



February 16, 2016

VIA ELECTRONIC MAIL

Internal Revenue Service

CC: PA: LPD: PR (Notice 2015-70)

Room 5203

P.O. Box 7604

Ben Franklin Station

Washington, D.C., 20044

Notice.Comments@irs.counsel.treas.gov

Re: Gasp and Alabama Center for Sustainable Energy's Comments on Notice 2015-70

Dear Sir or Madam,

Gasp¹ and the Alabama Center for Sustainable Energy² (we) respectfully submit the following comment to the Internal Revenue Service (IRS) regarding Notice 2015-70. We appreciate the opportunity to weigh in on defining certain types of property qualifying for the energy credit under § 48 of the Internal Revenue Code (IRC). We look forward to the IRS revising its regulations to better encompass the existing technologies and to anticipate and capture future technologies that should qualify for the energy credit.

I. Purpose

As groups advocating for the growth of the renewable energy industry³ we have a vested interest in the IRS' request for comments. Where the ITC incentivizes renewable energy, the IRS plays a crucial role in growing the renewable energy industry. We strongly encourage the IRS to include comprehensive definitions of energy storage and to resolve long-standing areas of ambiguity in its current regulations.

II. The IRC should give credit for energy storage.

Current regulations provide that energy property "includes equipment which uses solar

¹Gasp is a non-profit health advocacy organization fighting for healthy air in Alabama. We strive to reduce air pollution through education and advocacy — because Alabamians deserve clean, healthy air.

<http://www.gaspgroup.org>

² The Alabama Center for Sustainable Energy is accelerating the transition to clean, sustainable energy. ACSE achieves this by promoting sustainable energy as a feasible, state-wide goal, by executing high-impact, sustainable energy projects across the state, and by providing people with information and opportunities to help make sustainable energy choices. <http://alcse.org/>

³ Gasp advocates for clean air and healthy communities. Gasp supports policies, programs and technologies that result in fewer harmful emissions and pollutants in the air. Renewable energy, specifically solar energy, does not emit carbon and other harmful pollutants associated with traditional sources of power. Accordingly, the growth of the renewable energy industry in Alabama is crucial to fulfilling Gasp's mission

energy to generate electricity to heat or cool (or provide hot water for use in) a structure or to provide solar process heat.⁴” This section of the IRC contemplates “storage devices” but the language and examples focus largely on thermal storage.

First, old Investment Tax Credit (ITC) regulations and the current IRC § 48 are inconsistent, contradictory and often do not reflect current technology. Furthermore, statutory modifications by Congress and the continual development of modern technologies further obscures which properties and technologies qualify for the ITC. Should the IRS better define energy storage specifically, many of the existing inconsistencies in the current regulations would be clearer.

Second, energy storage has evolved over the years and continues to evolve. Energy storage increases the capacity factor of intermittent resources like solar power. Energy storage also helps moderate peak load demands on the grid, and thus can result in avoided investment in new infrastructure (i.e. transmission lines and utility-scale power plants). Where energy storage has become an integral part of the renewable energy sector, the IRS should clearly allow for storage devices to receive the ITC.

Furthermore, in states where unsupportive policies by state and regulatory bodies exist, inclusion of energy storage in the ITC becomes more important. For instance, energy buybacks below the wholesale rate encourage individuals and businesses to invest in energy storage technology. Clarification of the technologies eligible for the ITC would further drive demand in such states, including Alabama.

III. The IRS should adopt a comprehensive definition for energy storage that is uniform for electricity-producing technologies.

The current regulations often require that all or a portion of the ITC be reduced to the extent that the qualifying energy property performs another function and/or uses a non-qualifying source of energy. Application of the dual use property rules to energy storage has been inconsistent. For example, the IRS has treated differently battery storage for solar PV and battery storage for wind⁵.

The IRS should reconcile its differential treatment of battery storage for wind and solar PV. The IRS’ reasoning in its application of the ITC to the battery storage for solar PV focuses on the fact that the battery allowed the solar PV owner to store non-solar generated electricity from the grid. The IRS should compare this result with its decision to grant the full ITC to the wind battery ruling, where batteries are also allowed to draw energy from the grid. In both instances, battery storage provides grid regulation services. The IRS should more fairly apply the ITC to both sets of circumstances including when electricity drawn from the grid serves to provide grid regulation services.

Similarly, the IRS should consider the crucial role energy storage plays in capturing intermittent resources such as solar. Energy storage allows the full value of intermittent renewable resources to be captured and delivered thereby keeping with the original intent of the

⁴ IRC § 48(a)(3)(A)(i)

⁵ In 2011, the IRS permitted taxpayers to claim a full 30 percent ITC on the eligible basis of storage devices paired with wind farms. *See* IRS PLR 201142005, 201208035. However, in 2012, the IRS concluded that for a combined solar PV and battery system the taxpayer must apply a haircut on the ITC claimed on storage device in cases, where the storage device is charged with solar and non-solar energy (i.e. grid power). The IRS deemed this storage device as energy property under Treas. Reg. § 1.48-9(d)(6) and determined that such equipment is solar energy property only if its use of energy from sources other than solar energy does not exceed 25 percent of its total energy input and only to the extent of its basis of cost allocable to its use of solar energy. *See* IRS PLR 201308005.

rule: to promote renewable energy. Accordingly, the IRS should honor the original intent of the ITC by applying the full credit to energy storage.

IV. The IRS should clarify long-standing areas of ambiguity in the ITC.

Many of the definitions in the Treasury Regulations date back to 1987 and have not been revisited since; many ambiguities exist. The aforementioned sections address ambiguities and contradictions regarding energy storage. This is an opportunity for IRS to consider public comment and reconcile many of the differences in regulations that contradict one another and confuse taxpayers.

Specifically, the IRS should reconcile the contradictions in IRC § 48(a)(3)(A)(i) that provides solar process heat is eligible for the ITC, but Treas. Reg. § 1.48-9(d)(7) provides that solar process heat does not qualify as solar energy. Community solar projects continue to increase in popularity. However, the current IRS regulations are silent on the extent to which taxpayers' property will be respected as qualifying energy property under the shared ownership of components scenario unique to community solar projects. Although the IRS recently accepted the concept of community solar⁶, the IRS needs to specifically address shared and separate ownership in its regulations. For community solar, details can vary widely. For example, in some cases, separately-owned property may be functionally interdependent, whereas the property in other cases may be only integral. The regulations need to capture the nuances and intricacies of shared and separate ownership.

V. Conclusion

We strongly support the IRS' efforts to reconcile historical ambiguities and confusion in its regulations. The ITC has played a crucial role in incentivizing and growing America's clean energy industry. Accordingly, by creating more comprehensive definitions that can incorporate existing and future technologies, and applying its rules more consistently, the IRS can further incentivize the renewable energy sector. We hope this public comment process will result in proposed regulations and we look forward to participating again in that public comment process.

We appreciate the opportunity to comment.

Sincerely,



Haley Colson Lewis
Programs Manager
Gasp



Daniel Tait
CEO
Alabama Center for Sustainable Energy

⁶ See IRS PLR 201536017.