

June 3, 2009

The Honorable Michael Mundaca
Deputy Assistant Secretary (International Tax Affairs)
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Room 3045
Washington, D.C. 20220

Re: Guidance Request With Respect to Energy Grants in Lieu of Credits

Dear Mr Mundaca:

I am writing on behalf of the Solar Energy Industries Association (SEIA) to support the efforts of the real estate industry to ensure that real estate investment trusts (REITs) are eligible for the energy grant provisions in Section 1603 of American Recovery and Reinvestment Act.

SEIA is the national trade association of 850 solar energy manufacturers, project developers, distributors, contractors, installers, architects, consultants and financiers. Established in 1974, SEIA works to expand the use of solar technologies in the global marketplace, strengthen research and development, remove market barriers, and improve education and outreach for solar.

The commercial real estate sector should be a prime source of demand for renewable energy property generally and for solar investments specifically. Buildings account for 40% of all energy consumption and almost 70% of all electrical energy use in the United States. We understand that approximately 200 REITs that register with the SEC as public entities own an estimated six billion square feet of commercial space. Another 1,200 or so entities file taxes as REITs accounting for still more commercial real estate assets in REIT form.

Traditionally, this real estate sector has not been a major investor in renewable energy because most REITs generate insufficient tax liability to be able to fully utilize the tax credits at the entity level, and the credits cannot be passed-through to shareholders. Moreover, current law through a reference in section 50(d)(1) to the rules of section 46(e), severely limits the qualifying investment for section 48 credits to the ratable share of REIT income that is not paid out in dividends. That is, if a REIT distributes 95% of its income to its shareholders, the energy credit it would otherwise be entitled to is reduced by 95%.

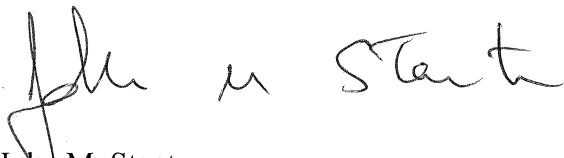
While those provisions have served as effective barriers to REIT investment in renewable energy property in the past, they should not serve as a barrier to REIT investment in the future under the

new Energy Grants in Section 1603 of ARRA. Section 1603(f) of the Act does provide that the application of “rules similar to the rules of section 50” of the Code apply to the energy grants, and the legislative history provides that Section 1603 is intended to “mimic” the operation of the credit under section 48. We don’t believe that should be read to exclude the participation of REITs which are technically eligible to receive section 48 credits in spite of the limitations that reduce the incentive to such a level that it is not economic. Moreover, Section 1603 includes a specific list of non-taxable entities that cannot receive grants and that list makes no reference to REITs.

As you know, the Energy Grant program was created to encourage increased investment in renewable energy property to help restore economic growth, reduce reliance on foreign oil, and move the nation toward a greener economy with lower greenhouse gas emissions. We urge you to interpret the new law to permit a major sector of the economy to invest in renewable solar energy.

Thank you for considering these points.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John M. Stanton". The signature is fluid and cursive, with the first name "John" being the most prominent.

John M. Stanton
Executive Vice President and General Counsel
The Solar Energy Industries Association