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Re.: *Potential tax advantages.*

Dear Potential RaPower-3 Customer,

To help you, as a taxpayer, understand the possible tax saving benefits of purchasing energy equipment through RaPower-3, we have assembled the following information so that you can consult with your own tax professional about the potential tax advantages of entering the energy market by owning RaPower-3 energy equipment.

With the purchase of Rapower-3 Energy Equipment, there are four possible ways to reduce tax liability:

- energy credits;
- depreciation;
- § 179 costs,
- deductions and expenses.

Depending on your situation, all four approaches may apply to you. Below is a discussion regarding each possible benefit for you to review with your own tax professional and determine the applicability to your own unique financial situation.

**I. Energy credit -- Internal Revenue Code §§ 45 & 48**

Through tax code, the Federal Government has implemented several programs to incentivize renewable energy projects. One such program is found in IRC § 45 in conjunction with IRC § 48. Simply stated the sections provide for a credit of 30% the basis (essentially the purchase price) of energy equipment that is placed in service during the taxable year. For energy equipment that has not been placed in service, such as equipment still being manufactured, a taxpayer can elect to take a portion of the credit if the equipment is a Qualified Progress Expenditure Property ("QPEP"). QPEP is property being constructed by or for the taxpayer and which (a) has a normal

**Plaintiff  
Exhibit**

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construction period of two years or more, and (b) it is reasonable to believe that the property will qualify for the energy credit (from IRC § 48) once it is placed in service.

An owner of QPEP may claim the 30% credit on: (a) the amount paid towards the purchase (during the tax year) to another person for the construction of QPEP, or (b) an amount attributable to the portion of the QPEP that is completed (during the tax year); whichever is less.

Detailed language of this Energy Credit can be found in the United States Code, Title 26, §§ 45 through 48. Other considerations may apply, so be sure to talk to your tax professional about how you can personally qualify for this energy tax credit.

## **II. Depreciation**

Depreciation is an annual income tax deduction that could allow an owner of energy equipment to recover the purchase cost. The tax code acknowledges that hard assets such as energy equipment wear out and lose value over time. Thus, depreciations is an allowance that accrues over time for the wear and tear, deterioration, or obsolescence of the property. You can depreciate most types of tangible property, such as buildings, machinery, vehicles, and equipment.

To be depreciable, the property must meet all of the following requirements: it must be property you own; it must be used in your business or income-producing activity; it must have a determinable useful life; and it must be expected to last more than one year after being placed in service.

A taxpayer can start claiming depreciation of an asset as soon as his or her property is placed in service. Property is placed in service when it is ready and available for a specific use, whether in a business activity, an income-producing activity, a tax-exempt activity, or a personal activity. This does not mean you have to be using the property, just that it is ready and available for its specific use.

If the equipment 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.

## **III. Section 179 Expenses**

A qualifying taxpayer may treat the costs (such as maintenance, upkeep, and repairs) of his or her energy property as an expense beginning the year the property is placed in service. This is in addition to claiming the depreciation of the property as discussed above.

In 2010, the Federal Government through the Small Business Jobs Act (SBJA) increased the cap of Section 179 expenses so that certain business can claim up to \$500,000 beginning in the 2010 and 2011 tax years. To qualify for the section 179 deduction, your property must have been acquired for use in your trade or business. Property you acquire only for the production of income, such as investment property, rental property (if renting property is not your trade or business), and property that produces royalties, does not qualify.

#### **IV. Deductions and Losses**

So long as a taxpayer materially participates in a business activity, the taxpayer may deduct the losses from such activity against investment income. Moreover, even if the taxpayer does not materially participate, any losses may be deducted if the taxpayer has passive income from other sources to offset the passive losses.

For a taxpayer to materially participate in a business activity, the payer must work on a regular, continuous and substantial basis in the activity. *I.R.C. § 469 (h)(1)* lays out several tests to determine material participation and the taxpayer only has to meet one of the possible requirements. The tests are as follows:

- a. The taxpayer does substantially all the work in the activity.
- b. The taxpayer works more than 100 hours in the activity during the year and no one else works more than the taxpayer.
- c. The taxpayer works 500 hours or more during the year in the activity.
- d. Based on all of the facts and circumstances, the taxpayer participates in the activity on a regular, continuous, and substantial basis during such year. This test only applies if the taxpayer works at least 100 hours in the activity, no one else works more hours than the taxpayer in the activity, and no one else receives compensation for managing the activity.

Stated simply, if you do most of the work in the business using the RaPower-3 energy equipment, any losses associated with your business will be non-passive and can be deducted without limitation.

Generally any work you do in connection with your business will be considered participation. In a multi-level marketing structure, participation would include any activity to increase the productivity of other individuals engaged in sales such as recruiting, training, motivating and counseling such individuals. Other ways to participate in your business would include meeting and counseling with the operator of the equipment, negotiating sale and distribution of energy, reviewing productivity and costs, among others.

#### **V. Conclusion**

Right now, the government is enacting programs geared to foster and encourage development of energy sources. RaPower-3's equipment could allow you to enter the energy market and capitalize on those government incentives. This is only a brief overview of some of the possibilities that may be available to new owners of RaPower-3 energy equipment.

Although we have tried to ensure our information is accurate and useful, we are not acting as your attorney and the above is offered to you for informational purposes only. We recommend that you consult your own lawyer and tax professional for particularized assurance that the information applies to your situation.

Sincerely,

Anderson Law Center, P.C.

DISCLAIMER: Anderson Law Center, P.C. as an institution or its attorneys are not offering you advice on any personal income tax requirements or issues. The purpose of this communication for general information only and does not represent personal tax advice either expresses or implied. You are encouraged to seek professional tax advice for personal or corporate income tax questions and assistance.

## Tax Information

From: **Todd Anderson** (todd@deltaattorney.com)

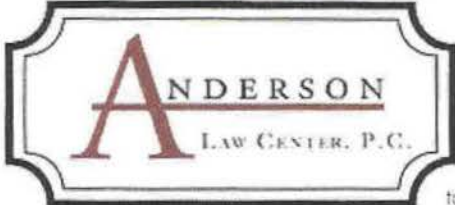
Sent: Mon 11/15/10 3:41 PM

To: neldon@iaus.com; glendaejohnson@hotmail.com

2 attachments

Operation & Maintenance Agreement.docx (125.6 KB) , Taxpayer Info.docx (59.6 KB)

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