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BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of Letter Ruling	)	D E T E R M I N A T I O N
	)	No. 12-0021
. . .	)	Registration No. . . .
	)	TI&E Letter Ruling
	)	Docket No. . . .

RULE 273; RCW 82.16.120: RENEWABLE ENERGY SYSTEM INVESTMENT COST RECOVERY INCENTIVE – ELIGIBILITY. A special purpose entity that leases the roof space of a customer of a light and power company, installs its renewable energy system on the roof, and sells the energy produced by the system to the roof owner, does not qualify for a renewable energy system cost recovery incentive under RCW 82.16.120 and WAC 458-20-273.

Headnotes are provided as a convenience for the reader and are not in any way a part of the decision or in any way to be used in construing or interpreting this Determination.

Eckholm, A.L.J. – A solar power system seller appeals a Taxpayer Information and Education (TI&E) section letter ruling that a special purpose entity does not qualify for the cost recovery incentive payment under RCW 82.16.120 and WAC 458-20-273 (Rule 273), where it leases the roof space of a customer of a light and power company, installs its renewable energy system on the roof and sells the energy produced by the system to the roof owner. We affirm the letter ruling and deny the appeal.[1]

ISSUE

Whether a special purpose entity that leases the roof space of a customer of a light and power company, installs its renewable energy system on the roof and sells the energy produced by the

[1] Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

system to the roof owner, qualifies for the cost recovery incentive payment under RCW 82.16.120 and Rule 273.

FINDINGS OF FACT

[In] 2010, [Taxpayer] ("the solar power system seller") requested a letter ruling from the Department of Revenue ("Department") TI&E section regarding the application of the investment cost recovery incentive to a solar power system owned by a special purpose entity and placed on the roof of a building owned by a separate entity. The solar power system seller provided the following facts in its ruling request:

> [The solar power system seller] is inquiring on its own behalf regarding a scenario where the [building owner] provides space on its roof for a solar power system that is owned by another party.
>
> [The solar power system seller] is a Washington corporation that, together with its subsidiaries, is engaged in the development, installation, and operation of photovoltaic solar power systems that transmit electrical energy to a host site for use on-site. By this letter, [the solar power system seller] requests a ruling from the Department regarding the eligibility of a subsidiary of [the solar power system seller], or any special purpose taxable entity established for the purpose of developing, owning, operating, and selling power from a solar power system to the site host, to receive the Standard (not Community Solar) Washington Solar Production Incentive for a solar power system installed on property owned by a third party, so long as the property is served by a participating utility.
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> In particular, [the solar power system seller] is working with the [building owner] in . . . WA, which is a not-for-profit business. The [building owner's] Executive Director and Trustees have expressed interest in the installation and operation of a solar power system on the roof of the [building owner]. Under [the solar power system seller's] proposal, a special purpose taxable entity will be established for the purpose of installing, owning, and operating the solar power system, and provide its electric power to the [building owner] in return for compensation to be determined by mutual agreement between the Special Purpose Entity and the [building owner]. The solar power system will use a net metering arrangement with [the light and power company], and the Special Purpose Entity will apply for the Washington Solar Production Incentive for a non-community solar project.
>
> Please provide a ruling as to whether the Special Purpose Entity described above, as the (1) Owner of a Solar Power System Installed on the real property of a Business that is a Customer of a Participating Utility and (2) Generator and Provider of Power from the Solar Power system to the Business, may apply for and is eligible to receive the Standard Washington Solar Production Incentive.
>
> I am providing the following information to assist you in responding to this request.

> • The Special Purpose Entity that [the solar power system seller] will create to own and operate the solar equipment will be either a Washington Limited Liability Company OR a Washington Cooperative Corporation. We seek a ruling on whether either or both entity types are eligible applicants for the Washington Production Incentive in the scenario described above.

Request for Letter Ruling, October 28, 2010 (bracketed terms ours). On November 4, 2010, the TI&E section issued the following ruling in response:

> A solar energy system owned and operated by a Special Purpose Entity that [the solar power system seller] will create placed [*sic*] on property owned by the [building owner] does not meet the requirements under WAC 458-20-273 for the renewable energy system cost recovery incentive payment either as a standard system or a community solar project.
>
> To qualify for incentive payments under this program, except for a community solar project, the applicant must own the system, own the property the system is placed on, and have an account with the local light and power company for that property.
>
> Only a community solar project can qualify on leased property owned by a cooperating local government entity. The [building owner] is not a local government entity. Therefore, the site cannot qualify as a community solar project.
>
> For a project to receive incentive payments for electricity generated from the roof of the [building owner] the system must be owned by the [building owner], placed on property owned by the [building owner], and the [building owner] must receive power at that site. The [building owner] would then qualify as the "applicant" to receive incentive payments under the standard rate of $0.15 per kilowatt hour produced.
>
> WAC 458-20-273 defines "applicant" and "customer generated electricity".
>
> Section 2(b):
>
> "**Applicant**" has the following three meanings in this definition.
>
> (i) For other than community solar projects, applicant means an individual, business, or local government, **that owns the renewable energy system that qualifies under the definition of "customer-generated electricity."**
>
> (ii) For purposes of a community solar project defined in (c)(i) or (iii) of this subsection, the administrator, defined in (a) of this subsection, is the applicant.
>
> (iii) For purposes of a utility-owned community solar project defined in (c)(ii) of this subsection, the utility will act as the applicant for its ratepayers that provide financial support to participate in the project.

Section 2(e):

> **"Customer-generated electricity"** means the alternating current electricity that is generated from a renewable energy system located in Washington state, **that is installed on an individual's, businesses', local government's or utility's real property and the real property involved is served by a light and power business.**
>
> (i) Except for utility-owned community solar systems, **a system located on a leasehold interest does not qualify under this definition.** For a community solar project requiring the cooperation of a local governmental entity, the cooperating local governmental entity must own in fee simple the real property on which the solar energy system is located to qualify as "customer-generated electricity." A leasehold interest held by a cooperating local governmental entity will not qualify. However, for nonutility community solar projects, a solar energy system located on land owned in fee simple by a cooperating local governmental entity that is leased to local individuals, households, nonprofit organizations, nonutility businesses or companies will qualify as "customer-generated electricity." . . .

Letter Ruling, November 4, 2010 (emphasis in original)(bracketed terms ours). The solar power system seller disagrees with TI&E's conclusion and asserts, in summary:

> There is no mandate in the statute that the underlying property (the situs) owner also own the system creating the "customer generated electricity"; only that the underlying property not be leased. (RCW 82.16.110(3).) . . .
>
> Neither the statute nor the rules requires that the owner of the system also own the underlying real property. The system may be owned by "a business" and the situs of the customer-generated electricity may be "a business," but the two businesses do not need to be the same. If the legislature had intended to require the incentive applicant and system owner to be the same as the site owner, it would have required the applicant to be a business that owns the renewable energy system *and* the site on which the customer-generated electricity is generated. Instead, "a business" may own a system that generates electricity on the property of "a business," so long as that latter business is served by a light and power company and does not lease the property. . . .

Appeal Petition, page 2.

At the hearing on appeal, the solar power system seller indicated that the Special Purpose Entity owner of the solar power system intends to lease from the building owner the roof space where the solar power system will be installed. The solar power system seller also indicated that they have discussed their proposed arrangement with the light and power company serving the building owner's property, and have assisted the building owner in setting up any necessary metering agreements between the power company and the building owner in order to track the amount of customer-generated energy eligible for the incentive. In addition, the solar power system seller stated that the Special Purpose Entity will have its own meter on the system to

track the amount of electricity produced by the system for which it will charge the building owner.

ANALYSIS

RCW 82.16.110 through 82.16.140 provide for a renewable energy cost recovery program. The Department's rule implementing the program, WAC 458-20-273 (Rule 273), summarizes the program as follows:

> . . . This program authorizes a customer investment cost recovery incentive payment (incentive payment) to help offset the costs associated with the purchase and use of renewable energy systems located in Washington state that produce electricity. …

Rule 273(1). RCW 82.16.120 describes who is eligible for the incentive:

> **Any individual, business, local governmental entity**, not in the light and power business or in the gas distribution business, or a participant in a community solar project **may apply to the light and power business serving the situs of the system**, each fiscal year beginning on July 1, 2005, for an investment cost recovery incentive for each kilowatt-hour from a customer-generated electricity renewable energy system. . . .

RCW 82.16.120(1)(a)(emphasis added). The statute only allows a cost recovery incentive for "customer-generated electricity" generated from a renewable energy system, which is defined as:

> . . . a community solar project or the alternating current electricity that is generated from a renewable energy system located in Washington and **installed on an individual's, businesses' (sic), or local government's real property** that is **also provided electricity generated by a light and power business.** Except for community solar projects, **a system located on a leasehold interest does not qualify under this definition**. Except for utility-owned community solar projects, "customer-generated electricity" does not include electricity generated by a light and power business with greater than one thousand megawatt hours of annual sales or a gas distribution business.

RCW 82.16.110(3)(emphasis added).

Rule 273 reiterates the statutory definition of "customer-generated electricity" in subsection (2)(e) and defines "applicant" in subsection (2)(b):

> (2) Definitions. The definitions in this section apply throughout this section unless the context clearly requires otherwise. . . .
>
> (b) "Applicant" has the following three meanings in this definition.

> (i) For other than community solar projects, applicant means an individual, business or local government that owns the renewable energy system that qualifies under the definition of "customer-generated electricity. . . .

Rule 273 further defines who may receive an incentive payment in subsections (3) and (4):

> (3) Who may receive an incentive payment? Any of the following may receive an incentive payment:
> (a) An individual, business, or local government entity, not in a light and power business or in a gas distribution business owning a qualifying renewable energy system; or . . . .
>
> (4) Must you be a customer of a light and power business to be a recipient of an incentive payment? Yes, only owners of qualifying renewable energy systems located on interconnected properties belonging to customers of a light and power business are eligible to receive incentive payments. . . .

In summary, the following requirements must be met to establish eligibility for an investment cost recovery incentive:

(1) The individual, business, or local government entity applying for the incentive (the applicant) must own the system (Rule 273(2)(b)(i) and (3)(a));

(2) The system must be installed on an individual's, business's, or local government entity's real property (RCW 82.16.110(3); Rule 273(2)(e));

(3) The system may not be located on a leasehold interest (RCW 82.16.110(3); Rule 273(2)(e)(i));

(4) The property where the system is located must be provided electricity generated by a light and power business (RCW 82.16.110(3); Rule 273(2)(e)); and

(5) The applicant must be a customer of the light and power business serving the property where the system is located and the interconnecting properties must also be customers of the light and power company (Rule 273(4)).

Applying these requirements, the Special Purpose Entity has only established that it meets the fourth requirement of eligibility for the investment cost recovery incentive – that the property where the system is located is served by a light and power company – but it has not established the other four eligibility requirements.

We can easily address requirements three and five. The solar power system seller does not meet the third requirement – that the system may not be located on a leasehold interest – because the Special Purpose Entity intends to lease the roof from the building owner and install the renewable energy system on the leased roof. The renewable energy system will be located on a

leasehold interest, the leased roof space, therefore, the electricity produced by the Special Purpose Entity's system will not qualify under the definition of "customer generated electricity."

The solar power system seller does not meet the fifth requirement – that the applicant must be a customer of the light and power business serving the property where the system is located – because the building owner is the customer of the light and power business serving the property, not the Special Purpose Entity. The Special Purpose Entity intends to install and own the system, and then sell the electricity produced by the system to the building owner. The solar power system seller indicated that it approached the light and power company and engaged in discussions as to how the electricity produced by the system would be metered and how the Special Purpose Entity would apply for the credit, but that does not make the Special Purpose Entity a customer of the light and power business.

The first and second requirements – that the individual, business, or local government entity applying for the incentive (the applicant) must own the system and that the system must be installed on an individual's, business's, or local government entity's real property – were interpreted by TI&E to mean that the system must be installed on the real property owned by the *same* individual, business, or local government entity that owns the system and is applying for the credit. The solar power system seller asserts that these requirements are not set forth in the statute or rule.

The statutory language at issue is set forth in RCW 82.16.110(3) and RCW 82.16.120(1)(a), *supra*¸ and references "an individual, business, or government entity" in similar form. To determine whether the references in both sections refer to the *same* "individual, business, or government entity" we are required to engage in statutory interpretation.

. . . Under RCW 82.16.120(1)(a) any individual, business or local government entity may apply to the light and power business serving the situs of the system for an investment cost recovery incentive for each kilowatt-hour of customer-generated electricity. Customer-generated electricity, as the term plainly states, is electricity generated by the customer. The light and power business issues the incentive to its customer at the situs of the system. Therefore, the individual, business or local government entity applicant eligible for the incentive must be the customer of the light and power business serving the situs of the system. The Department includes this statutory requirement in Rule 273(4).

. . . The statute includes within the definition of "customer-generated electricity" that the system generating the electricity must be installed on an individual's, business's or local government's real property that is provided electricity by a light and power business, and that the system cannot be located on a leasehold interest. RCW 82.16.110(3). As stated above, the light and power company serving the situs of the system may only issue the incentive to an individual, business, or local government entity that is its customer and owns the system. Therefore, if the system owner is the customer of the light and power business serving the location of the system, and the customer cannot have a leasehold interest in the property, it stands to reason that the statute's reference to the individual, business or local government entity required to own the real

property where the system is located, is the same individual, business or local government entity that may apply to the light and power business for the incentive.

The solar power seller asserts that the statute does not require that the applicant and the owner of the property be the same individual, business or local government entity. We do not find that interpretation of the statute reasonable because it would be inconsistent with the requirement that the system not be located on a leasehold interest. . . .

In summary, reading . . . RCW 82.16.110(3) and RCW 82.16.120(1) in the context of the statute, the only reasonable interpretation is that the individual, business or local government entity applying for the incentive must also be the same individual, business or local government entity that owns the real property where the system is located.

. . . The . . . statute requires that only an owner of a renewable energy system, installed on the system owner's property, that is served by the light and power business of which the system owner is its customer, is eligible for the investment cost recover incentive under RCW 82.16.110. The solar power system seller has failed to establish that the Special Purpose Entity meets the eligibility requirements for the investment cost recovery incentive payment under RCW 82.16.120. We affirm the TI&E letter ruling and deny the petition.

DECISION AND DISPOSITION

The Taxpayer's petition is denied and the letter ruling is affirmed.

Dated this 7th day of February, 2012.