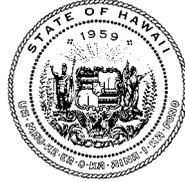


LINDA LINGLE
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ACTING DEPUTY DIRECTOR

LETTER RULING NO. 2010-23

[REDACTED TEXT]
[REDACTED TEXT]
[REDACTED TEXT]
[REDACTED TEXT]

October 6, 2010

**RE: DETERMINATION OF A "SYSTEM" FOR PURPOSES OF THE
RENEWABLE ENERGY TECHNOLOGIES INCOME TAX
CREDIT, SECTION 235-12.5, HRS.**

Dear [REDACTED TEXT]:

This responds to your letter dated March 11, 2010 (the "Ruling Request"), wherein you requested confirmation regarding application of the Renewable Energy Technologies Income Tax Credit under Hawaii Revised Statute ("HRS") §235-12.5 ("RETITC"), as further discussed below.

Specifically, [REDACTED TEXT] (the Company) respectfully requests a ruling on the proper treatment of certain [REDACTED TEXT] installations for purposes of the RETITC.

STATEMENT OF FACTS

The Company is a Hawaii [REDACTED TEXT] engaged in the business of developing, designing, installing, owning, and/or operating commercial renewable energy facilities in the State of Hawaii. The Company is not engaged in the business of residential installations. [REDACTED TEXT] technology is one of the solar technologies the Company installs in the facilities it develops, designs, and/or constructs. The Company files tax returns on a December 31 fiscal year basis and employs an accrual method for maintaining its accounting books and tax returns.

[REDACTED TEXT] technology employs [REDACTED TEXT] and convert this solar energy into [REDACTED TEXT]. The [REDACTED TEXT] technology can be used for numerous applications, including without limitation, [REDACTED TEXT]. Use of the [REDACTED TEXT] effectively reduces the end-user's dependence upon and consumption of fossil fuels.

Each [REDACTED TEXT] facility will include one or more aggregations of [REDACTED TEXT] corresponding system components, such as (but without limitation)

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[REDACTED TEXT]

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[REDACTED TEXT] (collectively, an “Assembly”). The number of Assemblies included in the design of a facility depends upon the facility location, size and capacity, and desired application.

[REDACTED TEXT] do not function individually, and can only generate [REDACTED TEXT] energy when integrated into a larger Assembly, as described above. Each Assembly in a facility will be mounted independent of other Assemblies installed in the Facility, if any, and accordingly, may be independently operated, maintained, removed, or replaced. Each will be [REDACTED TEXT].

The balance of the facility will be comprised of one or more [REDACTED TEXT] and one or more application components [REDACTED TEXT] (each, an “Application Component”). While not all [REDACTED TEXT] facilities will incorporate [REDACTED TEXT], those that do will be designed such that one or more Assemblies can [REDACTED TEXT]. Each [REDACTED TEXT] can be [REDACTED TEXT] separate and apart from any other [REDACTED TEXT]. A [REDACTED TEXT] may be designated and utilized for the desired application. Each [REDACTED TEXT] may have [REDACTED TEXT] can be utilized separate and apart from that [REDACTED TEXT] in any other [REDACTED TEXT], if any. The unique characteristics of these [REDACTED TEXT] facilities for more than one application.

One of the critical challenges that currently faces solar power facilities is the variability of the solar resource (*e.g.*, day versus night, cloud cover, passing rainfall, volcanic fog (VOG) and other variable environmental conditions), which results in the intermittency of energy generated and thus resulting power (or other application output). An advantage of [REDACTED TEXT].

ISSUE PRESENTED

The Company requests a ruling determining whether:

- Each [REDACTED TEXT] and the respective Assembly or Assemblies [REDACTED TEXT]; or in the alternative
- Each [REDACTED TEXT] and the respective Assembly or Assemblies and Application Component(s) [REDACTED TEXT],

(as the case may be, collectively, a “System”), whether said System is installed and integrated into a larger [REDACTED TEXT] facility or constitutes an entire facility, is a separate “solar energy system” for purposes of the RETITC, under HRS Section 235-12.5(a).

BRIEF ANSWER

Each System, as identified above and discussed in more detail below, will be considered a separate solar energy system because each System constitutes a separate and independent

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[REDACTED TEXT]

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“solar energy system” that “converts solar or wind energy to useful thermal energy or electrical energy for heating, cooling or reducing the use of other types of energy that are dependent upon fossil fuel for their generation.” Therefore, each System will be defined as a separate “solar energy system” for purposes of HRS Section 235-12.5, thus generating a separate RETITC in the year each said System is installed and placed in service in the State.

LAW AND ANALYSIS

Pursuant to HRS Section 235-12.5, as amended, a Hawaii income tax credit may be claimed by an owner of a “solar energy system” equal to thirty-five percent (35%) of the actual cost of the a “solar energy system”, or the applicable cap amount, whichever is less. HRS § 235-12.5(a).

Section 235-12.5(b)(2)(C), HRS, establishes a cap of \$500,000 per system for commercial solar energy systems, the primary purpose of which is not to heat water for household use. A “solar or wind energy system” is defined as “any identifiable facility, equipment, apparatus, or the like that converts solar or wind energy into useful thermal or electrical energy for heating, cooling, or reducing the use of other types of energy that are dependent upon fossil fuel for their generation.” HRS § 235-12.5(c). Additionally, Tax Information Release No. 2007-2 states that a “system will only exist when all the components necessary for the conversion of insolation or wind energy into useful thermal or electrical energy are present.” (Note, after the issuance of TIR No. 2007-02, Act 154, Session Laws of Hawaii 2009, deleted the term “insolation” and replaced it with the term “solar.” This modification does not materially impact the Department’s interpretation of the RETITC, conclusions drawn in TIR 2007-02, or this letter.).

Also, recent Tax Information Releases 2010-02 and 2010-03 provide additional guidance on the determination of a “system” in relation to photovoltaic renewable energy technologies. In TIR 2010-02, a taxpayer is allowed to treat energy systems separately where the systems function separately and independently, as such, for legitimate nontax reasons. The Company represents that the Systems discussed in this letter have been appropriately divided into multiple systems for legitimate nontax engineering reasons. In TIR 2010-03, it is reiterated that a system will only be considered separate to the extent it is considered fully integrated (*i.e.*, must incorporate all components necessary to convert a renewable energy resource into useful thermal or electrical energy). The Systems discussed in this letter are each fully integrated and independent of one another, with each involving at least one [REDACTED TEXT], one or more Assemblies, and in the alternative, the foregoing inclusive of one or more Application Components.

Each System, as defined above, constitutes an identifiable facility, equipment, apparatus, or the like which captures solar energy and converts it into electrical or useful gross thermal energy for heating, cooling, or otherwise reducing fossil fuel usage. The thermal energy

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[REDACTED TEXT] by one or more Assemblies and [REDACTED TEXT] may be utilized for [REDACTED TEXT]. As such, each combination of a [REDACTED TEXT], and the respective Assembly or Assemblies [REDACTED TEXT], or in the alternative, each combination of a [REDACTED TEXT], and the respective Assembly or Assemblies and Application Component(s) [REDACTED TEXT], constitutes a “solar energy system” that converts solar energy into electricity or useful thermal energy for purposes of HRS Section 235-12.5(a), and will generate a separate RETITC in the year the system is placed in service.

CONCLUSION

In conclusion, each System, whether installed and integrated into a larger [REDACTED TEXT] facility or constituting the entire facility, is an identifiable and independent “solar energy system” which “converts solar or wind energy to useful thermal energy or electrical energy for heating, cooling or reducing the use of other types of energy that are dependent upon fossil fuel for their generation” for purposes of the RETITC, under HRS Section 235-12.5(a), and will thus generate a separate RETITC in the year the System is installed and placed in service in the State.

This ruling and its conclusions are applicable only to the Company and the Company’s [REDACTED TEXT] projects to the extent the facts relative to the Company’s [REDACTED TEXT] projects are as represented in this letter. This ruling shall not be applied retroactively. It may not be used or cited as precedent by any other taxpayer.

The conclusions reached in this letter are based on our understanding of the facts that you have represented. If it is later determined that our understanding of these facts is not correct, the facts are incomplete, or the facts later change in any material respect, the conclusion in this letter will be modified accordingly.

The Company has reviewed and agreed that the redacted version of this ruling attached as Exhibit A will be available for public inspection and copying.

If you have any further questions regarding this matter, please call me at 808-587-1596. Additional information on Hawaii’s taxes is available at the Department’s website at www.state.hi.us/tax.

Very truly yours,

JOSEPH B. TICHY
Administrative Rules Specialist

APPROVED BY:

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[REDACTED TEXT]

[REDACTED TEXT]

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JOHNNEL NAKAMURA
Rules Officer