2014 return a Form 3800, General Business Credit. On line 34 of the Form 3800, they claimed a carryforward of business credit from tax year 2013 in the amount of $1,081. On line 38 of the Form 3800, they claimed a credit allowed for tax year 2014 in the amount of $11,581. (Stip. ¶ 197; Exhibit 6-J)

377. Petitioners attached to their 2014 return a Form 3468, Investment Credit. On line 12b of this form, petitioners claimed basis of property for purposes

of the energy credit in the amount of $10,500 (total purchase price for 10 solar lenses in the amount of $35,000 multiplied by 30%). (Stip. ¶ 198; Exhibit 6-J)

378. Petitioners nearly zeroed out their income tax liability in tax year 2014 by claiming depreciation expenses and tax credits based on their purchase of solar lenses in 2014. (Exhibit 6-J; Tr. 248:12-249:3)

379. Richard Jameson prepared petitioners' 2014 return. (Stip. ¶ 199; Exhibit 6-J)

380. During the audit of petitioners' return for tax year 2014, Mr. Jameson represented petitioners before respondent's Tax Compliance Officer ("TCO"). (Tr. 432:12-20)

381. Mr. Jameson provided some advice on whether he believed petitioners' purported solar energy activities met the section 162 requirements. (Tr. 434:7-23)

382. Petitioners believed they cooperated with the TCO and provided the records requested. (Tr. 433:1-434:6)

383. Mr. Jameson provided all the books and records available to him, but the TCO determined they were not sufficient to support petitioners' claimed deductions and credits related to their lenses. (Exhibit 8-J)

384. After examination, respondent determined petitioners were not entitled to claim as deductions any expenses related to their purchase of solar lenses from RaPower3 as set forth in the notice of deficiency. (Stip. ¶ 200; Exhibit 8-J)

385. Respondent also determined petitioners were not entitled to claim any credits related to their purchase of solar lenses from RaPower3 as set forth in the notice of deficiency. (Stip. ¶ 201; Exhibit 8-J)

X. Summary of petitioners' solar lens purchases and the accompanying effect on their Federal income tax liabilities

386. Petitioners reduced or eliminated their federal income tax liability[5] by claiming a combination of depreciation expenses and tax credits based on the full "purchase price" as detailed in Table G below. (Exhibits 1-J through 6-J, 11-J, 13-J, 14-J, 16-J, 18-J, 20-J)

[5] Petitioners reported $0.00 in total tax due for tax years 2010, 2011, 2012, and 2013 and received a refund of all the federal income tax that petitioner Preston Olsen's employer withheld. They reported $1,538.00 in total tax due for tax year 2014, but they still received a refund of $27,973.00.

Table G

Tax year	# of lenses	Total [6] "Purchase price" for all lenses	Total amount paid [7]	Depreciation claimed	Credit claimed	Refund claimed
2009	2	$60,000	$18,000	$30,600	$4,629	$[redacted]
2010	0[8]			$8,160	$10,306	$[redacted]
2011	14	$49,000	$8,470	$46,546	$7,531	$[redacted]
2012	13	$45,500	$13,650	$23,342	$19,136	$[redacted]
2013	15	$52,500	$15,750	$33,715	$16,540	$[redacted]
2014	10	$35,000	$10,500	$29,975	$11,851	$[redacted]
Totals	54	$242,000	$66,370	$172,338	$69,993	$[redacted]

XI. Program Materials

A. Promotional materials

387. RaPower3 provided three ways to make money from purchasing solar lenses: (1) tax benefits (i.e., eliminating income tax liability through depreciation,

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[6] In tax year 2009, the purchase price per solar lens was $30,000. For the other tax years at issue, the purchase price per solar lens was $3,500.

[7] For the solar lenses purchased in tax year 2009, petitioners paid this full $18,000 on the date they signed the agreement to purchase the solar lenses. For all the other years at issue, petitioners would pay a portion of this total on or about the date they entered into the purchase agreement, typically ten percent, and they paid the remainder of this amount during the following tax year after receiving their tax refund.

[8] Petitioners did not purchase any solar lenses in tax year 2010. But they claimed depreciation expenses and credits based on the solar lenses they purchased in tax year 2009; they carried back to tax year 2008 other tax benefits based on the solar lenses they purchased in 2009.

net operating losses, and credits); (2) rental income; and (3) bonus income. (Exhibits 32-J, 33-J, 35-J)

388. Purchasers of RaPower3 solar lenses sought to "zero-out" their income tax liabilities and to maximize their potential tax benefits. (Exhibits 36-J, 40-J; Tr. 248:12-249:3)

389. The promoters described the purpose of the solar lens purchases as "buy[ing] our solar [lenses] with your tax money instead of giving it to the IRS" by "receiv[ing] nearly double your investment from the IRS in tax benefits." (Exhibit 42-J)

390. Petitioners used their estimated income tax liability to determine the number of lenses to purchase. (Exhibits 36-J, 47-J, 109-J; Tr. 262:5-13)

391. Petitioners' profit was "created by [their] depreciation" and "tax credit". (Exhibit 36-J)

392. Purchasers were told how to claim depreciation and credits on their income tax returns. (Exhibit 38-J)

393. On April 1, 2010, Greg Shepard claimed RaPower3 participants had "realized" over $1,000,000 in tax benefits. (Exhibit 117-J)

394. Purchasers were encouraged to use "profits from their recent tax returns" to buy more lenses. (Exhibit 51-J)

395. RaPower3 specifically told potential purchasers that the purchase of solar lenses was not an investment to avoid prospectus and securities issues. (Exhibits 33-J, 57-J, 117-J)

396. Beginning in tax year 2011, purchasers of the RaPower3 solar lenses immediately entered an agreement to purportedly lease those solar lenses to another promoter entity, LTB. (Exhibits 15-J, 17-J, 19-J, 21-J)

397. Purchasers could not provide their solar lenses to any other entity. (Tr. 245:4-13)

398. Purchasers received rental income only when their specific lenses were used to produce electricity and generate revenue. (Stip. ¶¶ 80, 115, 149, 183; Exhibits 15-J, 17-J, 19-J, 21-J, 70-J)

399. Purchasers of solar lenses have not received any rental payments from IAS, RaPower3, LTB, or any of the other promoter entities or individuals. (Stip. ¶¶ 81, 116, 150, 184; Tr. 121:7-9; Tr. 213:2-6, Tr. 245:14-16, Tr. 316:23-25)

400. No purchaser ever will receive any rental payments because a court-appointed Receiver has taken control of all the promoter entities. (Tr. 103:23-104:1, Tr. 121:7-15, Tr. 318:6-7; Tr. 356:24-357:3)

401. For solar lenses purchased before May 23, 2011, purchasers could receive bonus income "based on 0.006% of the first billion dollars of gross sales of IAS." (Exhibit 33-J)

402. For solar lenses purchased between May 24, 2011 and February 29, 2012, purchasers could receive bonus income based on "0.002% of the first billion dollars in gross sales of IAS." (Exhibit 33-J)

403. For solar lenses purchased between March 1, 2012 and December 31, 2013, purchasers could receive bonus income based on "0.002% of the second billion dollars in gross sales of IAS." (Exhibit 33-J)

404. IAS never made any income from using solar lenses. (Tr. 247:5-6)

405. Petitioners never received any bonus income based on the solar lenses they purchased. (Tr. 247:7-8; 284:14-21)

406. Greg Shepard prepared a document titled RAPOWER3 CLIENT SYNOPSIS. (Exhibit 32-J)

407. In the first 8 sections of this one-page document, RaPower3 explained to purchasers how to claim tax benefits from purchasing solar lenses. (Exhibit 32-J)

408. In the last 2 sections of this document, RaPower3 estimated the amount of rental income and bonus income a purchaser of solar lenses could

receive once the promoters started earning income from selling electricity. (Exhibit 32-J)

409. Purchasers would not pay the full purchase price of the solar lenses they purchased; rather, they would be responsible for a down payment of 30%. (Exhibits 14-J, 16-J, 18-J, 20-J; Tr. 217:22-219:1)

410. Purchasers would pay this 30% down payment in at least two installments: the first payment of 10% was paid on the date of purchase; the second payment was paid using income tax refunds purchasers received. (Exhibits 14-J, 16-J, 18-J, 20-J, 46-J; Tr. 217:22-219:1, Tr. 220:12-22, Tr. 222:7-223:11)

411. Petitioners were told they would receive "[p]ayback [of] over 1.5 times the down payment; most coming in less than a year" in the form of income tax refunds. (Exhibits 33-J, 36-J, 45-J; Tr. 251:18-252:4)

412. RaPower3 also offered a multi-level commission program for bringing in other purchasers. (Exhibits 33-J, 55-J, 106-J, 110-J; Tr. 282:20-283:7)

413. Petitioners never recruited anyone into the RaPower3 abusive tax avoidance scheme. (Tr. 283:18-20)

414. Petitioners never received any commission payments from IAS or RaPower3. (Tr. 283:18-20)

415. RaPower3 told purchasers they may use "Eligible Small Business" credits "to offset both regular and AMT liability." (Exhibit 34-J)

416. Purchasers never lose money with RaPower3. (Exhibit 39-J)

B. "Placed in service" letters

417. Petitioner Preston Olsen expressed concern about the solar lenses being placed in service for purposes of the tax credits. (Exhibit 43-J; Tr. 238:7-23)

418. For each of petitioners' solar lens purchases, IAS or RaPower3 sent petitioners a letter stating that their solar lenses had been "put in service." (Stip. ¶ 202)

419. IAS sent petitioners a letter dated December 30, 2009 claiming that the solar lenses they purchased in 2009 had been "put into service" on or before December 24, 2009. (Stip. ¶ 203; Exhibit 22-J)

420. RaPower3 sent petitioners a letter dated February 2, 2012 claiming that the solar lenses they purchased in 2011 had been "put into service" on or before December 31, 2011. (Stip. ¶ 204; Exhibit 23-J)

421. RaPower3 sent petitioners a letter dated February 16, 2013 claiming that the solar lenses they purchased in 2012 had been "put into service" on or before December 31, 2012. (Stip. ¶ 205; Exhibit 24-J)

422. RaPower3 sent petitioners a letter dated February 1, 2014 claiming that the solar lenses they purchased in 2013 had been "put into service" on or before December 31, 2013. (Stip. ¶ 206; Exhibit 25-J)

423. RaPower3 sent petitioners a letter dated February 12, 2015 claiming that the solar lenses they purchased in 2014 had been "put into service" on or before December 31, 2014. (Stip. ¶ 207; Exhibit 26-J)

424. Petitioners' return preparer Richard Jameson believed these "placed in service" letters were sufficient to meet the requirements of the Tax Code. (Tr. 439:13-17)

425. None of these letters explains how or where petitioners' solar lenses were placed in service. (Exhibits 22-J, 23-J, 24-J, 25-J, 26-J)

426. IAS and RaPower3 issued these "placed in service" letters for the sole purpose of attempting to comply with Tax Code's rules regarding the energy tax credit. (Exhibits 22-J, 23-J, 24-J, 25-J, 26-J)

C. Law firm opinions

427. In 2012, Neldon Johnson hired the Anderson Law Center, a small law firm in Delta, Utah, to draft a letter (dated August 8, 2012) for potential RaPower3 customers describing the potential tax advantages of the RaPower3 plan. (Stip. ¶ 208; Exhibit 27-J)

428. This letter expressly stated its purpose was "for general information only and does not represent personal tax advice". (Exhibit 27-J)

429. In October 2012, Neldon Johnson hired the law firm Kirton & McConkie to draft an opinion memorandum analyzing tax consequences for "buyers" of the solar lenses. Attorney Kenneth Birrell drafted the memorandum. (Stip. ¶ 209; Exhibit 28-J)

430. The promoters considered this memorandum to be "generic". (Exhibit 114-J)

431. Mr. Birrell limited his analysis to apply only to corporations or LLCs taxed as subchapter C corporations for federal income tax purposes.[9] (Exhibit 28-J)

XII. Petitioners' work during the tax years at issue

A. Non-solar lens related activities

432. Petitioner Preston Olsen graduated from the University of Chicago Law School in 2003. (Stip. ¶ 316)

433. For the tax years at issue, petitioner Preston Olsen worked as a municipal bond/public finance attorney for the law firm Ballard Spahr, LLP, a

[9] The promoters disseminated Mr. Birrell's memorandum by posting it to the RaPower3 website against Mr. Birrell's wishes. United States v. RaPower3, LLC, International Automated Systems, Inc., LTB1, LLC, R. Gregory Shepard, and Neldon Johnson, 343 F.Supp.3d 1115, 1166-67 (D. Utah 2018).

national law firm with fourteen offices during the tax years at issue. (Stip. ¶ 317; Tr. 64:16)

434. In July 2015, petitioner Preston Olsen became partner in the firm. (Stip. ¶ 317; Tr. 65:22-66:1)

435. Petitioner Preston Olsen gained expertise in drafting technical documents, including agreements and contracts. (Tr. 162:6-13)

436. As a public finance attorney, petitioner Preston Olsen issued opinions about whether aspects of deals were done in accordance with the Tax Code. (Tr. 65:2)

437. During the tax years at issue, most, if not all, of petitioners' income was from petitioner Preston Olsen's legal practice. (Exhibits 1-J through 6-J)

438. For the tax years at issue, petitioner Elizabeth Olsen was a homemaker. (Stip. ¶ 318)

B. Solar lens related activities

439. On July 23, 2009, petitioner Preston Olsen registered with the state of Utah a single-member LLC named PFO Solar, LLC ("PFO Solar") with Preston Olsen being the sole member. (Stip. ¶ 33; Tr. 71:24)

440. Petitioners treated PFO Solar as a pass-through entity and reported all of its income ($0.00 for all tax years at issue) and losses on their Form 1040 for each tax year at issue. (Exhibits 1-J through 6-J; Tr. 71:12-72:3)

441. Petitioner Preston Olsen was the only individual who did any work for PFO Solar. (Tr. 134:19-20)

442. Petitioner Preston Olsen had no pleasure-seeking or recreational motive for purchasing solar lenses. (Tr. 135:3-8)

443. PFO Solar did not have a separate bank account. (Tr. 129:16-18)

444. Petitioner Preston Olsen's activity with regards to PFO Solar was "not much". (Tr. 296:2-14)

445. The operations of PFO Solar consisted of petitioner Preston Olsen signing agreements and talking to accountants to determine the number of solar lenses to buy. (Tr. 124:23-125:1)

446. Petitioners did not attempt to negotiate the price of the solar lenses. (Exhibit 11-J, section 7.1; Tr. 226:25-227:4)

447. Despite his expertise with contracts, petitioner Preston Olsen failed to catch incorrect references to dates (paragraphs 3 and 7) in the Equipment Purchase Agreements his signed. (Exhibits 16-J, 18-J, 20-J)

448. Despite his expertise with contracts, petitioner Preston Olsen failed to notice Neldon Johnson signed the Operation and Maintenance Agreements on behalf of the wrong entity (RaPower3 rather than LTB). (Exhibits 15-J, 17-J, 19-J, 21-J; Tr. 162:6-13, Tr. 167:11-22, Tr. 168:16-24, Tr. 169:9-17, Tr. 170:1-9)

449. By the terms of the Operation and Maintenance Agreements petitioners entered into for tax years 2011-2014, the owner of the solar lenses should have been an individual rather than an LLC. (Section 12.1(a) of Exhibits 15-J, 17-J, 19-J, 21-J)

450. By the terms of the Operation and Maintenance Agreements petitioners entered into for tax years 2011-2014, the operator of the solar lenses should have been a corporation rather than an LLC (either LTB or RaPower3). (Section 12.2(a) of Exhibits 15-J, 17-J, 19-J, 21-J)

451. Despite his expertise with contracts, petitioner Preston Olsen signed a "Referral Fee Contract (BONUS)" with many terms left blank, including the signature of anyone from RaPower3. (Exhibit 112-J)

452. All the tax return preparers used by petitioners during the tax years at issue were recommended by the promoters of the abusive tax avoidance scheme. (Exhibits 57-J, 116-J, 118-J; Tr. 185:19-21, Tr. 298:22-25)

453. At least one of these return preparers, Mr. Bolander, was a promoter who participated in sales presentations of the RaPower3 scheme. (Tr. 210:13-19)

454. Petitioner Preston Olsen did not seek advice from any independent advisors or experts regarding his alleged solar lens business. (Tr. 130:10-21, Tr. 199:6-25)

455. Petitioner Preston Olsen's communications with the promoters of the abusive tax avoidance scheme were focused on tax benefits, not solar power production. (Exhibits 43-J, 44-J, 45-J, 46-J, 47-J, 49-J, 57-J, 60-J, 77-J, 86-J, 87-J, 88-J, 89-J, 90-J, 93-J, 94-J, 100-J, 101-J, 102-J, 107-J, 111-J, 113-J, 115-J, 117-J; Tr. 196:6-197:14, Tr. 237:13-18, Tr. 238:17-23, Tr. 240:5-12, Tr. 259:15-260:14, Tr. 262:5-16, Tr. 294:9-295:9)

456. Petitioners claimed deductions and credits based on the contract purchase price of the solar lenses they purchased rather than on the amount of actual cash they paid for those solar lenses. (Tr. 249:16-22)

457. In August 2009, petitioner Preston Olsen expressed concern about the passive-loss rules. (Exhibit 115-J; Tr. 293:9-16; Tr. 294:9-295:12)

458. Petitioner Preston Olsen did not track the number of hours he spent on his alleged solar lens business. (Tr. 133:11-17)

459. The only books and records for PFO Solar were the agreements entered into with the promoters of the abusive tax scheme, a spreadsheet to track the number of solar lenses purchased, and copies of the checks used to pay the down payment for those solar lenses. (Tr. 128:18-129:9)

460. Petitioner Preston Olsen did not keep records of his travel expenses or any other expenses for his alleged visits to the solar tower test site. (Tr. 130:5-7)

461. Based on an email, it appears petitioner Preston Olsen visited the test site in Delta, Utah on September 19, 2013. (Exhibit 98-J)

462. Petitioner Preston Olsen did not provide any other specific dates he allegedly visited the test site in Delta, Utah for any of the tax years at issue. (Tr. 131:6-133:17)

463. Petitioner Preston Olsen did not state the number of times he allegedly visited the test site in Delta, Utah for any of the tax years at issue. (Tr. 131:6-133:17)

464. Petitioner Preston Olsen did not investigate the entity (LTB) with which he entered into the operation and maintenance agreements. (Tr. 243:8-244:13)

465. Petitioners never knew which solar lenses, if any, they owned. (Tr. 122:1-7, Tr. 264:19-21)

466. The solar lenses petitioners purchased were never identified by a serial number. (Exhibits 12-J, Tr. 267:7-23)

467. Petitioners never asked if their solar lenses were installed on any towers at the purported solar plant. (Tr. 266:20-267:2)

468. Petitioner Preston Olsen was never sure what Neldon Johnson's purported solar energy system entailed. (Exhibit 97-J; Tr. 271:19-23)

469. Petitioner Preston Olsen never saw the system produce electricity. (Tr. 273:18-24).

470. Even if petitioner Preston Olsen saw a turbine work, it was not connected to solar lenses or powered by solar lenses. (Tr. 214:25-215:12)

471. Petitioners continued to buy solar lenses even after the promoters failed to deliver on the many promises they had made regarding the construction and implementation of a working system using solar lenses. (Exhibits 51-J, 53-J, 54-J, 58-J, 59-J, 61-J, 63-J, 64-J, 65-J, 67-J, 68-J, 71-J, 72-J, 74-J, 76-J, 77-J, 81-J, 82-J, 88-J, 89-J, 90-J; Tr. 285:9-11, 290:5-12)

472. In an email dated January 10, 2012, petitioner Preston Olsen stated IAS "frequently say[s] that they are just about to change the world and then circulate pictures of their stuff and their stuff always looks a little like junk." (Exhibit 62-J; Tr. 179:14-181:8)

473. During the tax years at issue and continuing into tax year 2015, petitioner Preston Olsen knew about and repeatedly expressed concerns over the lack of constructed and functioning towers. (Exhibits 54-J, 55-J, 66-J, 67-J, 71-J, 83-J, 85-J, 91-J, 100-J)

474. Petitioners recouped more than the amount of their down payment through tax benefits by April 15 of the year following the purchase. (Tr. 213:18-22.)

475. Petitioners did not participate in the multi-level marketing aspect of the abusive tax avoidance scheme. (Tr. 283:2-7; 15-21)

476. Petitioners were not involved in the day-to-day management of any of these entities. (Entire record)

477. Petitioners had no control over any aspect of the proposed solar energy plant. (Entire record)

POINTS RELIED UPON

Beginning in tax year 2009, petitioners purchased tax benefits as part of an abusive tax avoidance scheme being promoted out of Delta, Utah. Petitioners, like many other participants in tax avoidance schemes before them, hope the Court believes their imagined ideal rather than focus on what is real. They claim to operate a legitimate business, but, in reality, they simply purchased purported tax benefits in the form of deducted expenses and credits. Using these purported tax benefits, petitioners substantially reduced their federal income tax liabilities, usually to $0.00.

As part of the abusive scheme, petitioners would purchase solar lenses (called alternative energy systems in "equipment purchase agreements"), which are plastic Fresnel lenses, from International Automated Systems, Inc. ("IAS") or RaPower3, LLC, ("Rapower3"), two of the many companies owned and controlled by the individuals promoting the tax avoidance scheme. IAS and RaPower3 claimed to be constructing a Concentrating Solar Power ("CSP") plant in Delta, Utah. The promoters failed to build any type of solar energy plant, and pursuant to a permanent injunction order[10], they never will. Accordingly, petitioners are not

[10] United States v. RaPower3, LLC, International Automated Systems, Inc., LTB1, LLC, R. Gregory Shepard, and Neldon Johnson, 343 F.Supp.3d 1115, 1123, 1195 (D. Utah 2018) (holding that the defendants caused serious harm to the United

entitled to any deductions or credits based on their solar lenses for multiple reasons.

First, petitioners purchased solar lenses for the tax benefits. They failed to establish a business purpose or profit motive for their purchase of solar lenses. I.R.C. § 183; see also Collins v. Commissioner, T.C. Memo. 2011-37 at *3 (finding "that petitioners did not engage in the activity for the primary purpose of seeking a business profit"); Beck v. Commissioner, 85 T.C. 557, 570-71 (1985) (holding that "petitioner did not engage in the [alleged business] activity with an actual and honest objective of making a profit but instead engaged in the transaction primarily, if not exclusively, to obtain tax deductions and credits and thereby reduce the tax petitioners would otherwise have to pay on their substantial income from other sources"); Jasionowski v. Commissioner, 66 T.C. 312, 321 (1976) (providing that one of the purposes of section 183 was "Congress' desire to create an objective standard to determine whether a taxpayer was carrying on a business for the purpose of realizing a profit or was instead merely attempting to create and utilize losses to offset other income"). This "business purpose test"

States Treasury and the system of honest and voluntary tax compliance and finding that the promoters created multiple entities to perpetrate a fraud "to enable funding of the unsubstantiated, irrational dream of Neldon Johnson.").

typically involves the examination of nine factors provided in Treas. Reg. § 1.183-2(b) to determine a taxpayer's profit motive. In this case, eight of the nine factors weigh against petitioners. In addition to the factors listed in the Regulation, petitioner Preston Olsen focused on the purported tax benefits of his solar lenses in most of the communications he had with the promoters of the scheme.

Second, petitioners failed to establish that their claimed expenses were: (1) actually paid during the tax year; (2) for carrying on petitioner's trade or business; (3) necessary to the ongoing conduct of the business; and (4) ordinary. I.R.C. § 162(a).

Third, petitioners failed to demonstrate that they held their solar lenses for any income producing activity. I.R.C. § 212. Petitioners never had any control over the lenses they purchased. As the Court noted during trial, no purchaser of the solar lenses really owned anything useful until the lenses were removed from the wrapped pallets and subsequently cut into triangular shapes to place into a frame.

Fourth, no entity or individual ever placed into service the solar lenses petitioners purchased. I.R.C. §§ 48, 167, and 168. The solar lenses at issue were never used in any solar energy system to produce heat for any meaningful purpose including the production of electricity. To the extent petitioners' solar lenses existed, they were not even producing heat as they remain on wrapped pallets.

Thus, the Court should hold that petitioners are not entitled to claim any deductions or credits related to their solar lenses.

If the Court determines that petitioners may claim some deductions and/or credits, the Code imposes limitations to the amount of those deductions and/or credits. Section 465 limits deductions a taxpayer may claim to the amount "at risk", or the amount of the down payment actually paid by petitioners in a given tax year. I.R.C. § 465(b).

With limited exceptions not applicable in this case, section 469 disallows the losses of an individual taxpayer who does not materially participate in the conduct of his or her trade or business. I.R.C. § 469(c)(1). In the tax years at issue, petitioners did little to operate their purported solar energy business. Further, if the Court determines that petitioners were in the business of leasing solar lenses, such rental activities are considered *per se* passive regardless of the level of participation. I.R.C. § 469(b)(2).

ARGUMENT

I. Petitioners purchased tax benefits as part of an abusive tax avoidance scheme, and as a result, they cannot claim any deductions or credits related to the scheme.

The IAS and RaPower3 solar lens purchase program was an abusive tax avoidance scheme. United States v. RaPower3, LLC, International Automated Systems, Inc., LTB1, LLC, R. Gregory Shepard, and Neldon Johnson, 343 F.Supp.3d 1115, 1123, 1192-93 (D. Utah 2018). Participants had no business purpose or profit motive in purchasing their solar lenses. Rather, the participants sought to eliminate or substantially reduce their income tax liability.

A. Petitioners participated in an abusive tax avoidance scheme designed to generate tax losses.

Like all abusive tax avoidance schemes, the tax benefits sold by IAS and RaPower3 were too good to be true. Petitioners should have noticed several red flags associated with this scheme, including: (1) continued failure of a purported "business" to earn income; (2) control of the purported business remaining with the promoter, rather than the customer; (3) illusory contract documents with little cash outlay by the customer and substantial debt that the customer was never required to pay; and (4) the promoter's heavy emphasis on greatly reducing or eliminating a

customer's tax liability by buying in to the plan. See e.g., Nickeson v. Commissioner, 962 F.2d 973, 976-77 (10th Cir. 1992); Diamond v. Commissioner, 930 F.2d 372, 376 (4th Cir. 1991) (lack of control over activities indicates taxpayers were at best investors and not engaged in a trade or business); United States v. Music Masters, Ltd., 621 F. Supp. 1046, 1049-50 (W.D. N.C. 1985). Despite IAS' and RaPower3's consistent failures to meet any promises they made to purchasers of solar lenses, petitioners continued to purchase solar lenses year after year. Despite earning no income from their solar lenses, petitioners were enjoying the elimination of their income tax liabilities.

Petitioners' participation in the solar lens scheme closely resembles another tax avoidance scheme that involved the purported publication of a book. Beck v. Commissioner; see also Rose v. Commissioner, 88 T.C. 386, 415-20 (1987), aff'd 868 F.2d 851 (6th Cir. 1989) (finding the taxpayers lacked a profit motive in their Picasso "reproduction" business).[11]

IAS and RaPower3 focused on the tax benefits of purchasing solar lenses in their promotional materials. Beck at 571. Petitioner Preston Olsen focused on tax

[11] The Court in Rose decided the transactions at issue lacked economic substance. Though economic substance is not an issue in the RaPower3 cases, the Rose opinion provides a useful discussion and analysis of the lack of profit motive in tax avoidance schemes.

benefits in most of the communications he had with the promoters. With petitioners' return preparers, petitioner Preston Olsen focused on the tax benefits of his solar lenses. Id. at 573.

Neither the promoters of the solar lens scheme nor the solar lens purchasers had any experience or educational background with developing solar energy technology. Id. at 572. Petitioner Preston Olsen also failed, both prior to purchasing solar lenses and in the many years since, to seek advice or assistance from any qualified experts in the solar energy production field. Id. at 573.

Petitioners accepted the terms of purchase for their lenses without any attempts at negotiating a more advantageous price. Id. at 572; Rose at 415-16. There was never a definite explanation of why the price of the solar lenses varied wildly from tax year 2009 to the other tax years at issue. The record does not establish the actual value of petitioners' solar lenses or the cost to manufacture the solar lenses.[12] Also, petitioners failed to take advantage of the agreement provisions that afforded petitioners the opportunity to receive a refund (for solar lenses purchased in 2009) or terminate the agreement without further payment (for solar lenses purchased in other years) due to the promoters' failure to install

[12] But see United States v. RaPower3, 343 F.Supp.3d 1115, 1123, 1191 (D. Utah 2018) (finding IAS paid Plaskolite (which acquired Lucite) between $52 and $70 for each rectangular sheet of plastic).

petitioners' solar lenses into any working system used to produce electricity or even heat for a meaningful purpose. Beck at 575.

Further, petitioners paid only a portion of the "purchase price" of the solar lenses they purchased; the promoters financed the rest at a 0% interest rate, and the promoters never tried to collect on the balance supposedly owed. Beck at 574-75; Rose at 420.

Finally, in the nearly 11 years since petitioners purchased their first solar lenses, they have received no income from their solar lenses. But they have received substantial tax benefits in all the tax years at issue.

B. Petitioners had no business purpose or profit motive in purchasing their solar lenses.

For the tax years at issue, petitioners claimed only losses from their alleged solar lens activity. A taxpayer must be engaged in an activity for profit to claim losses from the activity. I.R.C. § 183(a); see also Commissioner v. Groetzinger, 480 U.S. 23, 35 (1987) ("[T]o be engaged in a trade or business, the taxpayer must be involved in the activity with continuity and regularity and . . . the taxpayer's primary purpose for engaging in the activity must be for income or profit. A sporadic activity . . . does not qualify."); Cooper v. Commissioner, 88 T.C. 84, 108 (1987); Fuchs v. Commissioner, 83 T.C. 79, 98 (1984); Dreicer v. Commissioner,

78 T.C. 642, 646 (1982). If an activity is not engaged in for profit, any expenses a taxpayer may deduct are limited to the amount of gross income earned from the activity. I.R.C. § 183(b); see also Burger v. Commissioner, 809 F.2d 355, 358 (7th Cir. 1987); Faulconer v. Commissioner, 748 F.2d 890, 892-94 (4th Cir. 1984). This rule affects expenses claimed under both sections 162 (trade or business expenses) and 212 (expenses for production of income). Petitioners earned no gross income from their solar lens activity. Thus, to claim any deductions related to their solar lens activity, petitioners must demonstrate they had a profit motive. The regulations provide a non-exhaustive list of nine factors used to determine if a taxpayer had a profit motive:

(1) The manner in which the taxpayer carries on the activity;

(2) The expertise of the taxpayer or his advisors;

(3) The time and effort expended by the taxpayer in carrying on the activity;

(4) The expectation that assets used in the activity may appreciate in value;

(5) The success of the taxpayer in carrying on other similar or dissimilar activities;

(6) The taxpayer's history of income and losses with respect to the activity;

(7) The amount of occasional profits, if any;

(8) The financial status of the taxpayer; and

(9) Any element indicating personal pleasure or recreation.

Treas. Reg. § 1.183-2(b). All the facts and circumstances with respect to the activity must be taken into account. Id.

Petitioners in this case were not engaged in a for profit trade or business for the tax years at issue. Eight of the nine factors commonly used to determine if a taxpayer had a profit motive weigh against petitioners and the ninth factor (personal pleasure or recreation) is neutral. See Treas. Reg. § 1.183-2(b).

Like the other participants in this abusive tax avoidance scheme, petitioners followed a pattern for purchasing their solar lenses. Treas. Reg. § 1.183-2(b)(1). Using their estimated tax liability for each tax year, petitioners purchased, at the very end of tax years 2011, 2012, 2013, and 2014, the exact number of solar lenses needed to ensure they would "zero out" their income taxes. Further, petitioners kept minimal books and records, and notably, they failed completely to track any other expenses related to their alleged solar lens business (for example, petitioner Preston Olsen could not identify the dates or even the number of times he traveled to Delta, Utah). Treas. Reg. § 1.183-2(b)(1).

The promoters used the same stock language in all their contracts beginning in tax year 2011, but petitioners failed to catch errors in these contracts, which indicates a level of carelessness with respect to the purported business. Treas. Reg.

§ 1.183-2(b)(1). For example, paragraphs 3 (payment terms) and 7 (reduction of purchase amount) of the equipment purchase agreements reference June 30, 2012 and January 31, 2012, respectively. For solar lenses purchased in tax years 2012, 2013, and 2014, these dates remained unchanged despite the agreements being signed in late December of each year (i.e., after the dates listed in paragraphs 3 and 7). As another example, Neldon Johnson signed the 2011, 2012, 2013, and 2014 operation and maintenance agreements as Director of RaPower3, but RaPower3 was not a party to those agreements.

Petitioners had no experience or expertise in using solar lenses for any purpose. Treas. Reg. § 1.183-2(b)(2). Neither petitioners nor the promoters of the abusive tax avoidance scheme had experience with the use of CSP technology to produce electricity or heat. Likewise, petitioners had no experience or expertise in leasing solar lenses; rather, they relied wholly on the promoters of the abusive tax avoidance scheme who served as both the seller of the lenses and, beginning in tax year 2011, the lessee of those lenses.

Petitioners spent very little time on their purported solar lens business, PFO Solar. Treas. Reg. § 1.183-2(b)(3). Petitioner Preston Olsen testified he was the only individual who did any work for PFO Solar. Petitioner Elizabeth Olsen was not involved at all and petitioner Preston Olsen was busy as an attorney trying to

become a partner in his firm. The latter's efforts consisted of only electronically signing the purchase contracts and operation and maintenance agreements at the end of December in tax years 2011, 2012, 2013, and 2014, writing checks to pay the remainder of the "down payment" in the middle of the following tax years, occasionally emailing the promoters, and a couple visits to the "test site" or manufacturing facility/warehouse in Delta, Utah. Petitioner Preston Olsen provided only a vague estimate for the number of hours spent on these trips during his testimony. Petitioners provided no records to substantiate these claimed visits, and they claimed no deductions for expenses (i.e., travel, car and truck, meals) related to these trips.

Petitioners demonstrated no expectation that the solar lenses would appreciate in value. Treas. Reg. § 1.183-2(b)(4). Rather, they claimed depreciation expenses based on the total purchase price of the solar lenses indicating the solar lenses would lose value.

Petitioners carried on no similar activity. Treas. Reg. § 1.183-2(b)(5). They received all their income from the substantial wages earned by petitioner Preston Olsen in his successful law practice. They purchased solar lenses for the sole purpose of reducing to $0.00 their income tax liability from these wages (ranging between $[redacted] and $[redacted]).

In the nearly 11 years since petitioners first purchased solar lenses from IAS, they have earned no profit from their purported solar lens business. Treas. Reg. § 1.183-2(b)(6) and (7). In fact, they have not earned a single dollar of income from their solar lenses. Their solar lenses earned no income from the production of electricity, the production of heat, or from their illusory lease agreements with the promoters. But petitioners have claimed losses in the total amount of $142,388.00 for the tax years at issue, including depreciation expenses in the amount of $141,738.00 and legal and professional fees in the amount of $750.00.

Petitioner Preston Olsen earned between $[redacted] and $[redacted] of wages in the tax years at issue. Treas. Reg. § 1.183-2(b)(8). Petitioner Elizabeth Olsen did not work outside of the home. Petitioners did not need income from their purported solar energy business. And, despite the promoters' failures to deliver on agreed promises, petitioners failed to take advantage of contract terms that would allow them to terminate the agreements and obtain a refund of the amounts they paid.

In addition to these factors, petitioner Preston Olsen focused on tax benefits in most of the communications he had with the promoters. This is especially true in tax year 2009 when petitioners first became involved in the tax avoidance scheme.

Petitioner Preston Olsen's testimony regarding his hope to make money aside from the tax benefits was not credible. The promotion materials focused on

the tax benefits as the primary way participants in the tax avoidance scheme could make money. Petitioners followed the promoters' formula to base the number of solar lenses they purchased in each year on the amount of tax benefits they would receive; they purchased just enough solar lenses to eliminate (or nearly eliminate) their entire federal income tax liability. If petitioners had a true profit motive, they would have purchased more solar lenses. Finally, "greater weight must be given to objective facts than to petitioner's mere statement of his intent." Donahue v. Commissioner, T.C. Memo. 1991-181 at *12 (citing Siegel v. Commissioner, 78 T.C. 659, 699 (1982); Engdahl v. Commissioner, 72 T.C. 659, 666 (1979)).

Since petitioners were not engaged in a for profit trade or business and since they earned no income from their solar lens activity, they cannot claim any deductions related to their solar lenses under either sections 162 or 212.

C. Petitioners were not in the trade or business of "leasing" solar lenses.

Beginning with tax year 2013, petitioners changed, on their Federal income tax forms, their "solar energy business" to an "equipment rental services" company. Courts have rejected abusive tax avoidance schemes using this concept of "leasing". See Rose v. Commissioner, 88 T.C. 386, 413 (1987), aff'd, 868 F.2d 851 (6th Cir. 1989) (collecting cases in which "leasing" activity has been rejected); United States v. Philatelic Leasing, 794 F.2d 781, 782-85 (2d Cir. 1986); United

States v. Petrelli, 704 F. Supp. 122, 124-26 (N.D. Ohio 1986) (defendants violated section 6700 when they "entered into lease agreements with investors who leased master photographs and plates from the defendants. Defendants advised the lessees of the master photographs and plates to claim investment tax credits and deductions for the leased art work and plates allegedly made therefrom, some of which never existed.").

Petitioners never physically received or controlled the solar lenses they purportedly purchased. Petitioners did not even really own any solar lenses because the rectangular sheets remain uncut on wrapped pallets. Nobody can identify which solar lenses belong to which purchasers. And the agreements leave blank key information that could be used to identify the specific solar lenses petitioners purchased. On the same date they signed equipment purchase agreements in the tax years at issue, petitioners also signed operation and maintenance agreements that required them to "lease" their lenses to another entity controlled by the solar tax shelter promoters in exchange for rent payments.

Petitioners, however, never received "rent" or any other payment from IAS, RaPower3, LTB, or any other related entity or individual for the use of the solar lenses they purchased. Further, they could not lease their solar lenses to any other entity or individual. For the solar lenses purchased in tax year 2009, petitioner

Preston Olsen signed only an equipment purchase agreement; this agreement contains no lease or rent terms. Thus, for the first two years petitioners were involved in this scheme, they could not have been in the business of "leasing" the solar lenses they owned.

By the terms of the operation and maintenance agreements signed in December of tax years 2011, 2012, 2013, and 2014, petitioners would not earn any rental income until LTB started earning revenue from petitioners' specific solar lenses. Even if IAS had constructed towers complete with cut and framed solar lenses, LTB had no way of knowing which solar lenses belonged to which purchaser. Finally, even if IAS constructed a solar energy system that used petitioners' solar lenses, the amount of rental income petitioners would receive totaled only $150 per solar lens per year. At that rate, petitioners would not even recoup the total purchase price of their solar lenses ($3500) for over 23 years!

Although petitioners could not make a profit from "leasing" their solar lenses for over 23 years, they reaped the purported tax benefits each and every year. Petitioners purchased their solar lenses for the tax benefits; they had no business motive. Since petitioners were not engaged in a for profit trade or business and because they earned no income from their solar lenses, they cannot

deduct any expenses of their purported solar lens business for either depreciation or legal and professional services.

II. Petitioners cannot claim any deductions pursuant to section 162.

Section 162 allows for the deduction of business expenses. Petitioners, however, must prove that an expense was: (1) actually paid during the tax year; (2) for carrying on petitioner's trade or business; (3) necessary to the ongoing conduct of the business; and (4) ordinary. See Commissioner v. Lincoln Savings and Loan Association, 403 U.S. 345, 352 (1971).

As discussed above, petitioners were not engaged in a trade or business pursuant to the section 183 analysis. Further, petitioners failed to demonstrate that the expenses they claimed were actually paid during the tax year, that they were necessary to their purported business, and that they were ordinary.

An expense is necessary if it is appropriate and helpful to the taxpayer's business. Commissioner v. Tellier, 383 U.S. 687, 689 (1966); Welch v. Helvering, 290 U.S. 111, 113 (1933). An expense is ordinary if it is one that is common and accepted in the particular business activity. Welch at 114.

For the tax years at issue, petitioners claimed substantial losses from their "solar energy business" mostly in the form of depreciation, which is discussed below. Petitioners claimed deductions for legal and professional services in the

amounts of $425 and $325 for tax years 2010 and 2011, respectively. Petitioners failed to substantiate through either documentation or testimony the deductions claimed for legal and professional services. The record contains no evidence that petitioners actually paid the amounts claimed or to whom the alleged payments were made. The record also contains no evidence that these expenses were necessary or ordinary.

III. Petitioners' solar lenses were not an investment held for the production of income pursuant to section 212.

Section 212 allows a deduction for all the ordinary and necessary investment expenses paid or incurred during the tax year (1) for the production or collection of income; (2) for the management, conservation, or maintenance of property held for the production of income; or (3) in connection with the determination, collection, or refund of any tax. I.R.C. § 212. The latter activity is not at issue in this case. The second activity is also not at issue; by the very terms of the Operation and Maintenance Agreements petitioner Preston Olsen signed, the promoters (specifically, LTB) took responsibility for "routine operation and maintenance services" related to the solar lenses.

Petitioners did not hold their solar lenses for the production or collection of income. Petitioners did not ever have physical control of any of their solar lenses.

They could not use them for any purpose beyond what IAS and the related promoter entities/individuals wanted. Petitioners never earned any income from their solar lenses, but they did receive over $[redacted] of improper federal income tax refunds. As discussed above, to claim a deduction pursuant to section 212, a taxpayer must demonstrate a profit motive. Petitioners failed to demonstrate they engaged in the purchase of solar lenses "with a profit-seeking motive, independent of tax savings." Collins v. Commissioner, T.C. Memo. 2011-37 (citing Beck v. Commissioner, 85 T.C. 557, 569-70 (1985)).

The record demonstrates that petitioners did not hold their solar lenses for the purposes of producing income from the production of either electricity or solar processing heat. As detailed above, they also did not hold their solar lenses for the purpose of producing income from leasing them to one of the promoters' many entities. Treas. Reg. § 1.183-2(b). Petitioners' primary motive for purchasing solar lenses was to reduce or eliminate their federal income tax liability. Therefore, petitioners cannot claim as deductions under section 212 any expenses relating to their solar lenses.

IV. Petitioners' solar lenses were never placed in service for purposes of sections 167, 168, or 48.

Petitioners failed to demonstrate that their lenses were placed in service, which is a requirement to claim both depreciation pursuant to sections 167 and 168 and credits pursuant to section 48.

A. Petitioners cannot claim any deductions for depreciation expenses because their solar lenses were never placed in service.

Under the proper circumstances, the Code allows a taxpayer engaged in a trade or business certain tax deductions for expenses the taxpayer incurs while generating income. One "business" deduction is for depreciation, the "wear and tear" on property either used in the taxpayer's "trade or business" or held by the taxpayer "for the production of income." I.R.C. § 167(a).

Solar energy property may qualify for depreciation under the Accelerated Cost Recovery System ("ACRS") and is depreciable over a five-year life. I.R.C. § 168(e)(3)(B)(vi)(I). For purposes of the rules provided by sections 167 and 168, an asset is "first placed in service" when it is first "placed in a condition or state of readiness and availability for a specifically assigned function" by the taxpayer. Treas. Reg. § 1.167(a)-11(e)(1)(i).

According to the equipment purchase agreements petitioner Preston Olsen signed, the "specifically assigned function" of the solar lenses petitioners purchased was to create electricity at the "target rate" of 600 peak watts. As evidence of the promoters' lack of scientific knowledge, the equipment purchase agreements fail to specify whether this "target rate" was per hour, per day, or per year. Regardless, petitioners' solar lenses were never used for the purpose of producing electricity. Nobody knows if petitioners' solar lenses even existed. The promoters had no way to track which solar lenses belonged to which purchaser. Even if petitioners' solar lenses existed, they were never installed on any towers or even cut into the proper shape to be installed. Petitioners have never held physical possession of the lenses they purchased; they do not know where those lenses are located, and they no longer have access to them.

Neither the petitioners nor the promoters of this solar energy tax shelter ever built a solar energy power plant. They never obtained proper licenses, permits, authorizations, or other necessary permissions to build such a plant. They never entered into any Power Purchase Agreements, End User Agreements, or Connection Agreements with any electric utility, other entity, or individual. Because no solar energy power plant ever existed, the solar lenses petitioners purchased were never installed or "placed in a condition or state of readiness and

availability for a specifically assigned function." Even if their specific solar lenses existed, the only function they served was to collect dust in a warehouse in Delta, Utah.

Despite the form letters from the promoters that said otherwise, petitioners never "placed in service" the solar lenses they purchased. Accordingly, they cannot claim as a deduction any depreciation associated with those solar lenses.

B. Petitioners cannot claim any credits because their solar lenses were never placed in service.

The credits petitioners claimed in each of the tax years at issue implicate several statutes. Section 38(a) provides for investment and energy tax credits; section 46 describes how to calculate the amount of the investment tax credit; and section 48 defines property eligible for the credits. A taxpayer may be allowed an "energy credit" that reduces his income tax liability in a given year for "each energy property placed in service during such taxable year." I.R.C. § 48(a)(1).

"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 . . . ." I.R.C. § 48(a)(3)(A)(i) & (C). The taxpayer must either construct, reconstruct, or

erect the "energy property" or acquire the "energy property" if the original use of such property commences with the taxpayer. I.R.C. § 48(a)(3)(B).

"Energy property" includes "solar energy property", which includes:

> equipment and materials (and parts related to the functioning of such equipment) that use solar energy directly to (i) generate electricity, (ii) heat or cool a building or structure, or (iii) provide hot water for use within a building or structure. Generally, those functions are accomplished through the use of equipment such as collectors (to absorb sunlight and create hot liquids or air), storage tanks (to store hot liquids), rockbeds (to store hot air), thermostats (to activate pumps or fans which circulate the hot liquids or air), and heat exchangers (to utilize hot liquids or air to create hot air or water).

Treas. Reg. § 1.48-9(d)(1). "Solar energy property includes equipment that uses solar energy to generate electricity, and includes storage devices, power conditioning equipment, transfer equipment, and parts related to the functioning of those items." Treas. Reg. § 1.48-9(d)(3). Though petitioners' solar lenses were potentially capable of being used to produce heat from the sun—assuming they

ever actually existed, were removed from the pallets, and cut into the proper shape—they cannot be considered solar energy property. They were never used in any system that would use the heat produced for any meaningful purpose (i.e., produce electricity, heat a building, or provide hot water to a building or structure).

Similar to the rules for depreciation, to be "placed in service" for purposes of any general business credit allowed by section 38, the property must be in a condition or state of readiness and available for a specifically designed function, whether in a trade or business, in the production of income, in a tax-exempt activity, or in a personal activity." Treas. Reg. § 1.46-3(d)(1)(ii).

Components, like the solar lenses purchased by petitioners, should not be considered placed in service separately from the system of which they are an essential part. See Rev. Rul. 76-238, 1976-1 C.B. 55 (noting that individual units of production machinery and equipment acquired for use in a factory were not placed in service until they were installed in the production line and the entire production line had been completed); Rev. Rul. 73-518, 1973-2 C.B. 54 (ruling that a major electrical transmission line was not placed in service until the substations at the end of the line were completed and the line could be energized).

For purposes of determining whether energy property is "placed in service", several courts have adopted the approach of examining property in a project as a

whole when a number of interdependent components are designed to operate as a system. See, e.g., Sealy Power, Ltd. v. Commissioner, 46 F.3d 382, 395-97 (5th Cir. 1995) (holding that the taxpayer's property was "placed in service" in the first year in which the entire facility was operational and generating electricity); United States v. Tierney, 947 F.2d 854, 866 (8th Cir. 1991) (holding that "property is in a 'state of readiness and availability for a specifically assigned function' only if it is productive on a fairly consistent basis"); Public Service Co. v. United States, 431 F.2d 980, 983-84 (10th Cir. 1970) (holding that components of an electric power plant could not be considered separately because no one of them would serve any useful purpose until fitted together to constitute a complete unit); Green Gas Delaware Statutory Trust v. Commissioner, 147 T.C. 1, 50-54 (2016); Consumers Power Co. v. Commissioner, 89 T.C. 710, 725-26 (1987) (finding that a component of a hydroelectric plant was not placed in service until the entire plant was operating to produce electrical power); Siskiyou Communications, Inc. v. Commissioner, T.C. Memo. 1990-429 (determining a telephone system had been placed in service for investment credit and depreciation purposes once all the component parts had become capable of their intended use of processing calls even though certain component parts were on the premises and could perform separate functions). But see Armstrong World Industries, Inc. v. Commissioner, 974 F.2d

422, 432-35 (3d Cir. 1992) (concluding that each completed train track segment had independent utility and was placed in service prior to the time the entire project was completed and ready for use). The solar energy plant proposed by IAS was never built, never produced electricity, never put electricity onto the grid, and never used heat for any meaningful purpose. Further, petitioners' solar lenses could not serve any useful purpose unless and until they were removed from the pallets, cut into the proper shape, and placed in an operating system.

These courts have weighed five factors to determine whether and when energy property used to generate electricity may be considered "placed in service":

(1) whether the necessary permits and licenses for operation have been obtained;

(2) whether critical preoperational testing has been completed;

(3) whether the taxpayer has control of the facility;

(4) whether the unit has been synchronized[13] with the transmission or power grid; and

[13] "Synchronization of an electric generating facility refers to the stage at which alternating current systems, generating units, or a combination thereof are connected and operate at the same frequency so that the voltages between the systems remain constant." Sealy Power, Ltd. V. Commissioner, 46 F.3d 382, 396 (5th Cir. 1995) (citing Oglethorpe Power Corp. v. Commissioner, T.C. Memo. 1990-505).

(5) whether daily or regular operation has begun.

See Rev. Rul. 84-85, 1984-1 C.B. 10; Rev. Rul. 79-203, 1979-2 C.B. 94; Rev. Rul. 79-98, 1979-1 C.B. 103; Rev. Rul. 79-40, 1979-1 C.B. 13; Rev. Rul. 76-428, 1976-2 C.V. 47; Rev. Rul. 76-256, 1976-2 C.B. 46.

Neither petitioners nor IAS, RaPower3, or any other related entity or individual has obtained the necessary permits and licenses for operation of a solar energy plant. Petitioners have provided no evidence of critical preoperational testing being completed by an independent entity, electric utility, or government agency. Petitioners have no control of any aspect of the purported solar energy plant. Since petitioners' solar lenses have not been installed into any system, they certainly have not been used in any system that has been synchronized with the transmission or power grid. Finally, no daily or regular operation of the purported solar energy plant ever began, and it never will begin since a federally appointed Receiver now has ownership of the assets of IAS, RaPower3, and the related promoter entities and individuals. Petitioners have no way of taking physical control of their solar lenses. Therefore, the petitioners' solar lenses were never—and never will be—placed in service for their specifically assigned function of being used in a system to create electricity.

C. Petitioners' solar lenses were not placed in service when leased to the promoters.

Petitioners cannot claim depreciation expenses or credits because their solar lenses were never placed in service into an operating solar energy system. They also cannot claim depreciation expenses or credits based on the illusory "lease" of their solar lenses to one of the promoters' entities.

This Court has held that taxpayers who lease certain property may consider the property "placed in service" on the date they first held such property out for lease or even on the date they acquired the property with the intention of producing rental income. See, e.g., Waddell v. Commissioner, 86 T.C. 848 (1986) (concluding that computer terminals were placed in service on the date of acquisition, which was the same date as the lease agreement); Helfand v. Commissioner, T.C. Memo. 1984-102 (holding that a residence purchased for the purpose of producing rental income was placed in service on the date it was acquired even though it was not actually rented until the next month). In these cases, the property being held for lease was available for its intended purpose on the date of acquisition. The property must be completed and available for use to be placed in service. See Hudson v. Commissioner, 103 T.C. 90 (1994) (citing Donahue v. Commissioner, T.C. Memo. 1991-181). In Waddell, the computer

terminals were built and ready to be installed on the date they were purchased and leased; in Helfand, the residence was built and ready to be rented on the date it was purchased. In contrast, petitioners' solar lenses were never available for their intended purpose of being used in a solar energy system to produce electricity because the other components of the purported IAS system were never completed, and the solar lenses were not even in the correct shape to be installed.

In each of tax years 2011, 2012, 2013, and 2014, petitioners entered into an equipment purchase agreement on the same date they entered into an operation and maintenance agreement. The latter provided for "rental payment[s]" to begin only when the petitioners' solar lenses "are installed and producing revenue." As Dr. Mancini opined, the IAS CSP system was a combination of separate component parts that did not work together in an operational solar energy system. Petitioners' solar lenses were never placed in any system to create electricity or heat for any purpose. Despite the lease provisions in the 2011, 2012, 2013, and 2014 operation and maintenance agreements, petitioners' solar lenses were not placed in service.

Since the solar lenses petitioners purchased were never and never will be placed in service, petitioners cannot claim any credit based on the purchase of the solar lenses. Further, since petitioners cannot claim depreciation deductions for

their solar lenses, they may not claim the solar energy tax credit under section 48(a)(3)(C).

V. If the Court finds petitioners may claim deductions and/or credits based on the purchase of solar lenses, those deductions must be limited pursuant to sections 465 and 469.

Based on the reasons provided above, petitioners purchased tax benefits. They were not operating a trade or business with a profit motive, and their lenses were never placed in service. Accordingly, they are entitled to no deductions or credits related to their purchase of "solar lenses". In the alternative, if the Court determines petitioners may claim some deductions and/or credits, the Code imposes at-risk limitations and passive-loss limitations to the amount of those deductions and/or credits.

A. If the Court determines petitioners are entitled to some deductions, those deductions should be limited to the amount of down payment they actually paid in the specific year at issue.

Section 465 limits deductions a taxpayer may claim to the amount "at risk". This applies to each activity engaged in by the taxpayer in carrying on a trade or business or for the production of income. I.R.C. § 465(c)(3). For purposes of the at-risk rules, however, amounts borrowed from any person having an interest in the

activity (other than an interest as a creditor) are not considered to be at risk. I.R.C. § 465(b)(3). Further, taxpayers shall not be considered at risk for liabilities for which the lender does not have recourse against the borrower/taxpayer. I.R.C. § 465(b)(4).

Petitioners were expressly told by the promoters that "No one ever loses money with RaPower3." Petitioners financed with the promoter entities a majority of the purchase price of the solar lenses they purchased. Pursuant to section 465(b)(3), the amount borrowed by petitioners is not considered at risk. For the solar lenses purchased in July 2009, IAS agreed to refund the initial down payment if it failed to "furnish, deliver, install, and startup the alternative energy system" by December 31, 2009. Although petitioners never took physical possession of any of the lenses they purchased, they never requested a refund of their initial down payment, and IAS never issued a refund of petitioners' initial down payment.

In the other tax years at issue, the equipment purchase agreements petitioners signed provided for a minimal down payment ($1,050 per lens), which petitioners paid in two installments—10% ($105 per lens) on the date they signed the equipment purchase agreements and the second payment ($945 per lens) at some point in the tax year following the tax year in which they signed the

equipment purchase agreements.[14] The equipment purchase agreements required the remainder of the purchase price to be paid via installments beginning five years after the date the lenses were installed in an operating system commercially producing electricity and generating income to the operating entity. Within those same five years, if the solar lenses failed to meet the "warranty production rate" or "adjusted warranty production rate" within five years, petitioners could terminate their agreement without any further payment of the purchase price. Although petitioners did not terminate these agreements, they never paid any amount beyond the down payment for the solar lenses because their solar lenses were never installed in an operating system.

Also, the seller of the solar lenses has no recourse against the petitioners for the unpaid purchase price. Petitioners have not demonstrated that there was or is a realistic possibility of economic loss. See Levien v. Commissioner, 103 T.C. 120 (1994). Since petitioners would not need to start paying the remaining $2,450 per solar lens they owed until five years after their solar lenses started making money from commercial electricity producing plant, there was no realistic possibility of economic loss. Either their solar lenses would make money with which they would

[14] For tax year 2011, the promoters later introduced a five-year payment plan for the remaining balance of the down payment.

pay the outstanding balance over 29 years or, if their solar lenses never made any money, they would owe nothing. As Dr. Mancini concluded, the IAS CSP system could never be commercially viable; thus, petitioners would never pay the remaining balance of the purchase price. They could not suffer any economic loss above the initial down payment, which was dwarfed by the improper tax refunds petitioners received. Accordingly, if the Court holds petitioners are entitled to any deductions, petitioners' deductions should be limited to the amount of the down payment they actually paid in a given tax year. But, as discussed in the next section, any deductions allowed will also be limited (or eliminated) by section 469.

B. If the Court finds petitioners used their solar lenses in a trade or business and placed those lenses in service, then the losses claimed should be considered passive losses that can offset only passive income.

Section 469 allows taxpayers to offset passive activity income with deductions and credits accrued in a passive activity. It disallows the loss of an individual taxpayer who does not materially participate in the conduct of their trade or business. I.R.C. § 469(c)(1). Petitioner Preston Olsen expressed concern over these rules in August 2009.

Material participation is defined generally as regular, continuous, and substantial involvement in the business operations. I.R.C. § 469(h). Beyond

signing the illusory equipment purchase agreements and operation and maintenance agreements, writing checks for the down payment of the solar lenses, and sending emails requesting status updates, petitioners did little, if anything, to operate their solar energy business. They provided no evidence that they met any of the material participation tests. See Treas. Reg. 1.469-5T(a).

Further, work done in a taxpayer's capacity as an investor cannot be treated as participation unless the taxpayer is directly involved in the day-to-day management or operations of the activity. Treas. Reg. § 1.469-5T(f)(2). Petitioners were not involved in the day-to-day management or operations of the proposed solar plant.

Finally, if the Court determines that petitioners were in the business of leasing solar lenses, such rental activities are considered *per se* passive regardless of the level of participation. I.R.C. § 469(c)(2).

Petitioners received no passive income in the tax years at issue, and thus cannot claim the losses from their passive solar lens activity.

CONCLUSION

It follows that respondent's determinations should be sustained as modified herein.

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