

From: Greg Shepard <greg@rapower3.com>
Sent: Thursday, October 23, 2014 1:58 PM
To:
Subject: [BULK] Ra3 Court Appeal Update
Attach: Paul Jones Letter Generic.docx

Please read and use as you see fit. Regards, Greg



PREPARATION NOTES FOR RAPOWER3 COURT APPEALS

Hello To All RaPower3 Team Members being Audited,

Here is some info for your use at your audits and/or appeals. It's what we will use at court appeals. We have our first one October 24, 2014. I will let you know if we need to make any adjustments. Appeal agents at the court level will have to evaluate the hazards of litigation based on actual tax code and law. I believe our case is so strong that agents will have to realize that to go forward would be fruitless. The major thrust of this info stems from the Tax Attorney Opinion letters, especially the one from Kirton McConkie and comes from Neldon's point of view.

At the audit or first appeal level, IRS agents may try to dismiss our tax attorney opinion letters. They may tell you the Kirton McConkie letter has been rescinded. Just say, "You have no proof of that. I can assure you that we can use our letters. So, you'll have to deal with them now or in tax court."

1. **First Establish:** According to IRS Tax Form 3468, solar energy can qualify for tax credits by producing electricity or providing solar process heat. **Ask: Are you challenging this tax code? Cite tax code and statutory law.**
 - A. **Our solar lenses produce heat.**
 1. Can produce electricity
 2. Can heat a building like Frito-Lay in California. They get tax credits just on the heat.
 3. Can produce clean water like some California solar companies. (See epsea.org) They get tax credits just from water production. Our original conditional use permit from Millard County in Utah was for irrigation purposes. We turn brackish water into pure distilled water.
 - B. **Ask: Are you challenging our technology?**
 1. We have white papers (engineering reports) from NASA scientists with PhD's from MIT, Stanford, etc.
 2. We have expert witnesses available that will testify as to the company's superior technology. **Ask: Do you have expert witnesses that can contradict our expert witnesses?**

2. **Tax Attorney Opinion Letters:** Everyone relied on the Anderson and Kirton McConkie tax attorney opinion letters and all of their research into tax codes and law: Taxpayers, RaPower3, and the inventor, Neldon Johnson. We all thought that the tax benefits were legitimate and fully in compliance with all IRS tax codes relating to solar energy. Our RaPower3 taxpayers never would have purchased the solar lenses if there were even a hint of impropriety. Neither RaPower3 nor Neldon Johnson would have ever become involved in the first place. There was never any intent to perpetrate a tax avoidance scheme or do anything inappropriate. The intent was to fully participate in the American Recovery and Reinvestment Act (ARRA) passed by Congress and signed into law by President Obama in 2009.

The intent of the ARRA was to foster innovation so our country could have clean, affordable, renewable energy. At this point, we are the only solar company that can do this. (Energy Experts)

A. Is there anything in the Anderson Tax Attorney Opinion letter that you wish to challenge? If so, which parts? Cite tax code and statutory law.

1. Concerning the Bonus Contracts, Anderson states, "This is an advertising purpose. Leasing it (the solar lenses) for advertising purposes allows for depreciation. Thus, your lenses were placed in service for depreciation purposes."
2. A taxpayer can start claiming depreciation of an asset as soon as his or her property is placed in service. Property just has to be ready and available for its specific use. If the equipment (Solar Lenses) is ready and available for ANY income producing activity, including leasing it out for advertising purposes, the owner may start claiming depreciation of the asset.

B. Is there anything in the Kirton McConkie Tax Attorney Opinion letter that you wish to challenge? If so, which parts? Cite tax code and statutory law.

1. We consider the word "Memorandum" to be synonymous with "opinion". Kirton McConkie was paid to research all tax law pertaining to solar tax benefits and to ascertain if our marketing plan was in full compliance with all tax codes and law. Our tax attorneys affirm that we are in full compliance. If the IRS can find errors in either of our tax attorney opinion letters, then we would have cause to sue the attorneys.
2. Kirton McConkie did write a request to rescind their "memorandum." However, in their "memorandum" there was no such stipulation for use restriction. Therefore, they cannot rescind their letter for RaPower3 taxpayers. Doing so would risk a lawsuit.
3. The tax attorney opinion letters fully cover the following topics: Sale vs. lease, Energy Tax Credit, Energy Property, Cost Basis, Placed in Service, Depreciation, At-Risk Limitations, Passive Activity Limitations, etc. **So again, specifically, is there any area you wish to challenge? Reasons? Cite tax code and statutory law.**

Ask if the IRS is in compliance with all their procedures involving RaPower3 taxpayers and have you always been in compliance with all your procedures involving RaPower3 taxpayers as you have cited statutory law pertaining to our cases?

3. Other Possible Issues:

A. The IRS contends the only way RaPower3 taxpayers make money are from the tax benefits. Not true. **Rental Fees:** Payout is about \$2,700 for every \$1,050 purchase. **Bonus:** Payout is \$2K to \$6K for every \$1,050 purchase. Payouts are expected to start in late 2014 or 2015.

B. Material Participation: Taxpayers only need to meet one of the seven critical tests. Most taxpayers qualify by using #2: the taxpayer does substantially all the work.

C. Millard County Compliance and Permits: We are in good standing in every way.

D. Neldon Johnson, inventor, has just been stringing everyone along. He has never accomplished anything. Not true.

1. Mr. Johnson invented the self checkout system used in grocery stores that we see today. His technology was stolen by a Canadian company called Optimal Robotics. Mr. Johnson sued and won a \$1.7M settlement.
2. Mr. Johnson has 25 patents and 50 other patents pending. Many are extremely detailed and scientifically complex in order to protect his breakthrough technologies. (Expert witnesses)

3. Mr. Johnson owns vast areas of prime solar property in both Utah and Texas.
4. Mr. Johnson owns a functioning solar manufacturing plant with about 20 employees.
5. Mr. Johnson owns solar construction equipment and a huge inventory stored in the manufacturing plant and at the Delta, Utah project site.
6. RaPower3 taxpayers know about all of the above. This is why we are vigorously contesting the IRS. We are confident that Rental Fees and Bonus will be paid.
7. The IRS in previous audits in 2013 denied RaPower3 audits based on Rev. Rul. 76-256, 1976-2 CB 46-IRC Sec. 167. It was from a 1976 ruling with a coal-fired electric generating unit. That's when they thought producing electricity was the only option. The ruling also has other problems.

Ask: Do you wish to challenge any of these issues? If so, cite tax code and statutory law.

- 4. The Timing Issue:** Wendy, a Salt Lake City IRS appeal's agent, on a previous appeal denial, brought up a timing issue. Two other appeal agents agreed with her on the timing issue. (Suzette Jones from the Salt Lake City office and Elizabeth Moore: Appeals Team Manager from the Las Vegas IRS office) Their position was if we could have just had our project up and running in 2012, we would have been OK. They could not cite any tax code or law at that appeal hearing to support this position. **Can you substantiate your timing issue position at this time? Cite tax code and statutory law.**

Wendy was given our tax code to refute her timing issue position, but we were denied anyway.

A. Section 103 Div. B Energy Credit (Code Sec. 48) "For projects whose construction time is expected to equal or exceed two years, the credit may be claimed as is placed in service."

B. Energy Tax Credit: Code Section 38-section 46 and Code Section 48 (a) cited. Also, 48(a) (3) and 50(b). Talks about providing solar process heat and the different ways the heat can be used.

C. Energy Property: Six requirements to qualify as "energy property". **We qualify.** It is not necessary for solar energy property to comprise a completely functional solar system in order to qualify for the energy credit. The court found that an incomplete system made up of qualifying parts, such as collectors, storage tanks, thermostats, heat exchangers, etc. can qualify for the credit.

The Solar Lenses will be capable of using solar energy to generate electricity and/or solar process heat once they have been properly installed in a tower and otherwise incorporated into a larger solar energy system. The fact that the Solar Lenses must be installed and incorporated into a larger solar energy system does not prevent them from qualifying as energy property. **See Code Section 48(a)(3)(A)(i).**

D. Placed in Service: Property is placed in service when it is "placed in a condition or state of readiness and availability for a specifically assigned function." (**Treas. Reg. Section 1.46-3(d)(1)(ii)**). However, the Tax Court has held that for property purchased for lease to others to be placed in service, **"it is not necessary that the property actually be used during the taxable year in the taxpayer's profit-motivated venture. It is sufficient that the property be available for use."**

The Buyer will enter into the O&M Agreement, which effectively leases the Solar Lenses to the Operator, simultaneously with the execution of the Purchase Agreement. Thus, the Solar Lenses will be available for use in the Buyer's leasing operations as soon as they are manufactured and Buyer acquires them. **Therefore, the Solar Lenses will be considered to have been placed in service as soon as they are acquired by the Buyer even though they will not be installed and actually used by the Operator to generate electricity or solar process heat until some later date.**

5. Why Our Delay? The generous tax benefits that we have today did not exit when Mr. Johnson discovered his proof of concept with his turbine and solar lenses a decade ago. Therefore, he set out to produce solar power that would be as affordable as coal. Even today, conventional solar technology cannot come close to this goal. Mr. Johnson's research and development phase centered on creating technology where he would have three major advantages over conventional energy technologies: By far the lowest manufacturing and installation costs; by far the lowest cost of operation; the ability to mass produce all components.

Mr. Johnson has now achieved that goal giving him and RaPower3 a distinct advantage over not only all other renewable energy companies, but over the coal industry as well: Truly an historic achievement. It just took a little longer than everyone wanted.

We could have used conventional turbine and/or heat exchanger technologies to go with our solar lenses and the IRS would have given us our tax benefits without question. However, conventional solar technologies are fraught with problems. Testimony to this fact is that many dozens of solar companies have filed for bankruptcy after receiving their tax benefits costing taxpayers billions of dollars. The most famous case was the Solyndra scandal costing taxpayers \$500M with their bankrupt photovoltaic technology.

Concentrated Solar Power (CSP) technologies are going through a variety of problems. Environmental problems start with literally destroying the hundreds of required acres for installation and ends with a prolific use of water in draught areas of the country. Huge operation costs limit the states where solar can even make a little profit and that's charging customers higher than normal electricity rates. We have eliminated all these kinds of problems.

Abengoa, a solar company from Spain, has received \$2.8B in taxpayer monies for a CSP solar project in the United States. Solana received \$2B in tax benefits for their 280-MW CSP project in Arizona. Why is such a massive effort by the IRS directed against us? Out tax benefits amount to just a half of one percent of just those two solar companies alone.

In our own home state of Utah, Infinia, a solar company from Ogden, received high praise from government officials and the press in February of 2013. Their 1.5 megawatt project was to be the biggest solar project in Utah and located at the Tooele Army Depot. They built the project with conventional technology and received millions in tax benefits. They filed for bankruptcy just six months later.

A little farther away on I-15 just across the Nevada border in Ivanpah, California another solar boondoggle is now occurring at taxpayers' expense. It's the largest CSP project in the United States and for this 393-Megawatt project the tax benefits that have already been paid have been enormous. At this point, with their conventional technology, it has been called an environmental disaster and the costs of operation have already exceeded projections. The FAA wants the plant shut down because of the blinding light shot up into the sky at planes. They are using up vast amounts of water during the worst draught in California history. There are two full-time employees who do nothing except pick up dead birds caused by their technology. They won't be allowed to build another project.

6. Our Current Position:

A. R&D: All completed

B. Full Production Status: Start full production of ten towers a day in late November of 2014. That's about one megawatt a day. That would make us the largest solar company in Utah. We can easily double that in our current Utah manufacturing plant. That would make us the largest solar company in the country. **(Expert Witness)**

C. Our Other Renewable Energy Technologies: With our new Dynamic Voltage Controller along with other technologies, we have a decided edge over all other forms of energy production: coal, PV solar, CSP solar, wind, ocean, geothermal, nuclear and batteries, etc. We are also the only solar company that can produce high volumes of pure distilled water using salt water or brackish water which will prove to be a godsend to draught stricken areas throughout our nation. **(See iaus.com. We also have expert witnesses and detailed patents pending).** Some of these technologies are ready now and some will be ready within a year or less.

IN CONCLUSION: The hazards of litigation are extremely high for the IRS. The hazards of adverse publicity are high for the IRS. We will soon have national and international publicity extolling our technologies as well as high praise coming from government officials. The IRS should put our cases behind them as quickly as possible.