DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

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UIL: 25C.00-00

Dear :

I am responding to your fax dated January 30, 2011. In this fax, you discuss several aspects of the tax credits for nonbusiness energy property available to tenant-stockholders in cooperative housing corporations. This letter describes well-established interpretations and principles of tax law without applying them to a specific set of facts. This letter is advisory only and has no binding effect on the Internal Revenue Service. This letter only provides general guidance for determining how to comply with applicable law.

You stated in your fax that IRS officials had promised to send you a comprehensive document that would address the spectrum of issues affecting your fellow high-rise housing cooperative homeowners/stockholders and you. We agreed to send a follow-up letter to you correcting an error on a prior letter that we sent to you. Additionally, in a phone conversation with you I agreed to also address in that follow-up letter some additional questions about which you had asked for further clarification. I am addressing both the correction and clarifications in this letter along with my response to your fax dated January 30, 2011. I believe the content of this letter addresses all issues that we have discussed.

First, I want to provide the correction and clarification for the letter we sent to you dated December 22, 2010, in response to your fax dated November 24, 2010, on the tax credit for nonbusiness energy property under section 25C of the Internal Revenue Code (the Code). As part of my response dated December 22, 2010, I included general information about the credit including information stating when taxpayers must place property in service to qualify for a credit. There are errors in the paragraph describing the required placed in service dates.

This paragraph should read: “The credit is available for qualified property placed in service before January 1, 2011. Recently enacted legislation, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, extended the

placed in service date to allow property that is placed in service before January 1, 2012, to qualify for the credit and made other changes to the credit that are not relevant to this letter."

I spoke on the phone with you on January 12, 2011, about our letter to you dated December 22, 2010. During this phone call, you requested additional clarification about two different issues.

First, you requested clarification about a sentence in the December 22, 2010 letter. This sentence reads, "[a]s discussed, the law treats a tenant-stockholder in a cooperative housing corporation as having made his or her proportionate share of any expenditures of the corporation." This sentence means, the law treats a tenant-stockholder in a cooperative housing corporation as having made his or her proportionate share of the corporation's expenditures for property that is eligible for a tax credit under section 25C.

Second, you requested clarification about whether a taxpayer must have a manufacturer's certification to claim a tax credit. I will include a full response to this question in my discussion about the section 25C tax credit included in this letter; however, I also wanted to note that I responded to this question in my letter to you dated August 12, 2010.

As I have discussed in previous letters to you, tenant-stockholders in a cooperative housing corporation are eligible for the tax credits for nonbusiness energy property such as qualified exterior windows and qualified exterior doors. Section 25C of the Code provides this tax credit.

Qualifying Property under Section 25C of the Code

Section 25C, as originally enacted in the Energy Policy Act of 2005 (EPACT), provided a tax credit for qualified energy efficiency improvements including qualifying exterior windows and exterior doors. The credit was available with respect to qualifying property placed in service after December 31, 2005, and before January 1, 2008. The Energy Improvement & Extension Act of 2008 (EIEA), enacted on October 3, 2008, revived the section 25C credit that expired at the end of 2007. Neither of these laws, the EPACT nor the EIEA, provided any credit under section 25C for property placed in service during 2008, but the EIEA provided a credit for qualified property placed in service after December 31, 2008, and before January 1, 2010.

To qualify for this tax credit, the law required that the energy efficiency improvements meet certain energy efficiency standards. The EIEA required an exterior window or door to meet the requirements of the 2001 Supplement of the 2000 IECC or the 2004 Supplement of the 2003 IECC. Because of the difficulty taxpayers would have in determining whether they satisfied statutory efficiency standards for property that they purchase, the IRS allowed homeowners (including a tenant stockholder in a cooperative

housing corporation and the owner of a condominium) to rely on certifications of the manufacturer that the property that the manufacturer produced satisfies these efficiency standards in the law. The IRS issued a notice on March 13, 2006, that allowed manufacturers to issue a certification statement that the property that they manufactured met the energy efficiency requirements in the law. The IRS also allowed taxpayers who purchased exterior windows and skylights that bore the Energy Star label to rely on the Energy Star label to show that a window or skylight satisfied the statutorily required efficiency standards if the taxpayer installed the window or skylight in the region(s) identified on the label. (See Notice 2006-26.)

The American Recovery & Reinvestment Tax Act of 2009 (ARRTA), enacted on February 17, 2009, extended the credit for qualified property placed in service before January 1, 2011. The ARRTA also made further changes to the credit by amending the efficiency standards required in the law. Therefore, to qualify for this tax credit for qualified energy efficiency improvements (including exterior windows, skylights, and doors) that are installed the day after enactment, February 17, 2009, the improvements had to meet the energy efficiency standards in the ARRTA. The ARRTA generally raised the efficiency standards for property placed in service after February 17, 2009. Thus, the ARRTA requires that an exterior window, skylight, or door meet both the prescriptive criteria of the IECC and have a U factor and SHGC that is equal to or less than 0.30 to qualify for the tax credit. (After the ARRTA, a reference to the IECC may also refer to the 2009 IECC.)

The IRS provided a limited exception to this change in energy efficiency standards. This limited exception specifically provides that for amounts actually paid or incurred before June 1, 2009, taxpayers may rely
(1) on a manufacturer's certification issued before February 18, 2009, if the manufacturer based the certification on the efficiency standards in place before the ARRTA (that is, before February 18, 2009), and
(2) on the Energy Star label for exterior windows or skylights, if the taxpayer installed the windows or skylights in the region identified on the label. (Note-the exception allowing a taxpayer to rely on an Energy Star label does not apply to doors.)
The IRS provided this limited exception because Notice 2006-26 provided that taxpayers could rely on a manufacturer's certification statement for section 25C property or on an Energy Star label for exterior windows and skylights. A taxpayer who claims this limited exception should retain in his or her records the manufacturer's certification or the Energy Star label on which he or she relied.

We published this limited exception in section 7.03(1) and (2) of Notice 2009-53 (copy attached). Notice 2009-53 also includes an updated manufacturer's certification procedure to allow manufacturers to certify property that meets the new energy efficiency standards enacted in the ARRTA.

Taxpayers who made purchases before June 1, 2009, and did not rely on a manufacturer's certification issued before the ARRTA for section 25C property or an Energy Star label for exterior windows and skylights, cannot claim this exception. To qualify for the credit for property placed in service after February 17, 2009, these taxpayers must install property that meets the energy efficiency standards enacted as part of the ARRTA; specifically, for windows, doors, and skylights, the ARRTA requires that these properties meet both the prescriptive criteria of the IECC and have a U factor and SHGC that is equal to or less than 0.30 to qualify for the tax credit.

As stated in my letter dated August 12, 2010, a taxpayer may qualify for the nonbusiness energy property credit without a manufacturer's certification statement for section 25C property or the Energy Star label for exterior windows and skylights that the taxpayer installs between January 1, 2009, and February 17, 2009, if the taxpayer can show that the section 25C property meets the requirements in the law as in effect prior to the ARRTA. Likewise, a taxpayer may qualify for the credit without a manufacturer's certification statement for section 25C property that the taxpayer installs after February 17, 2009, if the taxpayer can show that the section 25C property meets the requirements in the law made effective by the ARRTA. Of course, either a manufacturer's certification for any section 25C property or the Energy Star label for windows and skylights is necessary to rely on the exception for amounts actually paid or incurred before June 1, 2009, based on either
(1) a manufacturer's certification issued before February 18, 2009, if the manufacturer based the certification on the efficiency standards in place before the ARRTA (that is, before February 18, 2009), and
(2) the Energy Star label for exterior windows or skylights, if the taxpayer installed the windows or skylights in the region identified on the label.

Therefore, to reiterate, in response to your fax dated January 30, 2011, only taxpayers claiming a credit under the limited exception must have the certification statement. Property that meets the applicable statutory requirements at the time it is installed is qualified property without a manufacturer's certification. The installation dates are critical, however, to determining the applicable statutory requirements. In your fax dated January 30, 2011, you stated your concern about confusing language for fenestration product purchase dates and installation dates. The Congress provided in the ARRTA that property installed after February 17, 2009, must meet the ARRTA requirements. The law specifically stated in the ARRTA that the change in the efficiency standards applies to property installed after February 17, 2009. Thus, an exterior window, skylight, or door installed after February 17, 2009, must meet both the IECC and the requirement that the SHGC and U factor be equal to or less than 0.30. Windows, skylights, and doors that meet the prescriptive criteria of the 2001 supplement of the 2000 IECC (but not the requirement that the window, skylight, or door has a U factor and SHGC that is equal to or less than 0.30) will only qualify if installed prior to February 18, 2009 (unless this property also qualifies for the limited exception

discussed above based on reliance on a manufacturer's certification or the Energy Star label).

I am sorry that manufacturers may not have been aware of the certification procedure; however, as explained, a taxpayer does not have to have a certification statement to claim the credit if the installed exterior window, skylight, or door meets both the prescriptive criteria of the IECC and has a U factor and SHGC that is equal to or less than 0.30 to qualify for the tax credit. The manufacturer's certification is necessary for a taxpayer claiming a credit under the exception to show that the taxpayer relied on the certification.

Additionally, in response to your fax dated January 30, 2011, I believe I have indicated to you in almost every (if not every) discussion I have had with you that we have never intended to provide any discussion of how to apply any provision of the IECC. I am sorry if anything I said caused you to think that we would provide any discussion of the application of the 2001 supplement to the 2000 IECC to large Cooperative buildings or to any other buildings.

Eligibility of tenant-stockholders for a tax credit

For the purpose of this credit, section 25C treats an individual who is a tenant-stockholder in a cooperative housing corporation as making the tenant-stockholder's proportionate share of any expenditures of the corporation for exterior windows and doors. Similarly, in the case of an individual who is a member of a condominium management association for a condominium unit that the individual owns, section 25C treats the individual as making the individual's proportionate share of any expenditures of the association for windows and doors for the purpose of determining that individual's eligibility for the section 25C credit.

As I discussed in my letter to you dated December 22, 2010, a cooperative housing corporation is not eligible for these tax credits for new fenestration or other products that benefit all of the individual tenant-stockholders. This credit is a personal, individual credit for individual taxpayers, and the law specifically allows tenant-stockholders in their individual and personal capacity to claim these tax credits. The Congress would have to amend the law to allow a cooperative to claim the credit.

The law deems a tenant-stockholder as making his or her proportionate share of the qualifying expenditures of the corporation. Generally, the term "tenant-stockholder's proportionate share" means the proportion that the stock of the cooperative housing corporation owned by the particular tenant-stockholder is of the total outstanding stock of the corporation (including any stock held by the corporation).

Thus, if property installed in a common area of the cooperative meets the efficiency standards in the law and qualifies for the tax credit, each tenant-stockholder is allocated a proportionate share of these eligible expenditures of the corporation. However, a

taxpayer is eligible for the credit only for the proportionate share of the expenditures attributable to a unit that the taxpayer owns and uses as a principal residence within the meaning of section 121 of the Code. Eligible tenant-stockholders should not adjust their proportionate share to take into account the share of the expenditures attributable to tenant-stockholders who cannot take the credit because they do not meet the principal residence requirement.

Therefore, a tenant-stockholder that owns and uses his or her unit as a principal residence within the meaning of section 121 will be eligible for the credit based on his or her proportionate share of the qualifying expenses of the corporation for qualifying property that meets the requirements of section 25C. A taxpayer residing in a unit with qualifying property *only receives a tax credit based upon that tenant-stockholder's proportionate share of the cooperative's expenses regardless of whether the qualifying property was installed in that tenant-stockholder's individual unit*.

You stated in your fax dated January 30, 2011, that it is difficult to determine which benefits-distribution process is best. You also stated in your fax that it is necessary for the IRS to determine the best process by which energy conservation tax credit benefits are distributed. The law treats a tenant-stockholder as making his or her tenant-stockholder's proportionate share as described above. As discussed, the law treats a tenant-stockholder in a cooperative housing corporation as having made his or her proportionate share of the corporation's expenditures for property that is eligible for a tax credit under section 25C. The expenditures taken into account are only those expenditures that the corporation made for property that meets the requirements in the law that applied to the property during the applicable time period.

Conclusion

In conclusion, the law allows a tenant-stockholder to qualify for these credits. The law does not provide different rules for cooperatives. For example, the installation date requirements and references to efficiency requirements are the same for a tenant-stockholder as those that apply to any taxpayer claiming the credit. Furthermore, the credit is available only for individual taxpayers and is not available for the cooperative. I understand this is disappointing for you, but for the law to provide different rules for a cooperative would require the Congress to amend the law.

I hope this information addressing the information you discussed in your fax dated January 30, 2011, and our telephone call is helpful. I hope these explanations of the law will clarify how the law applies. If you have any further questions, please contact (Identification Number) or me at for assistance.

Sincerely,

Charles B. Ramsey
Chief, Branch 6
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure